

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

TERI CALLEN, et al. on behalf of
themselves and all others similarly
situated,

Plaintiffs,

v.

DAIMLER AG and MERCEDES-
BENZ USA, LLC,

Defendants.

CASE NO. 1:19-cv-01411-TWT

Judge Thomas W. Thrash, Jr.

**UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF
PROPOSED CLASS ACTION SETTLEMENT AGREEMENT AND
PRELIMINARY CERTIFICATION OF NATIONWIDE SETTLEMENT
CLASS AND INCORPORATED MEMORANDUM OF LAW**

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**UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF
PROPOSED CLASS ACTION SETTLEMENT AGREEMENT AND
PRELIMINARY CERTIFICATION OF NATIONWIDE SETTLEMENT**

Plaintiffs Teri Callen, Steve Burton, Paul Finkenauer, Lorne Collier, Jose Figueroa, Glenn Scudder, Ann Fulmer, Rudi Rosenfeld, Taryn Armstrong, Sean Hunter, Richard Hall, Angelo Farrow and Larry Acunto (collectively, “*Callen Plaintiffs*”), individually and on behalf of the proposed nationwide Settlement Class as defined in the executed proposed Class Action Settlement Agreement and Release, attached as Exhibit 1 (the “Settlement Agreement,” “Settlement,” “Proposed Settlement Agreement,” or “PSA”), hereby give notice and move the Court for an Order (a) preliminarily approving the proposed Settlement Agreement; (b) preliminarily certifying a nationwide settlement class of all current and former owners and lessees of any 212 E-Class Mercedes-Benz originally equipped with Burl Walnut Trim and purchased or leased in the United States (“Class Members”); (c) directing Notice to the Class Members pursuant to Fed. R. Civ. P. 23(e)(1); (d) appointing Class Counsel for the Class Representatives and Class Members pursuant to Rule 23(g)(3); (e) preliminarily enjoining parallel proceedings¹; and, (f) scheduling a Final Approval hearing pursuant to Rule 23(e)(2). Any term in this motion that is not specifically defined herein shall take on that meaning ascribed to

¹ To date, the Parties are unaware of any other actions asserting similar allegations.

it in the proposed Settlement Agreement. This motion is not opposed by the Defendants, Daimler AG and Mercedes-Benz USA, LLC (collectively, “Defendants”).

As shown below, the proposed Settlement Class satisfies the requirements of Rule 23(a) and Rule 23(b)(3), and the proposed Settlement Agreement is fair, reasonable and adequate. The Parties have negotiated a proposed Settlement that offers monetary reimbursement for Qualified Past Repairs and extended warranty coverage for Qualified Future Repairs and that provides direct benefits to current and former owners and lessees of over 243,000 Subject Vehicles sold and/or leased in the United States, which likely will include over one hundred thousand individuals.

In short, the *Callen* Plaintiffs allege that the Burl Walnut Trim in 212 E-Class Mercedes-Benz vehicles substantially fades, grows discolored, and becomes cloudy over time (the “Litigation Claims”). Pursuant to the specified terms, including without limitation that Subject Vehicles be, in most cases, fewer than 15 years from their original in-service date, the proposed Settlement provides the proposed Class Members on a sliding scale based on the Subject Vehicle’s age (i) reimbursement for past out-of-pocket costs for repair of issues related to the Litigation Claims and (ii) a warranty extension to cover future costs related to the Litigation Claims.

Additionally, the proposed Settlement provides that if any Settlement Class Member prior to final approval of this Settlement either: (i) presents documentary evidence that he or she presented the Burl Walnut Trim of their Subject Vehicle to an Authorized Service Center for repair or replacement or provided written notice to MBUSA under the New Vehicle Limited Warranty but was denied warranty or goodwill coverage for such repair or replacement, and the Settlement Class Member for any reason chose not to repair or replace the Burl Walnut Trim; or (ii) provides to the Settlement Administrator proof of any such alleged Burl Walnut Trim defect, which proof includes a dated photograph of the alleged Burl Walnut Trim defect, then the claim is preserved and payable pursuant to the sliding scale. Further, the proposed Notice Plan, which includes direct mailing of postcard notification and the establishment of a website, fulfills the requirements of both Rule 23 and due process as the best notice practicable under the circumstances.

Accordingly, the *Callen* Plaintiffs hereby respectfully move this Court for a preliminary determination on the fairness, reasonableness, and adequacy of the proposed Settlement and appointment of Lead Counsel so that notice may be given to the preliminary nationwide Settlement Class and a hearing may be scheduled to make a final determination regarding the fairness of the proposed Settlement. As the proposed Settlement will resolve the claims of all Class Members, the *Callen*

Plaintiffs further move this Court for an Order preliminarily enjoining parallel litigation, pursuant to the All Writs Act which authorizes federal courts to “issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.” 28 U.S.C. § 1651(a).

MEMORANDUM OF POINTS AND AUTHORITIES

This Court is familiar with the *Callen* Plaintiffs’ allegations in this case (hereinafter referred to as “*Callen*”). The *Callen* Plaintiffs allege a defect in the Burl Walnut Trim in 212 E-Class Mercedes-Benz vehicles in that it substantially fades, grows discolored, and becomes cloudy over time (hereinafter, the “Subject Vehicles”). The *Callen* Plaintiffs allege that as a result of the Litigation Claims, the Class Members either paid out-of-pocket to repair or did not repair the Subject Vehicles because the repairs were not covered under warranty. The *Callen* Plaintiffs contend the Litigation Claims injured all proposed Class Members in the same way, regardless of whether they purchased or leased their Class Vehicles through authorized Mercedes-Benz dealerships or independent automobile dealerships and regardless of whether the Class Vehicles were new or used. The Defendants deny these allegations and would continue to litigate the claims at issue, were it not for the proposed Settlement.

The Plaintiffs successfully opposed multiple rounds of dispositive motions, prevailing on the majority of the fraud-based claims, and after traversing those motions and once the discovery process was well underway, the Parties agreed to explore potential early resolution, and the Parties initiated earnest settlement discussions. Having realized the complexity and importance of the potential settlement, the Parties agreed to engage Hunter Hughes to assist the parties in successful mediations, which took place on November 1, 2021, and November 5, 2021. *See* Declaration of William Lewis Garrison, Jr., at ¶¶ 25-27, attached here (the “Garrison Decl.”).

Following the first mediation with Mr. Hughes, the Parties reached the proposed nationwide class action settlement (“Settlement”) that, in accordance with the requirements and limitations of the Settlement Agreement, reimburses the proposed Class Members for certain past out-of-pocket costs (“Qualified Past Repairs,” as defined in the Settlement) and establishes a warranty extension to cover certain future costs (“Qualified Future Repairs” as defined in the Settlement) related to the Litigation Claims. Essentially, the Settlement Agreement extends, pursuant to certain requirements and limitations, a warranty on the Burl Walnut Trim (on a sliding scale) for up to 15 years and unlimited miles after each Class Vehicle was put into service. In the second mediation with Mr. Hughes, the Parties reached a

proposed agreement on Class Counsel's attorneys' fees, litigation costs and expenses, Class Representative incentive fees, and administrative costs, all of which are covered separately under the Settlement and will not reduce any of the benefits to the Class.

I. BACKGROUND AND PROCEDURAL HISTORY

This case involves alleged defects in the manufacture, process, materials, and workmanship of the Subject Vehicles, and it includes allegations regarding misleading marketing, advertising, warranting, selling, and servicing of the 212 E-Class Mercedes-Benz Vehicles with Burl Walnut Trim. The *Callen* Plaintiffs contend that Defendants knowingly concealed that the Burl Walnut Trim on the Subject Vehicles is defective and that this latent defect causes the Symptoms Alleged. Class Members either paid out-of-pocket to repair the Symptoms Alleged in the Subject Vehicles or, if not covered by warranty, may be required to do so in the future. Defendants deny the *Callen* Plaintiffs' allegations in full and further deny that they acted improperly or are liable for the *Callen* Plaintiffs' alleged damages.

Litigation related to the 212 E-Class Mercedes-Benz Burl Walnut Trim was initiated in this Court with the *Callen* Plaintiffs and has not been litigated elsewhere. A class action complaint, *Callen et al. v. Mercedes-Benz USA, LLC et al.*, was filed by plaintiff Teri Callen against Daimler AG and MBUSA on March 28, 2019, in the

United States District Court for the Northern District of Georgia alleging, on behalf of a putative nationwide class (and a proposed putative state subclass) that the Subject Vehicles contain defective Burl Walnut Trim in that they experience the Symptoms Alleged.

On August 1, 2019, Plaintiffs filed a First Amended Complaint adding plaintiffs Steve Burton, Paul Finkenauer, and Lorne Collier, and additional proposed putative state subclasses and related claims. On October 30, 2019, Defendants filed a motion to dismiss the First Amended Complaint. Plaintiffs opposed the motion on December 23, 2019. Defendants filed a reply brief on January 29, 2020. On June 17, 2020, the Court issued an order denying-in-part and granting-in-part Defendants' motion to dismiss. In that order, the Court dismissed Plaintiffs' claims for breach of express warranty, breach of implied warranty, violation of the Magnuson-Moss Warranty Act, unjust enrichment; fraud and suppression as to Plaintiff Paul Finkenauer's and Lorne Collier's fraudulent concealment claims, and violations of the South Carolina Unfair Trade Practices Act, Ohio Consumer Sales Practices Act as to Plaintiff Steve Burton's class action allegations, Oregon Unlawful Trade Practices Act and New Jersey Consumer Fraud Act. The Defendants' motion to dismiss as to all other Litigation Claims was denied.

On March 23, 2021, Plaintiffs filed a Second Amended Complaint that, among other things, added Plaintiffs Jose Figueroa, Glenn Scudder, Ann Fulmer, Rudi Rosenfeld, Taryn Armstrong, Sean Hunter, Richard Hall, Angelo Farrow, and Larry Acunto, and claims arising under the laws of nine additional states and additional proposed putative state subclasses. On May 10, 2021, Defendants filed a partial motion to dismiss the Second Amended Complaint. Plaintiffs opposed the motion on July 2, 2021. Defendants filed a reply brief on July 30, 2021.

On October 4, 2021, the Court issued an order denying-in-part and granting-in-part Defendants' partial motion to dismiss. In that order, the Court affirmed its prior motion to dismiss order and also dismissed Plaintiffs' claims for breach of express warranty, breach of implied warranty, violation of the Magnuson-Moss Warranty Act, and unjust enrichment. The Court also dismissed Plaintiffs' claim for equitable and injunctive relief, Plaintiffs Glenn Scudder, Larry Acunto, and Sean Hunter's fraudulent concealment claims, claims for violations of Georgia's Uniform Deceptive Trade Practices Act and Missouri Merchandising Practices Act, and Plaintiff Sean Hunter's omission-based California Unfair Competition Law and Consumers Legal Remedies Act claims. The Defendants' motion to dismiss as to all other Litigation Claims was denied.

