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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Gary Guthrie, Stephanie Crain, Chad Hinton, Julio Zelaya, Anna Gilinets, Marcy Knysz, Lester Woo, and Amy Bradshaw, *on behalf of themselves and all others similarly situated,*

Plaintiffs,

vs.

Mazda Motor of America, Inc.,

Defendant.

Case No.: 8:22-cv-01055-DOC-DFM

PLAINTIFFS' RESPONSE TO OBJECTIONS TO THE CLASS SETTLEMENT

Date: August 5, 2024
Judge: Hon. David O. Carter
Time: 8:30 a.m.
Courtroom: 10A

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I. INTRODUCTION[1]

A settlement is "a yielding of absolutes and an abandoning of highest hopes." *Staton v. Boeing* Co., 327 F.3d 938, 959 (9th Cir. 2003) (citation omitted). As the Ninth Circuit stated in affirming the approval of a settlement in a car defect case:

> Of course it is possible, as many of the objectors' affidavits imply, that the settlement could have been better. But this possibility does not mean the settlement presented was not fair, reasonable or adequate. Settlement is the offspring of compromise; the question we address is not whether the final product could be prettier, smarter or snazzier, but whether it is fair, adequate and free from collusion.

Hanlon v. Chrysler Corp., 150 F.3d 1011, 1027 (9th Cir. 1998); *see Chalian v. CVS Pharmacy, Inc.*, 2021 WL 3015407, at *3 (C.D. Cal. July 16, 2021) ("In reviewing the proposed settlement, a court need not address whether the settlement is ideal or the best outcome, but only whether the settlement is fair, free of collusion, and consistent with plaintiff's fiduciary obligations to the class."). While the Settlement is the product of compromise, the benefits offered to Class Members are comprehensive, address members' concern to remedy the Valve Stem Defect and provide valuable consideration to the Class.

The Class approves the settlement. The Settlement covers over 86,000 Class Vehicles and over 100,000 notices were mailed out via first-class mail. Only three Class Members challenge the Settlement.[2] The overwhelming positive reaction of the Class to the Settlement reveals its strength and the fact that it provides a tremendous result for Class Members. *See Zakikhani v. Hyundai Motor Co.*, 2023 WL 4544774, at *5 (C.D. Cal. May 5, 2023) ("The absence of a large number of objections to a proposed

[1] Plaintiffs incorporate herein Plaintiff's Motion for Final Approval of the Class Action Settlement of July 22, 2024, and the exhibits and declarations thereto.

[2] Franics J. Farina ("Farina"), Pamela Farr ("Farr") and Bobby Young ("Young"). The Farina objections are docket entries No. 107, 123 and 128. The Farr and Young objections are attached as Exhibits D and E respectively to the Declaration of Sergei Lemberg.

class action settlement raises a strong presumption that the terms of a proposed class settlement action are favorable to the class members") (citation omitted); *see also*, *Collado v. Toyota Motor Sales, U.S.A., Inc.*, 2011 WL 5506080, at *2 (C.D. Cal. Oct. 17, 2011), *aff'd in part, rev'd in part on other grounds*, 550 F. App'x 368 (9th Cir. 2013) (22 objections out of 239,670 class members was not a large number and "indicates that the terms of a proposed class settlement action are reasonably favorable to the class members").

The three objectors "bear[] the burden of proving any assertions they raise challenging the reasonableness of a class action settlement." *In re LinkedIn User Privacy Litig.*, 309 F.R.D. 573, 583 (N.D. Cal. 2015) (*citing United States v. Oregon*, 913 F.2d 576, 581 (9th Cir. 1990)). They fail to meet that burden and the objections should be overruled.

II. BACKGROUND

Plaintiffs allege that Class Vehicles have defective valve stem seals in their uniform Skyactiv-G 2.5T turbo engines that causes the Class Vehicles to consume an excessive amount of engine oil in between regular oil change intervals. (Dkt. No. 84 (Third Amended Complaint ("TAC")) ¶¶ 2, 114-120).

