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 FINAL APPROVAL OF CLASS SETTLEMENT AND CERTIFICATION OF SETTLEMENT CLASS

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Plaintiffs respectfully submit this memorandum of law in support of the Parties' Joint Motion, pursuant to Federal Rules of Civil Procedure 23(e), for final approval of the settlement ("Settlement" or "Settlement Agreement")[1] of this action, certification of the proposed Class for settlement purposes only, confirmation of the Court's appointment of Class representatives and Class Counsel, 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 No. 138) but is a signatory to this Settlement.[2]

I. INTRODUCTION

In this automotive defect class action, the Parties agreed to a comprehensive Settlement that provides concrete, valuable benefits to the current and former owners and lessees of more than 4.9 million Toyota and Lexus vehicles and, in addition, the millions of consumers who become subsequent owners and lessees of those vehicles.

The Parties presented the Settlement to the Court in their Joint Motion for Preliminary Approval. ECF No. 165. The Court granted the motion on September 16, 2022 (ECF No. 167), finding that the Settlement is within the realm of possible judicial approval as fair, reasonable, and adequate. The Court should now confirm its initial finding and grant final approval of the Settlement because, as described below, the Settlement provides superior relief to all members of

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[1] A copy of the Settlement Agreement (cited as "SA") and Plaintiffs' Memorandum in Support of Joint Motion for Preliminary Approval were filed with the Court on September 7, 2022. ECF Nos. 162 and 165. Unless otherwise indicated, capitalized terms have the meanings given to them in the Settlement Agreement. SA, § II.

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

the Settlement Class and is procedurally fair. The Court should also confirm its conditional certification of the Settlement Class as it satisfies all of the requirements of Rules 23(a) and 23(b)(3).

As the Court is aware, this litigation arose from Toyota's January 13, 2020 Safety Recall 20V-012 of 700,000 Toyota and Lexus vehicles equipped with defective low-pressure fuel pumps manufactured by Denso. A fuel pump is a critical component that supplies fuel to the vehicle's fuel injection system while the engine is in operation. ECF No. 160, ¶ 3. In their NHTSA filings, Defendants admitted that the fuel pumps contain impellers that can deform due to excessive fuel absorption and interfere with the fuel pump body, which can "result in illumination of the check engine and master warning indicators, rough engine running, engine no start/or vehicle stall" and an increased risk of crash. ECF No. 160, ¶¶ 2, 4 ("Defective Fuel Pumps"). 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 dangerously Defective Fuel Pumps. *Id.*, ¶¶ 533-34.

After Plaintiff Sharon Cheng 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 (*id.*, ¶ 20), Toyota expanded the recall four times, adding 2.7 million vehicles to the Recall. The Recall now covers approximately 3.4 million Toyota and Lexus vehicles manufactured between 2013 and 2020 equipped with Defective Fuel Pumps.

In later amended complaints filed after similar cases were consolidated with this case, Plaintiffs alleged additional facts relating to the expanding recall population, set forth the findings of their independent automotive engineering expert ("Automotive Expert"), and asserted additional claims on behalf of statewide, multi-state and nationwide classes. ECF Nos. 59, 96, 106.

In January 2021, Defendants moved to dismiss each of Plaintiffs' 97 claims. The Parties briefed their positions on that motion until May 2021. During this period, the Parties were also actively engaged in discovery.

In March 2021, the Parties also began to explore the possibility of an early settlement. After eighteen months of arms' length negotiations, informed by additional confirmatory discovery and aided by Court-appointed Settlement Special Master Patrick A. Juneau after November 2021, the Parties reached the Settlement on September 7, 2022.

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, Ex. 1b) 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 in-service date of the vehicles. This means that each of the 1.4 million Additional Vehicles is automatically entitled to have its original Denso fuel pump swapped out for an improved replacement fuel pump that was reformulated and manufactured as a countermeasure to address the defect in the recalled fuel pumps ("Countermeasure Fuel Pumps"). 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 will be entitled to the benefit. SA, § III.A.1.

The Defective Fuel Pumps that gave rise to the Recall were the subject of intense scrutiny by Class Counsel, who reviewed and analyzed the voluminous discovery relating to their design, manufacture and operation, and by Plaintiffs' Automotive Expert, who studied and thoroughly tested the fuel pumps and their components. After conducting the tests and studying the results, the independent Automotive Expert concluded that the Defective Fuel Pumps' impeller was made of lower density material that makes it susceptible to deformation during operation, which in turn

can cause the fuel pump to degrade and, eventually, potentially fail altogether. Plaintiffs' Automotive Expert, who also extensively tested and analyzed the Countermeasure Fuel Pumps, determined that the impellers in those fuel pumps were made of sufficiently robust material such that they could be expected to function properly in their operating environment.

In addition to the relief under the CSP, 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. SA, § III.B.1. This valuable benefit also travels with the vehicle such that subsequent purchasers or lessees also will be entitled to the Extended Warranty. SA, § III.B.1.

Moreover, the owners and lessees of the 4.9 million Covered Vehicles and their subsequent purchasers and lessees are all entitled to free towing and loaner vehicles while their fuel pumps are being replaced or repaired.

The CSP and the Extended Warranty 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, thus addressing one of Plaintiffs' overarching concerns that led to the filing of this lawsuit. ECF No. 165, at 16. Toyota's free repairs under the CSP and the Extended Warranty, and complimentary towing and loaner vehicles to Class Members during the repairs, also ensures that Class Members will not incur any expenses for repairs that may become necessary to address problems with the fuel pumps in their vehicles in the future, thus fulfilling another major goal of the litigation. *Id.* These benefits have been valued by an independent valuation expert to

be no less than $212 million and up to $287 million. *See* concurrently-filed Declaration of Lee Bowron ("Bowron Decl."), ¶ 8.