As the Court is aware, *Callen* has been intensely litigated from its inception. Garrison Decl., at ¶ 17. The *Callen* Plaintiffs and their counsel engaged in extensive pre-filing factual investigation beginning in the late Winter of 2019, when the undersigned counsel began receiving communications from owners of Subject Vehicles complaining about issues related to the Litigation Claims. Garrison Decl., at ¶ 6. The undersigned began diligently investigating the issues raised by the Mercedes owners that requested assistance. The undersigned researched the Litigation Claims and the Defendants' response to it through information provided by the National Highway Traffic Safety Administration ("NHTSA"). The undersigned counsel also reviewed and researched consumer complaints and discussions of the Litigation Claims in articles and forums online, and collected various operator manuals and Technical Service Bulletins discussing the defect. Garrison Decl., at ¶ 7.

The *Callen* Plaintiffs' counsel also conducted detailed interviews with prospective class members regarding their pre-purchase research, their purchasing decisions, and their repair histories, ultimately interviewing and communicating with dozens of prospective class members. Garrison Decl., at ¶ 8. After digesting all of the information garnered, the undersigned counsel conducted research into the various causes of action and analyzed similar automotive actions, developed a plan

for litigation based on class members' reported experiences with their Subject Vehicles, and subsequently initiated the present action. Garrison Decl., at ¶ 9.

Further, the undersigned counsel also retained leading experts in engineering processes and chemistry who investigated the alleged defect and identified the alleged defect in the Subject Vehicles. Garrison Decl., at ¶ 10. The undersigned counsel also engaged a damages expert to assess individual and Class-wide damages. *Id.* The undersigned counsel's efforts are reflected in and illustrated by the length and detail of the *Callen* Plaintiffs' Complaints, as amended. Garrison Decl., at ¶ 11.

Defendants sought to dismiss the *Callen* action in its entirety on multiple grounds, but the *Callen* Plaintiffs ultimately prevailed on several causes of actions, allowing the remaining claims to proceed to discovery. Garrison Decl., at ¶¶ 14-16. Prior to reaching the proposed Settlement Agreement, the Parties conducted extensive discovery. Garrison Decl., at ¶ 20. They negotiated and spent substantial time working out an electronic discovery protocol that incorporated specific search terms to effectively produce responsive and relevant documents. Garrison Decl., at ¶ 21. The *Callen* Plaintiffs' counsel served requests for production and interrogatories to each Defendant. Garrison Decl., at ¶¶ 18-19. In total, they served 66 requests for production and 16 interrogatories on each Defendant. *Id.* In response, Defendants produced thousands of pages of documents as well as

extensive warranty, sales and repair data compiled from their warranty databases.
Id.

The *Callen* Plaintiffs' counsel met and conferred with Defendants' counsel several times on their discovery responses, and the *Callen* Plaintiffs were continuing to demand documents and information at the time they reached the settlement-in-principle. Garrison Decl., at ¶¶ 21-22. The *Callen* Plaintiffs' counsel then served a second set of discovery on Defendants that was focused on confirming certain representations made in settlement negotiations and expect timely responses. Garrison Decl., at ¶ 24. The *Callen* Plaintiffs used an e-discovery vendor to assist with the technical aspects of the production and have since reviewed each page of the produced documents, coding them for issues. Garrison Decl., at ¶¶ 19-23.

Defendants issued substantial discovery, including 17 requests for admission, 22 interrogatories, and 43 requests for production to each *Callen* Plaintiff. Garrison Decl., at ¶ 20. The *Callen* Plaintiffs responded to each discovery request and produced hundreds of pages of documents and offered their Class Vehicles for inspection. *Id.* Since discovery opened in this case, the undersigned have had numerous meet and confers with Defendants' counsel to address discovery issues, vehicle inspection protocols, electronic search terms and databases, and responses and objections to discovery served in the Litigation. Garrison Decl., at ¶ 21. The

Parties resolved most of those issues after substantial time and effort and without resort to court intervention. *Id.*

Concurrently, the *Callen* Plaintiffs researched potential expert witnesses and ultimately interviewed four experts. Garrison Decl., at ¶ 22. Two of these experts were automobile manufacturing process experts and two of these experts were chemical specialists with specific expertise in automobile interior coatings. *Id.* The *Callen* Plaintiffs ultimately retained two testifying experts. *Id.* The *Callen* Plaintiffs also issued three subpoenas *duces tecum* to various third-parties, including a Chinese supplier of the Burl Walnut Trim. *Id.* At the time of settlement, the *Callen* Plaintiffs and those third parties were still meeting and conferring regarding their responses, or lack thereof, and document production. *Id.*

The *Callen* Plaintiffs also negotiated vehicle inspection protocols. Garrison Decl., at ¶ 23. The Parties then scheduled a vehicle inspection and conducted that inspection before they were placed on hold pending mediation. *Id.*

The *Callen* Plaintiffs first broached the topic of settlement in February 2020, but Defendants did not express a corresponding interest until the late Summer of 2021, when settlement negotiations began in earnest. Garrison Decl., at ¶25. The Parties engaged in intensive discussions and exchanges of information, including proposing potential settlement frameworks, but fell short of reaching a final

agreement. *Id.* Thereafter, the Parties agreed to mediate this case utilizing Hunter Hughes.² *Id.* The Parties mediated with Hunter Hughes on November 1, 2021, and November 5, 2021. Garrison Decl., at ¶ 26. During that mediation process, the Parties first reached an agreement-in-principle on the terms and conditions of the Class Member settlement, and later on attorney fees, litigation costs and expenses, class representative incentives and administrative costs, subject to approval by the Court. *Id.*, at ¶¶ 26-27. Importantly, the Parties only mediated and negotiated issues regarding attorneys' fees, litigation costs and expenses, incentive awards and administrative costs *after* reaching an agreement-in-principle as to the terms and conditions of the settlement for Class Members. *Id.*, at ¶ 27. The Parties finalized a written Term Sheet on November 2, 2021. *Id.* The Parties then worked on and executed the Settlement Agreement. *See, generally*, PSA.

The Proposed Settlement in this case will resolve the claims of all Class Members in the United States. Garrison Decl., at ¶ 28. Accordingly, for purposes of effectuating this proposed Settlement in this action and in this District, the *Callen* Plaintiffs seek an Order pursuant to the All Writs Act that preliminarily enjoins parallel proceedings. *Id.* at ¶ 28; *see, also, infra*, Section IV.

² Hunter Hughes is widely respected for his ethics, legal knowledge, and wealth of experience, particularly in automotive class actions and complex cases, and resolving disputes in the best interests of all concerned parties.

II. SUMMARY OF SETTLEMENT TERMS

A. THE SETTLEMENT CLASS DEFINITION

The proposed Settlement Class³ is defined as current owners, former owners, current lessees, and former lessees of Subject Vehicles who purchased or leased their Subject Vehicle in the United States. Subject Vehicles are defined as any 212 E-Class Mercedes-Benz originally equipped with Burl Walnut Trim and purchased or leased in the United States. Defendants offered Burl Walnut Trim as an original, interior trim package option for model year 2010-2016 212 E-Class vehicles.

The following persons are excluded from the proposed Settlement Class: (a) Persons who have settled with, released, or otherwise had claims adjudicated on the merits against Defendants that are substantially similar to the Litigation Claims related to the Symptoms Alleged (i.e., alleging that the Burl Walnut Trim in 212 E-Class Mercedes-Benz vehicles substantially fades, grows discolored, and becomes cloudy over time); (b) Defendants and their officers, directors and employees, as well as their corporate affiliates and the corporate affiliates' officers, directors and employees; (c) Counsel to any of the parties; and (d) The Honorable Thomas W. Thrash, Jr., Hunter R. Hughes, and members of their respective immediate families.

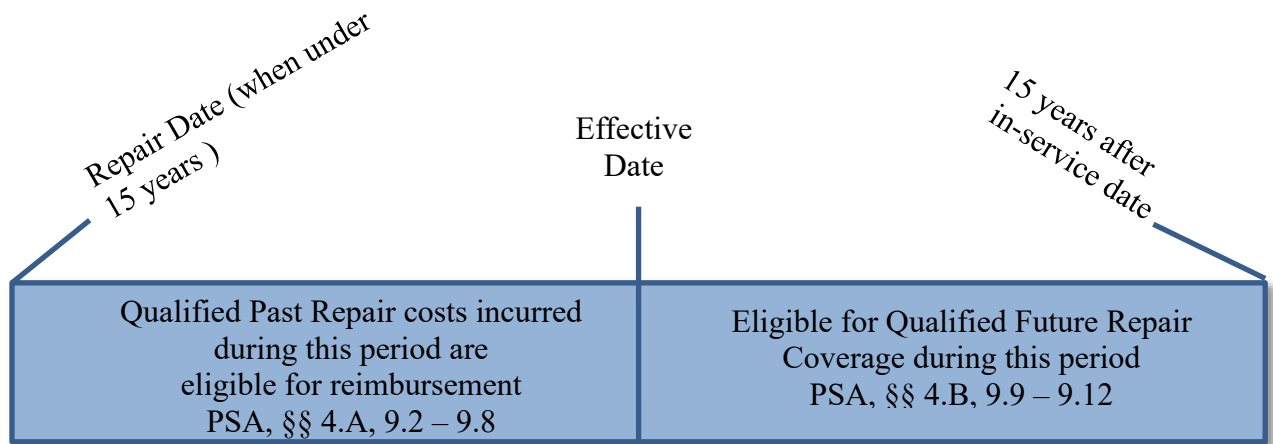
B. SETTLEMENT CLASS MEMBER BENEFITS

³ See PSA, §1.28.

The Settlement provides exceptional benefits that directly address the harm to Class Members. These benefits include: (1) reimbursement for Qualified Past Repairs that addressed the Litigation Claims and (2) a forward-looking, extended warranty to cover Qualified Future Repairs related to the Litigation Claims through an Authorized Service Center. Importantly, the extended warranty offered on the Burl Walnut Wood Trim is not dependent upon mileage – said another way, the extended warranty has unlimited mileage and is only dependent upon the age of the Class Vehicle.

More specifically, subject to the specific terms of the Settlement Agreement, the Settlement covers pre- and post-Settlement repairs to the Burl Walnut Trim in 212 E-Class Mercedes-Benz vehicles, which substantially fades, grows discolored, and becomes cloudy over time (“Qualified Repairs”). The Qualified Repairs are to be reimbursed on a sliding scale depending on age of the vehicle at the time of the repair or at the time the issue was presented to Defendants. Pursuant to stated requirements and limitations, the Settlement covers repairs related to the Litigation Claims that occur during the first fifteen years (180 months) from the date that the vehicle was put into service. *See* PSA, § 4. Qualified Repairs that occur before the Effective Date are eligible for reimbursement as Qualified Past Repairs. Qualified Repairs requested after the Effective Date are eligible for extended warranty

coverage as Qualified Future Repairs and must be performed at an Authorized Service Center. *Id.* This structure ensures that every Class Vehicle is similarly eligible for coverage up to 15 years.