The defect was caused by an October 2020 design change to the "exhaust valve seals" in the impacted Class Vehicles' engines where Mazda had "changed the lip of the seal." Ward Tr.[3] 8:12-25, 9:7-15, 12:8-22. Because of the design change, when Mazda installed the Class Vehicles' exhaust valve seals "they were susceptible to getting scratched" "as they went over the tip of the exhaust valve stem." *Id.* As a result, oil could leak past the seal on exhaust side and "into the exhaust manifold." Ward Tr. 71:25-72:25. By July 2021 MNAO "confirm[ed] that the design change had caused the oil consumption to increase." *Id.* at Tr. 20:4-8

[3] "Ward Tr." refers to excerpts from the deposition transcript of Jerry Ward, Senior Manager for Product Quality at MNAO, attached as Exhibit C to the Declaration of Sergei Lemberg.

The redesigned valve stem seals were installed in approximately 86,000 Class Vehicles manufactured between October 2020 and September 2021. Ward Tr. 23:5-8, 42:8-43:14.

Gary Guthrie initiated this action on April 18, 2022, by way of his class action complaint filed in the Superior Court of the State of California in Orange County. (Doc. No. 1-2). Guthrie sought relief for himself and for those similarly situated arising from the Valve Stem Seal Defect. (Doc. No. 1 ¶¶ 2 & 58).

The Settlement Agreement, negotiated by experienced Class Counsel, provides extensive relief to the Class. The Repair Program gives Class Members with a manifestation (very broadly defined) of excessive oil consumption, past or present, a repair by replacing the defective valve stem seals with corrected ones. *Settlement Agreement*, Art. II(A). The extension to the powertrain limited warranty covers the exhaust manifold, the seals and other components. *Settlement Agreement*, Art. I(S), II(B); Lemberg Decl. ¶ 18 Lemberg Decl., Exhibit B (2021 Mazda Warranty Booklet) at p. 19). Class members who paid out of pocket for excessive oil consumption or changes can be fully reimbursed. *Settlement Agreement*, Art. II(C)(1-2).

The release provided in the Settlement is narrowly tailored to the factual claims in this litigation. Class Members who do not timely exclude themselves release claims relating to the defective valve stem seals of Class Vehicles. *Settlement Agreement*, Art. I(N), VIII(D). The valve stem seals "means the component which, in part, controls oil leakage into the exhaust manifold and, prior to September 13, 2021, were installed in Class Vehicles' 2.5L turbocharged engine." *Id*. Art. I(R); *see, e.g., Spann v. J.C. Penney Corp.*, 314 F.R.D. 312, 327–28 (C.D. Cal. 2016) ("With this understanding of the release, *i.e.*, that it does not apply to claims other than those related to the subject matter of the litigation, the court finds that the release adequately balances fairness to absent class members and recovery for plaintiffs with defendants' business interest in ending this litigation with finality.")

Released Claims do not include claims for personal injuries, wrongful death, property damage (other than damage to the Settlement Class Vehicles) or subrogation. *Settlement Agreement*, Art. I(N). Moreover, the Settlement specifically provides that any claims that may arise from a future National Highway Traffic Safety Administration recall are not released.

III. The Farina Objections Should be Overruled

On January 28, 2023, Farina initiated his copy-cat action in the Western District of North Carolina. *Farina v. Mazda Motor of America, Inc. et al*, 3:23-cv-00050. Farina sought relief for himself and those similarly situated arising the Valve Stem Seal Defect and for breach of warranty. (Lemberg Decl. Ex. F ("Farina Complaint")). Farina's Complaint copied much of Guthrie's complaint word for word.[4] On May 2, 2023, Farina filed an amended complaint in which he asserted claims under the Clean Air Act

[4] Compare, *e.g.*, Guthrie Complaint (Doc. No. 1-1) at ¶ 30:

> "30. On November 10, 2020, Mazda acknowledged that some of the Class Vehicles consume an excessive amount of engine oil, a symptom of the Valve Steam Seal Defect. Specifically, on that date, Mazda updated its "High Engine Oil Consumption" "M-Tips" Bulletin to its dealerships, M-Tips No.: MT-005/20, to include, inter alia, 2021 CX-5, 2021 CX-9, and 2021 Mazda6 vehicles, and noted that "Some customers may complain about high engine oil consumption."

with Farina Complaint ¶¶ 21-23, with the copying underlined:

> "21. Based upon the data generated by its dealers, on November 10, 2020, Mazda acknowledged internally that some of the Class Vehicles consume an excessive amount of engine oil, a symptom of the Valve Stem Seal Defect.
> 22. Specifically, on that date, Mazda updated its 'High Engine Oil Consumption' 'MTips' Bulletin to its dealerships, M-Tips No.: MT-005/20, to include, inter alia, 2021 CX-5, 2021 CX-9, and 2021 Mazda6 vehicles, and noted that 'Some customers may complain about high engine oil consumption.'"