The Settlement also includes an orderly and consumer-friendly out-of-pocket expense reimbursement program with no cap on the amount of reimbursements, a reconsideration procedure, and settlement oversight by Settlement Special Master Juneau. SA, § III.C-F.

The Settlement provides concrete, valuable benefits to Class members, satisfies the requirements of Rule 23(e)(2), and merits the Court's approval. Further, as set forth below, the proposed Class satisfies Rules 23(a) and 23(b)(3) and can be certified for settlement purposes.

Plaintiffs respectfully submit the Court should grant this motion in all respects.

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 was defective and can cause engines to stall and shut down, increasing the risk of a crash. *Id.* at ¶ 1. Plaintiff Cheng also alleged Toyota's 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 as those included in the recall but were not covered. *Id.* at ¶ 95.

On April 13, 2020, Plaintiff Cheng filed her First Amended Class Action Complaint ("FAC"), adding (1) new plaintiffs; (2) Denso and its parent, Denso Corporation,[3] the makers 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. ECF No. 34.

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.[4] 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, Plaintiff Cheng, together with 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 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 the undersigned Class Counsel as interim Class Counsel and appointed a Plaintiffs' Steering Committee comprised of Finkelstein & Krinsk LLP

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[3] Denso Corporation ("Denso Corp.") was dismissed from this Action pursuant to a tolling agreement.

[4] One additional complaint, *Jose Ruis, et al. v. Toyota Motor North America, Inc. et al.*, 2:20-cv-12600 (D.N.J.), was filed on September 11, 2020, and made similar allegations to the cases above. *Ruis* was dismissed without prejudice on September 23, 2020. SA, at 4, n.4.

("Finkelstein & Krinsk"), Spector Roseman & Kodroff, P.C. ("Spector Roseman"), Wolf Haldenstein Adler Freeman & Herz LLP ("Wolf Haldenstein"), and Hagens Berman Sobol Shapiro LLP ("Hagens Berman"). *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 plaintiffs and asserted additional claims. All in all, there were 33 plaintiffs named and 97 causes of action for violations of state consumer protection statutes; breaches of express warranty; breaches of implied warranty; negligent recalls/undertakings; unjust enrichment; strict products 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. The briefing included over 303 total pages of detailed legal and factual analyses of complex issues covering the 33 Plaintiffs and 97 causes of action from 16 states described above, with briefing related to issues such as Defendants' knowledge of the defect and their duty to disclose it; whether the economic loss doctrine barred Plaintiffs' claims; statutes of limitations and whether the claims could be tolled; and vertical privity with a vehicle manufacture and part supplier, among other issues. Due to progress in the Parties' ongoing settlement negotiations, Defendants withdrew their Motions on March 1, 2022. ECF Nos. 152-153.

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' Interrogatories with verification. Also on September 9, 2021, TMNA served its Response to Plaintiffs' Interrogatories with verification. Additionally, Defendants produced volumes of documents responsive to Plaintiffs' requests, and Plaintiffs, TMNA, and Denso served their written Initial Disclosures on November 2, 2020.

On November 3, 2021, the Court appointed Patrick A. Juneau as settlement special master. ECF No. 148.

On September 7, 2022, Plaintiffs filed their Third Amended Consolidated Class Action Complaint ("TACC"), ECF No. 160, along with the Parties' Joint Motion for Entry of an Order Granting Preliminary Approval of Class Action Settlement, ECF No. 161, the Settlement Agreement, ECF No. 162, and the Parties' respective Motions in Support. ECF Nos. 163-165.

On September 16, 2022, this Court entered its Order preliminarily approving class settlement, directing notice to the Class, and scheduling a fairness hearing for December 14, 2022. ECF No. 167 ("Preliminary Approval Order"). The Court also appointed Class Counsel and Class Representatives for purposes of the Settlement. *Id*

As directed in the Preliminary Approval Order, notice of the Settlement was distributed in accordance with the Court-approved Notice Program. The approved Direct Mail Notice was sent by first-class mail on a rolling basis beginning on approximately September 19, 2022, to each person within the Settlement Class who could be identified based on data provided by IHS Automotive, Driven by Polk. Notice of the Settlement was also distributed via a number of publications, social media, and Internet channels. *Id*. In addition, the Long Form Notice of the Settlement and other key documents from this litigation, including the Motion for Preliminary Approval and supporting materials, were published on the official settlement website at www.ToyotaFuelPumpsSettlement.com. Notice was substantially completed on November 11, 2022. *See* concurrently-filed Joint Declaration of W. Daniel "Dee" Miles, III and Demet Basar in Support of Plaintiffs' Motion for Attorneys' Fee, Expenses, and Service Awards to the Class Representatives, at ¶ 12.

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 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 Defective Fuel Pumps, which were on NHTSA's website and other public fora. Plaintiffs alleged that nonetheless Defendants nonetheless 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 defective 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 concluded they can be expected to function as intended.

III. THE SETTLEMENT

A. The Settlement Class and Class Representatives

The Settlement Class consists of:

> All individuals or legal entities who, at any time as of the entry of the Initial Notice Date, own or owned, purchase(d) or lease(d) Covered Vehicles 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) Denso, its officers, directors and employees; its affiliates and affiliates' officers, directors and employees; its distributors and distributors' officers, directors and employees; (c) Plaintiffs' Counsel; and (d) judicial officers and their immediate family members and associated court staff assigned to this case. In addition, persons or entities are not Class Members once they timely and properly exclude themselves from the Class, as provided in this Settlement Agreement, and once the exclusion request is finally approved by the Court.

ECF No. 162, ¶ 10.

The Court-appointed 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. ECF No. 167. Plaintiffs respectfully submit Class Representatives, each of whom devoted substantial time and effort in this case, should be confirmed as Class Representatives.

B. 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 (1) analyzed their operation, (2) their specifications, and (3) the density of their impellers. ECF 165-1, Jt. Decl., ¶¶ 19-22.

