UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

SHARON CHENG, CRISTINA DIAS, RHONDA SANFILIPO, BRUCE PULEO, ZINA PRUITT, RON ZIMMERMAN, CHERYL SILVERSTEIN, TINA FENG, ROBERT HAKIM, BERNADETTE GRIMES, ELIZABETH GENDRON, ROGER CARTER, MARLENE RUDOLPH, PATRICIA BARLOW, TERESA EDWARDS, ISAAC TORDJMAN, JAMES HETTINGER, DIEU LE, CHRIS BOHN, DANIEL DEWEERDT, CRAIG BOXER, BETTY DENDY, ELIZABETH PERSAK, KRISTI ROCK, JENNIFER CHALAL, JOHN TORRANCE, LENARD SHOEMAKER, MICHAEL MITCHELL, ROBERT SKELTON, JEFFREY JONES, ISABEL MARQUES, PAYAM RASTEGAR, and SYED ABDUL NAFAY, individually and on behalf of all others similarly situated, Plaintiffs, v. TOYOTA MOTOR CORPORATION, TOYOTA MOTOR NORTH AMERICA, INC., and DENSO INTERNATIONAL AMERICA, INC., Defendants.	Case No: 1:20-cv-00629-WFK-JRC

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF JOINT MOTION FOR ENTRY OF AN ORDER PRELIMINARILY APPROVING CLASS SETTLEMENT, CONDITIONAL CERTIFICATION OF THE PROPOSED CLASS FOR SETTLEMENT PURPOSES ONLY, DIRECTING NOTICE TO THE CLASS, AND SCHEDULING FAIRNESS HEARING

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Plaintiffs, on behalf of themselves and the proposed Class (defined below), respectfully submit this memorandum of law in support of the Parties' joint motion, pursuant to Federal Rule of Civil Procedure 23(e), for preliminary approval of the proposed settlement ("Settlement") of this action, conditional certification of the proposed Class for settlement purposes only, approval of the notice and the notice program, and related relief. Defendants are Toyota Motor Corporation ("TMC"), Toyota Motor North America, Inc. ("TMNA" and, together with TMC, "Toyota"), and Denso International America, Inc. ("DIAM", and, together with Toyota and Plaintiffs, the "Parties"). Denso Corporation ("Denso Corp."), which owns DIAM, was voluntarily dismissed from this action (ECF 138) but is a signatory to this Settlement.[1]

I. INTRODUCTION

In this automotive defect class action, Plaintiffs have secured a settlement that, if approved, will confer valuable benefits on the owners and lessees of nearly 4.9 million Toyota and Lexus vehicles that are eligible to participate in the Settlement.[2] Plaintiffs submit the Settlement, described in detail below, is fair, reasonable and adequate, and merits this Court's preliminary approval.[3]

Plaintiffs allege that since 2013, Toyota marketed and sold Toyota and Lexus vehicles as safe, reliable and durable without disclosing to consumers that the vehicles were equipped with a dangerously defective fuel pump, a critical component that supplies fuel to the vehicles' fuel

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[1] DIAM and Denso Corp. are collectively referenced as "Denso."

[2] The Settlement Agreement dated September 7, 2022 is contemporaneously filed with Joint Motion For Entry Of An Order Granting Preliminary Approval Of Class Action Settlement And Issuance Of Related Orders. The Settlement Agreement is referenced as "SA" in this brief and, except where indicated, all defined terms have the same meanings ascribed to them as in the Settlement Agreement. *See* SA, § II.

[3] *See* Declaration of W. Daniel "Dee" Miles III and Demet Basar in Support of Plaintiffs' Motion for Preliminary Approval ("Joint Declaration" or "Joint Dec.").

injection system while the engine is in operation. These defective fuel pumps, all of which were manufactured by Denso, can cause the affected vehicles to run rough, unexpectedly stall, fail to accelerate, lurch and even to lose all engine power while in operation, increasing the risk of a crash ("Defective Fuel Pumps"). ¶¶ 1-45.

Due to the presence of these Defective Fuel Pumps in its vehicles, on January 13, 2020, Toyota voluntarily recalled about 700,000 Toyota and Lexus vehicles manufactured from August 1, 2018 to January 31, 2019. After Plaintiff Cheng commenced this action on February 4, 2020 and alleged in her initial complaint that the recall did not capture all Toyota and Lexus models and model years equipped with the Defective Fuel Pumps (¶ 20), Toyota expanded the recall four times within eleven months, adding 2.7 million vehicles to the Recall. In all, Toyota recalled a total of approximately 3.4 million Toyota and Lexus vehicles manufactured between 2013 and 2020 equipped with Defective Fuel Pumps.[4]

Plaintiff Cheng commended this case on February 4, 2020 and amended her complaint four times between February 2020 and December 2020, adding 32 plaintiffs to the case as later-filed cases were transferred to this District and consolidated with this case. In the amended complaints, Plaintiffs alleged additional facts relating to the expanding recall population, set forth the findings of their independent automotive engineering expert ("Automotive Expert") who tested and analyzed the Defective Fuel Pumps, and asserted additional claims on behalf of statewide, multi-state and nationwide classes. In January 2021, Defendants moved to dismiss each of Plaintiffs' 97 claims, which the Parties briefed until May 2021. During that same period, the Parties were also actively engaged in discovery.

[4] Denso too recalled its defective Fuel Pumps although it did not offer a remedy.

With knowledge of the strengths and weaknesses of their respective positions, the Parties also began to explore the possibility of an early resolution of this case. After eighteen months of arms' length negotiations, informed by additional confirmatory discovery and aided by Court-appointed Special Master Patrick A. Juneau at later stages, the Parties have reached a comprehensive Settlement that provides concrete, real-world valuable benefits to the owners and lessees of nearly 4.9 million Toyota and Lexus vehicles and the additional millions of consumers who will be subsequent owners and lessees of those vehicles.

In the Settlement, Toyota agreed to implement a Customer Support Program ("CSP") for the owners and lessees of approximately 1.4 million "Additional Vehicles" (SA § II.2) that were not previously recalled by Toyota, which are now entitled to prospective coverage for repairs (including parts and labor) on their original Denso low-pressure fuel pumps for 15 years from the date of original sale. This benefit travels with the vehicle, meaning if a vehicle is sold or its lease ends before the expiration of the 15-year period, the subsequent owner or lessee still will be entitled to the benefit. SA, § III.A.1. Toyota agreed to provide this excellent benefit to the owners and lessees of the 1.4 million vehicles that had not been recalled but contain the same defective Denso fuel pumps as a direct result of Plaintiffs' intensive efforts during settlement negotiations. If the Settlement is preliminarily approved by the Court, Defendants, at their sole discretion, may, after conferring with Class Counsel, implement the CSP prior to the Final Effective Date of the Settlement. SA, § III.

Toyota also agreed to provide an Extended New Parts Warranty of 15 years, measured from July 15, 2021, or 150,000 miles, whichever comes first, on the countermeasure fuel pump kit for owners and lessees of the nearly 3.4 million "Subject Vehicles" – the recalled vehicles (SA § II.49) – and the 170,000 "SSC Vehicles" – hybrid vehicles that were not recalled but for which

Toyota instituted a special service campaign (SA § II.48) during settlement negotiations – that are entitled to the Recall remedy, described below. SA, § III.B.1. This valuable benefit too travels with the vehicle such that subsequent purchasers or lessees also will be entitled to the Extended Warranty. SA, § III.B.1.

The Recall remedy is the replacement of the Defective Fuel Pumps with improved countermeasure fuel pumps that were specifically reformulated and manufactured to address the defect in the recalled fuel pumps ("Countermeasure Fuel Pumps"). The Defective Fuel Pumps that gave rise to the Recall, as well as the Countermeasure Fuel Pumps, were the subject of intense scrutiny, through voluminous formal and confirmatory discovery and thorough testing and analysis by Plaintiffs' Automotive Expert. After testing the recalled fuel pumps and their components, the independent Automotive Expert concluded that the fuel pumps have a defective impeller that is made of lower density material that makes it susceptible to deformation during operation, which in turn can cause the fuel pump to degrade or fail altogether. With thorough knowledge of the defect, Plaintiffs' Automotive Expert also conducted extensive testing and analysis of the Countermeasure Fuel Pump, and determined that the impellers in those fuel pumps were made of sufficiently robust material to function properly in their operating environment and thus could be expected to function as intended.

The owners and lessees of the Additional Vehicles are entitled to have these Countermeasure Fuel Pumps installed in their vehicles for free, and the owners and lessees of the Subject Vehicles and the SSC Vehicles[5] have a free 15-year or 150,000 warranty on the Countermeasure Fuel Pumps and the components in the kit included for their reinstallation in the

[5] The Additional Vehicles, the Subject Vehicles and the SSC Vehicles are "Covered Vehicles" in the Settlement. SA, § II.16.

vehicles. In addition, the owners and lessees of all the vehicles covered by the Settlement are entitled to free towing and loaner vehicles while their fuel pumps are being replaced or repaired. If a Class Member has a need for a loaner vehicle that is similar to her Covered Vehicle, Toyota, through its dealers, will use good faith efforts to satisfy the request. SA, §§ III.A.2, III.B.2.

The CSP and the Extended Warranty address Plaintiffs' overarching concern in this litigation – to ensure that the fuel pumps in the Covered Vehicles operate as intended and drivers, passengers, and other vehicles on the road will not be exposed to potentially unsafe conditions. Toyota's free repairs under the CSP and the Extended Warranty, and complimentary towing and loaner vehicles to Class Members during the repairs, ensures that Class Members will not incur any expenses for repairs that may become necessary to address problems with the original Fuel Pumps or Countermeasure Fuel Pumps in the future.

The Settlement also includes an out-of-pocket expense reimbursement program. All Class Members who incurred expenses to repair or replace Fuel Pumps of Covered Vehicles either before notice of the Settlement is provided, or between the date of notice and the Final Effective Date of the Settlement (if repaired by a Toyota dealer) are entitled to reimbursement through an orderly and consumer-friendly claims administration process that ensures prompt payment of eligible claims. *Id.*, § III.C.

The Settlement also includes a reconsideration procedure in connection with the CSP and the Extended Warranty (SA, § III.D), and an independent Settlement Special Master – Patrick A. Juneau – will oversee the Settlement to resolve any disputes by Class Members regarding entitlement to all benefits provided under the Settlement.

Defendants have agreed to pay all expenses for the relief in the Settlement as well as for attorney's fees, costs and expenses, and class representative awards, as may be awarded by the Court.

The Settlement is clearly within the realm of this Court's final approval. Further, the proposed Settlement Class satisfies Rules 23(a) and 23(b)(3) and can be conditionally certified for settlement purposes. Consequently, Plaintiffs respectfully request that this Court direct notice of the Settlement to the proposed Settlement Class under Rule 23(e). Fed. R. Civ. P. 23(e).

II. PROCEDURAL HISTORY AND SUMMARY OF RELEVANT FACTS

On February 4, 2020, Plaintiff Sharon Cheng filed her complaint against Toyota seeking damages and equitable relief individually and on behalf of Class members, each of whom purchased or leased a Covered Vehicle. ECF No. 1. In the complaint, Plaintiff Cheng asserted consumer protection and other claims against Toyota for marketing and selling the Class Vehicles as safe and dependable when the vehicles are equipped with a fuel pump that Toyota admitted in the Recall is defective and can cause engines to stall and shut down, increasing the risk of a crash. *Id.* at ¶ 1. Plaintiff also alleged that the Recall, which at that time covered nearly 700,000 2018-2019 Toyota and Lexus vehicles, was deficient because additional Toyota and Lexus vehicles shared the same defective fuel pump that is prone to sudden and unexpected failure exposing occupants and others to the risk of injury. *Id.* at ¶ 95.

On April 13, 2020, Plaintiff Cheng filed her First Amended Class Action Complaint ("FAC"), adding (1) new plaintiffs, (2) Denso, the maker of the defective fuel pumps, as defendants, (3) new and more robust allegations arising from Toyota's March 19, 2020 expansion of the Recall to about 1.8 million Toyota and Lexus Vehicles, and (4) the research and analysis of Plaintiffs' Automotive Expert. *Id.*

After Plaintiff Cheng filed her original complaint on February 4, 2020, seven other cases were filed in different districts across the country. ECF No. 91. Plaintiffs in many of these later-filed cases voluntarily transferred their cases to this District for consolidation with this Action, and, on July 3, 2020, those Plaintiffs filed a Consolidated Amended Complaint. ECF No. 59. Other Plaintiffs filed an application with the Judicial Panel on Multidistrict Litigation ("JPML") to centralize the then pending cases in the Eastern District of Michigan. ECF No. 57. Ultimately, to best protect the interests of the Classes and preserve judicial and party resources, these plaintiffs dismissed their JPML application (ECF No. 79), and also transferred their cases to this District to be consolidated with this Action. All transferred cases were consolidated for all purposes by mid-October 2020 (ECF No. 91), and Plaintiffs filed their First Amended Consolidated Class Action Complaint ("FACC") on November 5, 2020. ECF No. 96.

On November 6, 2020, the Court appointed proposed Class Counsel as interim Class Counsel and a Plaintiffs Steering Committee. *See* November 6, 2020 Electronic Order.

On November 4, 2020, Toyota added about 1.52 million additional vehicles to the Recall, but the amended recall was not published until after Plaintiffs filed the FACC. The parties stipulated for leave to file the Second Amended Consolidated Class Action Complaint ("SACC"), which was filed on December 14, 2020. ECF No. 106. The SACC added additional plaintiff and asserted additional claims. All in all, there were 33 plaintiffs named and 97 causes of action for violations of state consumer protection statutes; breach of express warranty; breach of implied warranty; negligent recall/undertaking; unjust enrichment; strict liability; and, on behalf of a nationwide class, a claim for violations of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, *et seq*.

On January 15, 2021, DIAM and TMNA served Plaintiffs with their motions to dismiss, to which Plaintiffs served responses on March 30, 2021, Defendants replied and fully briefed packages were filed on May 28, 2021. ECF Nos. 129-134.

Plaintiffs voluntarily dismissed Denso Corp. on August 31, 2021. ECF No. 137. TMC was served on May 11, 2021 and filed a pre-motion letter requesting permission to file a motion to dismiss on August 16, 2021 (ECF No. 139), to which Plaintiffs responded on August 23, 2021 (ECF No. 141). The request remains pending.

The Parties submitted a Discovery Plan, which was approved by the Court on October 28, 2020. ECF No. 92-A. Plaintiffs served requests for production of documents on Defendants on July 2, 2020, and served updated Requests on January 22, 2021. DIAM served its responses to Plaintiffs' requests on March 15, 2021. TMNA served its responses to Plaintiffs' requests on April 7, 2021. On September 9, 2021, TMC served its Initial Disclosures, Responses to Plaintiffs' Requests for Production, and Response to Plaintiffs' Interrogatory. Also on September 9, 2021, TMNA served its Response to Plaintiffs' Interrogatory with verification. Defendants have produced documents responsive to Plaintiffs' requests. Plaintiffs, TMNA, and Denso served their written initial disclosures on November 2, 2020.

As a part of formal discovery, Defendants produced, and Plaintiffs processed and reviewed, about 655,000 documents containing approximately 1.5 million pages of documents related to the Recalls, the design and operation of the Denso Fuel Pumps, warranty data, failure modes attributed to the Fuel Pumps, the Defendants' investigation into the issue, and countermeasure development and implementation. Additionally, Plaintiffs' independent automotive engineering expert sourced and inspected over 100 fuel pumps replaced pursuant to the Recall, and has analyzed, among other things, the pumps' operation, specifications, and the density of the impeller.

On November 4, 2021, the Court appointed Patrick A. Juneau as settlement special master. ECF No. 148. On March 1, 2022, DIAM and TMNA filed motions withdrawing their respective motions to dismiss (ECF Nos. 152-153), and on the same day the Court granted the withdrawals. ECF No. 153-A.

In the Action, Plaintiffs generally alleged that Defendants knew about the defect in the Denso-made Fuel Pumps since long before the initial recall because Denso and Toyota together designed, engineered, tested, validated, and manufactured the Defective Fuel Pumps in the Covered Vehicles. Further, Plaintiffs alleged that because Toyota owns approximately 25% of Denso, Toyota also knew about the problems with the durability and absorption qualities of the defective Fuel Pump impeller since well before October 2016 when Denso filed a patent application to improve the durability of the impellers. ECF No. 160, ¶ 7. Plaintiffs also alleged that Toyota knew about consumers' numerous complaints about problems with the Fuel Pumps, which were on NHTSA's website and other public fora. Plaintiffs alleged that nonetheless Defendants failed to disclose the defect and made material misleading statements about the safety and durability of their products.

With respect to the Recalls, Plaintiffs alleged that they were insufficient in scope because they did not include all vehicles equipped with Denso Fuel Pumps with the same part number prefixes as those of the recalled Fuel Pumps and did not include all affected hybrid vehicles. These vehicles are now part of the Covered Vehicles as the Additional Vehicles and the SSC Vehicles, respectively. Plaintiffs also alleged the Recall remedy was not adequate because the installation of the Countermeasure Fuel Pump could cause or exacerbate problems. However, after the filing of the SACC in December 2020, Plaintiffs' Automotive Expert thoroughly tested and analyzed the Countermeasure Fuel Pumps and has concluded they function as intended.

III. THE SETTLEMENT

A. Class Definition

The proposed Settlement Class consists of:

> All persons, entities or organizations who, at any time as of the entry of the Initial Notice Date, own or owned, purchase(d) or lease(d) Covered 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. 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 Toyota Dealers and Toyota Dealers' officers and directors; (b) Plaintiffs' Counsel; (c) judicial officers and their immediate family members and associated court staff assigned to this case; and (d) persons or entities who or which timely and properly exclude themselves from the Class as provided in the Settlement Agreement.

The proposed Class Representatives are Sharon Cheng, Cristina Dias, Rhonda SanFilipo, Bruce Puleo, Zina Pruitt, Ron Zimmerman, Cheryl Silverstein, Tina Feng, Robert Hakim, Bernadette Grimes, Elizabeth Gendron, Roger Carter, Marlene Rudolph, Patricia Barlow, Teresa Edwards, Isaac Tordjman, James Hettinger, Dieu Le, Chris Bohn, Daniel Deweerdt, Craig Boxer, Betty Dendy, Elizabeth Persak, Kristi Rock, Jennifer Chalal, John Torrance, Lenard Shoemaker, Michael Mitchell, Robert Skelton, Jeffrey Jones, Isabel Marques, Payam Rastegar, and Syed Abdul Nafay.

