IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

MARC ISENBERG, JASON DELLISANTI, CARMEL MCCOLGAN, PATRICK STACK, PETER SCHUMAN, KEVIN LIM, STEVEN KOSOFF, HENDRICK MOY, ELNUR ALIYEV, BARBARA JOHNSON, TERRY STINSON, PATRICK KEELEY, BOB LOFTUS, NICHOLE FICK, MARK CHATWIN, GIOI NGUYEN, MITHUN TALREJA and RAJIB DAS on behalf of themselves and the Putative Class, Plaintiffs, v. TOYOTA MOTOR SALES, U.S.A., INC., TOYOTA MOTOR NORTH AMERICA, INC. and TOYOTA MOTOR CORPORATION, Defendants.	Case No. 2:22-cv-05673-JXN-MAH

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

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PRELIMINARY STATEMENT

Plaintiffs have reached a nationwide class action settlement with Defendants Toyota Motor Sales, U.S.A., Inc., Toyota Motor North America, Inc., and Toyota Motor Corporation (collectively, "Toyota" or "Defendants") for a class of approximately 1.3 million vehicles for an extended warranty as it applies to HV Floor Under Wire Harness and Rear Traction Motor Cable to ten (10 years) or unlimited miles (i.e. no mileage limitation for 10 years), as well as a complimentary loaner vehicle in connection with any repair or replacement where appropriate. Toyota has been making repairs and as of June 1, 2026 has paid out over $270 million in repairs, inspection costs, and reimbursement of repair costs.

In addition, any customer that has already paid out-of-pocket for repairs for the alleged defect will be able to submit a claim to be reimbursed for their costs of repair, as well as related reasonable rental and/or towing costs. As of March 2026, Toyota has reimbursed $201,776.03 directly to customers. According to Plaintiffs' expert, the settlement value to the Class is between $485.1 million to $536.8 million[1].

[1] This figure represents economic harm allegedly attributable to the alleged defect at issue for a range of 1,281,790 – 1,331,801 of class vehicles. *See* Declaration of Frank A. Bernatowicz at ¶¶ 4-5. Toyota does not endorse the Bernatowicz report, or its contents, and reserves its rights to challenge it should the need arise, including the characterization in the report of the alleged defect causing alleged loss of motive power.

The settlement provides significant relief to Class Members and satisfies each of the factors under Rule 23(e)(2), *Girsh v. Jepson*, 521 F.2d 153 (3d Cir. 1975), and the other applicable requirements. Accordingly, the Parties request that the Court preliminarily approve the settlement, direct notice to all Class Members in the reasonable manner outlined below, set deadlines for exclusions, objections, and briefing on Plaintiffs' motion for final approval and application for an award of attorneys' fees and expenses, and set a date for the Final Fairness Hearing.

Plaintiffs submit herewith the Declaration of Bruce H. Nagel in Support of Unopposed Motion for Preliminary Approval of Class Action Settlement ("Nagel Decl.") which includes the Class Action Settlement Agreement ("Settlement Agreement") as **Exhibit 1**, as well as the expert report of Frank A. Bernatowicz at **Exhibit 2**[2]. The Declaration of Cameron R. Azari, Esq. Regarding Settlement Notice Plan ("Azari Decl."), submitted on behalf of Epiq Class Action & Claims Solution, the proposed Settlement Administrator, is submitted herewith as well.

BACKGROUND

A. History Of The Litigation

From the outset of this litigation, Plaintiffs have aggressively pursued claims arising from alleged defects in the hybrid system power cables and MGR Connectors

[2] The Bernatowicz report has been redacted where appropriate to protect Toyota's confidential and proprietary information. The parties will submit an unredacted version for *in camera* review, at the request of the Court.

installed in certain Toyota and Lexus hybrid vehicles. On September 22, 2022, plaintiffs Marc Isenberg, Jason Dellisanti, Carmel McColgan, Patrick Stack, Peter Schuman, Kevin Lim, Steven Kosoff, Hendrick Moy, Elnur Aliyev, Barbara Johnson, Terry Stinson, Patrick Keeley, and Bob Loftus (the "Original *Isenberg* Plaintiffs") filed a putative class action complaint ("Original Complaint") asserting claims under New Jersey, New York, Pennsylvania, Maryland, Tennessee, and Idaho's consumer protection statutes, a claim for common law fraud, breach of express and implied warranties, unjust enrichment, and violation of the Magnuson-Moss Warranty Act. Plaintiffs alleged that Toyota manufactured and sold hybrid vehicles equipped with allegedly defectively designed MGR Connector assemblies that were susceptible to corrosion and premature failure in the following vehicles: 2019-2022 model year Toyota RAV4 Hybrid AWD and RAV4 Prime AWD vehicles, 2020-2022 model year Toyota Highlander Hybrid AWD vehicles, 2020-2021 Toyota Venza Hybrid AWD vehicles, model year 2021-2022 Lexus NX350h AWD vehicles, and model year 2022 Lexus NX450h+ AWD Plug-in Hybrid. Nagel Decl. at ¶¶ 4-5.

Toyota thereafter sought to dismiss Plaintiff's Complaint.[3] *Id*. at ¶ 6.

On June 22, 2023, plaintiffs Mark Chatwin and Gioi Nguyen filed a class action complaint against Toyota in the United States District Court for the District

[3] The Court ultimately did not rule on Toyota's motion(s) to dismiss, which was ultimately taken off calendar as the parties pursue settlement negotiations.

of New Jersey. *Chatwin, et al. v. Toyota Motor Sales, U.S.A., Inc., et al.*, Case No. 2:23-cv-03398 (D.N.J.) ("*Chatwin*"). On July 3, 2023, before serving Toyota, plaintiffs Mark Chatwin, Gioi Nguyen, Mithun Talreja, and Rajib Das (the "*Chatwin* Plaintiffs") then filed a First Amended Complaint ("FAC") further expanding and refining the allegations against Toyota. *Id*. at ¶ 7.

Recognizing the overlap in factual allegations and legal claims, on October 3, 2023, the Court entered a stipulation and consent order consolidating *Isenberg* with *Chatwin*. *Id*. at ¶ 8.

Following consolidation, on November 2, 2023, Plaintiffs Marc Isenberg, Jason Dellisanti, Carmel McColgan, Patrick Stack, Peter Schuman, Kevin Lim, Steven Kosoff, Hendrick Moy, Elnur Aliyev, Barbara Johnson, Terry Stinson, Patrick Keeley, Bob Loftus, Nichole Fick, Mark Chatwin, Gioi Nguyen, Mithun Talreja, and Rajib filed a comprehensive Consolidated Amended Complaint ("CAC").[4] The CAC expanded the scope of the action to include additional state law claims and additional affected vehicle models, including 2021-2023 fourth-generation Toyota Sienna vehicles. Plaintiffs alleged that Toyota had long known of the alleged corrosion defect but failed to implement an effective fix.[5] *Id*. at ¶ 9.