The copying continues above and below these particular paragraphs and is far from the only copying of Guthrie's complaint that Farina did, as a cursory review of the two pleadings shows.

("CAA"), 42 U.S.C. § 7401, *et seq*. *Farina v. Mazda Motor of America, Inc.*, 3:23-cv-00050, ECF No. 29 (Lemberg Decl., Ex. G). Farina's motion to intervene was denied. (Doc. No. 124). He filed a motion for an order requiring the production of documents but never noticed it for a hearing. (Doc. No. 112). Farina has filed three objections to the Settlement.

Farina's objections, similar to his other filings, offer breathless and baseless speculation and are woefully flawed. The filings are replete with self-serving conclusions, untethered from a logical or factual basis, often contain fabricated quotes or cites,[5] fail to raise credible objections and should be overruled.

A. The First Farina Objection (Doc. No. 107) should be Overruled

Farina objects on the basis that the Plaintiffs and Class Counsel have not secured compensation to the Class for purported Clean Air Act ("CAA") violations and damage to emissions components of the Class Vehicles.[6] Farina argues that the Valve Stem

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[5] *E.g.*, Page 2 of Farina's First Objection states:

> he [Attorney Lemberg] told the Court that he agreed to the Release thereof because "*Mazda isn't going to pay any more money and a bird in the hand is worth two in the bush*."

Doc. No. 107 p. 2 (emphasis in original). The quote is made up and appears nowhere in the transcript of the March 11, 2024, preliminary approval hearing (Doc. No. 119). *See also*, Doc. No. 136 p. 4-5 (noting that Farina deleted lines from a block quote where the deleted portion showed the case (*In re Kosmos*, a securities case) was contrary to Ninth Circuit precedent. These two samples are by no means a complete catalogue of the misleading representations in Farina's papers.

[6]Claims under the CAA do not provide compensation for Farina or any other vehicle purchaser. "'The Clean Air Act entitles any person to sue for a violation of 'an emission standard or limitation under this chapter' or 'an order issued by the Environmental Protection Agency] Administrator or a State with respect to such a standard or limitation.'" *Rothschild v. Pac. Companies*, 2023 WL 4138262, at *2–3 (N.D. Cal. June 21, 2023) (*quoting In re Volkswagen 'Clean Diesel' Mktg., Sales Pracs., & Prod. Liab. Litig.*, 894 F.3d 1030, 1037–38 (9th Cir. 2018)). Relief under the CAA is in the form of injunctive relief or civil penalties paid to the US Treasury. *Id*. "What the Clean Air

Seal Defect caused oil to leak into vehicles' combustion chamber and damaged emissions related components. (No. 107 p. 1). Farina offers no proof of any damage to his emissions related components. Farina offers no proof that the Valve Stem Seal Defect results in leaks into the combustion chamber of vehicle engines and that emissions related components are thereby damaged. Farina offers no proof that his own vehicle, or any other vehicle, failed an emissions test or has any emissions issues.

Without any evidence and instead of proof, Farina merely speculates that, in direct response to his lawsuit in North Carolina, Mazda created a reserve of hundreds of millions of dollars to pay CAA penalties directly related to his lawsuit. (Doc. No. 107 p. 2). Farina states Mazda Motor Corporation's consolidated financials reveal that it set aside $102,925,000 to pay CAA fines (which he now says have doubled to over $203MM) because of his suit. He bases this on a line in Mazda Motor Corporation's consolidated financials which describes provisions related to environmental regulations as "for the estimated costs of complying with environmental regulations at the end of the fiscal year." (Doc. No. 107 pp 2-3). There is no detail regarding which environmental regulations are at issue, in which continent, country or jurisdiction. There is no detail regarding whether the "regulations" concern plant and installation costs or are more directly related to vehicles, let alone Class Vehicles. There is nothing to suggest the "reserve" relates to the Valve Stem Defect or to fines of any type.[7] Mazda

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Act does not provide for is 'a free-standing cause of action for nuisance that allows for compensatory damages.'" *Id*. (*quoting City of Oakland v. BP PLC*, 969 F.3d 895, 908 (9th Cir. 2020)).