B. Settlement Negotiations

The negotiations culminating in this Settlement were complex, conducted in good faith and at arms' length over a period of eighteen months by informed and experienced counsel, and aided by Court-appointed Special Master Patrick A. Juneau since November 3, 2021. Plaintiffs, with the goal of obtaining immediate valuable benefits for Class Members, and Defendants began to explore the possibility of an early resolution even while Defendants' motions to dismiss were being vigorously litigated and the Parties were engaged in substantial fact discovery.

During the course of the negotiations, Class Counsel, armed with the knowledge they gained through the informal and confirmatory discovery, as described below, and in consultation with their independent Automotive Expert, were able to meaningfully assess the reasons for the defect in the Fuel Pumps and the efficacy of the Recall remedy. Class Counsel and Defendants' counsel had numerous Zoom meetings and, as COVID restrictions eased, multiple in-person meetings, which required long distance travel by some Class Counsel, and, as negotiations intensified, frequent lengthy conference calls for the Parties to exchange their views concerning the settlement terms then under discussion. Numerous drafts of the Settlement Agreement and related exhibits were exchanged, which Counsel carefully negotiated and refined before a final agreement could be reached. As a result of Counsel's efforts, the Parties were successful in reaching a settlement that provides concrete substantial benefits to millions of Class Members.

C. Formal and Confirmatory Discovery

As part of formal discovery, Defendants produced, and Plaintiffs processed and reviewed approximately 655,000 documents containing roughly 1.5 million pages of documents related to the Recall, the design and operation of the Defective Fuel Pumps, warranty data, failure modes, Defendants' investigation into the defect, and the Recall countermeasure development and implementation. Additionally, Plaintiffs' Automotive Expert sourced and inspected over 100 Defective Fuel Pumps, and analyzed their operation, specifications, and the density of their impellers.

During the course of settlement negotiations, Class Counsel also conducted extensive confirmatory discovery. Toyota and Denso produced hundreds of pages of additional internal documents, including voluminous warranty data spreadsheets and detailed information about the Countermeasure Fuel Pumps, which Class Counsel reviewed and analyzed. Class Counsel consulted with their Automotive Expert about the information in these documents and provided

Countermeasure Fuel Pumps for his analysis. Class Counsel also interviewed Toyota and Denso engineers who are knowledgeable about the Recall and implementation, the Covered Vehicles, the Defective Fuel Pumps, and the Countermeasure Fuel Pumps.

D. Benefits to the Class Under the Settlement Agreement

1. Customer Support Program

As set forth above, under the CSP, Toyota will provide prospective coverage for repairs to correct defects in materials or workmanship in the Fuel Pumps for the 1.4 million Additional Vehicles that were not recalled.[6] The Additional Vehicles include 1.4 million Toyota and Lexus vehicles. SA, Ex. 1b. A Class Member's rights under the CSP are transferred with the Additional Vehicle. Coverage for the original Fuel Pumps continues for 15 years from the date of First Use, which is the date that the Additional Vehicle was originally sold or leased by a Toyota dealer. SA, § II.V. If any Additional Vehicle is covered by a future recall for the same underlying problem as the current Recalls, it will be entitled to the Extended Warranty for the Subject and SSC Vehicles. SA, § III.A.3. If the Settlement is approved, implementation of the CSP will begin no later than 30 days after the Final Effective Date of the Settlement. SA, § III.A.1. If the Court preliminarily approves the Settlement, Defendants, at their discretion, after consulting with Class Counsel, may implement the CSP prior to the Final Effective Date.

2. Extended New Parts Warranty for Subject and SSC Vehicles

The Extended New Parts Warranty for the Countermeasure Fuel Pump kit replaced on the Subject Vehicles and SSC Vehicles will last for 15 years, measured from July 15, 2021, and up to 150,000 miles, whichever comes first, and is transferrable with the vehicle. SA, § III.B.1. Class Members who are taking advantage of the Extended New Parts Warranty are also entitled to

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6 Salvaged Vehicles, inoperable vehicles, and vehicles with titles marked flood-damages are not eligible for this benefit. SA, § III.A.1.

participate in the free Loaner Vehicle/Towing Program. SA, § III.B.3. Class Members who have SSC Vehicles will also be entitled to the benefits under a future recall. SA, § III.B.C.

3. Loaner Vehicles and Towing for Class Members During Repair

As part of the Settlement, Toyota will offer and provide upon request a free loaner vehicle to eligible Class Members whose Covered Vehicles are undergoing repair/replacement under the CSP or the Extended New Parts Warranty. If a Class Member has a demonstrable need for a loaner vehicle similar to her Covered Vehicle – such as a vehicle that is used to transport a mobility-impaired person – Toyota, through its dealers, will use good faith efforts to provide one. Class Members whose Covered Vehicles are undergoing repair are also entitled to free towing. SA, §§ III.A.2, III.B.2.

4. Reimbursement of Previously Incurred Expenses

The Settlement also provides for an Out-of-Pocket Claims Process under which potential Class Members, who do not opt out of the Settlement, can submit claims for out-of-pocket expenses incurred to repair or replace a Fuel Pump in their Covered Vehicles, as well as reasonable rental vehicle and towing costs, that were not otherwise reimbursed and that were either (a) incurred prior to the Initial Notice Date; or (b) incurred after the Initial Notice Date and before the Final Effective Date. SA, § III.C.[7] To be eligible for relief, Class Members must complete and timely submit Claim Forms, with Supporting Documentation, to the Settlement Claims Administrator within the Claim Submission Period. Claims Forms can be mailed or submitted online on the Settlement website.

[7] For costs that were incurred after the Initial Notice Date and before the Final Effective Date, the Class Member must provide proof that they were denied coverage by the Toyota dealer prior to incurring the cost.

By agreement of the Parties and subject to Court approval, the Out-of-Pocket Claims Process will be administered by Patrick A. Juneau and Patrick Hron of Juneau David, APLC, at Defendants' expense. SA, § II.A.45. Juneau David has extensive experience in claims administration and has administered the claims in some of the largest class action settlements providing for reimbursement of claims.

Claims submitted by Class Members will be received by the Settlement Notice Administrator, who will administer the review and processing of the Claims. SA, § III.C.4. If a Claim is determined to be deficient, the Settlement Notice Administrator will mail, and, if available, email a notice of deficiency to the Class Member, requesting the Class Member to complete and/or correct the deficiencies for resubmission within sixty (60) days of the date of the notice. SA, § III.C.5. Deficient claims that are not corrected/completed will be denied without further processing. *Id.* The Settlement Claims Administrator will use reasonable efforts to complete their review of timely and completed Claim Forms within sixty (60) days of receipt. *Id.*

Approved Claims that are accepted for payment will be paid by the Settlement Claims Administrator, using reasonable efforts, within sixty (60) days after the later of receipt of the Claim or the date of issuance of the Final Order and Final Judgment. SA, § III.C.5.a.

If a Class Member's Claim is rejected for payment, in whole or in part, the Settlement Claims Administrator will notify Class Counsel, Toyota's Counsel, and Denso's Counsel of the rejection of the Claim and the reason(s) why within sixty (60) days of the rejection. SA, § III.C.5.b. While the decision of the Settlement Claims Administrator will be final, Class Counsel, Toyota's Counsel, and Denso's Counsel may resolve any denied Claims, jointly recommend payment of the rejected Claims or payment of a reduced claim amount, in which case the Settlement Claims Administrator will instruct Defendants' Counsel to pay the Claims in full or in part, as the case

may be. *Id.* If Class Counsel, Toyota's Counsel, and Denso's Counsel disagree with the Settlement Claims Administrator's initial determination, they shall so notify the Settlement Claims Administrator, with explanation, and the Settlement Claims Administrator will make the final determination as to whether the Claim shall be paid. *Id.* If a Claim is rejected in full or in part, the Settlement Notice Administrator will be directed to mail a notice of rejection letter to the Class Member and email notice to the Class member if an e-mail address was provided. *Id.*

The Settlement Notice Administrator will provide status reports to Class Counsel, Toyota's Counsel and Denso's Counsel every six (6) months until the distribution of the last check, including copies of all rejection notices. SA, § III.C.6.

For any checks that are uncashed by Class Members after 90 days, the Settlement Notice Administrator will seek to contact the Class Members with the uncashed checks and have them promptly cash the checks, including, but not limited to, by reissuing checks. SA, § III.C.8. If the Settlement Notice Administrator is not successful at getting Class Members to cash a check within six months of the issuance of the check, the amount of the check will revert to Toyota and/or Denso. *Id.*

5. Reconsideration Procedure for Denial of Coverage

As part of the Settlement, Class Members and/or subsequent purchasers or lessors of a Covered Vehicle who are denied coverage for repairs under the CSP or Extended Warranty may take their vehicle to a second Toyota Dealer for an independent determination. If the second Toyota Dealer determines the vehicle qualifies for a repair and/or replacement of the fuel pump kit, the Class Member and/or subsequent purchaser or lessor will be provided the benefits as provided in the Settlement Agreement. SA, § III.D.1.

6. Settlement Oversight

As described in detail below, this Settlement is more favorable than continued litigation and should be approved by the Court, as the Settlement is robust in the notice, relief, administration, reconsideration procedure for denial of coverage, and equally important, the oversight of the Settlement during its implementation and administration.

Under the Settlement, if a Class Member, after exhausting all other means of resolution under this Settlement, still has a dispute relating to entitlement to any benefit under the CSP, the Extended New Parts Warranty, the Loaner/Towing Program, and/or the Out-of-Pocket Claims Process, the dispute will be referred to the Settlement Special Master, Class Counsel, Toyota's Counsel and Denso's Counsel within fifteen (15) days of the denial of the benefit. SA, § III.F.1. Counsel may make a joint recommendation or separately relay their positions on the dispute to the Settlement Claims Administrator within thirty (30) days. *Id.* The Settlement Claims Administrator will make the final determination concerning the dispute and provide written notice, with directions for implementation, to the Parties, or Settlement Notice Administrator within thirty (30) days. Defendants' Counsel, and/or the Settlement Notice Administrator will implement the Settlement Claims Administrator's determination within thirty (30) days. However, if the determination was to allow, in full or in part, a previously denied Claim, the Settlement Notice Administrator will pay the Claim in the next distribution of checks for allowed Claims. *Id.*

During the twelve (12) months after the Final Effective Date, the Settlement Claims Administrator and the Settlement Notice Administrator, with cooperation of Defendants' Counsel, will provide quarterly reports to Class Counsel concerning the implementation of and Class Member participation in the CSP. SA, § III.F.2.

7. Robust Notice Program

As described in Section VI below, as part of the Settlement, Toyota will fund a state-of the art Notice Program designed to reach 90% of Class Members an average of three times. SA, Ex. 4. The Notice will inform Class Members of their right to opt-out or object to the Settlement.

E. The Release

In exchange for the benefits of the Settlement, Class Members will agree:

> to fully, finally and forever release, relinquish, acquit, and discharge the Released Parties from any and all claims, demands, suits, petitions, liabilities, causes of action, rights, and damages of any kind and/or type regarding the subject matter of the Action and the Related Action, including, but not limited to, compensatory, exemplary, punitive, expert and/or attorneys' fees or by multipliers, whether past, present, or future, mature, or not yet mature, known or unknown, suspected or unsuspected, contingent or non-contingent, derivative or direct, asserted or un-asserted, whether based on federal, state or local law, statute, ordinance, regulation, code, contract, common law, violations of any state's deceptive, unlawful, or unfair business or trade practices, false, misleading or fraudulent advertising, consumer fraud or consumer protection statutes, any breaches of express, implied or any other warranties, RICO, or the Magnuson-Moss Warranty Act, or any other source, or any claim of any kind arising from, related to, connected with, and/or in any way involving the Action, the Related Action, the Covered Vehicles' Fuel Pumps and/or associated parts that are, defined, alleged or described in the Class Action Complaint, the Action, or any amendments of the Class Action Complaint; provided, however, that notwithstanding the foregoing, Class Representatives and Class Members are not releasing claims for personal injury, wrongful death or actual physical property damage (except to the Fuel Pump in the Covered Vehicle itself) from the Covered Vehicle.

SA, § VII.B.

The Release is attached to the Long Form Notice and will be posted on the Settlement Website.

F. Attorneys' Fees, Costs And Expenses And Class Representative Service Awards

At the conclusion of the Parties reaching agreement on the substantive material terms of this Settlement Agreement, the Parties mediated attorneys' fees and costs and individual Class Representative service awards with the assistance of Settlement Special Master Patrick A. Juneau. Following a series of intensive negotiations between the Parties and the Settlement Special Master Juneau on August 11, 2022, the Parties requested that Settlement Special Master Juneau propose a mediator's number for the amount of attorneys' fees; Settlement Special Master Juneau provided the Parties with a mediator's recommendation of $28,500,000.00 for Class Counsel attorneys' fees. After further evaluation, the Parties subsequently agreed to accept the Settlement Special Master Juneau's mediator number.

Additionally, as a result of additional negotiations, Class Counsel agreed to limit any petition for an award of costs and expenses in the Action to $500,000.00, and further agreed that Class Counsel may petition the Court for (i) Class Representative service awards of up to $3,500.00 for Class Representatives who had their vehicles inspected by the Defendants for their time in connection with the Action; and (ii) Class Representative service awards of up to $2,500.00 for Class Representatives who did not have their vehicles inspected by the Defendant for their time in connection with the Action. SA, § IX.

If this Court grants Class Counsel's application for fees, costs and expenses, and Class Representative service awards, any awarded amounts will be paid by Defendants into a Qualified Settlement Fund established by the Court. SA, § VIII.A. No order of the Court, or modification or reversal or appeal of any order of the Court concerning the amount(s) of any attorneys' fees, costs and expenses awarded by the Court, or concerning the amounts of Class Representative service

awards, shall affect whether the Final Order and Final Judgment are final and shall not constitute grounds for cancellation or termination of the Settlement Agreement. SA, § IX.E.

IV. ARGUMENT

Federal Rule of Civil Procedure 23(e) sets forth a streamlined protocol for preliminary approval of class action settlements. As a first step, the "parties must provide the court with information sufficient to enable it to determine whether to give notice of the proposal to the class." Rule 23(e)(1)(A). The Court must direct notice if the parties have shown that the court "will likely be able to: (i) approve the proposal under Rule 23(e)(2); and (ii) certify the class for the purposes of judgment on the proposal." Here, notice is warranted because the proposed Settlement is likely to meet the requirements of Rule 23(e)(2), and this proposed Settlement Class satisfies the requirements of Rules 23(a), 23(b)(3). Therefore, the Class can be conditionally certified for purposes of settlement.

A. The Court Will Likely be Able to Certify the Class Pursuant to Rules 23(a) and 23(b)(3)

Before deciding whether to preliminarily approve the proposed Settlement, this Court "must first ensure that the settlement class, as defined by the parties, is certifiable under the standards of Rule 23(a) and (b)." *Bourlas v. Davis Law Assocs.*, 237 F.R.D. 345, 349 (E.D.N.Y. 2006*); see also Denney v. Deutsche Bank AG*, 443 F.3d 253, 270 (2d Cir. 2006) (holding that Rule 23(a) and (b) analysis is independent of Rule 23(e) fairness review); *Cohen v. J.P. Morgan Chase & Co.*, 262 F.R.D. 153, 157 (E.D.N.Y. 2009) (The requirements of Rule 23(a) and Rule 23(b) apply equally to "conditional certification of a class for settlement purposes.").

"Certification of a settlement class has been recognized throughout the country as the best, most practical way to effectuate settlements involving large numbers of claims by relatively small claimants." *In re IMAX Sec. Litig.*, 283 F.R.D. 178, 186 (S.D.N.Y. 2012). "Conditional settlement

class certification and appointment of class counsel have several practical purposes, including avoiding the costs of litigating class status while facilitating a global settlement, ensuring notification of all class members of the terms of the proposed settlement agreement, and setting the date and time of the final approval hearing." *Almonte v. Marina Ice Cream Corp.*, No. 1:16-cv-00660 (GBD), 2016 U.S. Dist. LEXIS 171033, at *5 (S.D.N.Y. Dec. 8, 2016). "Preliminary certification is appropriate [where, as here,] claims … would 'focus predominantly on common evidence.'" *In re U.S. Foodservice Inc. Pricing Litigation*, 729 F.3d 108, 125 (2d Cir. 2013).

As described below, the proposed Settlement Class here meets the requirements of both Rule 23(a) and Rule 23(b)(3) and should be conditionally certified for settlement purposes only.

1. Rule 23(a) Is Satisfied

a) The Class Is Sufficiently Numerous

Rule 23(a)(1) requires that "the class is so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a). Here, the Settlement covers the owners and lessees of nearly 4.9 million Covered Vehicles in the United States and its territories. Joinder of these widely dispersed, numerous Class Members into one suit would be impracticable. *See Vu v. Diversified Collection Servs., Inc.*, 293 F.R.D. 343, 352 (E.D.N.Y. 2013) ("While there is no magic number, courts have found numerosity to be satisfied by a class of forty members.") (citing *Consol. Rail Corp. v. Town of Hyde Park*, 47 F.3d 473, 483 (2d Cir. 1995)). The Rule 23(a)(1) numerosity requirement is easily met.

b) There Are Common Questions of Law and Fact

Rule 23(a)(2) requires that "there are questions of law or fact common to the class." To satisfy the commonality requirement, a "common contention must be of such a nature that it is capable of class wide resolution – which means that the determination of its truth or falsity will resolve an issue that is central to the validity of each of the claims in one stroke." *Wal-Mart Stores*,

Inc. v. Dukes, 564 U.S. 338, 350 (2011). Moreover, "[t]he claims for relief need not be identical for them to be common; rather, Rule 23(a)(2) simply requires that there be issues whose resolution will affect all or a significant number of the putative class members." *Johnson v. Nextel Commc'ns Inc.*, 780 F.3d 128, 137 (2d Cir. 2015). Indeed, "one significant issue common to the class may be sufficient to warrant certification." *Walmart Stores Inc.*, 564 U.S. at 369 (quoting *Savino v. Computer Credit, Inc.*, 173 F.R.D 346, 352 (E.D.N.Y. 1997)); *see Dupler v. Costco Wholesale Corp.*, 249 F.R.D. 29, 37 (E.D.N.Y. 2008) ("A single common issue of law will satisfy the commonality requirement.").

Courts addressing automobile defect claims routinely find commonality. *See, e.g., Wolin v. Jaguar Land Rover N. Am.*, LLC, 617 F.3d 1168, 1172 (9th Cir. 2010) (commonality was "easily satisfied" where prospective class members' claims involved same alleged defect and common questions included, as here, whether the defect existed, whether the defendant had concealed it, and whether that violated consumer protection law); *Skeen v. BMW of N. Am., Ltd. Liab. Co.*, No. 2:13-cv-1531-WHW-CLW, 2016 U.S. Dist. LEXIS 97188, at *17 (D.N.J. July 26, 2016) (commonality requirement met where all class vehicles had allegedly defective timing chain tensioner installed); *Keegan*, 284 F.R.D. at 524 (finding commonality where plaintiffs alleged a common defect and holding that "[t]he fact that some vehicles have not yet manifested premature or excessive tire wear is not sufficient, standing alone, to defeat commonality").