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. *Id.*

C. 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. ECF No. 165-1, Jt. Decl., at ¶ 20. Plaintiffs, with the goal of obtaining immediate valuable benefits for Class Members, and Defendants began to explore the possibility of an early resolution with Defendants even while Defendants' motions to dismiss were being vigorously litigated and the Parties were engaged in substantial fact discovery. *Id.*

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. ECF No. 165-1, Jt. Decl., at ¶ 21. Class Counsel and Defendants' counsel had numerous Zoom meetings and 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. *Id.* Numerous drafts of the Settlement Agreement and its exhibits were exchanged, which Counsel carefully negotiated and refined before a final agreement could be reached. *Id.* 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. *Id.*, ¶¶ 20-22.

D. The Benefits to the Class Under the Settlement Agreement

1. Customer Support Program for Additional Vehicles

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.[5] 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.

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 take advantage of the Extended New Parts Warranty are also entitled to participate in the free Loaner Vehicle/Towing Program. SA, § III.B.3. Class Members who have SSC Vehicles will also be entitled to these benefits under any related future recall. SA, § III.B.C.

3. The Loaner/Towing Program

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, Toyota, through its dealers, will use good faith efforts to

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

provide one. Class Members whose Covered Vehicles are undergoing repair are also entitled to free towing. SA, §§ III.A.2, III.B.2.

4. Reconsideration Procedure for CSP and Extended New Parts Warranty

The Settlement has a streamlined reconsideration procedure which requires little effort by Class members. If a Class member and/or subsequent purchaser or lessee of a Covered Vehicle is denied coverage for repairs under the CSP or Extended Warranty, she may take her 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 fuel pump, the Class member and/or subsequent purchaser or lessee will be provided the benefits. SA, § III.D.1.

5. Reimbursement for Out-of-Pocket Costs Claims Process

All Settlement Class Members who incurred expenses to repair or replace the Fuel Pumps in Covered Vehicles, including rental vehicle and towing expenses, either before notice of the Settlement, or between the date of notice and the Final Effective Date of the Settlement (if repaired by a Toyota dealer), are entitled to claim reimbursement. SA, § III.C. Former owners and lessees of the Covered Vehicles, like current owners and lessees, are entitled to participate in the expense reimbursement program. There is no cap on the amount of reimbursements.

The Out-of-Pocket Claims Process is consumer-friendly and fast. Claims may be submitted on the Settlement website or by mail. If Class Members don't have invoices or receipts to corroborate an expense, they can submit a sworn statement establishing the nature and amount of the expense incurred. SA, § III.C.2; II.50. If a Claim is determined to be deficient, a notice of deficiency will be mailed or emailed to the Class Member, requesting the Class Member to complete and/or correct the deficiencies for resubmission within sixty (60) days. SA, § III.C.5. 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 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 the Parties' Counsel within sixty (60) days of the rejection. SA, § III.C.5.b. While the decision of the Settlement Claims Administrator will be final, Counsel may resolve any denied Claims and jointly recommend payment. *Id.* If Counsel agree with the initial determination, the Settlement Claims Administrator will make the final determination as to whether a Claim will be paid and the Class member will be notified accordingly. *Id.*

For any checks that are uncashed by Class Members after 90 days, the Settlement Notice Administrator will seek to contact the Class Member and have them promptly cash the checks or, alternatively, the Settlement Notice Administrator will reissue the checks. SA, § III.C.8. If the Settlement Notice Administrator is unsuccessful 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.*

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.

6. Settlement Oversight by Settlement Special Master Juneau and Class Counsel

The Settlement has a fulsome dispute resolution procedure and will be overseen by Settlement Special Master Juneau. 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

Settlement, the dispute will be referred to the Settlement Special Master, Class Counsel and Defendants' 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 Special Master within thirty (30) days. *Id.* The Settlement Special Master 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. The Settlement Special Master's determination will then be implemented within thirty (30) days. 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 the 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 directed in the Preliminary Approval Order, the Settlement Notice Administrator implemented the Court-approved Notice Program, which was substantially completed on November 11, 2022. The Settlement Notice Administrator will file a declaration on December 5, 2022, setting forth the results of the Notice Program. ECF No. 167.

E. The Release

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

> [T]o 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 is posted on the Settlement Website.

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

After the Parties reached 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 Juneau. The Parties accepted Settlement Special Master Juneau's recommendation. The Long Form Notice, which is on the Settlement website, states that Plaintiffs' Counsel will "ask the Court for an award of attorneys' fees in the amount of $28,500,000.00 and for reimbursement of their out-of-pocket costs and expenses in an amount not to exceed $500,000.00." *See* www.ToyotaFuelPumpsSettlement.com, Long Form Notice, at §15. The Long Form Notice also states that Class Counsel will ask the Court to award service awards to Class Representatives in the amount of $3,500 or $2,500, with Class Representatives who had their vehicles inspected by the Defendants petitioning for the higher amount. SA, § IX.

Concurrently with this Motion, Plaintiffs are filing their Unopposed Motion for Attorneys' Fees, Expenses, and Service Awards, in which they seek an award of attorneys' fees of

$28,500,000; for reimbursement of $344,729.69 in unreimbursed litigation expenses; and for $2,500 each for the Class Representatives in this Action in recognition of their contributions to the successful prosecution of this case.[6] As set forth in that motion, the fee request represents 13.4% of the low end of the value of the CSP and Extended Warranty, which is $212,000,000, and only 9.9% of the high end of the valuation, $287,000,000. *See* Bowron Decl., ¶ 8.[7]

Any awarded amounts will be paid by Defendants into a Qualified Settlement Fund established by the Court. SA, § VIII.A. Further, the resolution of Plaintiffs' motion for fees, expenses and Class Representative service amounts will not affect whether the Final Order and Final Judgment are final and will not be grounds for cancellation or termination of the Settlement Agreement. SA, § IX.E.