[7] Farina also references "reserves for warranty claims due to the defective valve stems" without much explanation. (*id.* p. 2). Elsewhere he notes an annual "huge increase" in warranty reserves as of March 31, 2024. (Farina's Third Objection (Doc. No. 127), p. 10 n.5). It is not controversial that Mazda would account for warranty costs; it warrants millions of vehicles. Moreover, nothing cited links these reserves to the issues in this case or any other litigation. Finally, even if amounts were reserved and reserved specifically related to the Valve Stem Seal Defect in the Class Vehicles (there is no proof of this), any "huge increase" would be rationally related to the Settlement Agreement's Repair Program and warranty extension Plaintiffs secured and illustrate

is a large company whose regulatory obligations extend beyond this case and beyond this country.[8] Moreover, nothing in the release purports to or could release any Mazda entity from its regulatory obligations.

From the above line, Farina baselessly jumps to his conclusion that "[t]his reserve is clearly intended only for the CAA fines, and not to benefit any class members whose emissions systems have been processing up to three (3) to four (4) times the carbon that they were strictly engineered to handle." (No. 107 p. 3). There is nothing to support this.

Plaintiffs' counsel investigated the cause of the Valve Stem Seal Defect, its symptoms and design. This investigation included reviewing Mazda's internal investigation of the defect which concluded that, where oil leaks because of the Valve Stem Defect, it leaks on the exhaust side, "not into the combustion chamber" and "has no affect on emissions." Ward Tr. 71:1-72:25. That investigation was supported by detailed documentation outlining the causes of the defect, the exhaust valve stem seals' placement in the engine, the resulting oil leaks, and emissions tests performed by Mazda. (Lemberg Decl. ¶ 12). Counsel consulted with their own automotive expert about Mazda's investigation, the cause of the defect, its symptoms and systems

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the substantial benefit provided under the Settlement.

[8] Mazda Motor Corporation's Annual Securities Report (From April 1, 2023 to March 31, 2024) adds more detail regarding "Provisions related to environmental regulations":

> Provision related to environmental regulations provides for the estimated costs of complying with environmental regulations as of March 31, 2024 in consideration of environmental regulations in each country. However, additional provisions may be required in the event that the environmental regulations in each country are further tightened in the future.

(Lemberg Decl., Ex. H at p. 33). Neither the foregoing, nor Farina's proofs, show Mazda has set aside a reserve of hundreds of millions of dollars to deal with potential fines flowing from the Valve Stem Defect in Class Vehicles.

impacted. *Id.* Further, Plaintiffs reviewed the results of the EPA's random emissions testing for failures by Class Vehicles and found none.[9] *Id.* ¶ 13. Plaintiffs' counsel has interviewed their own Plaintiffs, all of whom experienced decreased oil, and none reported emissions test failures. *Id.* The class members who have communicated with Class Counsel are the same and none have reported emissions-related issues. *Id.* Class Counsel also conferred with counsel for MNAO specifically about the supposed Mazda Motor Corporation's CAA "reserve" and is satisfied that Farina's theory has no basis. *Id.* ¶ 14.

Moreover, Farina offers no proof whatsoever that the Valve Stem Defect impacted his emissions system and that he has suffered any harm not fairly addressed by the Settlement. *See Zakikhani*, 2023 WL 4544774 at *7 ("[objector] has not presented any evidence suggesting that the ABS defect impacted the resale price of his vehicle or otherwise cause him harm. And to the extent that any former owner or lessee was dissatisfied with the settlement, he or she had the chance to opt out. Because [objector] has not identified an injury that he or other similarly situated Class Members have suffered for which the settlement does not provide an adequate remedy, the Court declines to disrupt the settlement.") (*citing Collado*, 2011 WL 5506080 at *2 (objection "too insubstantial for the Court to disturb the overall settlement")). Thus, the objection on this ground should be overruled.