Here, the claims of all prospective Class Members involve the same issues that are central to this case. These include, among others, whether the Covered Vehicles have a safety-related defect; whether and when Defendants knew of the defect; whether Defendants misrepresented the safety and quality of the Covered Vehicles; whether Defendants' alleged misrepresentations and omissions were misleading to reasonable consumers, and, if misleading, whether they were

material; the presence and quantum of Class Members' damages, and whether equitable relief is warranted, among others. The commonality requirement is easily satisfied.

c) The Class Representatives' Claims Are Typical of Those of Other Class Members

Typicality under Rule 23(a)(3) is established where, as here, "each class member's claim arises from the same course of events, and each class member makes similar legal arguments to prove the defendant's liability." *Haseman v. Gerber Products Co.*, 331 F.R.D. 239, 268 (E.D.N.Y. 2019); *see also In re Flag Telecom Holdings, Ltd. Sec. Litig.*, 574 F.3d 29, 35 (2d Cir. 2009). "[T]ypicality does not require the representative party's claims to be identical to those of all class members." *Wilson v. LSB Indus.*, No. 15 Civ. 7614 (RA)(GWC), 2018 U.S. Dist. LEXIS 138832, at *13 (S.D.N.Y. Aug. 13, 2018) (internal quotation omitted). "When it is alleged that the same unlawful conduct was directed at or affected both the named plaintiff and the class sought to be represented, the typicality requirement is usually met irrespective of minor variations in the fact patterns underlying individual claims." *Robidoux v. Celani*, 987 F.2d 931, 936–37 (2d Cir. 1993) (citations omitted).

Typicality is met here as Plaintiffs and the proposed Settlement Class assert the same or similar claims arising from the same course of conduct by Defendants. The Class Representatives and the Class Members all own(ed) or lease(d) a Covered Vehicle, and their claims arise from the same course of events and rely on the same or similar legal grounds. On the basis of the Recall and the defects alleged in their complaints, they assert nearly identical claims under various state consumer protection statutes, express and implied warranty claims, strict liability claims, common law fraud claims, negligent recall claims, and claims under the Magnuson-Moss Warranty Act on behalf of a nationwide class. The Class Representatives and the other Class Members, depending on their vehicle, will benefit from the CSP or the Extended Warranty, which both provide

prospective coverage for repairs/replacements of the Fuel Pumps, and all Class Members benefit from the Loaner/Towing Program, the Reconsideration Procedure, and the Out-of-Pocket Claims Procedure, and the other relief provided by the Settlement. Accordingly, the typicality requirement of Rule 23(a)(3) is satisfied here. *See, e.g., Robidoux*, 987 F.2d at 936 (citations omitted).

d) The Class Representatives Will Fairly and Adequately Protect the Interests of the Class

Rule 23(a)(4) is satisfied if "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). "To ensure that all members of the class are adequately represented, district courts must make sure that the members of the class possess the same interests, and that no fundamental conflicts exist among the members." *Charron v. Wiener*, 731 F.3d 241, 249 (2d Cir. 2013). To defeat class certification, however, any conflict between the Class Representatives and members of the proposed Settlement Class must be "fundamental." *In re Flag Telecom Holdings, Ltd. Sec. Litig.*, 574 F.3d at 35.

Here, there is no conflict or antagonism between the proposed Class Representatives and the other Class members. Rather, the proposed Class Representatives have brought substantively identical claims and seek the same relief as the proposed Class, and have the same incentive to obtain the best possible result through prosecution and settlement of their claims. Further, the proposed Class Representatives retained the services of highly qualified and competent counsel who are well-versed in class action litigation, and who vigorously prosecuted the interests of the proposed Class Members throughout the course of this litigation, which culminated in a settlement that confers meaningful benefits on the proposed Class. *See* Joint Decl. ¶¶ 1-4, 20-42. As set forth below, proposed Class Counsel are well-qualified to represent the proposed Class and should be appointed Class Counsel under Rule 23(g). *See* Section VI, below. The requirements of Rule 23(a)(4) are plainly satisfied.

2. This Action Meets the Requirements of Rule 23(b)(3)

A class may be certified under Rule 23(b)(3) if "the questions of law or fact common to class members predominate over any questions affecting only individual members," and "a class action is superior to other available methods for fairly and efficiently" settling the controversy. Fed. R. Civ. P. 23(b)(3). The proposed Class meets both requirements.

a) Common Issues of Law and Fact Predominate

"Class-wide issues predominate if resolution of some of the legal or factual questions that qualify each class member's case as a genuine controversy can be achieved through generalized proof, and if these particular issues are more substantial than the issues subject only to individualized proof." *In re U.S. Foodservice Inc. Pricing Litig.*, 729 F.3d 108, 118 (2d Cir. 2013) (internal quotation omitted). The Supreme Court has explained that "Rule 23(b)(3) . . . does *not* require a plaintiff seeking class certification to prove that each 'elemen[t] of [her] claim [is] susceptible to classwide proof' but rather that "common questions '*predominate* over any questions affecting only individual [class] members.'" *Amgen Inc. v. Conn. Ret. Plans & Trust Funds*, 133 S. Ct. 1184, 1196 (2013) (citations omitted). So long as common issues and evidence carry greater significance for the case as a whole, the presence of individual issues will not defeat predominance. *Sykes v. Mel S. Harris & Assocs. LLC*, 780 F.3d 70, 87 (2d Cir. 2015); *see also Kurtz v. Kimberly-Clark Corp.*, 321 F.R.D. 482, 548 (E.D.N.Y. 2017) (same).

"Predominance is a test readily met in certain cases alleging consumer … fraud." *Amchem*, 521 U.S. at 625 (citing Adv. Comm. Notes, 28 U.S.C. App., p. 697). Indeed, courts routinely hold the predominance requirement is satisfied in automobile defect class actions. *See, e.g., In re Nissan Radiator*, No. 10 CV 7493 2013 WL 4080946 (VB) (S.D.N.Y. May 30, 2013) (finding predominance in case concerning defects that allegedly cause coolant from car radiators to contaminate transmission systems); *see also Carriuolo v. GM Co.*, 823 F.3d 977, 985 (11th Cir.

2016) (upholding district court finding of "predominance requirement to be satisfied by an essential question common to each class member: whether the inaccurate Monroney safety standard sticker provided by General Motors constituted a misrepresentation prohibited by FDUTPA"); *Wolin*, 617 F.3d at 1173 (common issues predominate such as whether Land Rover was aware of the existence of the alleged defect, had a duty to disclose its knowledge and whether it violated consumer protection laws when it failed to do so); *Skeen*, 2016 U.S. Dist. LEXIS 97188, at *20 (common questions of law or fact concerning defective timing chain tensioner predominated over any questions affecting only individual class members).

Here, as set forth above, there are significant common questions regarding the existence of a defect, Defendants' knowledge and other elements of Plaintiffs' claims. The resolution of these questions does not depend on the individual facts or circumstances of an individual Class Member's purchase and/or lease of the Covered Vehicles. These questions predominate over all others in this Action and are common to both the Class Representatives and the Class. Predominance is established.

b) Class Treatment Is Superior

Superiority is demonstrated by showing "that the class action presents economies of 'time, effort and expense, and promote[s] uniformity of decision.'" *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 330 F.R.D. 11, 57 (E.D.N.Y. 2019) (quoting *In re U.S. Foodservice Inc. Pricing Litig.*, 729 F.3d 108, 130 (2d Cir. 2013)). The requirement "is designed to avoid 'repetitious litigation and possibility of inconsistent adjudications.'" *Id.* (quoting *In re Air Cargo Shipping Servs. Antitrust Litig.*, No. 06-MD-1175 JG VVP, 2014 WL 7882100, at *64 (E.D.N.Y. Oct. 15, 2014) (citing *D'Alauro v. GC Servs. Ltd. P'ship*, 168 F.R.D. 451, 458 (E.D.N.Y. 1996))).

Where, as here, the parties "agreed on a proposed Settlement Agreement, the desirability of concentrating the litigation in one forum is obvious." *Gripenstraw v. Blazin' Wings, Inc.*, No. 1:12-cv-00233-AWI-SMS, 2013 U.S. Dist. LEXIS 179214, at *26 (E.D. Cal. Dec. 19, 2013) (internal quotation omitted). Further, the Court need not consider the manageability of a potential trial, because the Settlement, if approved, would obviate the need for a trial. *Amchem Prods*., 521 U.S. at 620.

3. The Class Is Ascertainable

Although Rule 23 does not reference ascertainability, the Second Circuit has recognized that Rule 23 has an "implied requirement of ascertainability." *Brecher v. Republic of Argentina*, 806 F.3d 22, 24 (2d Cir. 2015) (quoting *In re Initial Public Offerings Sec. Litig.*, 471 F.3d 24, 30 (2d Cir. 2006)). In this Circuit, a class is ascertainable if it is defined "using objective criteria that establish a membership with definite boundaries." *In re Petrobras Sec. Litig*., 862 F.3d 250, 264 (2d Cir. 2017). "This modest threshold requirement will only preclude certification if a proposed class definition is indeterminate in some fundamental way." *Id*. at 269.

Here, the Settlement Agreement identifies the makes, models, the model years and production periods of the Covered Vehicles. SA, Exs. 1a., 1b, and 2. Courts regularly hold similar classes to be ascertainable where, the class definition, among other things, identified class vehicles' make, model, and production period. *See, e.g., Parkinson v. Hyundai Motor Am.*, 258 F.R.D. 580, 594 (C.D. Cal. 2008) (finding a class ascertainable when, among other things, the class definition identified a particular make, model, and production period for the class vehicle); *see also In re Longwei Petroleum Inv. Holding Ltd. Sec. Litig.*, No. 13 Civ. 214, 2017 U.S. Dist. LEXIS 85004, at *6 (S.D.N.Y. May 22, 2017) (certifying class where it was "ascertainable from business records and/or from objective criteria.").

Class membership is easily verified using the unique vehicle identification numbers ("VIN") assigned to all the Covered Vehicles. Toyota has already identified the VIN numbers for the Covered Vehicles using information provided by R.L. Polk & Co. ("Polk"), an automotive data provider. SA, Ex. 4 (Notice Program) at 2. As vehicle owners must register their vehicles, this information can and will be used to identify current names and addresses for Class Members. Indeed, here, in order to quickly disseminate notice, the Settlement Notice Administrator has already secured from Polk the names and address of 4.3 million potential Class Members using VINs provided by Toyota. SA, Ex. 4 at 2.

B. The Court Will Likely be Able to Approve the Proposed Settlement

Rule 23(e)(2) provides that the Court may finally approve a settlement only after "finding that it is fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). In making that determination, a court must consider whether: (A) the class representatives and class counsel have adequately represented the class; (B) whether the proposal was negotiated at arms' length; (C) whether the relief provided for the class is adequate; and (D) whether the proposal treats class members equitably relative to each other. Fed. R. Civ. P. 23(e)(2)(A)-(D).

At preliminary approval, Plaintiffs are required to show only that this Court will "likely be able to" grant final approval of the proposed Settlement. *See Cymbalista v. JPMorgan Chase Bank, N.A.*, No. 20 CV 456 (RPK)(LB), 2021 WL 7906584, at *4 (E.D.N.Y. May 25, 2021) ("At the preliminary approval stage, the Court must determine whether it '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.'"); *In re GSE Bonds Antitrust Litig.*, 414 F. Supp. 3d 686, 692 (S.D.N.Y. 2019)); *see also In re Gen. Motors LLC Ignition Switch Litig.*, No. 14-MC-2543 (JMF), 2020 WL 12918022, at *2 (S.D.N.Y. Apr. 27, 2020) ("[T]he Parties have shown, and the Court concludes, that, pursuant

to Federal Rule of Civil Procedure 23(e)(1)(B)(i), the Court will likely be able to grant final approval and find that the Settlement Agreement is fair, reasonable, and adequate. . .").

Historically, courts in the Second Circuit have utilized the nine factors set forth in *City of Detroit v. Grinnell Corp.*, when assessing substantive fairness of a settlement, whether preliminary or final.[8] However, "after the 2018 amendments to the Federal Rule of Civil Procedure 23(e), Courts in this Circuit now look to the factors set forth in the Rule and then turn to the *Grinnell* factors to fill in any gaps and complete the analysis." *Cymbalista*, 2021 WL 7906584, at *5 (citing *Mikhlin v. Oasmia Pharmaceutical AB*, 2021 WL 1259559, at 2* (E.D.N.Y. Jan. 6, 2021)); *see also In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 330 F.R.D. at 29. Thus, Rule 23(e) remains entirely consistent with the long-standing rule that preliminary approval, "is at most a determination that there is what might be termed 'probable cause' to submit the proposal to class members and hold a full-scale hearing as to its fairness." *In re Traffic Exec. Ass'n-E. Railroads*, 627 F.2d 631, 634 (2d Cir. 1980) (*citing* Manual For Complex Litigation § 1.46 at 55 n.10 (1977)); *see also Dover v. Brit. Airways, PLC (UK)*, 323 F. Supp. 3d 338, 349 (E.D.N.Y. 2018) ("In contrast to the rigorous inquiry the court must conduct at the final approval stage, at preliminary approval, the court need only determine that there is. . . probable cause to submit the proposed settlement.") (citation omitted).

[8]The *Grinnell* factors are (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; (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation. *See generally Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir. 1974).

1. The Proposed Class Representatives and Class Counsel Adequately Represented the Class

Proposed Class Representatives and Class Counsel submit that, at final approval, Rule 23(e)(2)(A) will be satisfied because they have zealously represented and pursued the best interests of the proposed Class as evident from the superb results achieved in the Settlement. They did so during their prefiling investigation, throughout the course of the litigation, and when engaging in settlement negotiations with Defendants' counsel.

Prior to the filing of this lawsuit, Counsel conducted a comprehensive investigation into the underlying facts of this case. They thoroughly studied the Recall Notice, brought their automotive engineering expertise to reviewing and analyzing Recall-related information on the NHTSA website, and other public sources. Counsel conferred extensively with the Covered Vehicle owners who consulted them about their own experiences with their vehicles' Fuel Pumps. Counsel carefully studied the customer complaints and reports on the NHTSA website as well as other publicly available information as part of this inquiry. Counsel retained and conferred with their independent Automotive Expert to better understand the causes of the Fuel Pump problems experienced by Class Members and to explore potential remedies for these problems. *See* Joint Dec., ¶¶ 6, 8, 18, 20-22, 25.

Counsel also conducted legal research to determine the viability of asserting various claims against Defendants, including claims under the consumer protection statutes of their potential clients' home states. Counsel interviewed the potential clients about the internet and other research they did prior to purchasing or leasing their vehicles, and examined Defendants' marketing and advertising materials in various media outlets to assess whether they could properly allege that Defendants made material misrepresentations and/or omissions. Counsel researched the viability of common law claims a nationwide claim for violation of the Magnuson-Moss Warranty Act.

After Class Counsel satisfied themselves that viable claims could be asserted against Toyota, they conferred with and got approval from their first client, Ms. Cheng, and commenced this action. Joint Dec., ¶¶ 5-8. Subsequently, as it became clear strict liability and other claims could be asserted against Denso, more Plaintiffs were added to the action, the Recall was expanded, and Class Counsel, with input from their Automotive Expert, gained a greater understanding of the defect and its causes, Plaintiffs filed multiple amended complaints. As set forth above, Plaintiffs also vigorously opposed Defendants' efforts to dismiss their claims.

Throughout this period, the Parties were actively engaged in discovery, most of which took place after the filing of the SACC in December 2020. Plaintiffs and Class Counsel, working with the lawyers on the Court-appointed Plaintiffs' Steering Committee,[9] reviewed millions of pages of documents. Class Counsel conferred extensively with their Automotive Expert, providing him with relevant documents, as he tested and analyzed the recalled Fuel Pumps with the defective impellers and, after the Recall remedy began to be rolled out, the Countermeasure Fuel Pumps.

During this same period, Class Counsel sought to promote the Class' interests by beginning to explore the possibility of an early resolution with Toyota and Denso, with the goal of securing a favorable early settlement that would benefit the Class. As described above, Class Counsel, through their hard fought, well informed, arms' length negotiations with Toyota's and Denso's counsel, successfully resolved the litigation in a manner that provides immediate benefits to all Class Members and avoids the costs, risks and delay of continued litigation. Joint Decl. at ¶¶ 20-31.

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9 The Plaintiffs' Steering Committee is comprised of Jeffrey Corrigan, John A. Macoretta, and Jeffrey L. Spector, of Spector Roseman & Kodroff, P.C.; Malcolm T. Brown and Kate McGuire of Wolf Haldenstein Adler Freeman & Herz, LLP; Jeffrey R. Krinsk of Finkelstein & Krinsk LLP; and Jerrod C. Patterson of Hagens Berman Sobol Shapiro LLP. *See* November 6, 2020 Electronic Order.

a) The Settlement Was Negotiated at Arms' Length by Informed Counsel

Because the Settlement was negotiated at arms' length by informed and capable counsel, the Court should find that Rule 23(e)(2)(B) will be met at the final approval stage.

A "presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arms-length negotiations between experienced, capable counsel after meaningful discovery." *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 116 (2d Cir. 2005) (citing *Manual for Complex Litigation, Third*, § 30.42 (1995)). Consequently, "great weight is accorded to the recommendations of counsel, who are most closely acquainted with the facts of the underlying litigation." *In re MetLife Demutualization Litig.*, 689 F. Supp. 2d 297, 330 (E.D.N.Y. 2010) (quoting *In re Telik, Inc. Sec. Litig.*, 576 F.Supp.2d at 576 (internal quotation marks omitted)).

Here, as described above, the negotiations were arms'-length, good faith and intensive, lasting more than a year and a half. In addition, Class Counsel have substantial experience serving as class counsel in a multitude of complex class actions, including several against Toyota (see Section V, below), and, as such, were well-positioned to assess the benefits of the proposed Settlement balanced against the strengths and weaknesses of their claims and Defendants' defenses. Moreover, Special Settlement Master Juneau assisted in the negotiations after November 2021. "A settlement ... reached with the help of third-party neutrals enjoys a presumption that the settlement achieved meets the requirements of due process." *In re Penthouse Executive Club Comp. Litig.*, No. 10-1145, 2013 WL 1828598, at *2 (S.D.N.Y. Apr. 30, 2013); *see Elkind v. Revlon Consumer Prod. Corp.*, No. CV142484JSAKT, 2017 WL 9480894, at *17 (E.D.N.Y. Mar. 9, 2017), report and recommendation adopted, No. 14-CV-2484(JS)(AKT), 2017 WL 1169552

(E.D.N.Y. Mar. 29, 2017) ("Significantly, participation by a neutral third party supports a finding that the agreement is non-collusive.").