1. Reimbursement for Qualified Past Repairs.

Subject to the specific terms of the Settlement Agreement, Qualified Past Repairs will be reimbursed on a sliding scale. PSA, § 4.A. The sliding scale applies as of the date the Qualified Past Repair was made and, generally, the percentage of reimbursement or coverage available for a particular repair is based on the Class Vehicle’s age on the date of repair as follows:

Vehicle Age Time Period	Effective Warranty Extension From 4 Year, 50,000 Mile New Vehicle Limited Warranty	Reimbursement/ Coverage Amount
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<u>Category 1</u> : Subject Vehicles that have been in service for less than 8 years (96 months).	4 years and unlimited miles	75%
<u>Category 2</u> : Subject Vehicles that do not fall within Category 1 and have been in service for less than 10 years (120 months).	6 years and unlimited miles	55%
<u>Category 3</u> : Subject Vehicles that do not fall within Category 1 or 2 and have been in service for less than 13 years (156 months)	9 years and unlimited miles	50%
<u>Category 4</u> : Subject Vehicles that do not fall within Categories 1, 2 or 3 and have been in service for less than 15 years (180 months)	11 years and unlimited miles	30%

See id., § 4.1. There is no limit to the number of Qualified Past Repairs that Defendants will reimburse. *See id.* However, no double recovery is allowed. Thus, if the Class Member has been reimbursed previously by Defendants, insurance, or some other form of coverage, or if Defendants already covered the repair under the warranty or goodwill, the costs associated with that repair shall not be subject to reimbursement. *See id.*, § 4.2.

2. Reimbursement for Qualified Future Repairs.

Qualified Future Repairs will be extended warranty coverage on a sliding scale based on the vehicle's age when the Subject Vehicle is presented to an Authorized Service Center for repair or, if the Class Member was denied warranty

or goodwill coverage before the Notice Date, based on the vehicle's age when the Class Member first presented the Subject Vehicle to an Authorized Service Center or notified Defendants of the Symptoms Alleged. PSA, §§ 4.B, 9.11. Importantly, Class Members may preserve their claim for Qualified Future Repairs by timely submitting a properly completed Reimbursement Claim Form within sixty (60) days of the Notice Date. PSA, § 9.11. Generally, the percentage of warranty coverage available for a Qualified Future Repair is as follows:

Vehicle Age Time Period	Effective Warranty Extension From 4 Year, 50,000 Mile New Vehicle Limited Warranty	Reimbursement/ Coverage Amount
<u>Category 1</u> : Subject Vehicles that have been in service for less than 8 years (96 months).	4 years and unlimited miles	75%
<u>Category 2</u> : Subject Vehicles that do not fall within Category 1 and have been in service for less than 10 years (120 months).	6 years and unlimited miles	55%
<u>Category 3</u> : Subject Vehicles that do not fall within Category 1 or 2 and have been in service for less than 13 years (156 months)	9 years and unlimited miles	50%

Category 4: Subject Vehicles that do not fall within Categories 1, 2 or 3 and have been in service for less than 15 years (180 months)	11 years and unlimited miles	30%
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See id., § 4.3. Until the Subject Vehicles exceed 15 years, there is no limit to the number of Qualified Future Repairs that can be made. *See id.* All Qualified Future Repairs must be performed at an Authorized Service Center. *See id.*, § 4.4.

Class Members that need a Qualified Future Repair after Notice Date of the Settlement but before the Effective Date of the Settlement and whose vehicle is less than 15 years from the original in-service date at the time such repair is needed, should get their Subject Vehicle repaired, retain their payment receipts for any qualifying repair performed, and make a claim for reimbursement as a Qualified Past Repair within 60 days of the repair. *See PSA*, §§ 1.26, 9.2-9.3. Subject to the specific terms of the Settlement Agreement, those Class Members will be reimbursed as a Qualified Past Repair. *See id.*, §§ 4.1- 4.2. Dispute resolution is available for Class Members who dispute their coverage for Qualified Future Repairs or believe coverage was wrongfully denied. *Id.*, § 10.

3. The Claims Process Is Simple.

The Settlement provides for a streamlined and straightforward claims process. Class Members can submit reimbursement claims for Qualified Past Repairs by

submitting a Reimbursement Claim Form and supporting documents online or by mail, which the Settlement Administrator will then review to determine eligibility. *See* PSA, §§ 8.6-8.11 and 9.A. Required supporting documents for Qualified Past Repairs include: (a) Itemized repair order or invoice or other documentation showing that the Subject Vehicle received a qualified repair or replacement (e.g., the repair invoice must show that the Burl Walnut Trim was repaired or replaced) and the cost of the qualified repair or replacement; (b) Proof of documentation of the Settlement Class Member's payment for the repair (e.g., credit card statement, invoice showing zero balance, receipt showing payment, etc.); and (c) Proof of the Settlement Class Member's ownership or leasing of the Subject Vehicle at the time of the repair.

If the repair is determined by the Settlement Administrator to be an eligible Qualified Past Repair, payment shall be made to the Class Member. *See* PSA, § 9.A. Dispute resolution, paid for by Defendants, is available for Class Members who dispute their reimbursements or believe their claim was wrongfully denied. PSA, § 10.

Class Members can receive Qualified Future Repairs by presenting their Vehicle to an Authorized Service Center, which will determine eligibility and perform the repairs. PSA, § 9.B. Class Members whose Subject Vehicles are

already 15 years old on the Notice Date can seek a Qualified Future Repair by submitting a Claim Form and documentary evidence showing that the Class Member (a) presented the Subject Vehicle to an authorized Mercedes-Benz dealer for a qualifying repair or provided notice to Defendants at a time when the vehicle had less than 15 years and (b) was denied warranty or goodwill coverage for such repair. If the future repair claim is approved by the Settlement Administrator, the Class Members can receive one Qualified Future Repair by bringing their Vehicle to an Authorized Service Center.

III. LAW AND ARGUMENT

The *Callen* Plaintiffs aver that this proposed Settlement meets the standard for preliminary approval and that the appropriate factual and legal bases for class certification exist. Review of a proposed settlement generally proceeds in two stages: first, a hearing on preliminary approval, followed by a second hearing, on final approval. *See MANUAL FOR COMPLEX LITIG.*, § 21.632 (4th ed. 2004); Rule 23(e)(2).

At the preliminary approval stage, a court conducts a preliminary review to determine whether the proposed settlement is “within the range of possible approval.” *Fresco v. Auto Data Direct, Inc.*, 2007 WL 2330895, *4 (S.D. Fla. May 11, 2007) (internal citations omitted). “[T]he court’s primary objective at th[is] point

is to establish whether to direct notice of the proposed settlement to the class, invite the class's reaction, and schedule a final fairness hearing." 4 W. Rubenstein, *NEWBERG ON CLASS ACTIONS* § 13:10 (5th ed. 2015); *MANUAL FOR COMPLEX LITIG.*, § 21.632. After preliminary approval and notice to the class, the Court assesses the settlement's strengths and weaknesses at the final approval hearing and determines whether the settlement is fair, reasonable, and adequate to those who are affected. *See Fresco*, 2007 WL 2330895 at *4; *MANUAL FOR COMPLEX LITIG.*, § 21.632.

The law generally encourages settlement. *See Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984) ("[O]ur judgment is informed by the strong judicial policy favoring settlement as well as by the realization the compromise is the essence of settlement."); *see also Williams v. First Nat'l Bank of Pauls Valley*, 216 U.S. 582, 595 (1910) ("[C]ompromises of disputed claims are favored by the courts."). Furthermore, "settlements of class actions are highly favored in the law and will be upheld whenever possible because they are means of amicably resolving doubts and preventing lawsuits." *Carnegie v. Mut. Sav. Life Ins. Co.*, Civ-99-S-3292-NE, 2004 WL 3715446, *17 (N.D. Ala. Nov. 23, 2004) (citations omitted).

In determining whether preliminary approval is warranted, the issue before the Court is whether the settlement is within the range of what might be found fair, reasonable, and adequate, so that notice of the settlement should be given to the

settlement class, and a hearing scheduled to consider final settlement approval. The Court is not required at this point to make a final determination as to the fairness of the Settlement Agreement—that decision is made only at the final approval stage, after notice of the settlement has been provided to the Settlement Class, and they have had an opportunity to voice their views of the settlement. *See* 3B J.W. Moore, *MOORE’S FEDERAL PRACTICE* (2d ed. 1996), ¶ 23.80[2.-1] at 23-479. Courts have noted that the standard for preliminary approval is less rigorous than the analysis at final approval. *See Horton v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 855 F. Supp. 825, 827 (E.D.N.C. 1994) (explaining that the issue at preliminary approval stage is whether there is “probable cause” to justify notifying class members of proposed settlement); *In re: Bromine Antitrust Litig.*, 203 F.R.D. 403, 416 (S.D. Ind. 2001) (the “bar [for obtaining preliminary approval] is low”).

A. PRELIMINARY APPROVAL IN THE ELEVENTH CIRCUIT

Rule 23(e)(2) identifies criteria for determining whether to grant preliminary approval of a proposed class settlement and direct notice to the proposed class. The proposed Settlement here satisfies all of these conditions.

Rule 23(e)(2) states that a district court should approve a proposed settlement after considering whether:

- (A) the class representatives and proposed class counsel have adequately represented the class;

- (B) the proposal was negotiated at arm's length;
- (C) the relief provided for the proposed class is adequate, taking into account:
 - (i) the costs, risks, and delay of trial and appeal;
 - (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
 - (iii) the terms of any proposed award of attorneys' fees, including timing of payment;
 - (iv) any agreement required to be identified under Rule 23(e)(3); and,
- (D) the proposal treats Class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2).

Courts within the Eleventh Circuit use two different standards in considering whether to preliminarily approve a proposed settlement. Some courts find that preliminary approval is appropriate “where the proposed settlement is the result of the parties’ good faith negotiations, there are no obvious deficiencies and the settlement falls within the range of reason.” *In re: Checking Account Overdraft Litig.*, 275 F.R.D. 654, 661 (S.D. Fla. 2011). Other courts apply criteria known as the *Bennett* factors. *See Bennett*, 737 F.2d at 986. These factors largely overlap with those in Rule 23(e)(2) and include: (1) the likelihood of success at trial; (2) the range of possible recovery; (3) the range of possible recovery at which a settlement is fair, adequate, and reasonable; (4) the anticipated complexity, expense, and duration of litigation; (5) the opposition to the settlement; and (6) the stage of proceedings at

which the settlement was achieved. *In re: Equifax Customer Data Sec. Breach Litig.*, 2020 U.S. Dist. LEXIS 118209, *174 (N.D. Ga. Mar. 17, 2020) (citing *Bennett*, 737 F.2d at 986 and *Faught v. Am. Home Shield Corp.*, 668 F.3d 1233, 1240 (11th Cir. 2011)). The proposed settlement warrants preliminary approval under both standards.