[4] Contemporaneously herewith, the Parties also file a proposed Stipulation and Order to file a Second Amended Complaint to name four additional plaintiffs in furtherance of the resolution of this action. A true and correct copy of the proposed Second Amended Complaint is annexed to the Declaration of Bruce H. Nagel., Esq. at Exhs. A (redline) and B (clean).

[5] Toyota denies liability, including the existence of an alleged defect.

For the past year, the parties have undertaken extensive confirmatory discovery on the number of vehicles inspected and repaired, as well as monies paid out by Toyota. With extensive negotiations over many months, the parties revised approximately ten (10) drafts before agreeing upon an execution agreement. In the course of these negotiations, the parties added new vehicles[6] and subsequently expanded the scope of the class relief. *Id*. at ¶10. The Parties have executed this agreement. *See* Nagel Decl. at Exh. 1.

B. Summary Of Settlement Terms

Toyota has offered both an extended warranty as well as a reimbursement program. Toyota has extended its warranty as it applies to HV Floor Under Wire Harness and Rear Traction Motor Cable to ten (10) years or unlimited miles (i.e. no mileage limitation for 10 years) for each of the affected model vehicles, in addition to a number of additional model vehicles, upon an inspection of the vehicle. Nagel Decl. at ¶ 21. This is a significant expansion:

Toyota Models	**Previous Warranty**	**New Warranty Period**
2023-2024 RAV4 HV	3 years / 36,000 mi	10 years / unlimited mi
2023-2024 Highlander HV	3 years / 36,000 mi	10 years / unlimited mi

[6] These vehicles include the 2023-2024MY RAV4HV AWD; 2023-2024MY RAV4 Prime HV; 2023-2024MY Sienna HV AWD; 2023-2024MY Venza HV; 2023-2024MY Lexus NX 350h; 2023-2024MY Lexus NX 450h+; 2023-2024MY Crown; 2023-2024MY Lexus RX350h; 2024MY Lexus RX450h+. *See* Settlement Agreement at §II, ¶39.

2023-2024 RAV4Prime	3 years / 36,000 mi	10 years / unlimited mi
2023-2024 Sienna HV	3 years / 36,000 mi	10 years / unlimited mi
2023-2024 Venza HV	3 years / 36,000 mi	10 years / unlimited mi
2023-2024 Crown HV	3 years / 36,000 mi	10 years / unlimited mi
2020-2022 Highlander HV AWD	8 years/ 100,000 mi	10 years / unlimited mi
2019-2022 RAV4HV	8 years/ 100,000 mi	10 years / unlimited mi
2021-2022 RAV4Prime	8 years/ 100,000 mi	10 years / unlimited mi
2021-2022 Sienna HV	8 years/ 100,000 mi	10 years / unlimited mi
2021-2022 Venza HV	8 years/ 100,000 mi	10 years / unlimited mi

Lexus Models	**Previous Warranty**	**New Warranty**
2024 NX 350h	4 years / 50,000 mi	10 years / unlimited mi
2023-2024 NX450h+	4 years / 50,000 mi	10 years / unlimited mi
2023-2024 RX350h	4 years / 50,000 mi	10 years / unlimited mi
2024 RX450h+	4 years / 50,000 mi	10 years / unlimited mi
2022-2023 NX350h	8 years / 100,000 mi	10 years / unlimited mi
2022NX450h+	8 years / 100,000 mi	10 years / unlimited mi

As is shown, the warranty extension provides significant additional coverage, up to 7 years / 74,000 miles in older vehicle models.

To take advantage of this extended warranty, customers will have 36 months to present their vehicle to an authorized Toyota or Lexus dealer for a technician to perform an inspection to determine whether the vehicle has the alleged defect. If the vehicle does have the alleged defect, it will be repaired at no cost by replacing the affected part. Toyota will also provide a complimentary loaner vehicle in connection with the repair or replacement if the vehicle will remain at the dealership more than 6 hours. If there is no repair needed, the MGR Component will be cleaned, waterproofed, and an improved connector cover will be installed. If a customer does not take their vehicle for inspection by September 30, 2028[7], their warranty will remain as-is. Nagel Decl. at ¶ 22.

In addition, under the reimbursement program, any customer that has already paid out-of-pocket for repair for the alleged defect will be able to submit a claim to be reimbursed for their costs of repair, as well as related reasonable rental and/or towing costs. To obtain reimbursement, a customer will have to submit a claim form with proof of the repair expense or proof of the rental/towing/storage expense. If a customer qualifies for reimbursement, they will receive a check within 60 days. If a customer only qualifies for a partial reimbursement or their claim is denied, they will

[7] The deadline for inspection for the Sienna model vehicles will differ and will be a later date, as implementation of repairs for the Sienna vehicles has not yet begun.

have an opportunity to supplement their reimbursement request with additional information, if applicable, and request a second review of their claim. *Id*. at ¶ 22.

Toyota also agrees to pay service awards to each of the Class Representatives in an amount up to $5,000 each. *Id*. at ¶ 24.

As of June 1, 2026, Toyota has already made full repairs on 12,738 vehicles for a total of $55,763,902.69; and inspected 648,146 vehicles and implemented a remedy where needed at a cost of $214,338,373.96. In addition, as of March 2026, Toyota has reimbursed $201,776.03 directly to customers who have already paid out-of-pocket for repair for the alleged defect. To date, Toyota has expended over $270 million. *Id.* at ¶ 12.

The costs and expenses associated with providing the settlement relief and implementing the settlement relief, including the costs of Class Notice and settlement administration, and the fees and expenses incurred by the Settlement Administrator, will be the sole obligation of and paid by Toyota. *Id*. at ¶ 25.

The Class is defined as "all persons, entities or organizations who, at any time as of the entry of the Preliminary Approval Order, own or owned, purchase(d) or lease(d) Subject Vehicles distributed for sale or lease in any of the fifty States, the District of Columbia, Puerto Rico, and all other United States territories and/or possessions." The class consists of approximately 1.3 million vehicles. Excluded from the Class are: (a) Toyota, its officers directors and employees; its affiliates and

affiliates' officers, directors and employees; its distributors and distributors' officers directors and employees; and authorized Toyota Dealers and their officers and directors; (b) Plaintiffs' Counsel; (c) judicial officers and their immediate family members and associated court staff assigned to his case; and (d) persons or entities who or which timely and properly exclude themselves from the Class as provided in this Settlement Agreement. *Id*. at ¶ 20.

In order to effectuate the settlement, Toyota shall obtain from its own records and verify with R.L. Polk & Co (IHS Markit) the names and current or last known addresses of Class Members that can be reasonably obtained using the VINs provided by Toyota, which in turn will be used to disseminate notice to the Class. *See* Settlement Agreement at §IV, p. 26. The parties, and the Settlement Administrator, shall work cooperatively to effectuate class notice as soon as practicable in connection with preliminary approval.