Class Counsel, as well the Plaintiffs Steering Committee, fully endorse the Settlement as fair, reasonable, and adequate. Joint Decl. at ¶ 42.

b) The Relief Provided by the Proposed Settlement is Adequate

Under Rule 23(e)(2)(c), a court's assessment of whether a proposed settlement is adequate takes 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). Fed. R. Civ. P. 23(e)(2)(c)(i)-(iv). A preliminary consideration of these factors shows that it is likely that Plaintiffs will be able to satisfy this prong of Rule 23(e)(2) when seeking final approval, and thus further supports preliminary approval.

(1) The Benefits of the Proposed Settlement, Weighed Against the Costs, Risks, and Delay of Trial and Appeal, Favor Preliminary Approval

The proposed Settlement, if approved, confers significant immediate benefits to the Class that outweigh the costs, risks, and delay of continued litigation, which strongly supports preliminary approval.

Courts have long recognized that a settlement can confer a "'substantial benefit'" warranting approval "'regardless of whether the benefit is pecuniary in nature.'" *In re AOL Time Warner S'holder Derivative Litig.,* No. 02 Civ. 6302 (SWK), 2006 U.S. Dist. LEXIS 63260, at *12 (S.D.N.Y. Sept. 6, 2002) (quoting *Mills v. Elec. Auto-Lite Co.*, 396 U.S. 375, 395 (1970)). A settlement in which a defendant automobile manufacturer agrees to cover vehicle repairs "provides significant benefits and advantages for the class." *In re Nissan Radiator*, 2013 WL 4080946, at

*20 (approving settlement consisting of repair benefits even where many class members would have to pay significant co-pay for repairs). The value of repairs as settlement consideration is regularly recognized in the consumer class action context. *See, e.g., In re Sony SXRD Rear Projection TV Class Action Litig.*, No. 06 Civ. 5173 (RPP), 2008 U.S. Dist. LEXIS 36093, at *23 (S.D.N.Y. May 1, 2008) (approving settlement although defendant could withstand larger judgment where "the Settlement reasonably provides Plaintiffs with benefit-of-the-bargain relief in the form of repair or replacement of the defective Optical Block, a warranty extension, and reimbursement of repair costs previously incurred."); *see also Kommer v. Ford Motor Co.*, 2020 WL 7356715 at *5-7 (N.D.N.Y. December 15, 2020) (approving settlement and noting that "defendant's ability to withstand a greater judgment, standing alone, does not suggest that the settlement is unfair" where the settlement agreement provided Class Members with repair or replacement of the defective door latch, a warranty extension, and reimbursement of repair costs previously incurred.).

The CSP and the Extended Warranty provide prospective coverage for the Fuel Pumps in the Covered Vehicles with the precise goal of ensuring that their fuel pumps function as intended in the future, and no longer pose any risks to, or require repair costs to be borne by, Class Members. *See* ¶ 51; Request for Relief C-F; SA, III.A-C. Courts regularly approve automobile repair and reimbursement-centered settlements, such as this one, finding they provide valuable benefits and merit approval. *See Simerlein v. Toyota Motor Corp.*, No. 3:17-CV-1091 (VAB), 2019 WL 2417404, at *27-30 (D. Conn. June 10, 2019); *see also In re Nissan Radiator*, 2013 WL 4080946, at *4-5; *20; *Kommer*, 2020 WL 7356715 at *5-7; *Skeen*, 2016 U.S. Dist. LEXIS 97188, at *54-55 (approving settlement consisting largely of repairs and reimbursement).

In contrast, if the litigation were to proceed, the Class would be faced with significant litigation risks. Settlements resolve any inherent uncertainty on the merits, and are therefore strongly favored by the courts, particularly in class actions. *See Wal-Mart*, 396 F.3d at 116.

The parties disagree about the merits of Plaintiffs' claims and there is substantial uncertainty about the ultimate outcome of this litigation. These risks are demonstrated by the still-pending motions to dismiss in this Action. While Plaintiffs are confident in their positions, the motions have yet to be decided, and Defendants may succeed in securing the dismissal of some or all of Plaintiffs' claims. Indeed, in a class action involving the very same Denso Fuel Pumps at issue here albeit against a different auto manufacturer, the court granted in part and denied defendants' motion to dismiss, dismissing a substantial number of plaintiffs' claims. *See Cohen v. Subaru of Am., Inc*., No. 120CV08442JHRAMD, 2022 WL 721307, at *40 (D.N.J. Mar. 10, 2022) (dismissing numerous claims against Subaru); *Cohen v. Subaru of Am., Inc*., No. 120CV08442JHRAMD, 2022 WL 714795, at *35 (D.N.J. Mar. 10, 2022) (dismissing numerous claims against Denso). Here, the immediacy and certainty of substantial benefits for the Class Members under the Settlement balanced against the numerous impediments to a class-wide recovery through continued litigation weigh in favor of approval. *See Cymbalista*, 2021 WL 7906584, at *6-7 (finding that "given the inherent risks and duration of litigation, the certainty of a substantial and speedy recovery in this case weighs in favor of settlement approval."); *see also Mikhlin*, 2021 WL 1259559, at *5; *Kommer*, 2020 WL 7356715, at *4-5.

Moreover, allegations of product defects like those asserted here require a battle of the experts. Whether the fuel pumps or some of their parts are defective, whether the alleged defects are present in all of the Class Vehicles, whether the defects pose an unreasonable risk of harm, whether the Recall remedy is effective, and the existence and quantum of damages, would all be

the subject of expert testimony. "Settlement is favored in cases in which plaintiffs would have faced significant legal and factual obstacles to proving their case." *See Mikhlin*, 2021 WL 1259559, at *5 (stating that Plaintiffs would face several hurdles in establishing liability and damages, proof of which "is always difficult and invariably requires expert testimony."); *Kommer*, 2020 WL 7356715, at *4-5 .

In addition, while the Settlement provides relief for Class Members nationwide, if the Settlement is not ultimately approved, securing certification of a nationwide class, multi-state or state-wide classes is far from certain. There are serious obstacles to maintaining a nationwide or multi-state classes in light of *Bristol-Myers Squibb Co. v. Superior Court of San Francisco, CA*, 137 S. Ct. 1773 (2017). There is sure to be a battle of the experts with respect to Plaintiffs' damages theories and methodologies under *Comcast Corp. v. Behrend*, 569 U.S. 27 (2013). While Plaintiffs are confident that they will be able to provide a viable damages model, this is a non-trivial obstacle in many automotive defect class actions. *See, e.g.*, *Kommer*, 2020 WL 7356715, at *4; *In re Nissan Radiator/Transmission Cooler Litig.*, 2013 WL 4080946, at *7; *Simerlein v. Toyota Motor Corp.*, No. 3:17-CV-1091 (VAB), 2019 WL 2417404, at *25 (D. Conn. June 10, 2019). Further, for claims where reliance is at issue, Defendants can be expected to present vigorous arguments as to differences in Class Members' exposure to and reliance on alleged misrepresentations and omissions. *See, e.g., In re Nissan Radiator/Transmission Cooler Litig.*, 2013 WL 4080946, at *7-8. Moreover, bringing an array of state law claims may present serious manageability issues that Defendants can be expected to argue are insurmountable conflicts between the laws of different states. *Id.*

The risks of securing and maintaining class status are also evidenced by the many decisions denying class certification in automobile defect cases. *See, e.g., Tomassini v. FCA US LLC*, 326

F.R.D. 375, 391 (N.D.N.Y. 2018); *Oscar v. BMW of N. Am., LLC*, No. 09 Civ. 11 (PAE), 2012 U.S. Dist. LEXIS 84922 (S.D.N.Y. June 19, 2012); *Nguyen v. Nissan N. Am., Inc.*, No. 16-CV-05591-LHK, 2018 U.S. Dist. LEXIS 93861 (N.D. Cal. Apr. 9, 2018). Furthermore, even if a nationwide or any state-wide classes were to be certified, they are subject to decertification. *See Jin v. Shanghai Original, Inc.*, 990 F.3d 251, 261 (2d Cir. 2021) ("As a result, district courts have the authority to *sua sponte* decertify a class if they find that the class no longer meets the requirements of Rule 23 at any time before final judgment is entered.") (citing Fed. R. Civ. P. 23(c)(1)(C).) Plaintiffs reasonably expect that this case, if not settled, will continue to be zealously litigated. Absent settlement, there will be additional motion practice on the pleadings, including motions to dismiss; if Defendants' motions to dismiss are denied, Plaintiffs will move to certify one or more classes; and if one or more classes are certified, the case will continue to be intensely litigated, potentially through summary judgment, trial, and appeals.

Moreover, were litigation to proceed, the class would incur significant expense and delay. The expense and duration of litigation are significant factors considered in evaluating the reasonableness of a settlement. *See* Rule 23(e)(2)(C)(i). "The law favors settlement, particularly in class actions and other complex cases where substantial resources can be conserved by avoiding the time, cost, and rigor of prolonged litigation." *In re Advanced Battery Technologies, Inc. Sec. Litig.*, 298 F.R.D. 171 (S.D.N.Y. 2014); *see also Cymbalista*, 2021 WL 7906584 at *4 ("Settlement of class actions and complex litigation is strongly favored by public policy and the courts"). If litigation were to proceed, a great deal of additional discovery, including multiple depositions in the U.S. and Japan, and expert work, with their concomitant significant expenses, would be required to address key components of the claims and damages. It would also take significant time and expense to brief and argue the class certification motion, potential Rule 23(f) petitions which

may result in interlocutory appeals, and summary judgment, conduct trial, and litigate appeals. These high expenses weigh strongly in favor of settlement approval. *See Mikhlin*, 2021 WL 1259559, at *6 (finding "the risks, costs, and delay of trial and appeal would be significant," and thus weigh in favor or preliminary approval.)

Weighed against these risks, costs and delays of continued litigation and eventual appeal, the proposed Settlement is well within the range of possible judicial approval.

(2) The Convenience and Well-Designed Administration of the Settlement Relief Supports Preliminary Approval

The benefit distribution process is well-tailored for the convenience and benefit of Class Members. *Cymbalista*, 2021 WL 7906584, at *7 ("The Court must evaluate 'the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims.'") (quoting Federal Rule of Civil Procedure23(e)(2)(C)(ii)).

Under the Customer Support Program and Extended Parts Warranty, Class Members can obtain a covered repair by bringing their Covered Vehicle to any Toyota dealership. For added convenience, Class Members will receive a loaner vehicle to use while their own vehicles are undergoing covered repairs. If the first dealer denies coverage, a Class Member can go to a second dealer. If that dealer also denies coverage, the Class Member can take the issue to the Settlement Special Master for resolution. The Out-of-Pocket Claims Process is similarly simple and convenient, as described above, and Plaintiffs have selected highly experienced claims administrators to oversee this process.

(3) The Proposed Attorneys' Fees, Costs and Class Representative Service Awards Support Preliminary Approval

As set forth above, the Parties did not negotiate fees, costs, or Class Representative service awards until after they had reached agreement on all material settlement terms. The Parties then

mediated fees, costs and individual Class Representative services awards with the assistance of Special Settlement Master Patrick Juneau, who provided the Parties with a recommendation of $28.5 million for attorneys' fees. The Parties accepted the recommendation, and also agreed that Plaintiffs could seek up to $500,000 in costs, and $3,500 each for up to four proposed Class Representatives who had their cars inspected, and $2,500 each for the remaining proposed Class Representatives.

The amount of fees is reasonable for a settlement of this magnitude providing substantial benefits to the owners and lessees, and any subsequent purchasers and lessees, of approximately 4.9 million Covered Vehicles. *See, e.g., In re Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices, & Products Liability Litigation*, No. 8:10ML 02151 JVS, 2013 WL 3224585, at *17-20 (C.D. Cal. June 17, 2013) (granting approval of settlement and attorneys' fees in the amount of $200 million); *see also Blessing v. Sirius Xm Radio, Inc.*, 507 F. App'x 1, 4 (2d Cir. 2012) (upholding $13 million fee award in case with no cash payout to class where "fees were negotiated only after the terms of the settlement were reached, and the fee award comes directly from Sirius XM, rather than from funds (or coupons) earmarked for the class"). Notice to the Class will advise them of these planned requests, and advise them of the procedures to comment on or object to the fee petition before Final Approval.

(4) The Agreements Made In Connection With the Proposed Settlement Are Typical and Support Preliminary Approval

The substantive terms of the Settlement are set forth in the Settlement Agreement, and the agreed upon language of the proposed orders and notices are set forth in the exhibits to the Settlement Agreement. As set forth above, separate and apart from the substance of the Settlement, the Parties negotiated an agreement concerning attorneys' fees, costs and expenses, and Class Representative service awards, that, subject to Court approval, will be paid by Defendants.

2. The Proposal Treats Class Members Fairly Relative to One Another

The final element for consideration under Rule 23(e)(3) is whether a proposed settlement treats Class Members equitably in relation to one another. *See, e.g.*, *Cymbalista*, 2021 WL 7906584 at *9 (finding distribution scheme was equitable because it distributed relief on the bases of each individual class member's claim and the release applied equally to all class members).

Here, depending on the kind of vehicle they own or lease, Class Members will receive prospective coverage for their Fuel Pumps. Class Members who own or lease Additional Vehicles are automatically entitled to 15 years of prospective coverage on their original fuel pumps, measured from the date of original sale, and Class Members who own or lease Subject Vehicles and SSC Vehicles are automatically entitled to an Extended New Parts Warranty of 15 years, measured from July 15, 2021, or up to 150,000 miles, on the countermeasure fuel pump kit. Every Class Member's rights under the CSP and the Extended Warranty are transferred with their Covered Vehicle. All Class Members whose vehicles are undergoing repair under the CSP and Extended Parts Warranty are entitled to the benefit of the same Loaner/Towing Program, free of charge. In addition, all Class Members may submit claims for reimbursement via the Out-of-Pocket Claims Program. All Class Members are thus treated equitably.[10]

[10] As set forth above, Class Counsel intends to apply for service awards of $3,500 each for the proposed Class Representatives whose cars were inspected by Toyota and $2,500 each for the other proposed Class Representative for their efforts during Class Counsel's pre-filing investigation, and their supervision of and assistance to Class Counsel in litigating and settling these matters. "Service payments 'are common in class action cases and are important to compensate plaintiffs for the time and effort expended in assisting the prosecution of the litigation, the risks incurred by becoming and continuing as a litigant, and any other burdens sustained by the plaintiff.'" *Quow v. Accurate Mech. Inc.*, No. 1:15-CV-09852 (KHP), 2018 U.S. Dist. LEXIS 114524, at *12 (S.D.N.Y. July 10, 2018), quoting *Mohney v. Shelly's Prime Steak, Stone Crab & Oyster Bar*, No. 06-cv-4270 (PAC), 2009 U.S. Dist. LEXIS 27899, at *6 (S.D.N.Y. Mar. 31, 2009).

V. PLAINTIFFS' COUNSEL SHOULD BE APPOINTED CLASS COUNSEL FOR THE PROPOSED CLASS PURSUANT TO RULE 23(g)

Rule 23(g) provides that "a court that certifies a class must appoint class counsel" taking into consideration their experience, knowledge, resources, and work on the case. Proposed Class Counsel are W. Daniel "Dee" Miles, III and Demet Basar of Beasley, Allen, Crow, Methvin, Portis & Miles, P.C. Law, each of whom has been recognized by both federal and state courts as being highly skilled and experienced in complex litigation, including successfully leading a multitude of consumer class actions concerning fraud, misrepresentation and unfair practices. *See* Joint Decl. at ¶¶ 36-42. Here, proposed Class Counsel investigated potential claims upon being contacted by aggrieved consumers, vigorously prosecuted this Action, negotiated the proposed Settlement and obtained valuable relief for all proposed Class members. Plaintiffs respectfully submit proposed Class Counsel satisfy the adequacy requirements of Rule 23(g) and should be appointed Class Counsel.

VI. THE COURT SHOULD APPROVE THE NOTICE PLAN AND SCHEDULE A FAIRNESS HEARING

A. The Court Should Authorize Notice to the Class

The Settlement provides a robust Notice Program that is well-designed to reach Class Members with clear, plainly stated information about their rights, options and deadlines in connection with this Settlement. Plaintiffs respectfully submit that the Court should approve the Notice Program and order dissemination of notice.

The adequacy of a class notice program is measured by whether the means employed to distribute the notice was reasonably calculated to apprise the class of the pendency of the action, the proposed settlement and the class members' rights to opt out or object. *See Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974). Under Rule 23(c)(2)(B), class members must receive "the best notice that is practicable under the circumstances, including individual notice to all members

who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B). The rule expressly approves of notice through "United States mail, electronic means, or other appropriate means." For "due process to be satisfied, not every class member need receive actual notice, as long as class counsel 'acted reasonably in selecting means likely to inform persons affected.'" *In re Adelphia Communs. Corp. Sec. & Derivatives Litig.*, 271 F. App'x 41, 44 (2d Cir. 2008) (citation omitted); *see also In re Sinus Buster Prods. Consumer Litig.*, No. 12-CV- 2429 (ADS)(AKT), 2014 U.S. Dist. LEXIS 158415, at *29-30 (E.D.N.Y. Nov. 10, 2014) ("Where, as here, the parties seek to simultaneously certify a settlement class and to settle a class action, the elements of Rule 23(c) and 23(e) are combined … [and] [i]n such circumstances, Due Process and the Federal Rules require notice that is practical under the circumstances and does not require actual notice to each class member.").

Rule 23(c)(2)(B) also requires that any such notice clearly and concisely state in plain, easily understood language: the nature of the action; the definition of the class to be certified; the class claims, issues, or defenses; that a class member may enter an appearance through an attorney if the class member so desires; that the court will exclude from the class any member who requests exclusion; the time and manner for requesting exclusion; and the binding effect of a class judgment on class members under Rule 23(c)(3). Fed. R. Civ. P. 23(b)(2)(B). Here, the Notice Program meets all applicable requirements.

The Notice Program set forth in the Settlement was designed by Kroll Notice Media Solutions ("Kroll Media"), a business unit of Kroll Settlement Administration LLC ("Kroll"), and Kroll Media's Managing Director, Jeanne C. Finegan. Ms. Finegan has more than 30 years of relevant experience, and has been directly responsible for the design and implementation of hundreds of class action notice programs, including some of the largest and most complex notice

programs ever implemented in both the United States and Canada. *See* Finegan Decl. at ¶¶ 4-10. Plaintiffs respectfully request that the Court appoint Ms. Finegan of Kroll Media as Settlement Notice Administrator.