B. THE SETTLEMENT MERITS APPROVAL

First, as explained in greater detail below, the *Callen* Plaintiffs and Class Counsel have adequately represented the proposed Settlement Class. The *Callen* Plaintiffs do not have any interests antagonistic to other Class Members and have retained lawyers with the necessary qualifications and experience to lead this litigation. Class Counsel vigorously pursued the claims alleged through successful opposition of Defendants' motions to dismiss and through discovery. *See, e.g., Parsons v. Brighthouse Networks, LLC*, 2:09-CV-267-AKK, 2015 WL 13629647, *12 (N.D. Ala. Feb. 5, 2015) (“This is not a case in which a complaint has been filed and the parties have rushed to a settlement. Thus, all Parties had a keen grasp of the issues, the factual underpinnings of the claims and defenses herein, and the measure of the evidence supporting those claims and defenses.”).

Second, the Parties negotiated the proposed settlement at arm's length and without collusion. *See* Declaration of Hunter Hughes, ¶¶ 2-10, filed herewith (the

“Hughes Decl.”). Indeed, the Parties reached a settlement only after hard-fought independent negotiations and then also mediation over two separate days with a respected mediator. They then subsequently finalized the proposed Settlement Terms through multiple rounds of discussions and drafting revisions. *See, e.g., In re: Checking Account Overdraft Litig.*, 275 F.R.D. at 661 (“Settlement negotiations that involve arm’s length, informed bargaining with the aid of experienced counsel support a preliminary finding of fairness”).

Third, as explained in greater detail below, the relief provided for the Settlement Class is fair, reasonable, and adequate, taking into account the costs, risks, and delay of trial and appeal, the effectiveness of any proposed method of distributing relief to the class, and the terms of the proposed award of attorney fees. Moreover, the proposal treats class members equitably relative to each other—similarly situated Class Members are treated the same with respect to their eligibility for reimbursement for Qualified Past Repairs and to receive Qualified Future Repairs.

Moreover, pursuant to Fed. R. Civ. P. 23(e)(1), the *Callen* Plaintiffs present sufficient information herein for the Court to determine whether to give notice to the class. For the reasons set forth above, the Court will likely be able to approve the settlement proposal under Fed. R. Civ. P. 23(e)(2) and certify the nationwide

settlement class for purposes of judgment on the proposal. The Settlement Agreement satisfies all of the requirements for preliminary approval and preliminary certification of a nationwide settlement class under Rule 23 as it provides both significant benefits and clear notice to Class Members informing them of the Settlement, how to claim settlement benefits, and the procedures for opting out or objecting to the settlement.

1. The Settlement Was The Result Of A Thorough, Informed, Fair Negotiation Process.

Rule 23(e)(2) asks whether “the class representatives and class counsel have adequately represented the class” and “the proposal was negotiated at arm’s length.” Fed. R. Civ. P. 23(e)(2)(A). It “identif[ies] matters that might be described as ‘procedural’ concerns, looking to the conduct of the litigation and of the negotiations leading up to the proposed settlement.” Adv. Cmte. Note.

Procedurally, the *Callen* Plaintiffs’ counsel (proposed Class Counsel) and the *Callen* Plaintiffs (proposed Class Representatives) have conducted themselves in the Class’s best interests.⁴ As previously set forth herein, proposed Class Counsel has prosecuted this action on behalf of the proposed Class with vigor and dedication for

⁴ See Declarations of Teri Callen, Steve Burton, Paul Finkenauer, Lorne Collier, Jose Figueroa, Glenn Scudder, Ann Fulmer, Rudi Rosenfeld, Taryn Armstrong, Sean Hunter, Richard Hall, Angelo Farrow and Larry Acunto, filed herewith (collectively, “Class Rep. Decls.”).

over two years. The proposed Class Representatives likewise were engaged actively, providing Counsel with information about their Subject Vehicles, submitting to vehicle inspections, conducting extensive discovery, and providing records about their Subject Vehicle's ownership, service, and maintenance. Class Rep. Decls. ¶¶ 3-4. They were informed about the strengths and weaknesses of their case(s) via discovery and expert consultation, and all have been consulted on, and support, the Proposed Settlement, illustrating their continued willingness to protect the Class going forward. Class Rep. Decls. ¶¶ 4-5.

In addition, as previously set forth herein, the Proposed Settlement arises out of weeks of serious, informed, and non-collusive negotiations facilitated by mediation conducted on November 1st and November 5th before an experienced and sophisticated mediator. *See* Hughes Decl., ¶¶ 2-10. A settlement process facilitated by a mediator weighs heavily in favor of approval. *See, e.g., Wilson v. EverBank*, 2016 WL 457011, *6 (S.D. Fla. Feb. 3, 2016) (“The very fact of [mediator’s] involvement—let alone his sworn declaration—weights in favor of approval.”); *In re: Checking Account Overdraft Litig.*, 275 F.R.D. at 661; Adv. Cmte. Note (“involvement of a neutral...mediator...in those negotiations may bear on whether they were conducted in a manner that would protect and further the class interests.”).

Thus, the procedurally fair manner in which this Proposed Settlement was reached weighs strongly in favor of granting preliminary approval.

2. The Settlement Provides Significant Benefits In Exchange For The Compromise Of Strong Claims.

Rules 23(e)(2)(C) and (D) require a “substantive” review of a proposed settlement. Adv. Cmte. Note. Specifically, Fed. R. Civ. P. 23(e)(2)(C) requires a court to consider whether “the relief provided for the class is adequate, taking into account ... the effectiveness of any proposed method of distributing relief to the class, including the method of processing class member claims” and “the terms of any proposed award of attorneys’ fees, including timing of payment.” And amended Fed. R. Civ. P. 23(e)(2)(D) considers whether “the proposal treats Class members equitably relative to each other.”

Each of these substantive considerations are satisfied here. This comprehensive resolution provides much-needed relief to Class members, addresses what the *Callen* Plaintiffs contend is a long-running problem in the Subject Vehicles, and reimburses Class members for incurred costs. *See Amin v. Mercedes-Benz USA, LLC*, No. 1:17-cv-01701-AT, 2020 U.S. Dist. LEXIS 167395, at *6 (N.D. Ga. Sep. 11, 2020) (approving settlement with “sliding scale of reimbursement or coverage percentage based on the Vehicle's age/mileage”); *Eisen v. Porsche Cars N. Am., Inc.*, 2014 WL 439006, at *2 (C.D. Cal. Jan. 30, 2014) (approving sliding scale settlement

with a reimbursement schedule ranging from 100% to 25%); *In re Nissan Radiator/Transmission Cooler Litig.*, 2013 WL 4080946, at *3 (S.D.N.Y. May 30, 2013) (approving class action settlement that provided benefits for vehicles under a 10-year/100,000 mileage limit, with amount of recovery based on age and mileage); *Henderson v. Volvo Cars of N. Am., LLC*, 2013 WL 1192479, at *2 (D.N.J. Mar. 22, 2013) (similar); *David v. Am. Suzuki Motor Corp.*, 2010 WL 1628362, *2 (S.D. Fla. Apr. 15, 2010) (approving settlement providing for extended car warranty); *Turner v. Gen. Elec. Co.*, 2006 WL 2620275, *8 (M.D. Fla. Sep. 13, 2006) (approving settlement providing for extended warranty for moisture-related problems in refrigerators).

In essence, the Settlement (i) pays for Qualified Past Repairs (subject to the sliding scale) and (ii) covers Qualified Future Repairs that are requested within 15 years from the date the vehicle was put into service (subject to a sliding scale). That means that the Settlement effectively extends the warranty on the Subject Vehicles from 4 years and 50,000 miles (the coverage for interior trim under the standard New Vehicle Limited Warranty or “NVLW”) to 15 years and unlimited miles. Importantly, it also removes the mileage limitation from the extended NVLW. This is significant and represents an outstanding result for the Class.

All similarly situated Settlement Class Members are treated equally. Each Settlement Class Member who submits appropriate documentation for Qualified Past Repairs will be reimbursed for those; all those Settlement Class Members that make a claim for Qualified Future Repairs will get those, subject to the age limitation and confirmation that the Symptoms Alleged are present. Moreover, proposed Class Counsel are experienced class action litigators, consumer advocates, trial lawyers, and litigation veterans, and they support this Settlement, acknowledging the uncertainty in whether the Class could achieve a better outcome through further litigation. *See* Garrison Decl., ¶¶ 2-5, 29-31.

a. The Settlement Mitigates the Risks, Expenses, and Delays of Continued Litigation.

The Proposed Settlement secures significant benefits, even in the face of the inherent uncertainties of litigation. Compromise in exchange for certain and timely relief is unquestionably a reasonable outcome. *See George v. Academy Mort'g Corp. (UT)*, 369 F. Supp. 3d 1356, 1371 (N.D. Ga. 2019) (settlement a “fair compromise” given risks and “certainty of substantial delay”).

Pursuing this case was not without risk, and Defendants fought vigorously, challenging the *Callen* Plaintiffs’ legal and damages theories. Even after two years of demanding litigation, the *Callen* Plaintiffs would still need to get their proposed class certified, establish Defendants’ liability, and prove damages on behalf of the

class. Further, even if this Proposed Class were certified and upheld on appeal, it would face the risk, expense, and delay of trial and potentially lengthy appellate process, further delaying any recovery for years to come. Avoiding years of additional litigation in exchange for the immediate certainty of this Proposed Settlement is even more compelling because it allows the *Callen* Plaintiffs and Proposed Class Members in need of a Qualified Repair to immediately obtain one rather than paying for it themselves or going either wholly unreimbursed or without a repair.

b. The Claims Process Is Straightforward.

This proposed Settlement provides benefits to Class Members via a simple claims process. Each Class Member will receive information about the Settlement via the proposed Notice Plan; specifically, postcard notice sent directly to all Class Members (who shall be located via Vehicle Identification Numbers (“VINs”)) and establishment of a settlement website. *See, supra*, Section II.B.3. To obtain reimbursement for Qualified Past Repairs and for certain Qualified Future Repairs, Class Members will submit a Claim Form and supporting documents online or by mail. PSA, § 9.A. After reviewing a past repair claim for completeness and eligibility, the Settlement Administrator will mail a check or send money electronically. *Id.* The Notice Plan will also inform Class Members of their

eligibility for Qualified Future Repairs and how to get them. *See, supra*, Section II.B.3; PSA, § 9.A. Defendants will be responsible for all costs related to the Notice Plan, including payment to the Settlement Administrator, which provides additional value to the Class that would normally be deducted from any settlement fund. Class Members also are provided an avenue to challenge the Settlement Administrator's determination of their claims through a Third-Party Neutral, which provides for safeguards to the Class Members during the claims process. *See, supra*, Section II.B.2. Class Counsel also will be available for the duration of the extended warranty to assist Class Members as needed with any issues that arise in securing settlement benefits and providing a safeguard to the Class to ensure that the claims process for Qualified Future Repairs are managed appropriately.

c. Counsel Will Seek Reasonable Fees and Costs.