C. Scope Of The Release

Plaintiffs and Class Members who do not opt-out of the settlement agree to fully, finally, and forever release, relinquish and discharge the Released Parties from any and all of the release claims. *See* Settlement Agreement at §V.D, §VII.B. The parties, and the Settlement Administrator, shall work cooperatively to effectuate class notice as soon as practicable in connection with preliminary approval.

D. The Notice and Administration Plan

Notice to the Class shall be sent via Short-Form Notice (see Exh G to Settlement Agreement) by U.S. Mail, postage prepaid, to the current and former registered owners and lessees of Subject Vehicles. The Short-Form Notice shall be sent together with the Claim Form (see Exh F). In addition, the Settlement Notice Administrator shall: (a) re-mail any notices returned by the United States Postal Service with a forwarding address no later than the deadline found in the Preliminary Approval Order; (b) by itself or using one or more address research firms following receipt of any returned notices that do not include a forwarding address, research such returned mail for better addresses, and promptly mail copies of the applicable notice to any better addresses so found. Nagel Decl. at ¶ 29.

The Settlement Administrator shall also establish a Settlement Website that will inform members of the Class of the terms of the Settlement Agreement, their rights, dates and deadlines, and related information, as well as contain a copy of the Long-Form Notice. Class members may also submit any claims for reimbursement through the settlement website, in addition to via regular mail. *Id*. at ¶ 30. The Notice Plan and Settlement Administration Costs shall be paid by Toyota. *Id*. at ¶ 27.

E. Attorneys' Fees and Costs

Class Counsel will request attorneys' fees, costs, expenses and interest related to work performed or to be performed and costs and expenses incurred or to be incurred by Class Counsel. Defendants reserve the right to oppose any such fee

request. Class Counsel will file a separate application for an award of attorneys' fees and expenses within 15 days of notice to the Class. *Id*. at ¶ 34. Class Members will have an opportunity to review that application and submit any objections they may have before the hearing.

LEGAL STANDARD

Rule 23(e) of the Federal Rules of Civil Procedure requires court approval for any compromise of claims brought on a class basis. Fed. R. Civ. P. 23(e) ("The claims . . . of a certified class – or a class proposed to be certified for purposes of settlement – may be settled . . . only with the court's approval."). It is well established in this Circuit that the settlement of class action litigation is both favored and encouraged. *See Politi v. Boscov's Inc.,* 2025 WL 3496691 (D.N.J. Dec 5, 2025) *citing Ehrheart v. Verizon Wireless*, 609 F.3d 590, 594-95 (3d Cir. 2010) ("This presumption is especially strong in 'class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation.'"); *see also In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 535 (3d Cir. 2004) ("[T]here is an overriding public interest in settling class action litigation, and it should therefore be encouraged."); *Curiale v. Lenox Grp., Inc.*, 2008 WL 4899474, at *5 (E.D. Pa. Nov. 14, 2008) citing *In re Gen. Motos Corp. Pick-up Truck Fuel Tank Prod. Liab*., 55 F.3d 768, 784 (3d Cir. 1995) ("'The law favors settlement particularly in class actions and other complex cases where substantial judicial resources can be conserved by

avoiding formal litigation.'"); *In re CIGNA Corp.*, 2007 WL 2071898, at *3 (E.D. Pa. July 13, 2007) ("Settlement of complex class action litigation conserves valuable judicial resources, avoids the expense of formal litigation, and resolves disputes that otherwise could linger for years.").

The *Manual for Complex Litigation* describes a three-step process for approving a class action settlement: preliminary approval of the proposed settlement; dissemination of notice of the settlement to class members; and a final approval hearing. *See Manual for Complex Litigation*, §21.633 (4th ed. 2004). At this juncture, Plaintiffs request that the Court take the first and second steps in the settlement approval process by entering the proposed Preliminary Approval Order and ordering the dissemination of notice to the Class. In doing so, the Court must consider whether the proposed settlement is likely to be approved under Rule 23(e)(2). *See Powell v. Subaru of America, Inc*., 2024 WL 4381832 at *7 (D.N.J. Oct. 3, 2024).

Under Rule 23(e), preliminary approval should be granted if the Court "will likely be able to: (i) approve the proposal under Rule 23(e)(2); and (ii) certify the class for purposes of judgment on the proposal." Fed. R. Civ. P. 23(e)(1)(B); *see also Powell*, *supra*, at *7 ("If the court grants preliminary approval, the court then directs that notice of the settlement be provided to all class members."). Rule 23(e)(2) provides:

> (2) Approval of the Proposal. If the proposal would bind class members, the court may approve it only after a hearing and only on finding that it is fair, reasonable, and adequate after considering whether:
>
> (A) the class representatives and class counsel have adequately represented the class;
>
> (B) the proposal was negotiated at arm's length;
>
> (C) the relief provided for the class is adequate, taking into account:
>
> (i) the costs, risks, and delay of trial and appeal;
>
> (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
>
> (iii) the terms of any proposed award of attorney's fees, including timing of payment; and
>
> (iv) any agreement required to be identified under Rule 23(e)(3); and
>
> (D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2). These factors overlap with those set forth by the Third Circuit in *Girsh*, which include:

> "(1) the complexity, expense and likely duration of the litigation . . . ; (2) the reaction of the class to the settlement . . . ; (3) the stage of the proceedings and the amount of discovery completed . . . ; (4) the risks of establishing liability . . . ; (5) the risks of establishing damages . . . ; (6) the risks of maintaining the class action through the trial . . . ; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery . . . ; [and] (9) the range of reasonableness of the settlement

> fund to a possible recovery in light of all the attendant risks of litigation . . . ."

521 F.2d at 157. The *Girsh* factors "'are a guide and the absence of one or more does not automatically render the settlement unfair.'" *In re Schering-Plough/Merck Merger Litig.*, 2010 WL 1257722, at *5.

Plaintiffs submit that these factors warrant preliminary approval here.

ARGUMENT

A. PRELIMINARY APPROVAL IS APPROPRIATE

The Third Circuit favors settlement of class action litigation. *See Ehrheart v. Verizon Wireless*, 609 at 594-595 ("Settlement Agreements are to be encouraged because they promote the amicable resolution of disputes and lighten the increasing load of litigation faced by the federal courts."). Where the parties can resolve the litigation through good faith and arms-length negotiations, judicial resources can be preserved and the public interest is furthered. *In re Pet Food Prods. Liab. Litig.*, 629 F.3d 333 (3d Cir. 2010)("... we reaffirm the overriding public interest is settling class action litigation."); *In re Warfarin Sodium Antitrust Litigation*, 212 F.R.D. 231, 254 (D. Del. 2002) (recognizing the Third Circuit's overriding public interest in settling class action litigation).