IV. ARGUMENT

A. The Settlement Merits this Court's Final Approval

Federal Rule of Civil Procedure 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). To determine whether that requirement is met, a court must consider: (A) the adequacy of the representation by the class representatives and class counsel; (B) whether the proposal was negotiated at arms' length; (C) the adequacy of the relief that the proposed settlement provides for

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6 Ultimately, no Class Representative was eligible to seek the $3,500.00 award.

7 The $212,000,000 represents the estimated out-of-pocket costs that Class Members would incur absent the relief in the CSP ($164,700,000) and the Extended Warranty ($47,300,000). S*ee* Bowron Decl., ¶¶ 23-26, 31. The 287,000,000 represents the same estimated out-of-pocket costs that would be incurred absent the CSP (because it is a one-time replacement) but, for Class Members who are eligible for the Extended New Parts Warranty, the estimated retail price of a service contract with the same coverage as the Extended Warranty ($122,300,000). *Id.,* ¶¶ 27-34.

the class; and (D) whether all members of the class are treated equitably relative to each other under the terms of the proposed settlement. Fed. R. Civ. P. 23(e)(2)(A)-(D).

As detailed in Plaintiffs' memorandum in support of the Parties' Joint Preliminary Approval Motion (ECF No. 165 at 19-40), which is incorporated herein by reference, the Settlement satisfies all elements of Rule 23(e)(2). The Class Representatives and Class Counsel zealously represented the Class throughout the litigation; the Settlement was negotiated by experienced and informed attorneys at arms' length; the Settlement provides significant benefits to the Settlement Class, including relief that addresses the problems which led Plaintiffs to bring this litigation; and all members of the Class are treated equitably in relation to one another. As such, the Settlement is fair, reasonable and adequate under Rule 23(e)(2).

The Settlement also satisfies the requirements of *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir. 1974) (reversed on other grounds), which sets forth nine factors for courts to consider in assessing final approval of class action settlements. Courts in the Second Circuit, including in this District, continue to apply the *Grinnell* factors after the 2018 amendment to Rule 23(e)(2). *See Mendez v. MCSS Rest. Corp.*, 2022 WL 3704591, at *7 (E.D.N.Y. Aug. 26, 2022) (applying *Grinnell* factors in considering final approval of a proposed class action settlement); *In re Restasis (Cyclosporine Ophthalmic Emulsion) Antitrust Litig.*, 2022 WL 3043103, at *5 (E.D.N.Y. Aug. 2, 2022) ("District courts in this Circuit, accordingly, have considered the *Grinnell* factors in tandem with the factors set forth in Rule 23(e)(2).").

In *Grinnell*, the Second Circuit held that the following should be considered in evaluating a class action settlement:

> (1) the complexity, expense and likely duration of the litigation, (2) the reaction of the class to the settlement, (3) the stage of the proceedings and the amount of discovery completed, (4) the risks of establishing liability, (5) the risks of establishing damages, (6) the risks of maintaining the class action through the trial,

> (7) the ability of the defendants to withstand a greater judgment, (8) the range of reasonableness of the settlement fund in light of the best possible recovery, [and] (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

495 F.2d at 463 (internal citations omitted); *see also Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96 (2d Cir. 2005) (citing *Grinnell* factors). In finding that a settlement is fair, reasonable and adequate, "not every factor must weigh in favor of settlement, rather the court should consider the totality of these factors in light of the particular circumstances." *Flores v. CGI Inc.*, 2022 WL 13804077, at *6 (S.D.N.Y. Oct. 21, 2022); *In re Virtus Inv. Partners, Inc.*, 2018 WL 6333657, at *2 (S.D.N.Y. Dec. 4, 2018) (internal quotation and citation omitted.) Moreover, "a presumption of fairness, adequacy, and reasonableness may attach if the Court finds that arm's length negotiations took place between experienced counsel after a period of meaningful discovery." *Mendez*, 2022 WL 3704591, at *4 (citing *Wal-Mart Stores, Inc*., 396 F. 3d at 116; Manual for Complex Litigation, Third, § 30.42 (1995)).

1. The Complexity, Expense, and Likely Duration of the Litigation Support Approval of the Settlement.

The first *Grinnell* factor is clearly satisfied. "Most class actions are inherently complex and settlement avoids the costs, delays and multitude of other problems associated with them." *In re Austrian & German Bank Holocaust Litig.*, 80 F. Supp. 2d 164, 174 (S.D.N.Y. 2000). Nationwide automotive class actions like this one are no exception and, indeed, are often among the most complex class actions. *See generally In re Gen. Motors Corp. Pick–Up Truck Fuel Tank Prods. Liab. Litig.,* 55 F.3d 768, 812 (3d Cir.1995) (recognizing complexity of class action involving "web of state and federal warranty, tort, and consumer protection claims"); *In re Nissan Radiator/Transmission Cooler Litig.*, 2013 WL 4080946, at *16 (S.D.N.Y. May 30, 2013) ("This nationwide class action involves an alleged defect in three different vehicle models over six model

years. The complexity and magnitude of the litigation weigh in favor of the reasonableness of the award sought.").

This case involves nationwide class claims, multi-state class claims, and single-state class claims on behalf of 33 named Plaintiffs and approximately 4,900,000 absent Class members each of whom purchased or leased a Covered Vehicle. Covered Vehicles consist of over 30 models of Toyota and Lexus vehicles produced at different times ranging from 2013-2020. Defendants moved to dismiss Plaintiffs' 400-page Second Amended Consolidated Class Action Complaint, which asserted 97 different causes of action under the laws of 16 states, with supporting briefs that contained a multitude of complex legal arguments. ECF Nos. 129-130. Plaintiffs, after analyzing Defendants' arguments, conducted voluminous research, and submitted a combined opposition brief of nearly 100 pages. ECF No. 131.