As set forth above, the *Callen* Plaintiffs' counsel conducted an extensive investigation into the facts and circumstances of this case, and they put in significant time and resources into prosecuting the claims on behalf of the Class. *See, supra*, Section I. Notably, none of the Settlement benefits will be reduced to pay any Court-awarded attorneys' fees or costs to Class Counsel. Defendants will pay attorneys' fees and costs separate and apart from the monies that will be paid to qualified Class

Members. Of course, this is a tremendous benefit to the Class Members, as it otherwise would reduce their Settlement recovery.

Again, Class Counsel separately negotiated fees and costs only *after* all material terms of the Settlement were agreed upon in principle, which further supports approving this motion and the Settlement. *See Ingram v. The Coca-Cola Co.*, 200 F.R.D. 685, 693 (N.D. Ga. 2001) (finding that settlement not collusive where “the fee was negotiated separately from the rest of the settlement, and only after substantial components of the class settlement had been resolved”); *see also In re: Progressive Ins. Corp. Underwriting & Rating Practices Litig.*, 2008 WL 11348505, *2 (N.D. Fla. Oct. 1, 2008). The *Callen* Plaintiffs’ counsel will file a motion for fees and costs within thirty (30) days following the Preliminary Approval Order, so it is available to all potential Class Members before the deadline to object or opt-out of the Settlement.

3. The Settlement Treats Class Members Equitably.

Finally, Fed. R. Civ. P. 23(e)(2)(D) states that a court should consider whether “the proposal treats Class members equitably relative to each other.” This proposed Settlement fairly and reasonably allocates benefits among Class Members, both those who have already paid out-of-pocket costs *and* those who are eligible for future repairs, without any preferential treatment being given to the Plaintiff Class

Representatives or any separate or distinct segment of the Settlement Class. The Settlement provides the same durational period of warranty coverage for every Class Vehicle (15 years) and the same sliding scale of reimbursement or coverage percentage based on the age of the Class Vehicle. The mileage of the Class Vehicle has no bearing on the benefit. Courts have approved similar structured settlements concerning automobile defects. *See, e.g., Pinon v. Daimler AG, et. al*, 1:18-CV-3984-MHC, Dkt. 125 (N.D. Ga. Nov. 30, 2021) (approving settlement with substantially similar sliding scale warranty extension and past repair reimbursement); *Amin*, No. 1:17-cv-01701-AT, 2020 U.S. Dist. LEXIS 167395, at *6 (approving settlement with “sliding scale of reimbursement or coverage percentage based on the Vehicle's age/mileage”); *Sadowska v. Volkswagen Grp. of Am., Inc.*, 2013 WL 9600948, *6 (C.D. Cal. Sep. 25, 2013) (approving settlement with different eligibility requirements for an extended warranty depending on age of car); *see also Alin v. Honda Motor Co., Ltd.*, 2012 WL 8751045, *3 (D.N.J. Apr. 13, 2012) (approving settlement with different coverage for air condition defect depending on time period/mileage of vehicle).

Class Counsel intends to request service awards for the *Callen* Plaintiff Class Representatives, to be paid by Defendants in addition to the compensation they are otherwise entitled to as a member of the Proposed Class. Class Counsel is aware of

and sensitive to the Eleventh Circuit's recent opinion in *Johnson v. NPAS Solutions, LLC*, which rejected class representative incentive awards. 975 F.3d 1244 (11th Cir. 2020). However, the plaintiff in that case filed a petition for rehearing *en banc* on October 22, 2020, which has not yet been decided. Also, some six (6) *amici* have been filed, to-date. As noted by the dissent in *Johnson*, the holding "will have the practical effect of requiring named plaintiffs to incur costs well beyond any benefits they receive from their role in leading the class." *Id.* at 1264.

Whether the initial holding will ultimately stand is unknown, and there is a reasonable likelihood that the case will continue to be challenged even if the Eleventh Circuit upholds the initial ruling. The *Johnson* opinion represents a fundamental change in the law that is absent from any other Circuit in the country. The categorical prohibition on class representative incentive awards is an issue of exceptional importance, particularly given they have been approved in every other Circuit and the U.S. Supreme Court has acknowledged the practice of incentive awards. *See, e.g., China Agritech, Inc. v. Resh*, 584 U.S. ___, 138 S. Ct. 1800, 1811 n.7, 201 L.Ed.2d 123 (2018).

In support of the request for service awards to the proposed Class Representatives, the undersigned notes that each spent significant time providing information to Class Counsel, responding to discovery requests, and considering and

blessing this Proposed Settlement. Class Rep. Decls. ¶¶ 4-5. Given this significant commitment, service awards are appropriate here. Should the Court deny the service awards request in light of *Johnson v. NPAS Sols.*, the *Callen* Plaintiffs would request the Court deny the request without prejudice and retain jurisdiction for the limited purpose of revisiting the denial of service awards if *Johnson* is reversed. See *Hawkins v. JPMorgan Chase Bank, N.A.*, 2020 U.S. Dist. LEXIS 213064, *3 (M.D. Fla. Nov. 15, 2020) (denying service award request “without prejudice”); *Metzler v. Med. Mgmt. Int’l*, 2020 U.S. Dist. LEXIS 187478, *8 (M.D. Fla. Oct. 9, 2020) (denying service award “at this juncture”).

4. There Are No Undisclosed Side Agreements.

Rule 23(e)(3) requires the parties to “file a statement identifying any agreement made in connection with the proposal.” No such agreements exist here.

5. The Bennett Factors Support Preliminary Approval.

In addition to the factors set forth in Rule 23(e)(2), courts in the Eleventh Circuit often consider the *Bennett* factors during preliminary approval. *Adams v. Sentinel Offender Servs., LLC*, No. 1:17-cv-2813-WSD, 2018 U.S. Dist. LEXIS 78841, *20-23 (N.D. Ga. May 10, 2018) (discussing *Bennett*, 737 F.2d at 986).

a. *The Benefits of Settlement Outweigh the Risks at Trial.*

The first *Bennett* factor weighs in favor of approval, where there was “no guarantee that the plaintiffs would prevail at trial on their [] claims.” *Camp v. City of Pelham*, 2:10-CV-01270-MHH, 2014 WL 1764919, *3 (N.D. Ala. May 1, 2014); see also *Burrows v. Purchasing Power, LLC*, No. 1:12-cv-22800, 2013 WL 10167232, *6 (S.D. Fla. Oct. 7, 2013) (granting approval where “success at trial is not certain for Plaintiff[s].”). Although the *Callen* Plaintiffs are confident about their case, the risks involved cannot be disregarded, and success cannot be guaranteed. See generally *In re: Motorsports Merchandise Antitrust Litig.*, 112 F. Supp. 2d 1329, 1334 (N.D. Ga. 2000) (“[T]he trial process is always fraught with uncertainty.”). This is particularly true where, as here, the case “involves complex legal and factual issues that have been hotly contested, and would almost certainly continue to be hotly contested throughout the remaining litigation” and “the ultimate outcome on the merits were uncertain for both Parties.” See *Parsons*, 2015 WL 13629647 at *3. The proposed Settlement Agreement avoids these uncertainties and provides the Settlement Class with meaningful and certain relief.

b. *The Settlement Is Within the Range of Possible Recoveries and Is Fair, Adequate, and Reasonable.*

The second and third *Bennett* factors—whether the settlement is within the range of possible recoveries and is fair, adequate, and reasonable—are “easily

combined and normally considered in concert.” *Camp*, 2014 WL 1764919 at *3. “The Court’s role is not to engage in a claim-by-claim, dollar-by-dollar evaluation, but to evaluate the proposed settlement in its totality.” *Lipuma v. Am. Express Co.*, 406 F. Supp. 2d 1298, 1323 (S.D. Fla. 2005). The range of outcomes extends from no liability to total victory and must be considered in light of the attendant risks. *See, e.g., Beaty v. Contl. Auto. Sys. U.S., Inc.*, CV-10-S-2440-NE, 2012 WL 12895014, *8 (N.D. Ala. Feb. 6, 2012). Thus, even a minimal settlement can be approved. *See, e.g., Burrows*, 2013 WL 10167232 at *6; *Bennett*, 737 F.2d at 986; *Behrens v. Wometco Enters., Inc.*, 118 F.R.D. 534, 542 (S.D. Fla. 1988) (“A settlement can be satisfying even if it amounts to a hundredth or even a thousandth of a single percent of the potential recovery.”)

The Settlement reached here is outstanding—it is in the upper range of possible recoveries, considering the risks. *See* Garrison Decl., ¶¶ 29-31. The Settlement avoids the risks of prolonged litigation, and provides class members with certain, immediate relief. Importantly, it even provides a mechanism whereby Class Members can preserve their benefit and warranty extension category simply by completing a claim form. Indeed, it provides Class Members with reimbursement for Qualified Past Repairs and a forward-looking, extended and enhanced warranty to cover Qualified Future Repairs through Authorized Service Centers. *See, supra*,

Section II.B. Thus, the Settlement is fair, adequate, and reasonable, based on the range of possible recovery.

c. *Continued Litigation Would Be Expensive and Lengthy.*

A settlement that “will alleviate the need for judicial exploration of . . . complex subjects, reduce litigation costs, and eliminate the significant risk that individual claimants might recover nothing” merits approval. *Lipuma*, 406 F. Supp. 2d at 1324. Such is the case here. Approval will avoid complex, expensive, and lengthy litigation, saving resources of the parties and the Court. *See, e.g., Parsons*, 2015 WL 13629647 at *4. A national class action such as this one involves seemingly endless discovery; extensive expert involvement; argument and voluminous briefing over certification, summary judgment, and *Daubert* challenges; a lengthy trial; and appeals. The Settlement resolves the case without any further delay and will, if finally approved, offer Class Members an immediate and certain recovery. Thus, this factor also strongly favors preliminary approval of the Settlement.

d. *The Degree of Opposition to the Settlement.*

Courts do not consider this factor until notice has been provided to settlement class members. *See Columbus Drywall & Insulation, Inc. v. Masco Corp.*, 258 F.R.D. 545, 560 (N.D. Ga. 2007).

e. *The Stage of Proceedings.*

Courts look at the last *Bennett* factor “to ensure that the *Callen* Plaintiffs had access to sufficient information to adequately evaluate the merits of the case and weigh the benefits of settlement against further litigation.” *Lipuma*, 406 F. Supp. 2d at 1324. Courts have approved settlements at much earlier stages of litigation. *See Mashburn v. Nat’l Healthcare, Inc.*, 684 F. Supp. 660, 669 (M.D. Ala. 1988) (holding that early settlements are to be encouraged, and accordingly, only some reasonable amount of discovery is required to determine the fairness of the settlement). Plaintiff and Class Counsel have litigated this case at the pleadings stage, thoroughly investigated the facts and law, briefed the relevant legal issues, and reviewed substantive evidence relating to the claims and defenses. *See Parsons*, 2015 WL 13629647 at *12 (“This is not a case in which a complaint has been filed and the parties have rushed to a settlement. Thus, all Parties had a keen grasp of the issues, the factual underpinnings of the claims and defenses herein, and the measure of the evidence supporting those claims and defenses.”). Additionally, in *Callen*, substantial discovery has occurred, documents have been produced on both sides, and an inspection of one Subject Vehicle was scheduled and occurred. Moreover, the *Callen* Plaintiffs requested and received from the Defendants an affidavit confirming the completeness and accuracy of the warranty, sales and repair data

produced by them related to the Litigation Claim, including the total universe of Subject Vehicles sold or leased, the costs of repair under warranty related to the Litigation Claim, dates of repair, and claims covered by goodwill, among other information. *See* Garrison Decl., ¶ 26. Moreover, the *Callen* Plaintiffs have issued confirmatory discovery to confirm the details in that declaration and to confirm other relevant details related to complaints regarding the Burl Walnut Trim, among other information. Settlement here is not premature. Therefore, the *Bennett* factors, like the Rule 23 factors, strongly support approval of the settlement.