Farina fails to carry his burden that the Settlement provides "illusory benefits" (Doc. No. 107) because the warranty extension is to the powertrain limited warranty and not the emissions warranty. *Id.* pp. 12-16. First, the Powertrain Limited Warranty *covers the components impacted by the Valve Stem Seal Defect*: the seals themselves and the exhaust manifold (*see* Lemberg Decl., Exhibit C (2021 Mazda Warranty Booklet) at p. 19 (covered parts include the "Exhaust Manifold and Gaskets" and "Seals

[9] Vehicles sold in the United States are subject to random emissions testing by the EPA. The results are publicly available at https://www.epa.gov/compliance-and-fuel-economy-data/manufacturer-run-use-testing-program-data-light-duty-vehicles.

and Gaskets")). The extension provides value of $58,836,174 to Class Members and the Repair Program assures members get a fix for the Defect. Second, the Mazda Emission Warranty *does not cover these components*. *Id*. p. 29. Farina offers nothing but baseless conclusory statements that the Valve Stem Defect damaged his emissions components, the catalytic converter or otherwise, and that the Settlement does not provide adequate relief. Indeed, Farina is objecting to the real relief afforded to Class Members for the actual defect in Class Vehicles while arguing for alternative relief which would not impact or repair the problem with their cars.

Finally, that Farina purports (without basis) that an extension of the Emissions Warranty could improve settlement benefits does not make it a persuasive objection. *See, e.g., Asghari v. Volkswagen Grp. of Am., Inc.*, 2015 WL 12732462, at *26 (C.D. Cal. May 29, 2015) ("the possibility that a 'better' settlement might have been reached, do[es] not provide a sufficient basis upon which to conclude that the settlement agreement is unfair") (*citing Hanlon*, 150 F.3d at 1027); *Zakikhani*, 2023 WL 4544774 at *6 (same).

B. <u>The Second Farina Objection (Doc. No. 123) Should be Overruled</u>

The Second Farina Objection largely restates the first. (Doc. No. 123 p. 3) ("Farina objects to the award of any fees – and to the settlement itself – on the basis that class counsel has obtained nothing of value for the class."). As addressed above and in the final approval papers, the Settlement Agreement provides extensive benefits and value to the Settlement Class. Farina's speculation that Mazda has reserved hundreds of millions of dollars to account for his claims or fines is not supported by fact or well-grounded. Nor does Farina offer any proof that the Valve Stem Seal Defect damages emissions components or, even if it impacted emissions components, that the value of the Settlement is not fair compensation.

Further, Farina complains that "little to no effort was put into actual investigation of the class's actual claims as there was essentially no discovery conducted." (Doc. No. 123 p. 15 & 19). To the contrary, Class Counsel engaged in an extensive pre-suit

investigation into the defect,[10] Plaintiffs served interrogatories and requests for the production of documents on Mazda regarding the individual and class claims and the requirements of Rule 23, and Plaintiffs received document productions from Defendant and repeatedly conferred with Defendant regarding the scope of its production and need for additional discovery. (Lemberg Decl. ¶ 11). Plaintiffs also deposed Defendant regarding the merits, class issues, and the efficacy of the redesigned valve stem seals. *Id*.

Farina hypothesizes that the Parties failed to "properly" inform the mediator, a former judge of this Court, of the valuation of his claims. (Doc. No. 123 p. 16). Mediation discussions are privileged. Cal. Evid. Code § 1119; *Simmons v. Ghaderi,* 187 P.3d 934, 939–43 (Cal. 2008) (Under California law, any oral or written communication made "for the purpose of, in the course of, or pursuant to, a mediation or mediation consultation," is privileged and therefore inadmissible unless it falls within a statutory exception). Moreover, Farina's complaint is that his unsupported theories were not, he believes, given due weight. That is different from whether they were investigated and evaluated.

Farina objects that the class notice did not, he argues, sufficiently notify the class of his lawsuit, claims and objections to the Settlement. (Doc. No. 123 p. 17-20). The Court rejected this argument at preliminary approval and should reject it again. Rule 23(e) "requires notice that describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard." *Roes, 1-2 v. SFBSC Mgmt., LLC,* 944 F.3d 1035, 1044 (9th Cir. 2019) (affirming district court's rejection of objection that notice should include reference to parallel actions or objections) (cleaned up). Rule 23 does not compel "the inclusion in a settlement notice of [. . .] information about parallel litigation." *Id*. As the Ninth Circuit explained in

[10] When Farina copied word-for-word much of Guthrie's complaint, Farina was in fact relying on Class Counsel's pre-suit investigation.

rejecting objections that notice failed to include the content of objections, "'the Notice contains adequate information, presented in a neutral manner, to apprise class members of the essential terms and conditions of the settlement . . . While the Notice does not detail the content of objections, or analyze the expected value, we do not see why it should. Settlement notices are supposed to present information about a proposed settlement neutrally, simply, and understandably—objectives not likely served by including the adversarial positions of objectors.'" *Id.* at 1045 (quoting *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 962–63 (9th Cir. 2009)).