The Settlement provides that the Notice will be provided by direct mail to all known Class Members, and also via class website and a broad campaign of paid publication through print and online media, including targeted internet advertising through webpages, the Google search engine, and social networks. SA, Ex. 4. All of these avenues for notice have been approved by courts as satisfying due process. *See, e.g., Wal-Mart Stores, Inc.*, 396 F.3d at 114 (approving notice sent via direct mail and publication); *Simerlein*, 2019 WL 2417404, at *27-30 (approving notice program comprised of direct mail notice, publication notice, long form notice, settlement website, and social media campaign).

It is estimated that the Notice Program will reach more than 90% percent of Class Members, with an average frequency of three times. SA, Ex. 4. Defendants will cover all costs of this extensive Notice Program. SA, § IV.A.1.

1. Direct Notice

The Settlement Administrator will begin to send the Direct Mail Notice, substantially in the form attached to the Settlement Agreement as Exhibit 6, by First Class United States prepaid mail to all registered current and former owners of Covered Vehicles. The Settlement Notice Administrator will identify these based on data provided by Polk, which process, as set forth above, has already commenced. Before the Direct Notices are mailed, the Settlement Notice Administrator will check all addresses against the United States Post Office's National Change of Address database. SA, Exhibit 6. If any Direct Mail Notices are returned by the United States Post Office as undeliverable, the Settlement Notice Administrator will make appropriate efforts to obtain current addresses and resend them. *Id.*

The Direct Mail Notice advises recipients that a proposed class action settlement has been reached in an action concerning Toyota fuel pumps, informs them that they may be Class members, and briefly explains the Settlement terms and Class Members' options. It also sets forth the methods (i.e., via the Settlement website or through request on a dedicated toll-free phone-line) by which recipients may obtain more information.

2. Settlement Website

The Notice Administrator will also set up a settlement website that will provide access to the Long Form Notice (SA, Ex. 5), the Claim Form for reimbursement (SA, Ex. 8) and other documents relevant to the Settlement. SA, Ex. 4. The Settlement Website will set forth all applicable deadlines and will provide information about the proper methods for filing a claim. *Id.* In addition, the Notice Administrator will set up a toll-free 24-hour phone line through which consumers may request copies of the Long Form Notice, the Claim Form, and additional information. *Id.* The URL address for the Settlement Website and the toll-free phone number will be provided on the published notices as well as the Direct Mail Notices.

3. Paid Media Publication

The Settlement also provides for a comprehensive paid media outreach campaign to begin shortly after the Settlement is preliminarily approved. This paid media campaign spans print, search engine, and social media platforms, and is tailored to generate awareness among Class members of the Settlement and what it means for them. SA, § IV.C.

The Publication Notice, attached as Exhibit 7 to the Settlement Agreement, will be published in People Magazine, a national magazine with demographically appropriate circulation. SA, Ex. 4 at 2-4. The magazine was selected based on the highest coverage and indexed against the target audience characteristics. *Id.*

The Notice Program will also make extensive use of the internet. The Settlement Notice Administrator will establish banner notifications on the internet and a social media program that will provide settlement-related information to Class Members and shall utilize additional internet-based efforts as agreed to by the Parties.

As part of the Notice Program, the Notice Administrator will run online display ads across approximately 4,000 preselected websites and on social media platforms including Facebook, Twitter, and Instagram. *Id.* at 3-4. Notice will be targeted to people who have been identified as owners of Covered Vehicles using data collected from dealerships and service departments throughout the U.S. Social media ads will follow the targeted Class Members across users' newsfeeds, stories, and videos. On Facebook and Instagram, the ads will target those who have "liked" or "follow" Toyota and Lexus groups and pages. On Twitter, the campaign ads will target those who "follow" or interact with handles such as "@Toyota", "@ToyotaMotorCorp", "@Lexus", and other similar handles. *Id.*; *see also Simerlein*, 2019 WL 2417404, at *27-30; *Edwards v. Nat'l Milk Producers Fed'n*, No. 11-CV-04766-JSW, 2017 U.S. Dist. LEXIS 145217, at *13 (N.D. Cal. June 26, 2017) (referencing approval of similar "extensive" internet campaign).

As a further targeting mechanism, the Notice Program will also make use of Google AdWords and key search terms. When an internet user runs a Google search that includes relevant keywords (e.g., Toyota defect, Lexus defect, Toyota fuel pump, Lexus fuel pump, Toyota settlement, Lexus settlement, etc.) the results pages will include links to the Settlement Website. *Id.* The Notice Program will use online banner advertisements on both computers and mobile devices which will allow users who believe they may be Class Members to click on a link that will take them to the Settlement Website. *Id.*

The paid media component of the Notice Program will also include a press release issued over PR Newswire's U.S., Guam, Puerto Rico, U.S. Virgin Island and Pacific Islands Newslines. This will include the link for the Settlement Website.

4. Contents of the Long Form Notice

The Long Form Notice shall be in substantially the form of Exhibit 5 to the Settlement Agreement. It will be available on the Settlement Website and upon request by first-class mail. SA, § IV.E. It is clear and in plain language and addresses all requisite matters. It includes information such as: the case caption; a clear description of the nature of the Action; the definition of the Class; the general substance of the Class claims and issues; the main events in the litigation; a description of the Settlement; a statement of the Release; contact information for Class Counsel; the maximum amount of attorneys' fees and expenses and Class Representative Service awards that may be sought at final approval; the procedures and deadlines for opting out of the Settlement; the procedures and deadlines for objecting to the Settlement; the potential binding effect of a final judgment on Class members; the fairness hearing date; and how to obtain additional information.

Taken as a whole, the Notice Program exceeds all applicable standards.

B. The Court Should Set Settlement Deadlines and Schedule a Fairness Hearing

In connection with the preliminary approval, the Court must schedule the final approval hearing and set dates for other key events including mailing and publishing notice, objecting to the Settlement, requesting exclusion, and submitting papers in support of final approval. Plaintiffs propose the following schedule:

EVENT	DEADLINES
Initial Class Notice to be Disseminated	Not later than two business days of the date of the Preliminary Approval Order
Toyota's Counsel shall provide to the Settlement Notice Administrator a list of all counsel for anyone who has then-pending litigation against Toyota	September 23, 2022

relating to claims involving the Covered Vehicles and/or otherwise covered by the Release, and Denso's Counsel shall provide to the Settlement Notice Administrator a list of all counsel for anyone who has then-pending litigation against Denso relating to claims involving the Covered Vehicles and/or otherwise covered by the Release.	
Notice to be Substantially Completed	November 11, 2022
Plaintiffs' Motion, Memorandum of Law and Other Materials in Support of their Requested Award of Attorneys' Fees, Reimbursement of Expenses, and Request for Class Representatives' Service Awards to be Filed with the Court	November 18, 2022
Parties' Motion, Memoranda of Law, and Other Materials in Support of Final Approval to be Filed with the Court	November 18, 2022
Deadline for Receipt by the Clerk of All Objections Filed and/or Mailed by Class Members	November 25, 2022
Deadline for filing Notice of Intent to Appear at Fairness Hearing by Class Members and/or their Personal Attorneys	November 25, 2022
Postmark Deadline for Class Members to Mail their Request to Exclude Themselves (Opt-Out) to Settlement Notice Administrator	December 2, 2022
Settlement Notice Administrator Shall File the Results of the Dissemination of the Notice with the Court	December 5, 2022
Defendants Will Deposit the Amount of Class Representative Service Award and Attorneys' Fees, Costs, and Expenses specified in the Settlement Agreement into the Qualified Settlement Fund	December 8, 2022
Settlement Notice Administrator Shall File a List of Opt-Outs	December 8, 2022
Parties' Supplemental Memorandum of Law in Further Support of the Settlement to be Filed with the Court	December 9, 2022
Fairness Hearing	December 14, 2022 at _____ [a.m. or p.m.] - No sooner than 89 days after Preliminary Approval Order
Customer Support Program	Begins no later than 30 days after Final Effective Date. Coverage under the CSP for the original parts will continue for 15 years from the Date of First Use, which is the date the vehicle was originally sold or leased

Claim Submission Period	Runs from Initial Notice Date up to and including ninety (90) days after the Court's issuance of the Final Order and Final Judgment

VII. THE COURT SHOULD ISSUE A PRELIMINARY INJUNCTION PENDING FINAL APPROVAL OF THE PROPOSED SETTLEMENT

Pursuant to the "necessary in aid of" exception to the Anti-Injunction Act, 28 U.S.C. § 2283, and the All Writs Act, 28 U.S.C. § 1651(a), this Court may: (i) issue a preliminary injunction and stay all other actions, pending final approval by the Court; and (ii) issue a preliminary injunction enjoining potential Class Members, pending the Court's determination of whether the Settlement Agreement should be given final approval, from challenging in any action or proceeding any matter covered by this Settlement Agreement, except for proceedings in this Court to determine whether the Settlement Agreement will be given final approval.

As other federal courts have recognized, injunctions against filed parallel actions may be particularly appropriate in the context of complex litigation on the verge of settlement. *See e.g.*, *In re HSBC Bank, USA, N.A., Debit Card Overdraft Fee Litig.*, 99 F. Supp. 3d 288, 304 (E.D.N.Y. 2015); *In re Joint E. & S. Dist. Asbestos Litig.*, 134 F.R.D. 32, 36 (E.D.N.Y.1990). Where, as here, substantial negotiations have resulted in a settlement, competing actions would jeopardize the realization of a nationwide settlement, interfere with this Court's ability to manage the settlement, and potentially confuse Class Members. *See In re HSBC Bank, USA, N.A., Debit Card Overdraft Fee Litig.*, 99 F. Supp. 3d at 304 (citing *In re Diet Drugs*, 282 F.3d at 236, *In re Baldwin-United Corp.*, 770 F.2d 328, 337 (2d Cir. 1985), and *In re Corrugated Container Antitrust Litig.*, 659 F.2d 1332, 1334-35 (5th Cir. 1981)).

This Court may issue a preliminary injunction pursuant to the "necessary in aid of" exception to the Anti-Injunction Act, 28 U.S.C. § 2283, which allows a federal court to effectively prevent its jurisdiction over a settlement from being undermined by pending parallel litigation in

state courts. *Id.*; *see also In re Sch. Asbestos Litig.*, No. 83-0268, 1991 WL 61156, at *2 (E.D. Pa. Apr. 16, 1991), *aff'd*, 950 F.2d 723 (3rd Cir. 1991) ("A stay against state proceedings is thus proper under the 'necessary in aid of jurisdiction' exception to the Anti–Injunction Act, and pursuant to the All–Writs Act where a federal court is on the verge of settling a complex matter, and state court proceedings undermine its ability to achieve that objective."). Here, a preliminary injunction would prevent activity in any other parallel litigation from undermining this Court's jurisdiction over the proposed Settlement. Federal courts have issued similar injunctions in other class action settlements. *See, e.g.*, *In re Baldwin-United Corp.*, 770 F.2d at 338 (in consolidated multidistrict class actions against broker-dealers who sold securities in bankrupt corporations the federal court enjoined states from bringing actions which would affect rights of any plaintiff or class member).

This Court also has the authority to issue the requested injunction under the All Writs Act, 28 U.S.C. § 1651(a), which permits the Court to issue "all writs necessary or appropriate in aid of [its] jurisdiction[] and agreeable to the usages and principles of law." 28 U.S.C. § 1651(a). The Act permits a federal district court to protect its jurisdiction by enjoining parallel actions by class members that would interfere with the court's ability to oversee a class action settlement. *See In re Linerboard Antitrust Litig.*, 361 Fed. Appx. 392, 396 (3rd Cir. 2010) (noting the "in aid of jurisdiction" exception typically is invoked in class actions where proceedings in state court threaten to undermine the pending settlement of a complex case); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1025 (9th Cir. 1998).

The rights and interests of Class Members and the jurisdiction of the Court will be impaired if, during the notice period, any parallel actions are filed alleging virtually identical claims to those asserted in the instant action. It is imperative that Class Members be allowed to evaluate their options under the settlement without receipt of potentially confusing competing notices or

communications. Class Members could be subject to confusion arising from the potential pendency of competing lawsuits. To avoid this confusion and protect the rights and interests of Class Members, as well as the Court's own jurisdiction, the Court should issue a preliminary injunction pending final approval of the settlement, enjoining potential Class Members and their representatives from pursuing claims that are similar to those asserted in this litigation.

VIII. CONCLUSION

For all the above-stated reasons, Plaintiffs respectfully request that the Motion be granted and the Court enter an order: (a) preliminary approving the proposed Settlement; (b) conditionally certifying the proposed Class for settlement purposes only; (c) appointing the proposed Class Representatives as Class Representatives; (d) appointing the proposed Class Counsel as Class Counsel; (e) ordering notice to be disseminated to the Class; (f) appointing Jeanne C. Finegan as the Settlement Notice Administrator; (g) appointing Patrick Hron and Patrick A. Juneau as the Settlement Claims Administrators; and (h) setting a date and procedures for the final Settlement Fairness Hearing and setting related deadlines; and (i) issuing related relief as appropriate, including issuing a preliminary injunction staying all other actions, pending final approval by the Court and enjoining potential Class Members from challenging in any action or proceeding any matter covered by this Settlement Agreement.

Dated: September 7, 2022

Respectfully submitted,

/s/ *W. Daniel "Dee" Miles, III*
W. Daniel "Dee" Miles, III (*pro hac vice*)
Demet Basar
H. Clay Barnett, III (*pro hac vice*)
J. Mitch Williams (*pro hac vice*)
Dylan T. Martin (*pro hac vice*)
BEASLEY, ALLEN, CROW, METHVIN, PORTIS & MILES, P.C.

272 Commerce Street
Montgomery, Alabama 36104
Phone: (334) 269-2343
Email: Dee.Miles@BeasleyAllen.com
Email: Demet.Basar@BeasleyAllen.com
Email: Clay.Barnett@BeasleyAllen.com
Email: Mitch.Williams@BeasleyAllen.com
Email: Dylan.Martin@BeasleyAllen.com

Lead Interim Class Counsel

Jeffrey J. Corrigan
John A. Macoretta
Jeffrey L. Spector
Diana J. Zinser
SPECTOR ROSEMAN & KODROFF, P.C.
2001 Market Street, Suite 3420
Philadelphia, PA 19103
Phone: (215) 496-0300
Email: jcorrigan@srkattorneys.com
Email: jmacoretta@srkattorneys.com
Email: jspector@srkattorneys.com
Email: dzinser@srkattorneys.com

Jeffrey R. Krinsk
FINKELSTEIN & KRINSK LLP
501 West Broadway, Suite 1260
San Diego, CA 92101
Phone: (619) 238-1333
Email: jrk@classactionlaw.com

Malcolm T. Brown
Kate M. McGuire
WOLF HALDENSTEIN ADLER FREEMAN & HERZ LLP
270 Madison Avenue
New York, NY 10016
Phone: (212) 545-4600
Email: brown@whafh.com
Email: mcguire@whafh.com

Rachele R. Byrd
WOLF HALDENSTEIN ADLER FREEMAN & HERZ LLP
750 B. Street Suite 1820
San Diego, CA

Phone: 619-239-4599
Fax: 619-234-4599
Email: byrd@whafh.com

Jerrod C. Patterson
HAGENS BERMAN SOBOL SHAPIRO LLP
1301 Second Avenue
Suite 2000
Seattle, WA 98101
Phone: 206−623−7292
Fax: 206−623−0594
Email:jerrodp@hbsslaw.com

Plaintiffs' Steering Committee

Elbert F. Nasis
FORCHELLI DEEGAN TERRANA LLP
333 Earle Ovington Boulevard, Suite 1010
Uniondale, NY 11553
Phone: (516) 248-1700
Email: enasis@forchellilaw.com

Additional Plaintiffs' Counsel

CERTIFICATE OF SERVICE

I hereby certify that on September 7, 2022, a copy of the foregoing was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF system.

s/ *W. Daniel "Dee" Miles, III*
W. Daniel "Dee" Miles, III

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

SHARON CHENG, CRISTINA DIAS, RHONDA SANFILIPO, BRUCE PULEO, ZINA PRUITT, RON ZIMMERMAN, CHERYL SILVERSTEIN, TINA FENG, ROBERT HAKIM, BERNADETTE GRIMES, ELIZABETH GENDRON, ROGER CARTER, MARLENE RUDOLPH, PATRICIA BARLOW, TERESA EDWARDS, ISSAC TORDJMAN, JAMES HETTINGER, DIEU LE, CHRIS BOHN, DANIEL DEWEERDT, CRAIG BOXER, BETTY DENDY, ELIZABETH PERSAK, KRISTI ROCK, JENNIFER CHALAL, JOHN TORRANCE, LENARD SHOEMAKER, MICHAEL MITCHELL, ROBERT SKELTON, JEFFREY JONES, ISABEL MARQUES, PAYAM RASTEGAR, and SYED ABDUL NAFAY, individually and on behalf of all others similarly situated, Plaintiffs, v. TOYOTA MOTOR CORPORATION, TOYOTA MOTOR NORTH AMERICA, INC., and DENSO INTERNATIONAL AMERICA, INC., Defendants.	Case No.: 1:20-cv-00629-WFK-CLP

JOINT DECLARATION OF W. DANIEL "DEE" MILES, III, AND DEMET BASAR IN SUPPORT OF FOR ENTRY OF AN ORDER PRELIMINARILY APPROVING CLASS SETTLEMENT, CONDITIONAL CERTIFICATION OF THE PROPOSED CLASS FOR SETTLEMENT PURPOSES ONLY, DIRECTING NOTICE TO THE CLASS, AND SCHEDULING FAIRNESS HEARING

W. DANIEL "DEE" MILES, III, and DEMET BASAR hereby declare under penalty of perjury pursuant to U.S.C. § 1746 as follows:

1. I, W. Daniel "Dee" Miles, III, duly licensed to practice law in the State of Alabama

and admitted *pro hac vice* in this Action, am a partner at the law firm of Beasley, Allen, Crow, Methvin, Portis & Miles, P.C ("Beasley Allen"), co-lead interim class counsel and one of proposed Class Counsel in this Action.

2. I, Demet Basar, duly licensed to practice law in the States of New York and New Jersey, and admitted to practice in this Court, am of counsel at Beasley Allen, co-lead interim class counsel, and one of proposed Class Counsel in this Action.