C. THE COURT WILL BE ABLE TO CERTIFY THE SETTLEMENT CLASS

Where a class has not been certified prior to settlement, the Court must also consider the prospect of settlement class certification in determining whether to direct notice to the class. *See, e.g., Columbus Drywall & Insulation, Inc.*, 258 F.R.D. at 553 (*citing Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997) (“In order to certify the settlement class, the Court must examine whether the settlement class complies with Rule 23...[and] engage in an independent analysis to determine whether plaintiffs’ proposed settlement class complies with Rule 23(a) and (b).”)). While the ultimate decision on certification is not made until the final approval hearing, at the preliminary approval stage the parties must nevertheless “ensure that the court has a basis for concluding that it likely will be able, after the final hearing,

to certify the class.” Adv. Cmte. Note. To be certified, a class must meet all of Rule 23(a)’s requirements and the requirements of one subsection of 23(b).

The Class readily satisfies these requirements and class certification for settlement purposes is due to be granted. *See Sanchez-Knutson v. Ford Motor Co.*, 310 F.R.D. 529, 542 (S.D. Fla. 2015) (certifying class based on uniform auto defect with exhaust from vehicles).

1. The Class Satisfies Rule 23(a).

a. The Class Is Sufficiently Numerous.

Rule 23(a)(1) is satisfied where, as here, “the class is so numerous that joinder of all class members is impracticable.” Fed. R. Civ. P. 23(a)(1). Numerosity is generally satisfied when the class exceeds 40 members. *See, e.g., Cox v. Am. Cast Iron Pipe Co.*, 784 F.2d 1546, 1553 (11th Cir. 1986). Over 243,000 Subject Vehicles were sold and/or leased in the United States and the proposed Class, which includes likely over one hundred thousand current and former owners and lessees of Subject Vehicles. *See Garrison Decl.*, ¶ 31. Thus, the numerosity requirement of Rule 23(a)(1) is satisfied.

b. Common Questions of Law and Fact Exist.

“To satisfy the commonality requirement, Plaintiffs must show that questions of law or fact are common to the entire class.” *Melanie K. v. Horton*, 2015 WL

1308368, *4 (N.D. Ga. Mar. 23, 2015). “Commonality requires that there be at least one issue whose resolution will affect all or a significant number of the putative class members.” *Williams v. Mohawk Indus., Inc.*, 568 F.3d 1350, 1354 (11th Cir. 2009). The “commonality element is generally satisfied when a plaintiff alleges that Defendants have engaged in a standardized course of conduct that affects all class members.” *In re: Checking Account Overdraft Litig.*, 307 F.R.D. 656, 668 (S.D. Fla. 2015).

Here, the *Callen* Plaintiffs contend that the Class claims are rooted in common questions of fact as to the Litigation Claims in Subject Vehicles and Defendants’ alleged representations and omissions regarding the alleged defective nature of the Burl Walnut Trim. Dkt. 1, 7, 16, and 55. They further contend that the Symptoms Alleged are experienced consistently by Class Members. *See* Garrison Decl., ¶ 31. These common questions will, in turn, generate common answers “apt to drive the resolution of the litigation” for the Class as a whole. *See Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011); *see also Rosen v. J.M. Auto Inc.*, 270 F.R.D. 675, 681 (S.D. Fla. 2009) (“critical issue of whether the [airbag occupant classification system] in [class vehicles] was defective is common to all putative class members”).

c. The Class Representatives' Claims Are Typical.

Fed. R. Civ. P. 23(a)(3) requires that “the claims or defenses of the representative parties are typical of the claims or defense of the class.” *Williams v. Wells Fargo Bank*, 280 F.R.D. 665, 672-73 (S.D. Fla. 2012). A “representative plaintiff’s claim is typical if it arises from the same event or practice or course of conduct that gives rise to the claims of the other class members, and his or her claims are based on the same legal theory.” *In re: Tri-State Crematory Litig.*, 215 F.R.D. 660, 690 (N.D. Ga. 2003).

Here, the same alleged course of conduct injured the proposed Class Representatives in the same manner it has injured all other Class Members. The proposed Class Representatives, like other proposed Class Members, contend they purchased or leased their Subject Vehicles without knowing about the alleged defective nature of the Burl Walnut Trim. *See Rosen*, 270 F.R.D. at 682 (holding the plaintiff typical because he alleged same car defect as rest of class). Like all proposed Class Members, the proposed Class Representatives further contend their Subject Vehicles should have been free from any interior trim defects and free from the Symptoms Alleged. Finally, the proposed Class Representatives and proposed Class Members will similarly, and equitably, benefit from the Settlement. *See*

Garrison Decl., ¶ 31. As such, the typicality requirement of Fed. R. Civ. P. 23(a)(3) is satisfied.

d. The Class Representatives and Class Counsel Are Adequate.

Where “the representative parties will fairly and adequately protect the interests of the class,” the adequacy requirement of Fed. R. Civ. P. 23(a)(4) is met. “To adequately represent a class, a named plaintiff must show that she possesses the integrity and personal characteristics necessary to act in a fiduciary role representing the interests of the class, and has no interest antagonistic to the interests of the class.” *Sanchez-Knutson*, 310 F.R.D. at 540.

Here, the Class Representatives have demonstrated that they are familiar with the facts of this case and understand their duties and fiduciary obligations. *See, supra*, Section IV.B.1. In addition, the Class Representatives have no interests antagonistic to Class Members and will continue to vigorously protect the Class, as they have throughout this litigation.

Under Fed. R. Civ. P. 23(g), “a court that certifies a class must appoint class counsel.” In appointing class counsel, the court must consider the following factors: (i) the work counsel has done in identifying or investigating potential claims in the action; (ii) counsel’s experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (iii) counsel’s knowledge of the applicable law; and (iv) the resources

that counsel will commit to representing the class. Fed. R. Civ. P. 23(g)(1)(A).

The proposed Class Counsel regularly engage in consumer class action litigation and other complex litigation similar to the present action, and they have dedicated substantial resources to the prosecution of this action. *See* Garrison Decl., ¶¶ 2-32. Moreover, counsel have vigorously and competently represented the *Callen* Plaintiffs’ and Settlement Class Members’ interests in this action and will continue to fulfill their duties to the class. *Id.* A firm resume for proposed Class Counsel is attached, and it describes their experience in class actions and complex civil litigation. *See* Garrison Decl., at Exs. A and B.

2. The Class Satisfies Rule 23(b)(3).

Here, not only do “questions of law [and] fact common to class members predominate over any questions affecting only individual members”, class treatment is also “superior to other available methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3).

a. Common Issues of Law and Fact Predominate.

“The predominance inquiry ‘asks whether the common, aggregation-enabling, issues in the case are more prevalent or important than the non-common, aggregation-defeating, individual issues.’” *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. ___, 136 S.Ct. 1036, 1045, 194 L.Ed.2d 124 (2016) (citation omitted). The predominance requirement is satisfied if common issues have a “direct impact on every class member’s effort to

establish liability that is more substantial than the impact of individualized issues in resolving the claim or claims of each class member.” *Carriuolo v. Gen. Motors Co.*, 823 F.3d 977, 985 (11th Cir. 2016) (quoting *Babineau v. Fed. Express Corp.*, 576 F.3d 1183, 1191 (11th Cir. 2009)). At all times, “efficiency is the overriding, textually-mandated concern” and class treatment of claims stemming from a “common course” of conduct is favored. *In re: Checking Account Overdraft Litig.*, 307 F.R.D. at 673. “Predominance is ‘a test readily met in certain cases alleging consumer fraud,’ particularly where . . . uniform practices and misrepresentations give rise to the controversy.” *Id.* (quoting *Amchem*, 521 U.S. at 625).

In this case, questions of law and fact common to the claims of Class Members predominate over any questions affecting only individual members. Specifically, the *Callen* Plaintiffs contend that the Litigation Claims are common across Subject Vehicles. The *Callen* Plaintiffs also contend the Defendants’ Burl Walnut Trim, interior design processes, and marketing were consistent across the Subject Vehicles. Predominance is therefore satisfied.

b. Class Treatment Is Superior.

Superiority looks to the “relative advantages of a class action suit over whatever other forms of litigation might be realistically available to the plaintiffs.” *Klay v. Humana, Inc.*, 382 F.3d 1241, 1269 (11th Cir. 2004). Under Rule 23(b)(3), the Court

considers a “non-exhaustive list of four factors” in making its superiority determination: “(1) the interests of members of the class in individually controlling the prosecution or defense of separate actions; (2) the extent and nature of any litigation concerning the controversy already commenced by or against the class; (3) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (4) the difficulties likely to be encountered in the management of a class action.” *Id.*

Here, each factor falls in favor of class certification: (1) there is no evidence implicating the first factor; (2) there are no parallel cases ongoing; (3) this Court has handled this litigation ably and is fully capable of continuing to do so; and, (4) the final factor, manageability, does not apply here. *Amchem Prods., Inc.*, 521 U.S. at 620 (“a district court need not inquire whether the case, if tried, would present intractable management problems ... for the proposal is that there will be no trial.”).

The damages sought by each Class Member are quite small relative to the cost of prosecuting an individual claim, especially given the expert-intensive nature of the scientific evidence necessary to prevail. *See Monroe Cty. Empls.’ Ret. Sys. v. S. Co.*, 2019 WL 3956139, *27 (N.D. Ga. Aug. 22, 2019) (superiority met where “amount of individual damages is likely to be relatively small”). Likewise, Class treatment is superior from an efficiency and resource perspective. *See Mohamed v. Am. Motor Co., LLC*, 320 F.R.D. 301, 317 (S.D. Fla. 2017) (“issues involved in

Plaintiff's claim and the allegations he uses to support same would be, for all intents and purposes, identical to those raised in individual suits brought by any of the members of the modified class."). Therefore, the superiority requirements of Rule 23(b)(3) are satisfied.