The notice here met this standard and in neutral language apprised members of the essential settlement terms, their rights to object or exclude themselves and how to do so. (Heubach Declaration Ex. B). It provided sufficient details to alert those with adverse viewpoints to investigate and come forward to be heard. The notice was successfully sent to a very high 97% of the class and tens of thousands have visited the Settlement Website. The Settlement Website itself contained essential documents as well as Farina's first two objections after his counsel asked that they be posted. (Lemberg Decl. ¶ 19).[11]

Finally, Farina – whose counsel does not appear to have any class representation experience – complains that the Parties have engaged in a "reverse auction." (Doc. No. 123 pp. 9, 15 & 21). "A reverse auction is said to occur when 'the defendant in a series

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[11] *See* https://www.mazdavalvestemsealsettlement.com/admin/api/connectedapps.cms.extensions/asset?id=1cc5a79b-2ff3-4449-9468-98287e38e9aa&languageId=1033&inline=true. Farina also complains that not every document he demanded to be placed on the Settlement Website was uploaded. (Doc. No. 123 p. 18). Farina's attorney had demanded that the Settlement Administrator upload dozens of unlabeled files to the Settlement Website. (Lemberg Decl. ¶ 19). Because that would only obscure essential documents and confuse Class Members, the parties instructed the Settlement Administrator to compile his filed objections he sought to be placed on the website in one pdf file and attach a neutral and simple cover sheet for Class Members.

of class actions picks the most ineffectual class lawyers to negotiate a settlement within with [sic] in the hope that the district court will approve a weak settlement that will preclude other claims against the defendant.'" *Negrete v. Allianz Life Ins. Co. of N. Am.*, 523 F.3d 1091, 1099 (9th Cir. 2008) (*quoting Reynolds v. Beneficial Nat'l Bank*, 288 F.3d 277, 282 (7th Cir. 2002)). "Those challenging a settlement as resulting from an alleged reverse auction must provide 'concrete evidence' of collusion." *Tuttle v. Audiophile Music Direct Inc.*, 2023 WL 3318699, at *4 (W.D. Wash. May 9, 2023) (*quoting Rutter & Wilbanks Corp. v. Shell Oil Co.*, 314 F.3d 1180, 1189 (10th Cir. 2002)). "Otherwise, the 'reverse auction argument would lead to the conclusion that no settlement could ever occur in the circumstances of parallel or multiple class actions—none of the competing cases could settle without being accused by another of participating in a collusive reverse auction.'" *Id.* (*quoting Negrete*, 523 F.3d at 1100).

None of the indices of a reverse auction – "ineffectual lawyers, evidence that the defendant negotiated with those lawyers *because of* their supposed ineffectiveness, and overly generous attorneys' fees compared to the relief offered to the class" – are present here. *Tuttle*, 2023 WL 3318699 at *4 (emphasis in original). Class Counsel have a long record of successful class action litigation. (Lemberg Decl. ¶¶ 3-4). They are currently serving as class counsel in two contested class action proceedings involving automobile defects. *See Riley v. Gen. Motors LLC*, 2024 WL 1256056 (S.D. Ohio Mar. 25, 2024) (certifying a class arising from General Motor's failure to repair defective shifters); *Jefferson v. Gen. Motors, LLC*, 344 F.R.D. 175, 188 (W.D. Tenn. 2023) (same). There is nothing to suggest they are ineffectual lawyers. Second, far from negotiating with Class Counsel because they were ineffectual, MNAO negotiated with Class Counsel because they are effectual. *Id*. Class Counsel also represented the first-filed and non-stayed case which was the proper case to be negotiated and settled. *Tuttle*, 2023 WL 3318699 at * 5 (defendant settling with first-filed case not in indicia of collusion). Had MNAO tried to settle later-filed cases it might indicate "shopping around" but that is not what occurred here. Third, the requested fees and costs are not overly generous

compared to the relief secured to the Class. As noted, fees and costs were only addressed after the relief to the class was agreed and preliminary approved. The amount MNAO has agreed to pay represents 3.4% of the value of the extension to the powertrain warranty alone. The record demonstrates that Class Counsel placed Class Members' interests ahead of their own and the manner in which fees were resolved gave Class Counsel every incentive to maximize the value of class relief. The objection based on a reverse auction is meritless.