1. Plaintiffs And Class Counsel Have Adequately Represented The Class

Plaintiffs and their counsel have adequately represented the Class as required by Rule 23(e)(2)(A) by diligently and zealously prosecuting this litigation on behalf of the proposed Class, including, *inter alia*, by investigating Defendants' business practices and developing Plaintiffs' claims; drafting detailed complaints and engaging in complex and detailed motion practice in the District Court; exchanging written discovery demands and responses thereto, including interrogatories, document demands and requests to admit; reviewing and assessing thousands of Defendants' documents; and, finally, negotiating and effectuating the proposed settlement now before this Court. *See* Nagel Decl. at ¶15.

2. The Proposed Settlement Was Negotiated At Arm's Length

Rule 23(e)(2)(B) looks at whether the settlement was negotiated at arm's length. In this case, the Settlement did not occur until counsel conducted a thorough investigation, engaged in motion practice and conducted substantial discovery.

On November 13, 2024, the Court converted the status conference set for March 14, 2025, into a settlement conference. The Court further ordered each side to submit a confidential settlement memorandum on or before March 7, 2025. As early as December 2024, the Parties were in good faith discussions regarding settlement and exchanging meaningful settlement terms for a classwide resolution of this matter. These discussions continued into 2025. On March 7, 2025, the Parties informed the Court that, having conferred in good faith, they were close to a

settlement in principle on a classwide basis, and jointly requested a continuance of the settlement conference. The Court granted the Parties' request, adjourning the settlement conference. The Parties subsequently requested, and the Court approved, additional continuances of the settlement conference as they further finalized their negotiations of a classwide settlement.

To date, considerable written and document discovery has been exchanged by the Parties in anticipation of a classwide settlement, including significant confirmatory discovery. That information includes inspection, repair, reimbursement, and claims data pertaining to approximately 660,884 vehicles to date; internal communications regarding the investigation and remedy for the alleged defect; communications with dealerships regarding implementation of the Customer Support Programs and Limited Service Campaign; failure rate analyses / Weibull reports; Technical Service Bulletins pertaining to the alleged defect; market data regarding manifestation of the alleged defect across impacted makes and models; and the Declaration of Toyota Motor Sales, U.S.A., Inc.'s Manager of Supply Chain, Quality Compliance, regarding the investigation, analysis, and implementation of a remedy pertaining to the alleged defect. Confirmatory discovery has been ongoing through memorialization of a written settlement agreement. Nagel Decl. at ¶ 11.

Arm's length negotiations conducted by competent counsel constitute *prima facie* evidence of fair settlements. In this case, the settlement was the result of

intensive, arm's-length negotiations over the course of years between skilled attorneys with vast experience handling complex cases and class actions. Nagel Decl., ¶¶ 10, 32. There is no evidence that any collusion or illegality existed during settlement negotiations. The Parties' counsel supports the settlement as fair and reasonable, and all certify that it was reached at arm's length.

The Agreement is the result of hard fought and fully arm's length negotiations. The Class Representatives have no conflict of interest with the remainder of the Class, and they share the Class's interest in obtaining recovery for themselves and the other Class Members. These Class Representatives have cooperated fully in providing relevant documents and discovery and have been actively engaged in the litigation.

3. The Relief Provided For The Class Is Adequate Taking Into Account The Costs, Risks, And Delay Of Trial And Appeal

Rule 23(e)(2)(C)(i), which overlaps *Girsh* factors 1 and 4 through 9, instructs the Court to consider the adequacy of the settlement relief in light of the costs, risks, and delay that trial and appeal could inevitably impose.[8] *Compare* Fed. R. Civ. P. 23(e)(2)(C)(i), *with Girsh*, 521 F.2d at 157 (factor one focuses on the complexity,

[8] The second *Girsh* factor, the reaction of the class to the settlement, does not yet apply, and will be addressed at the final approval stage after the Class Members have been given notice of the settlement and have had an opportunity to be heard.

expense, and likely duration of the litigation; factors four through nine focus on risks). These factors weigh in favor of approval of the settlement.

Although Plaintiffs believe that the claims asserted in the litigation are meritorious and the Class would ultimately prevail at trial, and Toyota believes it would prevail should the matter proceed to trial, continued litigation against Defendants poses risks that make any recovery for the Class uncertain. The settlement's fairness is underscored by consideration of the obstacles that the Class would face in ultimately succeeding on the merits, as well as the expense and likely duration of the litigation. Without any of the risks involved with further litigation, the Settlement Agreement provides Class Members with significant settlement benefits. Moreover, there are no grounds to doubt the fairness of the settlement or other obvious deficiencies, such as unduly preferential treatment of Plaintiffs or excessive attorney compensation. Plaintiffs, like all Class Members, will receive benefits consistent with the Settlement Agreement. As disclosed in the Short Form and Long Form Notices, Plaintiffs will seek payment of service awards for their significant work in representing the Class. The benefits of settlement clearly outweigh the risks of continued litigation, including trial and appeals, given the substantial relief that Class Members will be afforded.

Further, continued litigation would be lengthy and expensive. Class action litigation is difficult and complex. A settlement is beneficial to all parties, including

the Court. *See Adams v. Kulicke and Soffa Industries, Inc*., 2025 WL 1479498 (E.D. Pa. May 22, 2025) (recognizing that settlement saves time, costs, and energy on both sides); s*ee also Woodward v. NOR–AM Chem. Co.*, 1996 WL 1063670, at *21 (S.D. Ala. May 23, 1996) ("Complex litigation . . . 'can occupy a court's docket for years on end, depleting the resources of the parties and the taxpayers while rendering meaningful relief increasingly elusive.'") (quoting *In re U.S. Oil & Gas Litig.*, 967 F.2d 489, 493 (11th Cir. 1992)).

The fourth *Girsh* factor examines "the risks of establishing liability." *Girsh*, 521 F.2d at 157. Under this factor, "[b]y evaluating the risks of establishing liability, the district court can examine what the potential rewards (or downside) of litigation might have been had class counsel elected to litigate the claims rather than settle them." *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prod. Liab. Litig.*, 55 F.3d 768, 814 (3d Cir. 1995) ("*GMC Truck*")). In considering this factor, the Court has recognized that "[a] trial on the merits always entails considerable risk[s]." *Pro v. Hertz Equip. Rental Corp.*, 2013 WL 3167736, at *4 (D.N.J. June 20, 2013) (citing *Weiss v. Mercedes-Benz of N. Am., Inc.*, 899 F. Supp. 1297, 1301 (D.N.J. 1995), *aff'd*, 66 F.3d 314 (3d Cir. 1995)). Although Class Counsel believe the claims presented in the litigation are meritorious, they are experienced counsel who understand "the risks surrounding a trial on the merits are always considerable." *Weiss*, 899 F. Supp. at 1301. The settlement provides certainty to the Class and substantial relief now.