3. We respectfully submit this joint declaration in support of Plaintiffs' Joint Motion for Entry of an Order Preliminarily Approving Class Settlement, Conditional Certification of the Proposed Class For Settlement Purposes Only, Directing Notice to the Class, and Scheduling Fairness Hearing (the "Joint Motion"). ECF No. 161. We have personal knowledge of the matters pertaining to the Action and the proposed Settlement and are competent to testify with respect thereto.

4. We are pleased to submit for the Court's preliminary approval the proposed Settlement of this Action, as set forth in the Settlement Agreement.[1] The proposed Settlement, if approved, will confer valuable benefits on the owners and lessees of nearly 4.9 million Toyota and Lexus vehicles that are eligible to participate in the Settlement. The Settlement is fair, reasonable and adequate, provides substantial benefits for the members of the proposed Class, and merits this Court's preliminary approval. The Settlement Agreement, together with its exhibits, was filed contemporaneously with the Joint Motion. ECF No. 161.

I. BACKGROUND

5. This case arises from Toyota's marketing and sale of Toyota and Lexus vehicles as

[1] Unless otherwise indicated, capitalized terms have the meanings given to them in the Settlement Agreement. *See* SA, § II.

safe, reliable and durable without disclosing to consumers that the vehicles were equipped with a dangerously defective fuel pump, a critical component that supplies fuel to the vehicles' fuel injection system while the engine is in operation. These defective fuel pumps, all of which were manufactured by Denso, can cause the affected vehicles to run rough, unexpectedly stall, fail to accelerate, lurch and even to lose all engine power while in operation, increasing the risk of a crash ("Defective Fuel Pumps"). Due to the presence of these Defective Fuel Pumps in its vehicles, on January 13, 2020, Toyota voluntarily recalled about 700,000 Toyota and Lexus vehicles manufactured from August 1, 2018 to January 31, 2019 (the "Recall").

6. On February 4, 2020, Plaintiff Sharon Cheng filed her complaint against Toyota seeking damages and equitable relief individually and on behalf of Class members, each of whom purchased or leased an Affected Vehicle. ECF No. 1. In the complaint, Plaintiff Cheng asserted consumer protection and other claims against Toyota for marketing and selling these vehicles as safe and dependable when they are equipped with the Defective Fuel Pumps. *Id.* at ¶ 1. Plaintiff also alleged that the Recall was deficient because additional Toyota and Lexus vehicles shared the same defective fuel pump that is prone to sudden and unexpected failure exposing occupants and others to the risk of injury. *Id.* at ¶ 95.

7. Prior to filing this Action, counsel conducted a comprehensive investigation into the underlying facts of this case. We thoroughly studied the Recall Notice, brought our automotive engineering expertise to reviewing and analyzing Recall-related information on the NHTSA website, and other public sources. We conferred extensively with the Affected Vehicle owners who consulted them about their own experiences with their vehicles' Fuel Pumps. Counsel carefully studied the customer complaints and reports on the NHTSA website as well as other publicly available information as part of this inquiry. Counsel retained and conferred with an independent automotive engineering expert ("Automotive Expert") to better understand the causes

of the Fuel Pump problems and to explore potential remedies for these problems.

8. Counsel also conducted legal research to determine the viability of asserting various claims, including claims under the consumer protection statutes of potential clients' home states as more individual began to reach out to Counsel. Counsel interviewed the potential clients about the internet and other research they did prior to purchasing or leasing their vehicles, and examined Defendants' marketing and advertising materials in various media outlets to assess whether they could properly allege that Defendants made material misrepresentations and/or omissions. Counsel researched the viability of common law claims a nationwide claim for violation of the Magnuson-Moss Warranty Act. After Class Counsel satisfied themselves viable claims could be asserted against Toyota, they conferred with and got approval from their first client, Ms. Cheng, and commenced this Action.

9. On April 13, 2020, Plaintiff Cheng filed her First Amended Class Action Complaint ("FAC"), adding (1) new plaintiffs, (2) Denso entities, the maker of the defective fuel pumps, as defendants, (3) new and more robust allegations arising from Toyota's March 19, 2020 expansion of the Recall to about 1.8 million Toyota and Lexus Vehicles, and (4) the research and analysis of Plaintiffs' Automotive Expert. *Id.*

10. After Plaintiff Cheng filed her original complaint on February 4, 2020, seven other cases were filed in different districts across the country. ECF No. 91. Plaintiffs in many of these later-filed cases voluntarily transferred their cases to this District for consolidation with this Action, and, on July 3, 2020, those Plaintiffs filed a Consolidated Amended Complaint in this Action. ECF No. 59.

11. Other Plaintiffs filed an application with the Judicial Panel on Multidistrict Litigation ("JPML") to centralize the then pending cases in the Eastern District of Michigan. ECF No. 57. Ultimately, to best protect the interests of the Classes and preserve judicial and party

resources, these plaintiffs dismissed their JPML application (ECF No. 79), and also transferred their cases to this District to be consolidated with this Action. All transferred cases were consolidated for all purposes by mid-October 2020 (ECF No. 91), and Plaintiffs filed their First Amended Consolidated Class Action Complaint ("FACC") on November 5, 2020. ECF No. 96.

12. On November 6, 2020, the Court appointed proposed Class Counsel as interim lead Class Counsel and a Plaintiffs Steering Committee. *See* November 6, 2020 Electronic Order.

13. On November 4, 2020, Toyota added about 1.52 million additional vehicles to the Recall, but the amended recall was not published until after Plaintiffs filed the FACC. The parties stipulated for leave to file the Second Amended Consolidated Class Action Complaint ("SACC"), which was filed on December 14, 2020. ECF No. 106. The SACC added additional plaintiff and asserted additional claims. All in all, there were 33 plaintiffs named and 97 causes of action for violations of state consumer protection statutes; breach of express warranty; breach of implied warranty; negligent recall/undertaking; unjust enrichment; strict liability; and, on behalf of a nationwide class, a claim for violations of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, *et seq*.

14. In the Action, Plaintiffs generally alleged that Defendants knew about the defect in the Denso-made Fuel Pumps since long before the initial recall because Denso and Toyota together designed, engineered, tested, validated, and manufactured the Defective Fuel Pumps in the affected vehicles. Further, Plaintiffs alleged that because Toyota owns approximately 25% of Denso, Toyota also knew about the problems with the durability and absorption qualities of the defective Fuel Pump impeller since well before October 2016 when Denso filed a patent application to improve the durability of the impellers. ECF No. 160, ¶ 7. Plaintiffs also alleged that Toyota knew about consumers' numerous complaints about problems with the Fuel Pumps, which were on NHTSA's website and other public fora. Plaintiffs alleged that nonetheless Defendants failed to

disclose the defect and made material misleading statements about the safety and durability of their products.

15. With respect to the Recalls, Plaintiffs alleged that they were insufficient in scope because they did not include all vehicles equipped with Denso Fuel Pumps with the same part number prefixes as those of the recalled Fuel Pumps and did not include all affected hybrid vehicles. Plaintiffs also alleged the Recall remedy was not adequate because the installation of the Countermeasure Fuel Pump (defined below) could cause or exacerbate problems.

16. On January 15, 2021, DIAM and TMNA served Plaintiffs with their motions to dismiss, to which Plaintiffs served responses on March 30, 2021, Defendants replied and fully briefed packages were filed on May 28, 2021. ECF Nos. 129-134.

17. Plaintiffs voluntarily dismissed Denso Corporation, the parent of DIAM, on August 31, 2021. ECF No. 137. TMC was served on May 11, 2021 and filed a pre-motion letter requesting permission to file a motion to dismiss on August 16, 2021 (ECF No. 139), to which Plaintiffs responded on August 23, 2021 (ECF No. 141). The request remains pending.

18. The Parties submitted a Discovery Plan, which was approved by the Court on October 28, 2020. *See* October 28, 2020 Electronic Order. Plaintiffs served requests for production of documents on Defendants on July 2, 2020 and served updated Requests on January 22, 2021. DIAM served its responses to Plaintiffs' requests on March 15, 2021. TMNA served its responses to Plaintiffs' requests on April 7, 2021. On September 9, 2021, TMC served its Initial Disclosures, Responses to Plaintiffs' Requests for Production, and Response to Plaintiffs' Interrogatory. Also on September 9, 2021, TMNA served its Response to Plaintiffs' Interrogatory with verification. Defendants have produced documents responsive to Plaintiffs' requests. Plaintiffs, TMNA, and Denso served their written initial disclosures on November 2, 2020.

19. As a part of formal discovery, Defendants produced, and Plaintiffs processed and

reviewed, about 655,000 documents containing approximately 1.5 million pages of documents related to the Recalls, the design and operation of the Denso Fuel Pumps, warranty data, failure modes attributed to the Fuel Pumps, the Defendants' investigation into the issue, and countermeasure development and implementation. Additionally, Plaintiffs' Automotive Expert sourced and inspected over 100 fuel pumps replaced pursuant to the Recall, and has analyzed, among other things, the pumps' operation, specifications, and density of the impeller. After testing the recalled fuel pumps and their components, the independent Automotive Expert concluded that the Fuel Pumps have a defective impeller that is made of lower density material that makes it susceptible to deformation during operation, which in turn can cause the fuel pump to degrade or fail altogether

II. SETTLEMENT NEGOTIATIONS AND CONFIRMATORY DISCOVERY

20. The negotiations culminating in this Settlement were complex, conducted in good faith and at arms' length over a period of eighteen months by informed and experienced counsel, and aided by Court-appointed Special Master Patrick A. Juneau since November 3, 2021. Plaintiffs, with the goal of obtaining immediate valuable benefits for Class Members, and Defendants began to explore the possibility of an early resolution even while Defendants' motions to dismiss were being vigorously litigated and the Parties were engaged in substantial fact discovery.

21. During the course of the negotiations, Class Counsel, armed with the knowledge they gained through the informal and confirmatory discovery, as described below, and in consultation with their independent Automotive Expert, were able to meaningfully assess the reasons for the defect in the Fuel Pumps and the efficacy of the Recall remedy. Class Counsel and Defendants' counsel had numerous Zoom meetings and, as COVID restrictions eased, multiple in-person meetings, which required long distance travel by some Class Counsel, and, as negotiations intensified, frequent lengthy conference calls for the Parties to exchange their views concerning the settlement terms then under discussion. Numerous drafts of the Settlement Agreement and related exhibits were exchanged, which

Counsel carefully negotiated and refined before a final agreement could be reached. As a result of Counsel's efforts, the Parties were successful in reaching a settlement that provides concrete substantial benefits to millions of Class Members.

22. In addition to the extensive formal discovery they conducted, during the course of settlement negotiations, Class Counsel also conducted extensive confirmatory discovery. Toyota and Denso produced hundreds of pages of additional internal documents, including voluminous warranty data spreadsheets and detailed information about the Countermeasure Fuel Pumps, which Class Counsel reviewed and analyzed. Class Counsel consulted with their Automotive Expert about the information in these documents and provided Countermeasure Fuel Pumps for his analysis. Class Counsel also interviewed Toyota and Denso engineers who are knowledgeable about the Recall and implementation, the Affected Vehicles, the Defective Fuel Pumps, and the Countermeasure Fuel Pumps.

III. SETTLEMENT

23. In the Settlement, Toyota agreed to implement a Customer Support Program ("CSP") for the owners and lessees of approximately 1.4 million "Additional Vehicles" (SA § II.2) that were not previously recalled by Toyota, which are now entitled to prospective coverage for repairs (including parts and labor) on their original Denso low-pressure fuel pumps for 15 years from the date of original sale. This benefit travels with the vehicle, meaning if a vehicle is sold or its lease ends before the expiration of the 15-year period, the subsequent owner or lessee still will be entitled to the benefit. SA, § III.A.1. Toyota agreed to provide this excellent benefit to the owners and lessees of the 1.4 million vehicles that had not been recalled but contain the same defective Denso fuel pumps as a direct result of Plaintiffs' intensive efforts during settlement negotiations. If the Settlement is preliminarily approved by the Court, Defendants, at their sole discretion, may, after conferring with Class Counsel, implement the CSP prior to the Final Effective Date of the Settlement. SA, § III.

24. Toyota also agreed to provide an Extended New Parts Warranty of 15 years, measured from July 15, 2021, or 150,000 miles, whichever comes first, on the countermeasure fuel pump kit for owners and lessees of the nearly 3.4 million "Subject Vehicles" – the recalled vehicles (SA § II.49) – and the 170,000 "SSC Vehicles" – hybrid vehicles that were not recalled but for which Toyota instituted a special service campaign (SA § II.48) during settlement negotiations – that are entitled to the Recall remedy, described below. SA, § III.B.1. This valuable benefit too travels with the vehicle such that subsequent purchasers or lessees also will be entitled to the Extended Warranty. SA, § III.B.1.

25. The Recall remedy is the replacement of the Defective Fuel Pumps with improved countermeasure fuel pumps that were specifically reformulated and manufactured to address the defect in the recalled fuel pumps ("Countermeasure Fuel Pumps"). The Defective Fuel Pumps that gave rise to the Recall, as well as the Countermeasure Fuel Pumps, were the subject of intense scrutiny, through voluminous formal and confirmatory discovery and thorough testing and analysis by Plaintiffs' Automotive Expert. After testing the recalled fuel pumps and their components, the independent Automotive Expert concluded that the fuel pumps have a defective impeller that is made of lower density material that makes it susceptible to deformation during operation, which in turn can cause the fuel pump to degrade or fail altogether. With thorough knowledge of the defect, Plaintiffs' Automotive Expert also conducted extensive testing and analysis of the Countermeasure Fuel Pump, and determined that the impellers in those fuel pumps were made of sufficiently robust material to function properly in their operating environment and thus could be expected to function as intended.

26. The owners and lessees of the Additional Vehicles are entitled to have these Countermeasure Fuel Pumps installed in their vehicles for free, and the owners and lessees of the Subject Vehicles and the SSC Vehicles have a free 15-year or 150,000 warranty on the Countermeasure Fuel Pumps and the components in the kit included for their reinstallation in the

vehicles. In addition, the owners and lessees of all the vehicles covered by the Settlement are entitled to free towing and loaner vehicles while their fuel pumps are being replaced or repaired. If a Class Member has a need for a loaner vehicle that is similar to her Affected Vehicle, Toyota, through its dealers, will use good faith efforts to satisfy the request. SA, §§ III.A.2, III.B.2.

27. The CSP and the Extended Warranty address Plaintiffs' overarching concern in this litigation – to ensure that the fuel pumps in the Covered Vehicles operate as intended and drivers, passengers, and other vehicles on the road will not be exposed to potentially unsafe conditions. Toyota's free repairs under the CSP and the Extended Warranty, and complimentary towing and loaner vehicles to Class Members during the repairs, ensures that Class Members will not incur any expenses for repairs that may become necessary to address problems with the original Fuel Pumps or Countermeasure Fuel Pumps in the future.

28. The Settlement also includes an out-of-pocket expense reimbursement program. All Class Members who incurred expenses to repair or replace Fuel Pumps of Covered Vehicles either before notice of the Settlement is provided, or between the date of notice and the Final Effective Date of the Settlement (if repaired by a Toyota dealer) are entitled to reimbursement through an orderly and consumer-friendly claims administration process that ensures prompt payment of eligible claims. Id., § III.C.

29. The Settlement also includes a reconsideration procedure in connection with the CSP and the Extended Warranty (SA, § III.D), and an independent Settlement Special Master – Patrick A. Juneau – will oversee the Settlement to resolve any disputes by Class Members regarding entitlement to all benefits provided under the Settlement.

30. As part of the Settlement, Toyota will fund a state-of-the-art Notice Program designed to reach Class Members with information about their rights and options under the Settlement Agreement. This Notice Program is described in detail in the Settlement Agreement and the

Declaration of Jeanne C. Finegan, APR, submitted contemporaneously herewith. *See* SA, § 4; SA, Exs. 4, 9. It includes direct mail to all known Class members, and it is expected that the vast majority of Class members will have known addresses, as vehicle owners and lessees are required to register their vehicles, and the Notice Administrator will be able to obtain addresses through registration information. It also includes an extensive cross-platform, multimedia publication campaign, including publication in a national magazine, publication in eight territorial newspapers along with banner advertising on the newspapers' websites, internet advertising across over 4,000 websites, targeted use of social media including Facebook, Twitter, and Instagram, and makes use of Google AdWords to target persons who run searches with relevant terms, such as "Toyota fuel pump." It is expected to reach over 90% of Class Members.

31. Defendants have agreed to pay all expenses for the relief in the Settlement as well as for attorney's fees, costs and expenses, and class representative awards, as may be awarded by the Court.

IV. ATTORNEYS' FEES, COSTS, CLASS SERVICE AWARDS

32. We did not begin discussions with Defendants' counsel concerning our intended application for attorneys' fees, costs and expenses, and request for service awards for the proposed Class Representatives until after reaching agreement on the substantive terms of the Settlement.

33. At the conclusion of the Parties reaching agreement on the substantive material terms of this Settlement Agreement, the Parties mediated attorneys' fees and costs and individual Class Representative service awards with the assistance of Settlement Special Master Patrick A. Juneau. Following a series of intensive negotiations between the Parties and the Settlement Special Master Juneau on August 11, 2022, the Parties requested that Settlement Special Master Juneau propose a mediator's number for the amount of attorneys' fees; Settlement Special Master Juneau provided the Parties with a mediator's recommendation of $28,500,000.00 for Class Counsel attorneys' fees. After

further evaluation, the Parties subsequently agreed to accept the Settlement Special Master Juneau's mediator number.

34. Additionally, as a result of additional negotiations, Class Counsel agreed to limit any petition for an award of costs and expenses in the Action to $500,000.00, and further agreed that Class Counsel may petition the Court for (i) Class Representative service awards of up to $3,500.00 for Class Representatives who had their vehicles inspected by the Defendants for their time in connection with the Action; and (ii) Class Representative service awards of up to $2,500.00 for Class Representatives who did not have their vehicles inspected by the Defendant for their time in connection with the Action.

35. If this Court grants our application for fees, costs and expenses, and class representative service awards, any awarded amounts will be paid by Defendants into a Qualified Settlement Fund established by the Court.