C. <u>The Third Farina Objection (Doc. No. 123) should be Overruled</u>

The Third Farina Objection restates many of its contentions addressed above.

It adds a complaint of adequacy as to Plaintiffs Guthrie and Bradshaw and the use of declarations to support final approval.

Farina objects to the adequacy of Guthrie and Bradshaw who Farina claims have done nothing in this case, that Bradshaw lacks standing, and otherwise do not meet the adequacy threshold. (Doc. No. 128 p. 5). First, Guthrie and Bradshaw have been actively involved in their cases and this litigation: they have aided in the investigation, they understand they seek relief owing to the Valve Stem Defect, they understand that this is a class action and their role, they have no known conflicts with the class and are committed to achieving a fair and just result. (Declaration of Gary Guthrie ¶¶ 1-10; Declaration of Amy Bradshaw ¶¶ 1-12). If the Settlement did not provide fair and adequate relief to the Class now, they and their counsel would not have agreed it and would have continued litigation. *E.g.*, *Riley*, 2024 WL 1256056. Guthrie and Bradshaw have demonstrated that they are adequate representatives, have no known conflicts with the class and will, with counsel, vigorously pursue class interests. *Sali v. Corona Reg'l Med. Ctr.*, 909 F.3d 996, 1007 (9th Cir. 2018); *In re Silver Wheaton Corp. Sec. Litig.*, 2017 WL 2039171, at *8 (C.D. Cal. May 11, 2017) ("The plaintiffs' declarations more than satisfy the requirement that plaintiffs present some affirmative evidence that they are familiar with this case, the claims within it, and the role of a class representative").

Second, Farina's claim that Bradshaw lacks standing and is not a class member is meritless. She "purchased or leased a Settlement Class Vehicle" in the United States and is therefore a member of the Class. (Bradshaw Decl. ¶ 3; *Settlement Agreement*, Art. I(Q)). Her Vehicle suffered from the Valve Stem Defect causing her injury and harm and therefore she has standing to pursue her and class claims. (Bradshaw Decl. ¶¶ 5-8). While she no longer owns her Class Vehicle, she is still a member of the Class and obtains relief in this Settlement for the reimbursement of out-of-pocket oil expenses. *Id.*; *see*, *e.g. Zakikhani*, 2023 WL 4544774 at *7 (rejecting objection that former owners did not receive all the benefits of the Settlement where they are still entitled to other benefits of the settlement plan). Guthrie and Bradshaw present affirmative evidence of their adequacy and the objection should be overruled.

Farina also objects to the use of declarations in support of final approval instead of live testimony in Court which Farina incorrectly claims is required. Farina further claims the declarations, along with the expert valuation report of Report of Susan K. Thompson & Brian S. Repucci, are in and of themselves inadmissible "rank hearsay." Farina offers no authority supporting these contentions. A final approval hearing is a hearing on a Rule 23 motion, not a trial, and the Court can take evidence on a motion through affidavits, depositions or oral testimony. Fed. R. Civ. P. 43(c). Courts appropriately decide certification and class settlement issues on declarations and affidavits. *See Chavez v. Air Prod. & Chemicals Inc.*, 2016 WL 9558905, at *7 (C.D. Cal. Feb. 24, 2016) (collecting cases); *Emmons v. Quest Diagnostics Clinical Lab'ys, Inc.*, 2017 WL 749018, at *2 (E.D. Cal. Feb. 27, 2017) (ordering additional declarations

and affidavits). Class Counsel is not aware of any authority that final approval of a class settlement requires live testimony.[12]

For the foregoing reasons, Farina's objections should be overruled.

IV. The Farr Objection Should be Overruled

Farr objects to the length of the Powertrain Limited Warranty and proposes as an adequate remedy that Mazda buy back her vehicle. (Lemberg Decl., Ex. D at pp. 1-2). She also states that "it appears the lawyers and government (the $102,925,000 Reserve set forth for emissions issues not addressed with the customers) are the ones being adequately compensated in this case." *Id*.