Similarly, the fifth *Girsh* factor "'attempts to measure the expected value of litigating the action rather than settling it at the current time.'" *In re Cendant Corp. Litig.*, 264 F.3d 201, 238 (3d Cir. 2001) (quoting *GMC Truck*, 55 F.3d at 816). The Court looks at the potential damage award if the case were taken to trial against the benefits of immediate settlement. *In re Prudential Ins. Co. Am. Sales Prac. Litig. Agent Actions*, 148 F.3d 283, 319 (3d Cir. 1998). In *Warfarin Sodium*, the trial court found that the risk of establishing damages strongly favored settlement, observing that "[d]amages would likely be established at trial through 'a "battle of experts,'" with each side presenting its figures to the jury and with no guarantee whom the jury would believe.'" *In re Warfarin Sodium Antitrust Litig.*, 212 F.R.D. 231, 256 (D. Del. 2002), *aff'd*, 391 F.3d 516, 537 (3d Cir. 2004). Here, in a complex consumer class action like this one, there is no doubt such a battle of experts would occur.

In sum, taking into account that the risks and uncertainties of continued litigation, and the significant amount of the recovery, the settlement here is certainly reasonable and should be preliminarily approved. *See Girsh*, 521 F.2d at 157. Indeed, given the complexity of the case, the sophistication of Defendants and their counsel, and the uncertain risks and delay inherent in continuing the litigation, the recovery here is outstanding.

Accordingly, the Court should find that the proposed settlement is fair, reasonable, and adequately protects the interests of the Class Members.

4. The Other Rule 23(e)(2)(C) Factors Are Met

Rule 23(e)(2)(C) also lists three additional factors that a court considers in approving a settlement: the effectiveness of the proposed method for distributing relief; the terms of the proposed attorneys' fees; and the existence of any other "agreement[s]." Fed. R. Civ. P. 23(e)(2)(C)(ii)-(iv). As set forth below, these factors are readily met.

a. The Proposed Method For Distributing Relief Is Effective

As demonstrated below and in the Azari Declaration, the method and effectiveness of the proposed notice and claims administration process (Rule 23(e)(2)(C)(ii)) are more than sufficient. The Claims Administrator is an experienced and well-respected Claims Administrator. This Administrator will provide direct notice to all Class Members via U.S. mail. The notice plan includes direct mail notice to all those who can be identified with reasonable effort. *See* Azari Decl., ¶ 20, Att. 2. The reimbursement program will allow for payments to be made by the Claims Administrator by mailing a check. In addition, a toll-free hotline and a settlement-specific website will be created. *Id*. Key documents will be posted on the website, including the Settlement Agreement, Long Form Notice and Preliminary Approval Order. *Id.* This is an efficient and effective way of providing Class Members the relief they need and deserve. Moreover, there are no sub-classes and all Class Members are treated equally.

b. Attorneys' Fees and Expenses

Rule 23(e)(2)(C)(iii) addresses "the terms of any proposed award of attorney's fees, including timing of payment." The Settlement Agreement provides that Class Counsel will apply for an award of attorneys' fees and expenses 15 days after Notice to the Class is issued, and will include the requested fee award in the Notice, thereby allowing Class Members the opportunity to object.[9] Defendants may oppose the fee request on any ground available to them.

c. The Parties Have No Other Agreements

Rule 23(e)(2)(C)(iv) calls for the disclosure of any other agreements entered into in connection with the settlement of a class action. The settling parties have no other agreements concerning the Settlement Agreement or the claims of the Class, or any other matter related to this litigation or the settlement of this litigation, other than an agreement between Nagel Rice LLP and Plaintiffs' co-counsel, Joseph Santoli. *See* Nagel Decl. at ¶ 37.

5. Class Members are Treated Equitably

Rule 23(e)(2)(D) requires courts to evaluate whether the settlement treats class members equitably relative to one another. Here, the Settlement Agreement is fair, reasonable, and adequate because it treats all Class Members equitably and does not treat Plaintiffs or any other Class Member preferentially. Pursuant to the

[9] Class Counsel will provide the support for their fee request in their motion to award fees.

Settlement Agreement, each Class Member may take advantage of the Extended Warranty and the Reimbursement Program, if applicable. All Class Members are treated equitably.

B. THE PROPOSED NOTICE PROGRAM SATISFIES RULE 23 AND DUE PROCESS AND SHOULD BE APPROVED

Under Fed. R. Civ. P. 23(e), class members are entitled to notice of any proposed settlement before it is ultimately approved by the Court. *Manual For Complex Litigation Fourth* § 21.633. Under Rule 23(e) and relevant due process requirements, adequate notice must be given to all absent class members and potential class members to enable them to make an intelligent choice as to whether to opt-out of the class. *In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283 at 326-27. "'[B]est notice practicable'" means "'individual notice to all members who can be identified through reasonable effort.'" *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974). The best practicable notice is that which "is . . . reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950). Neither Rule 23 nor due process considerations require actual notice to every class member in every case. *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985). Rather, "notice reasonably certain to reach most of those interested in objecting" is required "to safeguard the interests of all." *Id*.

The notice plan set forth in the Settlement Agreement provides the best notice practicable under the circumstances. The Short Form and Long Form Notices (Exhs. G and H) were negotiated by the Parties and will be disseminated to all persons who fall within the definition of the Class and whose names and addresses can be identified with reasonable effort from Defendants' records and verified with R.L. Polk & Co (IHS Markit), and through databases tracking nationwide addresses and address changes. In addition, Epiq will administer the Settlement Website containing relevant information about the settlement. Azari Decl. at ¶ 20, Att. 2.

Moreover, Rule 23(h)(1) requires that "[n]otice of the motion [for attorneys' fees] must be served on all parties and, for motions by class counsel, directed to class members in a reasonable manner." Fed. R. Civ. P. 23(h)(1). The proposed notice plan satisfies the requirements of Rule 23(h)(1), as it notifies Class Members that Class Counsel will apply to the Court for an award of attorneys' fees 15 days after Notice to the Class is issued. Class Counsel will request a total, all-inclusive amount for all attorneys' fees, costs, expenses and interest related to work performed or to be performed and costs and expenses incurred or to be incurred by Class Counsel, which will be identified in the notice to the class.

The notice plan complies with Federal Rule of Civil Procedure 23 and due process because, among other things, it informs Class Members of: (1) the nature of the action; (2) the essential terms of the settlement, including the definition of the

Class, the claims asserted, and the benefits offered; (3) the binding effect of a judgment if the Class Member does not request exclusion; (4) the process for submitting objections and exclusions, including the time and method for objecting or requesting exclusion and that Class Members may make an appearance through counsel; (5) information regarding Class Counsel's request for awards of fees and expenses; and (6) how to make inquiries. Fed. R. Civ. P. 23(c)(2)(B).

Finally, the Notice satisfies all legal requirements and provides a comprehensive explanation of the Settlement in simple, non-legalistic terms. The notices contain all the information required by Rule 23(c); including, the nature of the action, definition of the class, the class claims, issues or defenses, details informing class members that they may enter an appearance though an attorney if they desire; how to object; the time and manner of requesting exclusion, and the binding effect of the class judgment on members under Rule 23(c)(3).