Class Counsel developed the technical details concerning the Defective Fuel Pumps necessary to propound targeted discovery, as well as manage, review, and process substantial multi-defendant discovery. The Defect, which is in a part within a bigger part – the impeller in a fuel pump – was intrinsically complex with multiple contributing factors and required highly technical and specialized discovery and expert work. After Toyota rolled out the Recall remedy, Class Counsel, together with the Automotive Expert, analyzed the efficacy of the Countermeasure. Between March 2021 and September 7, 2022, when the Settlement Agreement was executed, Class Counsel also engaged in extensive negotiations which required analysis of highly technical and voluminous confirmatory discovery, and interviews of Toyota and Denso engineers. As of November 15, 2022, Plaintiffs' Counsel devoted over 11,620 hours working on this complex class action litigation. *See Caballero v. Senior Health Partners, Inc.*, 2018 WL 6435900, at *3

(E.D.N.Y. Dec. 7, 2018) (finding first *Grinnell* factor met where counsel had expended thousands of hours and that time would escalate were litigation to continue).

Plaintiffs reasonably expect that this case, if not settled, would continue to be zealously contested, and the Class would incur significant expense and delay. It would take significant time and expense to bring the Class through the motions to dismiss, to complete fact discovery, brief and argue class certification and summary judgment motions, conduct a trial, and litigate appeals. Such protracted litigation and high expenses weigh strongly in favor of Settlement approval.

Moreover, if litigation were to proceed, a great deal of additional expert work would be required to address key components of the claims and damages. Allegations of product defects like those asserted here almost always 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, and the existence and quantum of damages, would all be the subject of expert testimony. Expert testimony significantly increases the expense of litigation.

Given the likelihood of lengthy and complex litigation before this Court, the risks involved in such litigation, and the probability of appellate practice, the availability of prompt relief under the Settlement is highly beneficial to the Settlement Class. *See, e.g., In re Pfizer, Inc. S'holder Derivative Litig.*, 780 F. Supp. 2d 336, 343 (S.D.N.Y. 2011) (settlement approved where benefits achieved "loom large when compared with the substantial possibilities that plaintiffs would have lost their case altogether.").

This factor weighs strongly in favor of final approval of the Settlement.

2. The Reaction of the Class to the Settlement

Under the second *Grinnell* factor, "[i]f only a small number of objections are received, that fact can be viewed as indicative of the adequacy of the settlement." *In re Payment Card*

Interchange Fee & Merch. Disc. Antitrust Litig., 2019 WL 6875472, at *16 (E.D.N.Y. Dec. 16, 2019), judgment entered, 2022 WL 2803352 (E.D.N.Y. July 18, 2022). citing *Wal-Mart*, 396 F.3d at 118 (quoting 4 NEWBERG § 11.41). The objection deadline is November 25, 2022, which post-dates this motion, but it bears noting that, as of filing, after a nearly two-month Notice Program directed at the owners and lessees of 4.9 million Covered Vehicles, there have been only two objections to the Settlement. *See D'Amato v. Deutsche Bank*, 236 F.3d 78, 86-87 (2d Cir. 2001) (18 objections from a class of 27,883 weighed in favor of settlement). Plaintiffs will address objections in full in their supplemental memorandum in support of this Motion to be filed on December 9, 2022.

3. The Stage of the Proceedings and the Amount of Discovery Completed Support Approval of the Settlement.

The third *Grinnell* factor also militates in favor of final approval of the Settlement. "When counsel has sufficient information to appreciate the merits of the case, settlement is favored." *Caballero by Tong v. Senior Health Partners, Inc.*, 2018 WL 4210136, at *12 (E.D.N.Y. Sept. 4, 2018) (citing *Velez v. Novartis Pharm. Corp.*, 2010 WL 4877852, at * 13 (S.D.N.Y. Nov. 30, 2010)).

Here, prior to entering into the Settlement, Plaintiffs had the benefit of (1) extensive pre-suit research, (2) review of hundreds of consumer complaints, (3) consultation with their independent Automotive Expert, (4) a thorough examination and evaluation of the components of over 100 Defective Fuel Pumps, (5) review of approximately 655,000 documents containing roughly 1.5 million pages provided by Defendants as part of formal discovery, (6) review of hundreds of pages of additional internal documents, including voluminous warranty data spreadsheets and detailed information about the Countermeasure Fuel Pumps, which Class Counsel reviewed, analyzed, and discussed with their Automotive Expert, and (7) interviews with

Toyota and Denso engineers with extensive knowledge about the Recall, the Defective Fuel Pumps and the Countermeasure Fuel Pumps.

The information Class Counsel obtained during this rigorous investigation allowed them to meaningfully assess Defendants' proposals for addressing the problems with the operation of the Defective Fuel Pumps. Plaintiffs entered into the Settlement only after achieving a thorough understanding of the issues raised and risks encountered in the case.

Thus, this factor too strongly supports final approval of the Settlement.

4. The Risks of Establishing Liability and Damages Support Approval of the Settlement.

The fourth and fifth *Grinnell* factors, which concern the risks of establishing liability and damages, respectively, are often considered together and also support final approval. *See, e.g., Spagnuoli v. Louie's Seafood Rest.*, LLC, 2018 WL 7413304, at *4 (E.D.N.Y. Sept. 27, 2018); *see also In re Virtus Inv. Partners, Inc.*, 2018 WL 6333657, at *2 (S.D.N.Y. Dec. 4, 2018). If Plaintiffs were to continue the prosecution of their claims, Plaintiffs would have to face several significant hurdles establishing liability and damages, at great cost and risk to Plaintiffs and the Class. As a result, there is substantial uncertainty about the ultimate outcome of this litigation. 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.