Farr's objection that a longer warranty period would be better is not grounds for an objection. *See, e.g.*, *Asghari*, 2015 WL 12732462, at *26 ("the possibility that a 'better' settlement might have been reached, do[es] not provide a sufficient basis upon which to conclude that the settlement agreement is unfair") (*citing Hanlon*, 150 F.3d at 1027); *Zakikhani*, 2023 WL 4544774 at *6 (same). This is especially so as members had the opportunity to opt out and pursue different relief if they believed they were so entitled.

[12] Farina cites Fed. R. Evid. 801, concerning exclusions from hearsay, in support without expansion or explanation regarding why sworn testimony is not proper evidence on a Rule 23 motion. Farina also cites to *Schmidt Loduca v. WellPet LLC*, 2022 WL 2304308, at *4 (E.D. Pa. June 27, 2022). *Loduca* concerned the use of absent class member affidavits to prove reliance, an element of the *Loduca* class claims, and held it was an insufficient means of establishing commonality and predominance as the defendant must be permitted to cross-examine members thus creating a "line of thousands of class members waiting their turn to offer testimony." *Id*. That is not at issue here and evidence by sworn affidavit or declaration are rightly considered in class certification proceedings. *See, e.g., Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121, 1132 (9th Cir. 2017); *Williams v. Apple, Inc.*, 338 F.R.D. 629, 646 (N.D. Cal. 2021).

Farr's reference to a $102,925,000 reserve for emissions issued appears to be based on the Farina filings posted to the settlement website. As above, there is no factual basis offered for this concern or complaint.

For the foregoing reasons, Farr's objection should be overruled.

V. The Young Objection Should be Overruled

It is unclear if Young objects to the Settlement. He advises that he has "concerns" but does not state he objects. (Lemberg Decl., Ex. E). Treated as an objection it should be overruled. Young states he is concerned whether the Valve Stem Seal can be replaced correctly by dealerships as the original part was installed in the factory. He also has concerns regarding potential damage to his "catalytic converter, engine, turbo, etc." *Id.*

A concern whether an authorized dealership can perform a repair could be transposed to anytime a dealership performs a warranty repair on a factory made vehicle. This fear does not make the Repair Program here unfair or inadequate. *E.g.*, *Sadowska v. Volkswagen Grp. of Am., Inc.*, 2013 WL 9600948, at *6 (C.D. Cal. Sept. 25, 2013) (overruling similar concern, because in part, "authorized Audi dealerships are capable of diagnosis and repair"). Moreover, the repair has proven effective. Following implementation of the redesigned parts and before this Settlement opened up the repair for all who manifested an oil consumption issue, Mazda tracked the effectiveness of the repair by comparing how often the low engine oil light appeared for unrepaired vehicles versus vehicles repaired by dealerships. Ward. Tr. 53:9-54:10. While at least 68% of Class Vehicles with the original parts had their low engine oil light appear before they were due for oil changes, that figure went to 12.9% for vehicles that have obtained the redesigned part. (Lemberg Decl. ¶ 15). The latter figure is consistent with the rate of oil light issues for non-defective subject vehicles with 2.5L turbocharged engines. Ward Tr. 60:14-61:9, 61:18-24, 68:25-69:6. Thus, dealerships are capable of performing the repair. Moreover, as more repairs are completed, it is expected that the figure will continue to decline. Ward Tr. 67:15-19.

Regarding potential damage flowing from the Valve Stem Defect, the extended Powertrain Warranty provides increased protection for the valve seals, engine, turbo, and exhaust manifold. It does not provide additional protection to the catalytic converter directly but, similar to Farina's objections, there is no requirement that a settlement cover every part of an engine or every part that could conceivably be impacted by a defect. Here, the Repair Program repairs the Defect, the Powertrain Warranty Extension provides extensive value for impacted parts, the engine and other components. Mr. Young's concerns go to whether the Settlement could provide additional or other relief and do not disturb the fairness and reasonableness of the Settlement Agreement.

CONCLUSION

For the reasons set forth above, Plaintiffs respectfully request that the Court overrule the objections.

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The undersigned, counsel of record for Plaintiffs, certifies that this brief contains 5,678 words.

DATED: July 22, 2024

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CERTIFICATE OF SERVICE

I, the undersigned, certify and declare that I am over the age of 18 years, and not a party to the above-entitled cause. I hereby certify that on July 22, 2024, a copy of the foregoing was filed electronically. Notice of this filing was sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. Mail. Parties may access this filing through the Court's electronic filing system.

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