Under Rule 23(c), the Court should consider the contents of class notice as well as the method of dissemination. *In re Nat. Football League Players' Concussion Injury Litigation*, 307 F.R.D. 351 (E.D. Pa. 2015); *In re Prudential*, 148 F.3d 283 at 327. The requirements for the content and dissemination of the Notice have been satisfied and the Notice should be approved.

C. CERTIFICATION OF THE CLASS IS APPROPRIATE

The Supreme Court has recognized that the benefits of a proposed settlement of a class action can be realized only through the certification of a settlement class. *See Amchem Prods. Inc. v. Windsor*, 521 U.S. 591, 620 (1997). To certify a class, Plaintiffs must satisfy all of the requirements of Rule 23(a), and one of the requirements of Rule 23(b). The four requirements of Rule 23(a) are numerosity, commonality, typicality, and adequacy. Fed. R. Civ. P. 23(a). Plaintiffs seek certification under Rule 23(b)(3), which requires a showing that common questions of law or fact predominate over any individual issues and a showing that the class treatment is the superior method for efficiently handling the case. Fed. R. Civ. P. 23(b)(3). These requirements are met for settlement purposes.

1. Numerosity

Numerosity requires "the class [be] so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). The Third Circuit holds that class sizes exceeding 40 are typically sufficient to satisfy this requirement. *Stewart v. Abraham*, 275 F.3d 220, 226-27 (3d Cir. 2001). Here, there are approximately 1.3 million class vehicles in the United States, indicating that there are over one million potential plaintiffs, joinder of whom would be impracticable. *See* Nagel Decl. at ¶ 11. The proposed class is sufficiently numerous for settlement purposes.

2. Commonality

Rule 23(a)(2) requires that there be "questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). This requirement is satisfied where the plaintiffs assert claims that "depend upon a common contention" that is "of such a nature that it is capable of classwide resolution – which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). Commonality is met where "the claims at issue . . . implicate[d] a 'uniform course of conduct common to all class members subject to common proof in a single trial.'" *C.P. v. N.J. Dep't of Educ.*, 2022 WL 3572815, at *6 (D.N.J. Aug. 19, 2022) (quoting *Chiang v. Veneman*, 385 F.3d 256, 266 (3d Cir. 2004)). "That burden is not onerous." *Rodriguez v. Nat'l City Bank*, 726 F.3d 372, 380 (3d Cir. 2013). "The commonality inquiry is satisfied where 'all putative class members were subjected to the same harmful conduct by the defendant,' even in the presence of 'legal and factual differences among the putative class members.'" *Neale v. Volvo Cars of N. Am., LLC*, 2021 WL 3013009, at *6 (D.N.J. July 15, 2021) (quoting *In re Cmty. Bank of N. Va. Mortg. Lending Pracs. Litig.*, 795 F.3d 380, 398 (3d Cir. 2015)).

In this case, common questions of law and fact include, for example, whether Defendants knew or should have known that the Class Vehicles suffered from alleged design defects that caused HV Floor Under Wire Harness and Rear Traction Motor Cable to be unreasonably susceptible to corrosion; and whether those alleged

defects were material, should have been disclosed, and caused or will cause Plaintiffs to incur thousands of dollars in expenses to repair or replace the affected parts. Discovery has confirmed that approximately 1,281,790 – 1,331,801 vehicles suffer from the alleged defect; and that the cost of repair ranges from $3,434.69 to $8,963.61, depending on vehicle model. *See* Nagel Decl. at ¶ 11. Evidence concerning the alleged defect and Defendants' knowledge of the alleged defect, as well as issues concerning Defendants' duty to disclose the alleged defect, are all central to the validity of Plaintiffs' claims and would be common to all proposed class members. Therefore, the commonality requirement is satisfied for settlement purposes.

3. Typicality

To satisfy the typicality requirement of Rule 23(a)(3), the claims or defenses of the representative parties must be typical of the claims or defenses of the class. This analysis focuses on "whether the interests of the named plaintiffs align with those of the unnamed members . . . and, explicitly, whether the claims and facts of class representatives are sufficiently like those of unnamed class members." *In re Valsartan, Losartan, & Irbesartan Prod. Liab. Litig.*, 2023 WL 1818922, at *9 (D.N.J. Feb. 8, 2023). Plaintiffs establish typicality when "the named plaintiff has (1) suffered the same injuries as the absent class members, (2) as a result of the same course of conduct by defendants, and (3) their claims are based on the same legal

issues." *Arbitrage Fund v. Toronto-Dominion Bank*, 2023 WL 5550198, at *4 (D.N.J. Aug. 29, 2023).

"The Third Circuit has adopted a 'low threshold' for typicality," and "[e]ven pronounced factual differences' will not destroy typicality where there is a 'strong similarity of legal theories' or where each claim 'arises from the same practice or course of conduct.' " *Neale*, 2021 WL 3013009, at *6 (quoting *In re Nat'l Football League Players Concussion Inj. Litig*. 821 F.3d 410, 428 (3d Cir. 2016)).

Here, Plaintiffs' and the class members' claims all arise out of the same alleged defect, the same acts Defendants allegedly engaged in to not disclose that alleged defect, and the same alleged resulting damages. Plaintiffs and the proposed class members are all current or previous owners or lessees of Class Vehicles. Plaintiffs and the class members would make the same legal arguments to support their claims. Therefore, the typicality requirement is satisfied for settlement purposes. *See id*. at *7 (finding typicality met where plaintiffs alleged uniform defect across all class vehicles); *Udeen v. Subaru of America, Inc.,* 2019 WL 4894568, at *5 (D.N.J. Oct. 4, 2019) (finding typicality satisfied where claims "all originated from the same allegedly defective product and Defendants' alleged actions to conceal that defect, relying on the same legal theories"); *Alin v. Honda Motor Co.*, 2012 WL 8751045, at *6 (D.N.J. Apr. 13, 2012) (finding typicality satisfied where claims involved

defect common to all class vehicles, named plaintiffs each owned or leased a vehicle in the class, and each plaintiff incurred repair costs as a result of alleged defects).

4. Adequacy Of Representation

The final requirement of Rule 23(a) is that "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). "'The adequacy inquiry under Rule 23(a)(4) serves to uncover conflicts of interest between named parties and the class they seek to represent.'" *In re Suboxone (Buprenorphine Hydrochlorine & Naloxone) Antitrust Litig.*, 967 F.3d 264, 272 (3d Cir. 2020). "For a class representative to be adequate, it must have 'a minimal degree of knowledge' about the case, . . . and have no conflict of interest with class counsel, . . . and members of the class." *Id.* "Only 'fundamental' conflicts 'will defeat the adequacy requirement.'" *Id.*

a. Adequacy of Class Counsel

Rule 23(g) provides the criteria for evaluating the qualifications of Class Counsel. *Sheinberg v. Sorensen*, 606 F.3d 130, 132 (3d Cir. 2010). Accordingly, the Court considers: (1) the work that counsel has done in identifying and investigating potential claims; (2) counsel's experience; (3) counsel's knowledge of applicable law; and (4) the resources counsel will expend in 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." Rule 23(g)(1)(B).