While Plaintiffs are confident in their positions, Plaintiffs face significant risk on Defendants' motions to dismiss currently pending before the Court. In a similar consumer protection class action involving Denso fuel pumps against a different auto manufacturer, the court district recently dismissed the majority of plaintiffs' claims. *See Cohen v. Subaru of Am., Inc.*, 2022 WL 714795 (D.N.J. Mar. 10, 2022) (granting in part and denying in part Denso's motion to dismiss; 20 of nearly 60 claims survived); *Cohen v. Subaru of Am., Inc.*, 2022 WL 721307, at *16

(D.N.J. Mar. 10, 2022) (granting in part and denying in part Subaru's motion to dismiss, but against the Subaru; 28 of nearly 50 claims survived). Moreover, allegations of product defects like those asserted here would have required expert showings on whether the fuel pumps' impellers were defective, whether the alleged defect is present in all the Class Vehicles, whether the defect poses an unreasonable risk to harm, pre-sale knowledge, and Toyota's and Denso's affirmative defenses, such as whether Plaintiffs' claims are timely under relevant statutes of limitations. To establish liability and damages Plaintiffs would have to rely on, in part, experts, "which always adds an element of uncertainty as to the outcome." *In re Sterling Foster & Co., Inc., Securities Litig*., 238 F.Supp.2d 480, 484–85 (E.D.N.Y. 2002); *In re Signet Jewelers Ltd. Sec. Litig.*, 2020 WL 4196468, at *11 (S.D.N.Y. July 21, 2020) ("There is no way to predict with any certainty which expert's opinions the jury would have accepted."); *Simerlein v. Toyota Motor Corp*., 2019 WL 2417404, at *21 (D. Conn. June 10, 2019) ("heavy reliance on expert testimony 'often increases the risk that a jury may not find liability or would limit damages.'") (citation omitted).

Balanced against such risks, the Settlement, which has been valued at between $212 and $287 million, is an excellent result. The fourth and fifth *Grinnell* factors support final approval of the Settlement.

5. The Risks of Maintaining the Class Action through Trial Support Approval of the Settlement.

The sixth Grinnell factor, the risks of maintaining the litigation as a class action through trial, also favors final approval.

Here, as part of the Settlement, Defendants have stipulated to certification of the Settlement Class for settlement purposes only. If there was no Settlement, securing certification of a nationwide class, multi-state or state-wide classes is far from certain, and 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 has proved an insurmountable hurdle for many proposed consumer classes. *See, e.g., Singleton v. Fifth Generation, Inc.*, 2017 WL 5001444, at *20- 22 (N.D.N.Y. Sept. 27, 2017); *Hughes v. The Ester C Co., NBTY, Inc.*, 320 F.R.D. 337, 344 (E.D.N.Y. 2017). 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, Defendants can be expected to argue that bringing an array of state law claims may present serious manageability issues or irreconcilable 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., Luppino v. Mercedes Benz USA*, 718 F. App'x 143, 148 (3d Cir. 2017); *Tomassini v. FCA US LLC*, 326 F.R.D. 375, 391 (N.D.N.Y. 2018); *Oscar v. BMW of N. Am., LLC*, 2012 WL 2359964 (S.D.N.Y. June 19, 2012); *Nguyen v. Nissan N. Am., Inc.*, 2018 WL 1831857 (N.D. Cal. Apr. 9, 2018); *Daigle v. Ford Motor Co.*, 2012 WL 3113854 (D. Minn. July 31, 2012); *Cholakyan v. Mercedes-Benz USA, LLC*, 281 F.R.D. 534 (C.D. Cal. 2012); *In re Ford Motor Co. E-350 Van Prods. Liab. Litig.*, 2012 WL 379944 (D.N.J. Feb. 6, 2012). Furthermore, even if a nationwide or any state-wide or multi-states classes were to be certified, they are subject to the risk of 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)).

Even if one or more classes were to be certified, there would be additional extensive motion practice, including one or more summary judgment motions, and, assuming Plaintiffs could go forward with one or more of their claims, an expensive trial and, no doubt, appeals would ensue. Absent settlement, Plaintiffs and Class Members would incur significant expense and delay, both of which 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 Cymbalista*, 2021 WL 7906584 at *4 ("Settlement of class actions and complex litigation is strongly favored by public policy and the courts").

This factor thus supports approval of the Settlement.

6. Defendants' Ability to Withstand Greater Judgment.

Under the seventh *Grinnell* factor, courts consider the ability of the defendants to withstand a greater judgment, but a "[d]efendant's ability to withstand a greater judgment, standing alone, does not suggest that the settlement is unfair." *See Mendez v. MCSS Rest. Corp.*, 2022 WL 3704591, at *8 (E.D.N.Y. Aug. 26, 2022); *Spagnuoli v. Louie's Seafood Rest., LLC*, 2018 WL 7413304, at *5 (E.D.N.Y. Sept. 27, 2018); *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 2019 WL 6875472, at *27. Thus, courts do not hesitate to approve settlements providing valuable relief, such as the CSP, Extended Warranty and Out-of-Pocket Claim Process in this Settlement, even when the defendant may be able to fund a bigger settlement. *See, e.g., In re Sony SXRD Rear Projection TV Class Action Litig.*, 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.).

Thus, the seventh *Grinnell* factor is no impediment to final approval of the Settlement.

7. The Range of Reasonableness of the Settlement Fund in Light of the Best Possible Recovery and in Light of All of the Attendant Risks of Litigation.

The final two *Grinnell* factors – "the range of reasonableness of the settlement in light of the best possible recovery, and the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation, are two *Grinnell* factors that are often combined for the purposes of analysis." *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 2019 WL 6875472, at *28; *In re Virtus Inv. Partners, Inc.*, 2018 WL 6333657, at *2. "In considering the reasonableness of the settlement fund, a court must compare the terms of the compromise with the likely rewards of litigation." *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 2019 WL 6875472, at *28 (internal quotation marks omitted). Further, in considering the reasonableness of a settlement, "the question for the Court is not whether the settlement represents the highest recovery possible…but whether it represents a reasonable one in light of the many uncertainties the class faces…." *Id.*, at 29; *In re Citigroup, Inc. Sec. Litig.*, 965 F. Supp. 2d 369, 384 (S.D.N.Y. 2013). Indeed, "[t]he fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved." *Grinnell*, 495 F.2d at 455.