D. THE PROPOSED CLASS NOTICE IS THE BEST PRACTICABLE

Rule 23(e)(1) requires that the Court "must direct notice in a reasonable manner to all class members who would be bound by the proposal" before a settlement may be approved. To satisfy due process, notice must "reach the parties affected" and "convey the required information." *Adams v. S. Farm Bureau Life Ins. Co.*, 493 F.3d 1276, 1285-86 (11th Cir. 2007). For a Rule 23(b)(3) settlement class, the Court must "direct to class members the best notice that is practicable under the circumstances...." Fed. R. Civ. P. 23(c)(2)(B).

The Notice Plan proposed meets these standards. The Parties created and agreed on the proposed Notice Plan, including the content and the distribution plan for the notice with the Settlement Administrator—Epiq Class Action Administration ("Epiq"), which is an experienced firm specializing in comprehensive notice settlement management in complex class litigation—who will administer the Notice Plan and claims process. *See* Declaration of Cameron R. Azari, Esq. Regarding Settlement Notice Plan, ¶¶ 1-10, filed herewith (the "Azari Decl."). The principal

methods of reaching Class Members will be through individual postcard notices by U.S. first class mail to all readily identifiable Class Members, and establishment of a comprehensive settlement website designed to explain Class Members' rights and obligations [www.\[settlementwebsite\].com](http://www.[settlementwebsite].com) including, but not strictly limited to: (i) an overview of the litigation; (ii) an explanation of the Settlement benefits and how to claim them; (iii) contact information for Class Counsel; (iv) the address of the comprehensive Settlement Website that will house links to key filings; and, (v) instructions on how to object or opt out. Azari Decl. ¶¶ 11-30. The Notice Plan includes a double-sided Post Card Notice, a Long Form a Notice, Reimbursement Claim Form, and a Qualified Future Repair Claim Form, which are attached as Attachments 2 to 5 of the Azari Decl. This Notice Plan comports with accepted standards and with this District's Procedural Guidance on notice and opt-outs.

E. THE PROPOSED SCHEDULE FOR NOTICE AND APPROVAL

In connection with preliminary approval, the *Callen* Plaintiffs request that the Court set a schedule for disseminating notice and a Final Approval Hearing. As set forth in their Notice Plan, the *Callen* Plaintiffs propose the following:

Event	Deadline
Deadline to file Motion for Attorneys' Fees, Costs, and Class Incentive Awards	30 days after Court enters the Preliminary Approval Order
Notice mailed to Class Members ("Notice Date")	35 days after Court enters the Preliminary Approval Order

Settlement Website available to Class Members	35 days after Court enters the Preliminary Approval Order
Deadline to Submit a Claim or Object to or Opt Out of Settlement	60 days after Notice Date
Last day to file Motion for Final Approval of Settlement	30 calendar days before the Final Approval Hearing
Final Approval Hearing	At least 140 days after entry of Preliminary Approval Order

This schedule is similar to those used in other class settlements and provides due process to Class Members.

IV. THE COURT SHOULD PRELIMINARILY ENJOIN PARALLEL PROCEEDINGS.

Finally, the *Callen* Plaintiffs seek entry of an Order preliminarily enjoining all Class Members who do not timely opt out from the Settlement Class from filing, prosecuting, maintaining or continuing litigation in federal or state court based on or related to the claims or facts alleged in *Callen*. This type of injunctive relief is commonly granted in preliminary approvals of class action settlements pursuant to the All Writs Act.

The All Writs Act authorizes federal courts to “issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.” 28 U.S.C. § 1651(a). The Act empowers the Court to enjoin “conduct which, left unchecked, would have had the practical effect of diminishing the court’s power to bring the litigation to its natural conclusion.” *In re: Am. Online*

Spin-Off Accounts Litig., No. CV 03-6971-RSWL, 2005 U.S. Dist. LEXIS 45625, *14 (C.D. Cal. May 9, 2005) (quoting *ITT Cmty. Dev. Corp. v. Barton*, 569 F.2d 1351, 1359 (5th Cir. 1978)).

In the class action context, the All Writs Act has been invoked by federal courts to enjoin persons not within the court's jurisdiction from frustrating a court order or court-supervised settlement. *See, e.g., In re: Baldwin-United Corp.*, 770 F.2d 328, 335-38 (2d Cir. 1985); *see also In re: Bridgestone/Firestone, Tires Prods. Liab. Litig.*, 333 F.3d 763, 769 (7th Cir. 2003) (approving "issu[ance of] an injunction [under the All Writs Act] that prevent[ed] all members of the putative national classes, and their lawyers," having "classes certified over defendants' opposition with respect to the same claims"). The Act extends a court's authority "to persons who, though not parties to the original action or engaged in wrongdoing, are in a position to frustrate the implementation of a court order or the proper administration of justice, and encompass those who have not taken any affirmative action to hinder justice." *United States v. N.Y. Tel. Co.*, 434 U.S. 159, 174 (1977).

In cases such as this, where parties to complex, class action litigation have reached a settlement agreement after lengthy, protracted and difficult negotiations, parallel proceedings can "seriously impair the federal court's flexibility and authority' to approve settlements." *In re: Baldwin-United Corp.*, 770 F.2d at 337

(citation omitted); *see also In re: Diet Drugs Prods. Liab. Litig.*, 282 F.3d 220, 236 (3d Cir. 2002) (finding threats to court’s jurisdiction “particularly significant where there are conditional class certifications and impending settlements in federal actions”). Under these circumstances, the Court has the power and authority to enjoin current or future federal proceedings and future state court proceedings. *See In re: Joint E. & S, Dist. Asbestos Litig.*, 134 F.R.D. 32, 37 (E.D.N.Y. & S.D.N.Y. 1990) (“Whether viewed as an affirmative grant of power to the courts or an exception to the Anti-Injunction Act, the All Writs Act permits courts to certify a national class action and to stay pending federal and state cases brought on behalf of class members.”); *Newby v. Enron Corp.*, 302 F.3d 295, 301 (5th Cir. 2002) (concluding that district court has authority to enjoin prospective state court actions).

Accordingly, pursuant to its authority under the All Writs Act, the Court should include in its Order a preliminary injunction against parallel proceedings pending the settlement approval process. *See, e.g., Grogan v. Aaron’s Inc.*, No. 1:18-cv-02821-JPB, Slip Op. at p. 14 (N.D. Ga. May 1, 2020), attached hereto as Exhibit 2 (“Pending the final determination of whether the Settlement should be approved, . . . all Settlement Class Members are hereby enjoined from commencing, pursuing, maintaining, enforcing, or prosecuting . . . Released Claims in any judicial, administrative, arbitral, or other forum, against any of the Released Parties. . . . This

injunction is necessary to protect and effectuate the Settlement Agreement, this Preliminary Approval Order, and the Court's flexibility and authority to effectuate the Settlement Agreement and to enter Judgment when appropriate and is ordered in aid of this Court's jurisdiction and to protect its judgments."); *Feller v. Transamerica Life Ins. Co.*, No. 16-cv-01378 CAS (GJSx), 2018 U.S. Dist. LEXIS 196062, *5 (C.D. Cal. Nov. 16, 2018) ("As part of [the preliminary approval] order, the Court issued a stay, which enjoins all settlement class members from pursuing or participating in cases with claims or causes of action (1) related to those in the consolidated *Feller* action or (2) released by the Settlement Agreement."); *In re: Mexico Money Transfer Litig.*, 98 C 2407, 98 C 2408, 1999 U.S. Dist. LEXIS 17268, *13 (N.D. Ill. Oct. 13, 1999) (enjoining "all parallel and overlapping litigation in other forums" and holding "injunctions are needed to prevent relitigation of similar matters and to enforce this court's jurisdiction over the nationwide class action.") .

V. CONCLUSION

For all the reasons set forth herein, the *Callen* Plaintiffs respectfully request the Court (1) grant preliminary approval of the proposed Settlement Agreement; (2) preliminarily certify the proposed nationwide Settlement Class; (3) direct Notice to the Class; (4) appoint Class Counsel; (5) schedule a Final Approval hearing; and (6) preliminarily enjoin all parallel proceedings under the All Writs Act.

Respectfully submitted this the 5th day of March, 2022.

/s/ James F. McDonough, III

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*Counsel for the Callen Plaintiffs and
Proposed Class Counsel*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I caused the foregoing document to be electronically-filed with the Clerk of Court using this Court's CM/ECF system, which caused it to be served this day on all counsel of record who have consented to receive electronic service.

Respectfully submitted this the 5th day of March, 2022.

/s/ James F. McDonough, III
James F. McDonough, III (GA Bar No. 117088)

LOCAL RULE 7.1(D) COMPLIANCE CERTIFICATE

Pursuant to L.R. 7.1(D), this certifies that the foregoing document complies with the font and point selections approved by L.R. 5.1(C). The foregoing document was prepared using Times New Roman font in 14 point.

Respectfully submitted this the 5th day of March, 2022.

/s/ James F. McDonough, III
James F. McDonough, III (GA Bar No. 117088)

EXHIBIT 1

**To Motion for Preliminary
Approval**

CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

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This Agreement is made and entered into by and between Teri Callen, Steve Burton, Paul Finkenauer, Lorne Collier, Jose Figueroa, Glenn Scudder, Ann Fulmer, Rudi Rosenfeld, Taryn Armstrong, Sean Hunter, Richard Hall, Angelo Farrow and Larry Acunto (“Plaintiffs”), on the one hand, and Defendants Daimler AG and Mercedes-Benz USA, LLC (“MBUSA”) (collectively, “Defendants”), on the other hand, to settle, compromise, release, and discharge the claims on behalf of Plaintiffs and all those similarly situated according to the terms and conditions herein.

1. DEFINITIONS

As used in this Agreement (which, as defined below, includes the accompanying Exhibits), the following terms have the meanings set forth below. The plural of any defined term includes the singular, and the singular of any defined term includes the plural, as the case may be.

1.1 “Burl Walnut Trim” means the genuine Mercedes-Benz interior trim option offered by Defendants as “Burl Walnut” or “Burred Walnut,” which is referenced by option codes 731 or H14.

1.2 “Administrative Costs” means all of the costs of the Notice Plan relating to this Settlement and the costs of administering and processing claims, disbursements of consideration, and other necessary and reasonable costs associated with administering this Settlement, including the compensation of the Settlement Administrator and the Third-Party Neutral. Administrative Costs shall be paid by Defendants.

1.3 “Agreement” means this Class Action Settlement Agreement and Release, including the notices and other documents contemplated by this Class Action Settlement Agreement and Release, and any amendments thereto. The Agreement may alternatively be referred to as the “Settlement” or “Settlement Agreement.”