Defendant does not oppose the appointment of the proposed Class Counsel for settlement purposes, and the Court should find that the proposed Class Counsel are well-qualified to represent the class for settlement purposes. The proposed Class Counsel is comprised of attorneys with extensive experience in multi-state class actions and other complex litigation, including numerous class actions involving motor vehicle defect claims. *See* Nagel Decl. at ¶ 32-33, Exh. 3. Counsel has also been involved in this litigation since its early stages and throughout this time, has demonstrated a thorough knowledge of the applicable law. Moreover, counsel has invested a significant amount of time and resources in investigating the claims at issue, engaging in formal discovery, consulting with experts, negotiating the terms of the settlement through a lengthy process that included extensive confirmatory discovery. *See* Nagel Decl. at ¶ 11. Therefore, the Court should find that Plaintiffs have established the adequacy of counsel for settlement purposes.

b. Adequacy of Representative Plaintiffs

"Class representatives are adequate if they demonstrate (1) '[a] minimal degree of knowledge' about the litigation; and (2) that no 'fundamental' conflict of interest exists between the representatives and the class." *Neale*, 2021 WL 3013009, at *7 (*quoting In re NFL Players*, 821 F.3d at 430). Here, the record shows that Plaintiffs assisted counsel with investigation and preparation of the Complaint, responding to extensive written discovery requests, and remained involved with

counsel throughout the settlement negotiations process. *See* Nagel Decl., ¶ 16. Moreover, there is no fundamental conflict of interest between Plaintiffs and the defined class. There is an alignment of interests between Plaintiffs and the proposed class and Plaintiffs are appropriate representatives for this litigation for settlement purposes.

5. Certification Under Rule 23(b)(3) Is Appropriate

The proposed class also meets the requirements of Rule 23(b)(3). Rule 23(b)(3) allows class certification of settlement classes where common questions of law and fact predominate over individual questions and class treatment is superior to individual litigation. Plaintiffs seek to certify a Class under Rule 23(b)(3), which has two components: predominance and superiority. Rule 23(b)(3) requires "a showing that questions common to the class predominate, not that those questions will be answered, on the merits, in favor of the class." *Amgen Inc. v. Conn. Ret. Plans & Tr. Funds*, 568 U.S. 455, 459 (2013). Put another way, "the focus of the predominance inquiry is on whether the defendant's conduct was common as to all of the class members, and whether all of the class members were harmed by the defendant's conduct." *Sullivan v. DB Invs., Inc*., 667 F.3d 273, 298 (3d Cir. 2011). When assessing predominance and superiority, the court may consider that the class will be certified for settlement purposes only, and that a showing of manageability at trial is not required. *See Amchem*, 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.").

a. Common Questions Of Law And Fact Predominate

"Predominance probes whether the proposed class is sufficiently cohesive to warrant adjudication by representation." *McGowan v. CFG Health Network, LLC*, 2024 WL 1340329, at *16 (D.N.J. Mar. 28, 2024) (internal citations omitted). "The focus of the predominance inquiry is on liability, not damages." *Smith v. Suprema Specialties*, No. 02-cv-168 (WHW), 2007 WL 1217980, at *9 (D.N.J. Apr. 23, 2007). Here, this requirement is easily satisfied as all Class Members were allegedly harmed by the same alleged defect. Accordingly, the predominance prong of Rule 23(b)(3) is satisfied for settlement purposes.

b. Class Treatment is Superior

The second prong of Rule 23(b)(3) – that a class action is superior to other available methods for the fair and efficient adjudication of the controversy – is also readily satisfied for the purpose of this settlement. *See* Fed. R. Civ. P. 23(b)(3); *see also Prudential*, 148 F.3d at 316. To determine superiority, the Court should consider:

> (A) the class members' interests in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already begun by or against

> class members; (C) the desirability or undesirability of concentrating the litigation of the claims in [a] particular forum; and, (D) the likely difficulties in managing a class action.

Fed. R. Civ. P. 23(b)(3). Courts also consider whether "'a class action would achieve economies of time, effort, and expense, and promote . . . uniformity of decisions as to persons similarly situated.'" *Amchem*, 521 U.S. at 615.

Here, Class Members do not have a strong interest in controlling the prosecution of this case. After all, it would cost them substantially more to litigate an individual case than they could recover in damages, where the alleged damages (cost of repair), if successful, would be greatly outweighed by the costs of litigation. As other courts have recognized in the context of low-damage consumer class actions, this case "'is the classic negative value case; if class certification is denied, class members will likely be precluded from bringing their claims individually because the cost to bring the claim outweighs the potential payout.'" *In re Marriott Int'l, Inc., Customer Data Sec. Breach Litig.*, 341 F.R.D. 128, 165 (D. Md. 2022), *rev'd on other grounds*, *In re Marriott Int'l, Inc.*, 78 F.4th 677 (4th Cir. 2023). "'For most class members the only realistic alternative to a class action is no action at all.' In such a case, 'the adjudication of the matter through a class action is superior to no adjudication of the matter at all.'" *Id; see also Hacker v. Electric Last Mile Solutions, Inc.,* 722 F.Supp.3d 480, 497 (2024) (recognizing negative value claims are well-suited for class certification where they would otherwise not be brought at all).

Further, there are no other pending cases outside this Court for the conduct alleged. Third, common sense dictates that "the difficulties that would necessarily be presented by thousands upon thousands of individual actions far outweigh any difficulties the Court may encounter in managing a class action in this case." *In re TD Bank, N.A. Debit Card Overdraft Fee Litig.*, 325 F.R.D. 136, 162 (D.S.C. 2018); *see also Schwartz v. Avis Rent-a-Car System, LLC*, 2014 WL 4272018 (Aug. 28, 2014) (where predominance is met, manageability is met as well). Finally, manageability concerns are not implicated in settlement class certification. *See Amchem*, 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 . . . ."). Superiority is met for settlement purposes. Thus, the Court may certify the Class for settlement under Rule 23(b)(3).

6. The Class Members Are Ascertainable

Although not explicitly set forth in the Federal Rules, some courts have read into Rule 23 an implicit requirement that a class be "definite" or "ascertainable." A proper class definition is necessary to ensure clarity as to who is entitled to relief, who is bound by a final judgment, and who is entitled to the "best notice practicable" in a Rule 23(b)(3) action. *Byrd v. Aaron's, Inc.*, 784 F.3d 154, 175 (3d Cir. 2015); *Manual for Complex Litigation* §21.222; 5 James W. Moore, *et al.*, *Moore's Federal Practice* 23.21[3][d] (3d ed. 2013). "For a class to be sufficiently defined, the court

must be able to resolve the question of whether class members are included or excluded from the class by reference to objective criteria." 5 James W. Moore, *et al.*, *Moore's Federal Practice*, 23.21[3] (3d ed. 1997)*; see also Byrd*, 784 F.3d at 164.