In this Settlement, Toyota and Denso agreed to provide the following relief:

<table>
<tr><th></th><th colspan="2">Relief</th></tr>
<tr><td>Additional Vehicles</td><td rowspan="2">Reimbursement for previous out-of-pocket repairs, including parts, labor, towing and rental expenses.</td><td>Implement a customer support program (“CSP”), providing coverage for original Denso Fuel Pumps for 15-years from the date of the original sale, including parts, labor, towing, and rental vehicle.</td></tr>
<tr><td>Subject and SSC Vehicles</td><td>Extended the warranty of the Countermeasure Fuel Pump kit to 15-years from July 15, 2021, or 150,000 miles, whichever comes first, including parts, labor, towing, and rental vehicle.</td></tr>
</table>

ECF No. 165 at 12-16.

In contrast to the risks of continued litigation, as described above, the Settlement will confer significant immediate benefits to the Class that outweigh the costs, risks, and delay of continued litigation. This strongly supports final 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.*, 2006 WL 2572114, at * 4 (S.D.N.Y. Sept. 6, 2006) (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 *7 (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.*,

2008 WL 1956267, at *8 (repair or replacement of defective part, warranty extension, and reimbursement of repair costs).

Here, the Customer Support Program and Extended New Parts Warranty provide prospective coverage for repairs for the fuel pumps in the Covered Settlements with the precise goal of ensuring that the 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* TACC (ECF No. 160), Request for Relief at 385-386. Thus, while automobile repair and reimbursement-centered settlements do not provide for monetary relief, they still "provide Class members with much of the relief they seek" and merit approval. *Skeen v. BMW of N. Am., Ltd. Liab. Co.*, 2016 WL 4033969, at *16 (D.N.J. July 26, 2016) (approving settlement consisting largely of repairs and reimbursement).

Moreover, the relief obtained here far exceeds the relief obtained in other recent automotive class action settlements. For example, in *Oliver v. BMW of N. Am., LLC*, 2021 WL 870662, at *2 (D.N.J. Mar. 8, 2021), the warranty was extended to 7 years/84,000 miles, reimbursements were capped, and class members were provided a one-year replacement part warranty. But here, coverage for the Additional Vehicles is 15-years from in-service date, for the Recalled and SSC vehicles, the New Parts Warranty on the Countermeasure Fuel Pump kit is extended 15-years/150,000 miles, and reimbursement for repairs, parts, towing, and rental is uncapped. In *Kommer v. Ford Motor Co.*, 2020 WL 7356715, at *2 (N.D.N.Y. Dec. 15, 2020), the settlement covered only current owners and provided for reimbursement of out-of-pocket expenses capped between $200-$400. But here, the Settlement applies to all current *and* former owners and lessees, and reimbursements are uncapped. In *In re Nissan Radiator/Transmission Cooler Litigation*, 2013 WL 4080946 (S.D.N.Y. May 30, 2013), Nissan extended the warranty to 10-years or 100,000 miles and provided capped reimbursement for repair and towing costs only. But here, the warranty

is extended to 15-years/150,000 miles and provides uncapped reimbursement for repairs, labor, towing, and rental. *See also Klee v. Nissan North America, Inc.,* 2015 WL 4538426 (C.D. Cal. July 7, 2015) (extended the warranty for 60 months or 60,000 miles, which occurs first with no reimbursement); *Chess v. Volkswagen Grp. of Am., Inc.*, 2022 WL 4133300, at *2 (N.D. Cal. Sept. 12, 2022) (extended warranty only to 9 years/90,000 miles, and only *one* repair is reimbursable at capped amounts and only within 140 days).

Accordingly, Plaintiffs submit that the Settlement is well within the range of reasonableness and is unquestionably superior to the very real possibility of no recovery at all. Thus, the last two *Grinnell* factors support final approval of the Settlement.

B. In Addition to Warranting Approval under the *Grinnell* Factors, the Settlement Is Procedurally Fair.

"In addition to ensuring the substantive fairness of the settlement through full consideration of the *Grinnell* factors, the Court must also 'ensure that the settlement is not the product of collusion.'" *In re Global Crossing*, 225 F.R.D. 436, 461 (S.D.N.Y. 2004) (quoting *In re NASDAQ Market-Makers Antitrust Litig.*, 187 F.R.D. 465, 474 (S.D.N.Y. 1998)). 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)); *see Mendez v. MCSS Rest. Corp*., 2022 WL 3704591, at *5 (E.D.N.Y. Aug. 26, 2022) ("If the settlement was achieved through experienced counsels' arm's-length negotiations, 'absent fraud or collusion, courts should be hesitant to substitute [their] judgment for that of the parties who negotiated the settlement.'") (quoting *Lora v. To-Rise LLC*, 2020 WL 8921400, at *7, 2020 U.S. Dist. LEXIS 252212, at *21-22 (E.D.N.Y. June 3, 2020)). Moreover, "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) (citation omitted).

Here, as described above, the settlement negotiations were arms'-length, good faith and intensive, lasting 18 months. Class Counsel have substantial experience serving as class counsel in a multitude of complex class actions, and, as such, were well- positioned to assess the benefits of the Settlement balanced against the strengths and weaknesses of their claims and Defendants' defenses. Moreover, Settlement Special 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*., 2013 WL 1828598, at *2 (S.D.N.Y. Apr. 30, 2013); *see Elkind v. Revlon Consumer Prod. Corp.*, 2017 WL 9480894, at *17 (E.D.N.Y. Mar. 9, 2017), report and recommendation adopted, 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.").