V. QUALIFICATIONS OF PROPOSED CLASS COUNSEL

36. I, Dee Miles, have more than 30 years' experience litigating complex cases on behalf of consumers and businesses in both individual and class action form. Over the last decade I have concentrated on work specifically involving vehicle defect class actions, while recovering billions of dollars for my clients and class members. My experience in automotive products litigation includes having been appointed to lead counsel or to other leadership positions in *In re Volkswagen "Clean Diesel" Mktg., Sales Practices, and Prods. Liab. Litig.*, MDL No. 2672 (N.D. Cal.); *Chrysler-Dodge-Jeep EcoDiesel, In re Chrysler-Dodge- Jeep EcoDiesel Mktg., Sales Practices, and Prods. Liab. Litig.*, MDL No. 2777 (N.D. Cal.); *In re Toyota Motor Corp. Unintended Acceleration Mktg., Sales Practices, and Prods. Liab. Litig.*, MDL No. 2151 (C.D. Cal.); *In re Polaris Mktg., Sales Practices, & Prods. Liab. Litig.*, No. 18-cv-975 (D. Minn.); *In re: General Motors LLC, GM 5.3 Vortec Engine*, No. 3:16-CV-07244-EMC (N.D.CA.); *Weidman, et al v. Ford Motor Company*, No. 18-cv-12719

(E.D. MI.); and *Simerlein et al. v. Toyota Motor Corporation et al.*, 3:17-CV-01021-VAB (D. Conn.), which resulted in a settlement providing quality class-wide relief valued at up to $40 million for the benefit of 1.3 million owners of Toyota Sienna minivans with sliding doors, including a ten-year warranty for covered parts and a free inspection as well as reimbursement for repairs. In the *Simerlein* Action, I was appointed co-class counsel alongside Ms. Basar.

37. Separately, I currently serve on the PSC in *In re The Home Depot, Inc., Customer Data Sec. Breach Litig.*, MDL No. 2583 (N.D. Ga.); *In re Target Corp. Customer Data Sec. Breach Litig.*, MDL No. 2522 (D. Minn.); *In re Wells Fargo ERISA 401(k) Litig.*, No. 16-CV-03405 (D. Minn.); and on the Discovery Committee in *In re Takata Airbag Prods. Liab. Litig.*, MDL No. 2599 (S.D. Fla.); *In re Apple Inc. Device Performance Litig.*, MDL No. 2827 (N.D. Cal.); *In re Domestic Airline Travel Antitrust Litig.*, MDL No. 2656 (D.D.C.); *In re: ZF-TRW Airbag Control Units Products Liability Litigation*, MDL No. 20295 (C.D.CA); and *In re Blue Cross Blue Shield Antitrust Litig.*, MDL No. 2406 (N.D. Ala.) (recently promoted to the Executive/Settlement committee). A copy of Beasley Allen's resume is attached hereto as Exhibit A.

38. I, Demet Basar, am an experienced attorney with 30 years of complex litigation experience. My practice is primarily concentrated in complex class action and MDL litigation, including consumer protection, data breach and securities litigation on behalf of institutional and individual clients. Currently, I am sole lead counsel for plaintiffs and a proposed class of approximately 4.7 million parents and other caregivers in *In re: Rock 'n Play Sleeper Marketing, Sales Practices, and Products Liability Litigation*, MDL No. 1:19-md-2903-GWC (WDNY) ("RNP"), a multi-district litigation against Fisher-Price and its corporate parent, Mattel, arising from the marketing and sale of Fisher-Price's popular Rock 'n Play inclined infant sleepers, which plaintiffs allege are inherently dangerous and misleading by being marketed as safe. While at my previous firm, I was appointed co-class counsel alongside Mr. Miles in the *Simerlein* action.

39. I have also served as lead counsel, co-lead counsel or other leadership positions in several multi-district litigations including *In re Mutual Fund Investment Litigation*, MDL No. 1586 (D. Md.), which resulted in class and derivative settlements totaling over $300 million, and *In re J.P. Morgan Chase Securities Litigation*, MDL No. 1783 (N.D. Ill.), in which I secured "best practices" corporate governance reforms in a proxy violation class action against the major global bank. My other representations include *In re American Pharmaceutical Partners, Inc. Shareholder Litigation*, Consolidated C.A. No. 1823N (Del. Ch. Ct.) ($14.3 million settlement), *In re Loral Space & Communications Shareholders Securities Litigation*, 03-cv-8262 (SDNY); *Steed Finance LDC v. LASER Advisors*, No. 99-cv-4222 (SDNY), *In re AMBAC Financial Group, Inc.*, C.A. No. 3521 (Del. Ch. Ct.).

40. We, along with other Beasley Allen lawyers, also represent plaintiffs in related cases arising from recalls of vehicles equipped Denso's low-pressure fuel pumps, including *Oliver, et al. v. Honda Motor Company Limited, et al*, 5:20-cv-00666-MHH in the Northern Dist. of Alabama in which Mr. Miles was appointed interim class counsel; *Cohen, et al. v. Subaru Corporation, et al.*, 1:20-cv-08442-JHR-AMD in the Dist. of New Jersey; and *Townsend Vance, et al. v. Mazda Motor of America, Inc. et al.*, 8:21-cv-01890-CJC-KES in the Central District of California.

41. Proposed Class Counsel, as well as the Plaintiffs Steering Committee, are well positioned to assess the benefits of the proposed Settlement and do hereby fully endorse it as fair, reasonable, and adequate.

42. We declare under penalty of perjury that the foregoing is true and correct.

Dated: September 7, 2022

By: */s/ W. Daniel "Dee" Miles, III*
W. Daniel "Dee" Miles, III

By: */s/ Demet Basar*
Demet Basar

EXHIBIT A

FIRM RESUME

FIRM BIO

I. Background of Beasley Allen

In 1978, Jere Locke Beasley founded the firm now known as Beasley, Allen, Crow, Methvin, Portis & Miles, P.C., which is located in Montgomery, Alabama and Atlanta, Georgia. From 1970 through 1978, Jere served as Lieutenant Governor of the State of Alabama, and for a short period as Governor. In 1978, he re-entered the private practice of law representing plaintiffs and claimants in civil litigation. This was the genesis of the present law firm, which is now made up of eighty-two attorneys and approximately two hundred sixteen support staff representing clients all over the country. Beasley Allen has forty-nine principals, one managing attorney, four supervising attorneys, five Board of Directors, and five non-attorney supervisors. Our support staff includes full time legal secretaries, paralegals, nurses, investigators, computer specialists, technologists, a public relations department, and a comprehensive trial graphics department. Beasley Allen is adequately qualified, prepared, and equipped to handle complex litigation on a national scale.

II. Experience of Beasley Allen

Beasley Allen's highly qualified attorneys and staff work tirelessly for clients throughout the country, representing plaintiffs and claimants in the following areas: Personal Injury, Products Liability, Consumer Fraud, Class Action Litigation, Toxic Torts, Environmental Litigation, Business Litigation, Mass Torts Drug Litigation, and Nursing Home Litigation. We have handled cases involving verdicts and settlements amounting to nearly $30 billion. For instance, Beasley Allen has played an integral role in this nation's most important consumer litigation such as Vioxx MDL, BP MDL, Toyota SUA MDL, VW MDL, Chrysler Fiat MDL and many others. Beasley Allen has recovered multi-million dollar verdicts for our clients against many corporate

wrongdoers, many of which are in the healthcare industry, including AstraZeneca, $216 million, GSK, $83 million, Johnson & Johnson, Johnson & Johnson Consumer Companies, Inc., and Imerys Talc America, Inc., $72 million in February of 2016, $55 million in May of 2016, $70 million in October of 2016, and $110 million in May of 2017, as well as Exxon, $11.9 billion, and G.M., $155 million, just to name a few.

Beasley Allen has extensive experience handling complex litigation, attorney general litigation, multi-district litigation throughout the U.S., including district and federal courts, *qui tam* litigation, and class-action lawsuits all involving matters in the healthcare, pharmaceutical, and medical device industry. Our attorneys have also represented clients testifying before U.S. Congressional committees on Capitol Hill in Washington, D.C. Beasley Allen has also been appointed to the Plaintiff's Steering Committee in many complex litigations.

i. Beasley Allen's Involvement as Lead or Co-Lead Counsel Representing States in Complex Litigation, as well as our Qui Tam and Class Action Litigation Experience

Beasley Allen is a proven leader in complex litigation on a national level. Beasley Allen has successfully represented the states of Alabama, Louisiana, Mississippi, Alaska, Hawaii, South Carolina, Kansas, Utah, and Kentucky involving various issues within the healthcare arena, and has confidentially investigated matters for several other Attorneys General. Beasley Allen's experience representing states with complex legal theories involves investigating wrongdoing, advising the states as to whether litigation should be pursued, handling all aspects of filed litigation, negotiating the Attorney General's claims in settlement discussions, and trying the litigations before a judge and jury. Our firm's experience with Attorney General cases involves litigating violations of Medicaid fraud, antitrust violations, consumer protection statutes, false claims act violations, fraud, false advertising, negligence, unjust enrichment, breach of contract,

and unfair and deceptive trade practices with respect to the provision of healthcare goods and services. Beasley Allen's Attorney General litigation background includes the Average Wholesale Price litigations on behalf of eight states concerning the fraudulent pricing of prescription drugs, the representation of four states against McKesson Corporation for its fraudulent and unfair practices involving prescription drugs, the Fresenius litigation on behalf of two states involving the medical device GranuFlo, the Unapproved Drugs litigations on behalf of two states concerning the states' reimbursement of drugs with a fraudulently obtained Medicaid reimbursement approval status, the Usual and Customary litigations regarding the false reporting of pharmacy price lists by the nation's largest chain pharmacies, the Actos litigation, and many other investigations. Beasley Allen's attorneys serve or served as lead counsel in the following cases:

a. *State of Louisiana, ex rel. v. Fresenius Medical Care Holdings, Inc., et al*., Suit No. 631,586, Div. "D"; 19th JDC; Parish of East Baton Rouge, Judge Janice Clark;

b. *In Re Alabama Medicaid Pharmaceutical Average Wholesale Price Litigation* filed in the Circuit Court of Montgomery, Alabama, Master Docket No. CV-2005-219, Judge Charles Price;

c. *In Re Kansas Medicaid Pharmaceutical Average Wholesale Price Litigation* filed in the District Court of Wyandotte County, Kansas, Master Docket No. MV-2008-0668, Division 7, Judge George A. Groneman;

d. *In Re Mississippi Medicaid Pharmaceutical Average Wholesale Price Litigation* filed in the Chancery Court of Rankin County, Mississippi, Master Docket No. 09-444, Judge W. Hollis McGehee;

e. *The State of Utah v. Apotex Corporation, et al.,* filed in the Third Judicial District Court of Salt Lake City, Utah, Case No. 08-0907678, Judge Tyrone E. Medley;

f. *The State of Utah v. Abbott Laboratories, et al.,* filed in the Third Judicial District Court of Salt Lake City, Utah, Case No. 07-0915690, Judge Robert Hilder;

g. *The State of Utah v. Actavis US, et al.*, filed in Third Judicial District Court of Salt Lake City, Utah, Case No. 07-0913717, Judge Kate A. Toomey;

h. *The State of Louisiana, et al. v. Molina Healthcare, Inc., et al.*, filed in 19th Judicial District Court, Parish of East Baton Rouge, Suit No. 631612, Judge Janice Clark;

i. *The State of Louisiana, et al. v. Takeda Pharmaceuticals America, Inc., et al.*, filed in 19th Judicial District Court, Parish of East Baton Rouge, Suit No. 637447, Judge R. Michael Caldwell;

j. *The State of Mississippi v. CVS Health Corporation, et al.*, DeSoto County, Third Chancery District, Trial Court No. 16-cv-01392, Judge Mitchell M. Lundy, Jr.;

k. *The State of Mississippi v. Fred's, Inc., et al.*, DeSoto County, Third Chancery District, Trial Court No. 16-cv-01389, Judge Mitchell M. Lundy, Jr.;

l. *The State of Mississippi v. Rite Aid Corporation, et al.*, DeSoto County, Third Chancery District, Trial Court No. 16-cv-01390, Judge Percy L. Lynchard, Jr.;

m. *The State of Mississippi v. Walgreen Co., et al.*, DeSoto County, Third Chancery District, Trial Court No. 16-cv-01391, Judge Mitchell M. Lundy, Jr.;

n. *In the Matter of the Attorney General's Investigation*, AGO Case No. AN2014103885, Alaska Pay-for-Delay Antitrust Investigation;

o. *State of Louisiana v. Pfizer, Inc., et al.*, Docket No. 625543, Sec. 24, 19th Judicial District Court, Parish of East Baton Rouge, Judge R. Michael Caldwell;

p. *State of Louisiana v. Abbott Laboratories, Inc.*, et al., Docket No. 596164, Sec. 25, 19th Judicial District Court, Parish of East Baton Rouge, Judge Wilson Fields;

q. *State of Louisiana v. McKesson Corporation*, Docket No. 597634, Sec. 25, 19th Judicial District Court, Parish of East Baton Rouge, Judge Wilson Fields;

r. *State of South Carolina v. Abbott Laboratories, Inc., et al., In re: South Carolina Pharmaceutical Pricing Litigation*, Master Caption Number:

2006-CP-40-4394, State of South Carolina, County of Richland, Fifth Judicial Circuit, Judge J. Cordell Maddox, Jr.;

s. *State of Alaska v. Alpharma Branded Products Division, Inc., et al.*, Case No.: 3AN-06-12026, Superior Court for the State of Alaska, Third Judicial District at Anchorage, Judge William F. Morse;

t. *State of Alaska v. McKesson Corporation and First DataBank, Inc.*, Case No. 3AN-10-11348-CI, Superior Court for the State of Alaska, Third Judicial Circuit of Anchorage, Judge Peter A. Michalski;

u. *State of Kansas, ex rel. v. McKesson Corporation, et al.*, Case No. 10-CV-1491, Division 2, District Court of Wyandotte County, Kansas, Judge Constance Alvey;

v. *State of Hawaii, ex rel. v. McKesson Corporation, et al.*, Civil Action No. 10-1-2411-11, State of Hawaii, First Circuit, Judge Gary W. B. Chang;

w. *Commonwealth of Kentucky. v. Fresenius Medical Care Holdings, Inc., et al.*, Civil Action No. 16-CI-00946, Franklin Circuit Court, Div. 2, Judge Thomas D. Wingate;

x. *State of Mississippi v. Actavis Pharma, Inc., et al.*, Civil Action No. 17-cv-000306, Hinds County Chancery Court, District 1, Judge Patricia D. Wise;

y. *State of Mississippi v. Barr Laboratories, Inc., et al.*, Civil Action No. 17-cv-000304, Hinds County Chancery Court, District 1, Judge J. Dewayne Thomas;

z. *State of Mississippi v. Camline, L.L.C. (f/k/a Pamlab, L.L.C.)*, Civil Action No. 17-cv-000307, Hinds County Chancery Court, District 1, Judge J. Dewayne Thomas;

aa. *State of Mississippi v. E. Claiborne Robins Company, Inc., et al.*, Civil Action No. 17-cv-000305, Hinds County Chancery Court, District 1, Judge Denise Owens;

bb. *State of Mississippi v. Endo Pharmaceuticals, Inc.*, Civil Action No. 17-cv-000309, Hinds County Chancery Court, District 1, Judge J. Dewayne Thomas;

cc. *State of Mississippi v. United Research Laboratories, Inc., et al.*, Civil Action No. 17-cv-000308, Hinds County Chancery Court, District 1, Judge Denise Owens;

dd. *State of West Virginia v. Merck-Medco*, Civil Action No. 02-C-2944, Circuit Court of Kanawha County, West Virginia, Judge Jennifer F. Bailey;

ee. *State of Alabama, ex. rel. Troy King, Attorney General v. Transocean, Ltd., et al.*, Civil Action No. 2:10-cv-691-MHT-CSC, Middle District of Alabama, Northern Division, Judge Myron H. Thompson;

ff. *State of Alabama v. Purdue Pharma, LP, et al.*, Civil Action No. 03-CV-2019-901174, Circuit Court of Montgomery County, Alabama, Judge J.R. Gaines; and

gg. *State of Georgia v. Purdue Pharma, et al.*, Civil Action No. 19-A-00060-2, Superior Court of Gwinnett County, Georgia, Judge Tracie H. Cason.

Through the various representations of the states listed in the previous paragraph, our firm has recovered billions of dollars for the states, with over $1.5 billion pertaining to recoveries involving state funds. Beasley Allen continues to represent states with complex litigation involving the manufacture and marketing of pharmaceuticals and pharmaceutical devices, including, but not limited to, allegations of Medicaid fraud, antitrust, consumer protection violations, false claims, fraud, unjust enrichment, false advertising, and unfair and deceptive trade practices with respect to the manufacture, marketing, pricing, and sale of pharmaceuticals, pharmaceutical devices, and the general provision of goods and services in the healthcare industry.

In addition to representing states, Beasley Allen is one of the nation's leading firms in *qui tam* litigation, especially in the healthcare industry. Our firm currently is handling seventeen filed *qui tam* cases, investigating approximately ten *qui tam* cases, tried two *qui tam* cases, settled fourteen *qui tam* cases, and has reviewed over three hundred thirty-five *qui tam* cases altogether. Beasley Allen, with the cooperation of the U.S. Department of Justice (DOJ), settled one of the most important *qui tam* cases in recent history against U.S. Investigations Services, Inc. (USIS), a private government contractor, for $30 million. The case is *United States ex rel. Blake Percival v. U.S. Investigations Services, Inc.*, Civil Action No. 2:11-cv-527-WKW, (M.D. Ala.). Beasley

Allen also represented one of six whistleblowers jointly responsible for a $39 million settlement in a False Claims Act case alleging illegal kickbacks and off-label marketing against Daiichi-Sankyo Company, Ltd. The case was *United States, et al., ex rel. Jada Bozeman v. Daiichi-Sankyo Company*, Civil Action No. 14-cv-11606-FDS. Beasley Allen's *qui tam* cases involve a variety of complex legal issues, including but not limited to violations of the Anti-Kickback Statute, Stark Law, Medicare/Medicaid fraud, military contractor fraud, abuse of Title IV funds, federal grant fraud and government contracting malfeasance.

Beasley Allen is also a leader in complex class action litigation. Beasley Allen has successfully brought a number of class actions, some of which were subsequently transferred to multidistrict litigation, which we originally filed in federal and state courts, including: *Ace Tree Surgery, Inc. v. Terex Corporation, et al.*, Case No. 1:16-cv-00775-SCJ D (N.D. Ga., filed July 22, 2015); *In re: Polaris Marketing, Sales Practices, and Products Liability Litigation*, Case No. 0:18-cv-00939-WMW-DTS (D. Minn., filed April 5, 2018); *Scott Peckerar et al. v. General Motors, LLC*, Case No. 5:18-cv-02153-DMG-SP (C.D. Cal., filed December 9, 2018); *Jason Compton et al v. . General Motors, LLC*, Case No. 1:19-cv-00033-MW-GRJ (N.D. Fla., filed February 21, 2019); *Simerlein v. Toyota Motor Corporation et al.*, Case No. 3:17-cv-01091-VAB (D. Conn., filed June 30, 2017); *Kerkorian et al v. Nissan North America, Inc.*, Case No. 18-cv-07815-DMR (N.D Cal., filed December 31, 2018); *Monteville Sloan, Jr. v. General Motors LLC*, Case No. 3:16-cv-07244-EMC (C.D. Cal., filed December19, 2016); *William Don Cook v. Ford Motor Company*, Case No. 2:19-cv-00335-ECM-GMB (M.D. Ala., filed May 8, 2019); *Sigfredo Rubio et al., vs. ZF-TRW Automotive Holdings Corp., et al.*, Case No. 2:19-cv-11295-LVP-RSW (E.D. Mich., filed May 3, 2019); *Weidman, et al. v. Ford Motor Co.*, Case No. 2:18-cv-12719 (E.D. Mich., filed August 30, 2018); *Gerrell Johnson v. Subaru of America, Inc. et al.*, Case No.