Through several cases, the Third Circuit has clarified what is required to establish ascertainability. Building upon the Third Circuit's previous decisions in *Carrera v. Bayer Corp.*, 727 F.3d 300 (3d Cir. 2013), and *Marcus v. BMW of N. Am., LLC*, 687 F.3d 583 (3d Cir. 2012), the Third Circuit has explained that ascertainability requires: 1) that the class members be identifiable by objective criteria; and 2) that "'a reliable and administratively feasible mechanism for determining whether putative class members fall within the class definition.'" *Byrd*, 784 F.3d at 163 (citing *Marcus*, 687 F.3d at 593-94). "The ascertainability requirement consists of nothing more than these two inquiries. And it does not mean that a plaintiff must . . . identify all class members at class certification. . . . ." *Id.* Nor must plaintiffs "demonstrate that a single record, or set of records, conclusively establishes class membership." *City Select Auto Sales Inc. v. BMW Bank of N. Am., Inc.*, 867 F.3d 434, 441 (3d Cir. 2017). Rather, at this stage of the litigation, a plaintiff need only show that "'class members ***can*** be identified.'" *Byrd*, 784 F.3d at 163 (quoting *Carrera*, 727 F.3d at 308 n.2) (emphasis in original). The Class proposed here meets all relevant ascertainability criteria for settlement purposes.

a. The Class Is Defined With Reference To Objective Criteria

"Many courts and commentators have recognized that an essential prerequisite of a class action, at least with respect to actions under Rule 23(b)(3), is that the class must be currently and readily ascertainable based on objective criteria." *Marcus*, 687 F.3d at 592 (citing *Chiang*, 385 F.3d at 271 (holding that "defining a class by reference to those who 'believe' they were discriminated against undermines the validity of the class by introducing a subjective criterion into what should be an objective evaluation")). Such is the case here.

Th Class includes "all persons, entities or organizations who, at any time as of the entry of the Preliminary Approval Order, own or owned, purchase(d) or lease(d) Subject Vehicles distributed for sale or lease in any of the fifty States, the District of Columbia, Puerto Rico, and all other United States territories and/or possessions."

None of these components require the Court to rely on impermissible subjective standards, potential Class Members' beliefs, or a resolution of the merits of the claims. *Cf. Manual for Complex Litigation* §21.222 (indicating in its discussion of ascertainability that "order defining the class should avoid subjective standards (*e.g.*, a plaintiff's state of mind) or terms that depend on resolution of the merits (*e.g.*, persons who were discriminated against")). Instead, these criteria provide a clean and straightforward way to identify "'a particular group [that] was harmed during a particular time frame, in a particular location, in a particular way,'"

in accordance with law from this Circuit. *Pollak v. Portfolio Recovery Assocs., LLC*, 285 F. Supp. 3d 812, 841 (D.N.J. 2018). The first criterion of the Third Circuit's ascertainability analysis is met for settlement purposes.

b. There Is A Reliable And Administratively Feasible Mechanism For Determining Class Membership

Second, the Court must be satisfied that there is a "reliable, administratively feasible" method to identify the Class Members. The Third Circuit addressed this requirement in *Byrd*, where it stated: "We were careful to specify in *Carrera* that '[a]lthough some evidence used to satisfy ascertainability, such as corporate records, will actually identify class members at the certification stage, ascertainability only requires the plaintiff to show that class members ***can be identified***.'" *Byrd*, 784 F.3d at 164 (quoting *Carrera*, 727 F.3d at 308 n.2) (emphasis in original). In other words, there must be evidence that it can be done. *Id.*

As set forth in the Settlement Agreement §IV, Toyota shall obtain from its own records and verify with R.L. Polk & Co (IHS Markit) the names and current or last known addresses of Class Members that can be reasonably obtained using the VINs provided by Toyota, which will be used to disseminate notice to the Class. *See* Settlement Agreement, §IV. The Settlement Administrator will use the information provided by Defendants to provide notice and payments to all class members. *Id.* Therefore, the identity of all class members is available to Defendants and will allow

the Settlement Administrator to easily provide notice to the class. Accordingly, the Class should be certified for settlement purposes.

D. PROPOSED CLASS COUNSEL SATISFY RULE 23(g)

Pursuant to Rule 23(g), Plaintiffs also move to appoint Bruce H. Nagel, and Lisa R. Considine, all of Nagel Rice, LLP, as Class Counsel. Rule 23(g) focuses on the qualifications of class counsel, complementing the requirement of Rule 23(a)(4) that the representative parties adequately represent the interests of the class members. Fed. R. Civ. P. 23. Although a court may consider any factor concerning the proposed class counsel's ability to "fairly and adequately represent the interests of the class," Rule 23(g)(1)(A) specifically instructs a court to 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). Here, each of these considerations weighs strongly in favor of the adequacy of proposed Class Counsel. Proposed Class Counsel performed substantial work identifying and investigating potential claims and properly supporting the allegations in the Complaint. As reflected in the Nagel Declaration, Plaintiffs' proposed Class Counsel have substantial experience, individually and collectively, successfully prosecuting class actions and other complex litigation

throughout the United States. *See* Nagel Decl., ¶¶ 32, 33, Exh. 3. Moreover, Class Counsel have demonstrated their abilities and commitment to this litigation, devoting the resources, time and personnel necessary to manage the litigation and achieve a substantial settlement with Defendants. Proposed Class Counsel respectfully submit that they far exceed the requirements of Rule 23(g).

E. THE COURT SHOULD APPROVE A SCHEDULE LEADING UP TO THE FINAL APPROVAL HEARING

Plaintiffs request that the Court set a schedule of events that will lead to the Final Fairness Hearing, that would include, *inter alia*, deadlines for notice to Class Members, for Class Members to object to the Settlement or to opt out of the settlement; and deadlines for the filing of papers in support of final approval, and in support of Plaintiffs' request for attorneys' fees and expenses. At the Final Fairness Hearing, the Court should hear all evidence and argument necessary to make its final evaluation of the settlement. *See* Fed. R. Civ. P. 23(e)(2). Proponents of the settlement may offer argument in support of final approval. Additionally, Class Members who properly object to the settlement may be heard at this hearing. The Court should determine through the Final Fairness Hearing whether the settlement will be approved.

CONCLUSION

For these reasons, Plaintiffs respectfully request that the Court enter an Order Granting Plaintiffs' Motion for Preliminary Approval of the Class Action Settlement.

Respectfully submitted,

NAGEL RICE, LLP

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By: *Bruce H. Nagel*

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