Plaintiffs' Counsel uniformly endorse the Settlement as fair, reasonable, and adequate. (ECF Nos. 176-1 – 176-6). In addition, all 33 of the Class Representatives recommend the Settlement based on their belief that it is fair and reasonable and in the best interest of the proposed Class. *See* ECF Nos. 174-2 – 174-34, Declarations of Class Representatives, attached hereto.

The procedural fairness of the Settlement favors approval.

C. The Terms of the Proposed Attorneys' Fees Are Reasonable and Will Not Reduce the Benefits to the Class.

As detailed in the concurrently filed Motion for Attorneys' Fees, Expenses, and Service Awards, the amounts sought are reasonable and present no conflict of interest between the attorneys and the Class as Defendants will pay any attorneys' fees, expenses and Class

Representative service awards approved the Court. *See* Plaintiffs' Memorandum in Support of Plaintiffs' Motion for Attorneys' Fees, Expenses, and Service Awards, ECF No. 176, at 24, 31.

D. The Settlement Class Satisfies Rules 23(a) and 23(b)(3).

"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). In its Preliminary Approval Order (ECF No. 167), the Court analyzed the Rule 23 factors and found that each of the pertinent elements was satisfied, and nothing has changed since that finding. Plaintiffs request that the Court confirm its certification of the Settlement Class, its appointment of Settlement Class Representatives and appointment of Settlement Class Counsel as the Settlement Class here clearly satisfies the requirements of both Rule 23(a) and 23(b)(3).

1. Rule 23(a) Is Satisfied.

a) The Class Is Sufficiently Numerous.

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*, 2016 WL 4033969, at *17 (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); *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.*, 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 Recalls 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 Defective Fuel Pumps, and all Class Members

benefit from the Loaner/Towing Program, the Reconsideration Procedure, and the Out-of-Pocket Claims Process, 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 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.

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*, (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 WL 4033969, at *20 (common questions of law or fact concerning defective timing chain tensioner predominated over any questions affecting only individual class members).

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. Thus, the predominance requirement is met.

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.*, 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.,* 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 granted final approval, would obviate the need for a trial. *Amchem Prods.*, 521 U.S. at 620.

3. The Class Is Ascertainable.

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.

The Settlement Agreement identifies the makes, models, the model years and production periods of the Covered Vehicles. SA, Ex Nos. 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.*, 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. Indeed, the Settlement website has a VIN lookup tool that allows consumers to determine whether they are members of the Settlement Class.

The Class is undoubtedly ascertainable.

4. Plaintiffs' Counsel Should Be Confirmed as 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. The Court appointed W. Daniel "Dee" Miles, III and Demet Basar of Beasley, Allen, Crow, Methvin, Portis & Miles, P.C. Law as Class Counsel. ECF No. 167. Class Counsel have 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* ECF No. 165-1, Joint Decl., at ¶¶ 36-41. 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 Class Counsel satisfy the adequacy requirements of Rule 23(g) and should be confirmed as Class Counsel.

V. A PERMANENT INJUNCTION IS WARRANTED.

A permanent injunction should be entered barring Class members who have not opted out of the Settlement from proceeding with any other litigation alleging claims that are substantially similar to those alleged herein or that were released in the Settlement Agreement. *See Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 106 (2d Cir. 2005) ("Plaintiffs in a class action may release claims that were or could have been pled in exchange for settlement relief."). A permanent injunction is necessary to protect and effectuate the Settlement Agreement, protect the interests of the Class, and to protect this Court's judgments. These permanent injunctions are commonly granted in final approval of class action settlements. *See*, *e.g.*, *Berkson v. Gogo LLC*, 2016 WL 1376544, at *3 (E.D.N.Y. Apr. 5, 2016) ("The Court permanently enjoins the Class Members and any other Releasor from filing, commencing, prosecuting, intervening in, participating in as class members or otherwise, or receiving any benefits or other relief from, any other litigation … or other proceeding in any jurisdiction, that asserts claims based on, or in any way related to, the Released Claims."); *Moeller v. Advance Magazine Publrs., Inc.*, 2019 U.S. Dist. LEXIS 37795, at *8 (S.D.N.Y. Mar. 6, 2019); *Gregorio v. Premier Nutrition Corp.*, 2019 U.S. Dist. LEXIS 9405, at *9 (S.D.N.Y. Jan. 17, 2019).

The requested injunction is also proper under Section 1651(a) of the All-Writs Act. 28 U.S.C. § 1651(a). "When a federal court has jurisdiction over its case in chief, as did the district court here, the All-Writs Act grants it ancillary jurisdiction to issue writs 'necessary or appropriate in aid of' that jurisdiction." *In re Baldwin-United Corp. (Single Premium Deferred Annuities Ins. Litig.)*, 770 F.2d 328, 335 (2d Cir. 1985).

Thus, a permanent injunction should issue barring Settlement Class Members from pursuing further litigation on substantially similar claims.

VI. CONCLUSION

For all the above-stated reasons, Plaintiffs respectfully request that the Motion be granted and the Court enter an order: (a) approving the Settlement; (b) certifying the Settlement Class; (c) confirming its appointment of the Class Representatives as Class Representatives; (d) confirming its appointment of Class Counsel as Class Counsel; (f) confirming its appointment of Jeanne C. Finnegan as the Settlement Notice Administrator; (g) confirming its appointment of Patrick Hron and Patrick A. Juneau as the Settlement Claims Administrators; and (i) issuing related relief as appropriate, including issuing a permanent injunction and enjoining Class Members from challenging in any action or proceeding any matter based on or arising out of the Released Claims.

Dated: November 18, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 18, 2022, a copy of the foregoing was filed electronically via the Court's CM/ECF system. Notice of this filing will be sent to the Parties of record by operation of the Court's electronic filing system. Parties may access this filing through the Court's CM/ECF system.

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