2:19-cv-05681-JAK-MAA (C.D. Cal., filed June 28, 2019); *Thondukolam et al., vs. Corteva, Inc., et al.*, Case No. 4:19-cv-03857 (N.D. Cal., filed July 3, 2019); *Dickman, et al. v. Banner Life Insurance Company, et al., Case No.* 1:16-cv-00192-WMN (D. Md., filed January 19, 2016); *Lesley S. Rich, et al. v. William Penn Life Insurance Company of New York*, Case No. 1:17-cv-02026-GLR (D. Md., filed July 20, 2017); *Vivian Farris, et al. v. U.S. Financial Life Insurance Company*, Case No. 1:17-cv-417 (S.D. Ohio, filed June 19, 2017); *In Re: Apple Inc. Device Performance Litigation*, Case No. 5:18-md-02827-EJD (N.D. Cal., filed April 5, 2018); *Intel Corp. CPU Marketing, Sales Practices and Products Liability Litigation*, Case No. 3:18-md-02828 (D.Or., filed April 5, 2018); *In Re: The Home Depot, Inc., Customer Data Security Breach Litigation*, Case No. Case 1:14-md-02583-TWT (N.D. Ga., filed November 13, 2014); *In Re: German Automotive Manufacturers Antitrust Litigation*, Case No. 3:17-md-02796-CRB (N.D. Cal., filed October 5, 2017); *In re: Domestic Airline Travel Antitrust Litigation*, Case No. 1:15-mc-01404-CKK (D.D.C., filed October 13, 2015); *In Re: Facebook, Inc., Consumer Privacy User Profile Litigation*; Case No. 5:18-md-02827-EJD (N.D. Cal., filed June 6, 2018); *Estrada v. Johnson & Johnson, et al.*, Case No. 2:14-cv-01051-TLN-KJN (E.D. Cal., filed April 28, 2014); *Larry Clairday, et al. v. Tire Kingdom, Inc., et al.*, No. 2007-CV-020 (S.D. Ga.); *Wimbreth Chism, et al. v. The Pantry, Inc. d/b/a Kangaroo Express*, No. 7:09-CV-02194-LSC (N.D. Ala.); *Danny Thomas, et al. v. Southern Pioneer Life Insurance Company*, No. CIV-2009-257JF, in the Circuit Court of Greene County, State of Arkansas*; Dolores Dillon v. MS Life Insurance Company n/k/a American Bankers Life Assurance Company of Florida*, No. 03-CV-2008-900291, in the Circuit Court of Montgomery County, Alabama; *Coates v. MidFirst Bank*, 2:14-cv-01079 (N.D. Ala., certified July 29, 2015); *Walls v. JP Morgan Chase Bank, N.A.*, 3:11-cv-00673 (W.D. Ky., certified October 13, 2016); *In re Volkswagen "Clean Diesel" Marketing, Sales Practices, and*

Products Liability Litig., 3:15-md-02672 (N.D. Cal., settlements approved October 25, 2016 and May 17, 2017); and *In re Takata Airbag Products Liability Litig.*, 1:15-md-02599 (S.D. Fla.). Beasley Allen's class action cases involve a variety of complex legal issues.

ii. Beasley Allen's Additional Experience as Lead or Co-Lead Counsel in Nationwide Complex Litigation

Beasley Allen is one of the country's leading firms involved in complex civil litigation on behalf of claimants, having represented hundreds of thousands of people. Attorneys from Beasley Allen have been selected by Federal Courts as lead counsel or co-lead counsel in the following complex multidistrict litigations:

a. *In Re Vioxx Products Liability Litigation*, United States District Court for the Eastern District of Louisiana, Judge Eldon E. Fallon, MDL No. 1657; (Andy Birchfield, Shareholder of Beasley Allen);

b. *In Re Reciprocal of America (ROA) Sales Practices Litigation*, United States District Court for the Western District of Tennessee, Judge J. Daniel Breen, MDL No. 1551; (Dee Miles and Jere Beasley, both Shareholders in Beasley Allen);

c. *In Re American General Life and Accident Insurance Company Industrial Life Insurance Litigation*, United States District Court for the District of South Carolina, Judge Cameron McGowan Currie, MDL No. 11429; (Dee Miles, Shareholder of Beasley Allen);

d. *In Re Dollar General Corp. Fair Labor Standards Acts Litigation*, United States District Court for the Northern District of Alabama, Western Division, Judge U.W. Clemon, MDL No. 1635; (Dee Miles, Shareholder of Beasley Allen);

e. *In re: Xarelto (Rivaroxaban) Products Liability Litigation*, District of Louisiana, Judge Eldon E. Fallon, Eastern MDL No. 2592;

f. *Johnson & Johnson Talcum Powder Products Marketing, Sales Practices, and Products Liability Litigation*, United States District Court for the District of New Jersey, Judge Freda L. Wolfson, MDL No. 2738 (Leigh O'Dell, Shareholder of Beasley Allen);

g. *Bruner et al v. Polaris Industries, Inc. et al*, United States District Court for the District of Minnesota, Judge David T. Schultz Case 0:18-cv-00939-WMW-DTS, 0:18-cv-00975-WMW-DTS (Dee Miles, Shareholder of Beasley Allen)[1];

h. *Weidman et al v. Ford Motor Company*, United States District Court of the Eastern District of Michigan, Judge Gershwin A. Drain, 2:18-cv-12719 (Dee Miles, Shareholder of Beasley Allen)[2].

i. *Sharon Cheng, et al. v. Toyota Motor Corporation, et al.*, United States District Court, Eastern District of New York, Judge William F. Kuntz, II, 1:20-cv-00629-WFK-CLP (Dee Miles, Shareholder of Beasley Allen)[3];

j. *Tucker Oliver, et al. v. Honda Motor Company Limited, et al.*, United States District Court, Eastern District of Alabama, Judge Madeline Hughes Haikala, 5:20-cv-006666-MHH (Dee Miles, Shareholder of Beasley Allen)[4]; and

k. *The K's Inc. v. Westchester Surplus Lines Insurance Company*, United States District Court, Northern District of Georgia, Judge William M. Ray, II, 1:20-cv-1724-WMR (Dee Miles, Shareholder of Beasley Allen).

iii. Beasley Allen's Leadership Appointments on Executive and/or Plaintiff Steering Committees in Complex Multidistrict Litigation

Beasley Allen has been appointed to the Plaintiff's Executive Committee and/or Steering Committee in many complex litigations. All of these multidistrict litigations involved multiple

[1] Beasley Allen was appointed as interim co-lead counsel.
[2] Beasley Allen was appointed as interim co-lead counsel.
[3] Beasley Allen was appointed as interim co-lead counsel.
[4] Beasley Allen was appointed as interim co-lead counsel.

claims against multiple defendants, which required excellent organization and leadership from our attorneys. Beasley Allen has been appointed to the following MDL complex litigation cases:

a. *In Re: Motor Fuel Temperature Sales Practices Litigation*, United States District Court for the Middle District of Kansas, Judge Kathryn Vratil, MDL No. 1840;

b. *Bextra/Celebrex, Bextra and Celebrex Marketing Sales Practices and Product Liability Litigation*, United States District Court for the Northern District of California, Judge Charles R. Breyer, MDL No. 1699;

c. *In Re: Vioxx Products Liability Litigation*, United States District Court for the Eastern District of Louisiana, Judge Eldon E. Fallon, MDL No. 1657;

d. *In Re: Actos (Pioglitazone) Products Liability Litigation*, United States District Court for the Western District of Louisiana, Judge Rebecca F. Doherty, MDL No. 2299;

e. *In Re: Zoloft (Sertraline Hydrochloride) Products Liability Litigation*, United States District Court for the Eastern District of Pennsylvania, Judge Cynthia M. Rufe, MDL No. 2342;

f. *In Re: Fosamax (Alendronate Sodium) Products Liability Litigation (No. II)*, United States District Court District of New Jersey, Judge Garrett E. Brown, Jr., MDL No. 2243;

g. *In Re: Fosamax Products Liability Litigation*, United States District Court, Southern District of New York, Judge John F. Keenan, MDL No. 1789;

h. *In Re: Depuy Orthopaedics, Inc. ASR Hip Implant Products Liability Litigation*, United States District Court for the Northern District of Ohio, Judge David A. Katz, MDL No. 2197;

i. *In Re: DePuy Orthopaedics, Inc. Pinnacle Hip Implant Products Liability Litigation*, US District Court for the Northern District of Texas, Judge Ed Kinkeade, MDL No. 2244;

j. *In Re: Biomet M2a Magnum Hip Implant Products Liability Litigation*, US District Court for the Northern District of Indiana, Judge Robert L. Miller, Jr., MDL No. 2391;

k. *In Re: Prempro Products Liability Litigation*, United States District Court, Eastern District of Arkansas, Western Division, Judge Billy Roy Wilson, MDL No. 1507;

l. *In Re: Mirena IUD Products Liability Litigation*, United States District Court, Southern District of New York, Judge Cathy Seibel, MDL No. 2434;

m. *In Re: Fresenius Granuflo/Naturalyte Dialysate Products Liability Litigation*, United States District Court, District of Massachusetts, Judge Douglas P. Woodlock, MDL No. 2428;

n. *In Re: American Medical Systems, Inc. Pelvic Repair Systems Products Liability Litigation*, United States District Court, Southern District of Ohio, Judge Joseph R. Goodwin, MDL No. 2325;

o. *In Re: C.R. Bard, Inc. Pelvic Repair Systems Products Liability Litigation*, United States District Court, Charleston Division, Judge Joseph R. Goodwin, MDL No. 2187;

p. *In Re: Boston Scientific Corp. Pelvic Repair Systems Products Liability Litigation*, United States District Court, Southern District of West Virginia, Judge Joseph R. Goodwin, MDL No. 2326;

q. *In Re: Ethicon, Inc. Pelvic Repair Systems Products Liability Litigation*, United States District Court, Charleston Division, Judge Joseph R. Goodwin, MDL No. 2327;

r. *In Re: Coloplast Corp. Pelvic Repair Systems Products Liability Litigation*, United States District Court, Charleston Division, Judge Joseph R. Goodwin, MDL No. 2387;

s. *In Re: Google Inc. Gmail Litigation*; United States District Court for the Northern District of California, San Jose Division, Judge Lucy H. Koh, MDL No. 2430;

t. *In Re Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices, and Products Liability Litigation*, United States District Court for the Central District of California, Judge James V. Selna, MDL No. 2151;

u. *In Re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation*; California Northern District (San Francisco), Hon. Charles R. Breyer, Case No. 3:15-md-02672-CRB;

v. *In Re: Xarelto (Rivaroxaban) Products Liability Litigation*, District of Louisiana, Judge Eldon E. Fallon, Eastern MDL No. 2592;

w. *In Re: Target Corporation Customer Data Security Breach Litigation*, United States District Court for the District of Minnesota, Judge Paul A. Magnuson, MDL No. 2522;

x. *In Re: Lipitor (Atorvastatin Calcium) Marketing, Sales Practices and Products Liability Litigation*, United States District Court for the District of South Carolina, Judge Richard M. Gergel, MDL No. 2502;

y. *In Re: Blue Cross Blue Shield Antitrust Litigation*, United States District Court for the Northern District of Alabama, Judge R. David Proctor, MDL No. 2406;

z. *In Re: Androgel Products Liability Litigation*, United States District Court for the Northern District of Illinois, Judge Matthew F. Kennelly, MDL No. 2545;

aa. *In Re: The Home Depot, Inc., Customer Data Security Breach Litigation*, United States District Court for the Northern District of Georgia, Judge, Thomas W. Thrash, Jr., MDL No. 2583;

bb. *In Re: Takata Airbag Products Liability Litigation*, United States District Court for the Southern District of Florida, Judge Federico A. Moreno, MDL No. 2599, serving on a discovery committee responsible for two Auto Manufacturer's discovery[5];

cc. *In Re: Chrysler-Dodge-Jeep EcoDiesel Marketing, Sales Practices and Products Liability Litigation*, United States District Court for the Northern District of California, Judge Edward Chin, MDL No. 2777;

[5] Discovery Committee appointment only.

dd. *In re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico,* United States District Court of the Eastern District of Louisiana, Judge Carl J. Barbier, MDL No. 2179;

ee. *In re: Invokana (Canagliflozin) Products Liability Litigation,* United States District Court District of New Jersey, Judge Lois H. Goodman, MDL No. 2750;

ff. *In re: Proton-Pump Inhibitor Products Liability Litigation,* United States District Court District of New Jersey, Judge Claire C. Cecchi, MDL No. 2789;

gg. *In Re: Apple Inc. Device Performance Litigation,* United States District Court for the Northern District of California, Judge Edward J. Davila, MDL 2827;

hh. *In Re: JUUL Labs, Inc. Marketing, Sales Practices & Products Liability Litigation,* United States District Court for the Northern District of California, Judge William H. Orrick, MDL 2913;

ii. *In re ZF-TRW Airbag Control Units Products Liability Litigation,* United States District Court Central District of California, Judge John A. Kronstadt, MDL No. 2905;

jj. *In Re: Zantac (Ranitidine) Products Liability Litigation,* United States District Court for the Southern District of Florida, Judge Robin L. Rosenberg, MDL No. 2924;

kk. *In Re: Rock 'N Play Sleeper Marketing, Sales Practices, and Products Liability Litigation,* United States District Court for the Western District of New York, Judge Geoffrey Crawford, MDL No. 1:19-mc-2903; and

ll. *In Re: Robinhood Outage Litigation,* United States District Court for the Northern District of California, Judge James Donato, Case No. 20-cv-01626-JD.

III. Qualifications of Beasley Allen Attorneys

Beasley Allen is comprised of highly qualified attorneys and staff that are well-equipped to be the co-lead counsel in handling any investigation and litigation. Our attorneys are some of the most qualified and experienced attorneys in the country.

On a firm-wide basis, national publications have profiled several Beasley Allen lawyers, including Forbes, Time Magazine, BusinessWeek, The New York Times, The Wall Street Journal, Jet Magazine, The National Law Journal, The ABA Journal, and Lawyers Weekly USA. Beasley Allen has also appeared nationally on Good Morning America, 60 Minutes, The O'Reilly Factor, CNN Live at Daybreak, CNN Headline News, ABC Evening News, CBS Evening News, NBC Evening News, FOX, National Public Radio, and Court TV.

Additionally, Beasley Allen attorneys have some of this country's largest verdicts and settlements in the following categories:

a. Largest verdict against an oil company in American history, $11,903,000,000, in *State of Alabama v. Exxon*, filed in the Circuit Court of Montgomery County, Alabama, Case No. CV-99-2368, Judge Tracy S. McCooey;

b. Largest environmental settlement in American history, $750,000,000, in *Tolbert v. Monsanto*, filed in the United States District Court for the Northern District of Alabama, Civil Action No. CV-01-1407PWG-S, Judge Paul W. Greene;

c. Largest predatory lending verdict in American history $581,000,000, in *Barbara Carlisle v. Whirlpool*, filed in the Circuit Court of Hale County, Alabama, Case No. CV-97-068, Judge Marvin Wiggins;

d. Largest average wholesale price litigation verdict, $215,000,000, in *State of Alabama v. AstraZeneca*, filed in the Circuit Court of Montgomery County, Alabama, Case No. CV-05-219.10, Judge Charles Price (Dee Miles as Co-Lead Counsel);

e. Second largest average wholesale price litigation verdict, $114,000,000, in *State of Alabama v. GlaxoSmithKline - Novartis*, filed in the Circuit Court of Montgomery County, Alabama, Case No. CV-05-219.52, Judge Charles Price (Dee Miles as Co-Lead Counsel);

f. Third largest average wholesale price litigation verdict, $78,000,000, in *State of Alabama v. Sandoz, Inc.*, filed in the Circuit Court of Montgomery County, Alabama, Case No. CV-05-219.65, Judge Charles Price (Dee Miles as Co-Lead Counsel);

g. Average wholesale price litigation verdict, $30,200,000, in *State of Mississippi v. Sandoz, Inc.*, filed in the Chancery Court of Rankin County, Mississippi, Case No. 09-00480, Judge Thomas L. Zebert (Dee Miles as Co-Lead Counsel);

h. Average wholesale price litigation verdict, $30,262.052, in *State of Mississippi v. Watson Laboratories, Inc., et al.*, filed in the Chancery Court of Rankin County, Mississippi, Case Nos. 09-488, 09-487, and 09-455, Judge Thomas L. Zebert (Dee Miles as Co-Lead Counsel);

i. Hormone Therapy Litigation Verdict, $72,600,000, *in Elfont v. Wyeth Pharmaceuticals, Inc., et al., Mulderig v. Wyeth Pharmaceuticals, Inc., et al., Kalenkoski v. Wyeth Pharmaceuticals, Inc., et al.*, filed in the County of Philadelphia, Court of Common Pleas, Case Nos. July Term 2004, 00924, 00556, 00933, Judge Gary S. Glazer;

j. Hormone Therapy Litigation Verdict, $5,100,100, in *Okuda v. Wyeth Pharmaceuticals, Inc.*, filed in the United States Distruct Court of Utah, Northern Division, Case No. 1:04-cv-00080-DN, Judge David Nuffer;

k. Talcum Powder Litigation Verdict, $72,000,000, in *Fox v. Johnson & Johnson, et al.*, filed in the Circuit Court of St. Louis City, Case No. 1422-CC03012-01, Judge Rex M. Burlison; and

l. Talcum Powder Litigation Verdict, $55,000,000, *in Ristesund v. Johnson & Johnson, et al.*, filed in the Circuit Court of St. Louis City, Case No. 1422-CC03012-01, Judge Rex M. Burlison.

Additionally, Beasley Allen maintains a full-time technology department comprised of six professionals who have successfully passed rigorous industry certification exams, in addition to an in-house graphics department that is responsible for designing, constructing, and presenting essential demonstratives and other presentations used in the courtroom and during mediations. These technological advancements not only allow Beasley Allen to successfully present the case for our clients at hearings and trial, but they allow our firm to stay in the forefront of multi-media and case management.