1.4 “Attorneys’ Fees, Costs, and All Other Expenses” means the settlement amounts

approved by the Court for payment to Class Counsel to cover attorneys' fees, costs, and any other expenses incurred by Class Counsel in this Litigation. Defendants are not responsible for any other expenses, including but not limited to any costs and expenses of addressing objections and appeals, any claims by other plaintiffs' counsel for attorneys' fees or costs, and any other expenses incurred by or on behalf of any Plaintiffs, Plaintiffs' counsel, Class Members, or Class Counsel.

1.5 "Authorized Service Center" means any service center specifically authorized at the time of repair or presentment to provide warranty services for Mercedes-Benz vehicles, including authorized Mercedes-Benz dealerships and authorized Mercedes-Benz Service Centers, which are identifiable by ZIP code at https://www.mbusa.com/mercedes/dealers/schedule_service.

1.6 "Claims Period" means the time during which Settlement Class Members may submit a Reimbursement Claim Form under the Settlement, and which is set forth in Section 9.4 of this Agreement.

1.7 "Class Counsel" means Heninger Garrison Davis, LLC, and W. Lewis Garrison, Jr. and Taylor C. Bartlett, and Rozier Hardt McDonough PLLC, and James F. McDonough, III.

1.8 "Class Notice" means the notice to the Settlement Class approved by the Court. The Settling Parties will cooperate to develop a proposed plain-English and user-friendly Class Notice to submit to the Court, for its approval with the motion for preliminary approval.

1.9 "Class Representatives" means the Plaintiffs in their representative capacity for the Settlement Class, as approved by the Court.

1.10 "Class Representative Service Award" means a payment, to be approved by the Court, to Plaintiffs in their capacity as Class Representatives to compensate them for their work on behalf of the Settlement Class, including participating in the Litigation, performing work in support of the Litigation, and undertaking the risks of Litigation.

1.11 “Court” means the Honorable Thomas W. Thrash, Jr. of the United States District Court for the Northern District of Georgia, or the Judge of the Northern District of Georgia assigned to preside over the above-captioned action if not Judge Thrash, Jr.

1.12 “Defense Counsel” means Defendants’ counsel of record in the Litigation, Troy M. Yoshino, Eric J. Knapp, Dara D. Mann and Scott J. Carr of Squire Patton Boggs (US) LLP, and Stephen B. Devereaux and Madison H. Kitchens of King & Spalding LLP.

1.13 “Effective Date” means 75 days after the date when the Final Order and Judgment is entered, unless there is an appeal or a timely motion for an extension of time to file an appeal under Federal Rule of Appellate Procedure 4(a)(5). If there is an appeal or a timely motion for an extension of time to file an appeal under Federal Rule of Appellate Procedure 4(a)(5), the Effective Date will be the latest of the following dates: (a) 75 days after the date when the Final Order and Judgment is entered; (b) 15 days after the date on which any motion for extension of time to file an appeal has been denied; or (c) 15 days after the date on which any appeals of the approval of the Settlement have been resolved exhausted in a manner approving the Settlement as proposed.

1.14 “Final Order and Judgment” means the order and judgment of the Court dismissing this matter with prejudice as to Defendants and approving this Agreement.

1.15 “In-Service Date” means the date that the Subject Vehicle was first purchased or leased by any customer from an authorized Mercedes-Benz dealership.

1.16 “Litigation” means *Callen et al. v. Mercedes-Benz USA, LLC et al.*, Case No. 1:19-cv-01411-TWT (N.D. Ga.), pending in the United States District Court for the Northern District of Georgia.

1.17 “Litigation Claims” means the claims asserted by Plaintiffs in this Litigation alleging that Burl Walnut Trim in 212 E-Class Mercedes-Benz vehicles substantially fades, grows

discolored, and becomes cloudy over time.

1.18 “Mediator” means Hunter R. Hughes.

1.19 “Notice Date” means the date on which Class Notice is sent to the Settlement Class.

1.20 “Notice Plan” means the plan for disseminating Class Notice to the Settlement Class as required by this Court, Fed. R. Civ. P. 23(c)(2)(B), and the Class Action Fairness Act (28 U.S.C. § 1715), as described in Section 8 below.

1.21 “Person” means an individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, any business or legal entity, and such individual’s or entity’s spouse, heirs, predecessors, successors, representatives, and assignees.

1.22 “Plaintiffs” means Teri Callen, Steve Burton, Paul Finkenauer, Lorne Collier, Jose Figueroa, Glenn Scudder, Ann Fulmer, Rudi Rosenfeld, Taryn Armstrong, Sean Hunter, Richard Hall, Angelo Farrow and Larry Acunto.

1.23 “Preliminary Approval Order” means the order to be entered by the Court preliminarily approving the settlement and directing that Class Notice be provided to the Settlement Class. The Settling Parties will submit an agreed-upon proposed Preliminary Approval Order to the Court along with the motion for preliminary approval.

1.24 “Qualified Future Repair” means the replacement of the Burl Walnut Trim set in a Subject Vehicle, at an Authorized Service Center on or after the Effective Date, after the requirements of Sections 4.B and 9.B have been met and upon confirmation that one or more Burl Walnut Trim pieces are experiencing fading or discoloration, that such conditions are not caused by external influences such as chemical exposure, harsh or abrasive cleaners, accidents, or

alterations, that exclusions set forth in the New Vehicle Limited Warranty and that are unrelated to ultraviolet radiation exposure do not otherwise apply; and that the New Vehicle Limited Warranty has not been voided.

1.25 “Qualified Past Repair” means a repair or replacement of the Burl Walnut Trim of a Subject Vehicle because of fading or discoloration that occurred before the Effective Date not caused by external influences, such as chemical exposure, harsh or abrasive cleaners, accidents, or alterations, and not otherwise falling into an exclusion from coverage that is unrelated to ultraviolet radiation exposure as set forth in the New Vehicle Limited Warranty.

1.26 “Reimbursement Claim Form” means the Court-approved claim form that must be timely completed and submitted for a Settlement Class Member to be eligible for reimbursement for Qualified Past Repair(s) as set forth in Section 9.A of this Agreement. A copy of the Reimbursement Claim Form that Class Members can download will be available on the settlement website, and there will also be an electronic version of the Reimbursement Claim Form that can be completed online and that allows for uploading of any required documentation to support a Claim. Together with the Settlement Administrator, the Settling Parties will cooperate to develop a proposed plain-English and user-friendly Reimbursement Claim Form to submit to the Court for its approval with the motion for preliminary approval.

1.27 “Settlement Administrator” means the qualified third-party appointed by the Court to administer the settlement, including implementation of the Notice Plan and claims administration.

1.28 “Settlement Class” means all current owners, former owners, current lessees, and former lessees of Subject Vehicles who purchased or leased their Subject Vehicle in the United States. Excluded from the Settlement Class are:

- a) Persons who have settled with, released, or otherwise had claims adjudicated on the merits against Defendants that are substantially similar to the Litigation Claims related to the Symptoms Alleged (*i.e.*, alleging that the Burl Walnut Trim in 212 E-Class Mercedes-Benz vehicles substantially fades, grows discolored, and becomes cloudy over time);
- b) Defendants and their officers, directors and employees, as well as their corporate affiliates and the corporate affiliates' officers, directors and employees;
- c) Counsel to any of the parties; and
- d) The Honorable Thomas W. Thrash, Jr., Hunter R. Hughes, and members of their respective immediate families.

1.29 “Settlement Class Member” means any Person who falls within the definition of the Settlement Class who has not timely and properly elected to opt out pursuant to Section 8.12 below.

1.30 “Settling Parties” means, collectively, Plaintiffs, all Settlement Class Members, and Defendants but excludes those Class Members that timely opt out of the Settlement.

1.31 “Symptoms Alleged” means what has been alleged and described as fading, discoloration, and cloudiness of the Burl Walnut Trim in a Subject Vehicle.

1.32 “Third-Party Neutral” means the mutually acceptable neutral who shall be responsible for adjudicating disputes over Settlement claims, as described in Section 9.7 below.

1.33 “Subject Vehicle” means any 212 E-Class Mercedes-Benz originally equipped with Burl Walnut Trim and purchased or leased in the United States.

2. DENIAL OF ANY WRONGDOING AND LIABILITY

2.1 Defendants deny the material factual allegations and legal claims asserted by the Plaintiffs and Settlement Class Members in the Litigation, including, but not limited to, any and all charges of wrongdoing or liability, or allegations of defect, arising out of any of the conduct, statements, acts or omissions alleged, or that could have been alleged, in the Litigation.

3. BACKGROUND

3.1 A class action complaint, *Callen et al. v. Mercedes-Benz USA, LLC et al.*, was filed by plaintiff, Teri Callen against Daimler AG and MBUSA on March 28, 2019, in the United States District Court for the Northern District of Georgia alleging, on behalf of a putative nationwide class (and a proposed putative state subclass) that the Subject Vehicles contain defective Burl Walnut Trim in that they experience the Symptoms Alleged.

3.2 On August 1, 2019, Plaintiffs filed a First Amended Complaint adding plaintiffs Steve Burton, Paul Finkenauer, and Lorne Collier, and additional proposed putative state subclasses and related claims.

3.3 On October 30, 2019, Defendants filed a motion to dismiss the First Amended Complaint. Plaintiffs opposed the motion on December 23, 2019. Defendants filed a reply brief on January 29, 2020.

3.4 On June 17, 2020, the Court issued an order denying-in-part and granting-in-part Defendants' motion to dismiss. In that order, the Court dismissed Plaintiffs' claims for breach of express warranty, breach of implied warranty, violation of the Magnuson-Moss Warranty Act, unjust enrichment; fraud and suppression as to Plaintiff Paul Finkenauer's and Lorne Collier's fraudulent concealment claims, and violations of the South Carolina Unfair Trade Practices Act, Ohio Consumer Sales Practices Act as to Plaintiff Steve Burton's class action allegations, Oregon

Unlawful Trade Practices Act and New Jersey Consumer Fraud Act. The Defendants' motion to dismiss as to all other Litigation Claims was denied.

3.5 On March 23, 2021, Plaintiffs filed a Second Amended Complaint that, among other things, added Plaintiffs Jose Figueroa, Glenn Scudder, Ann Fulmer, Rudi Rosenfeld, Taryn Armstrong, Sean Hunter, Richard Hall, Angelo Farrow, and Larry Acunto, and claims arising under the laws of nine additional states and additional proposed putative state subclasses.

3.6 On May 10, 2021, Defendants filed a partial motion to dismiss the Second Amended Complaint. Plaintiffs opposed the motion on July 2, 2021. Defendants filed a reply brief on July 30, 2021.

3.7 On October 4, 2021, the Court issued an order denying-in-part and granting-in-part Defendants' partial motion to dismiss. In that order, the Court affirmed its prior motion to dismiss order and also dismissed Plaintiffs' claims for breach of express warranty, breach of implied warranty, violation of the Magnuson-Moss Warranty Act, and unjust enrichment. The Court also dismissed Plaintiffs' claim for equitable and injunctive relief claim, Plaintiffs Glenn Scudder, Larry Acunto, and Sean Hunter's fraudulent concealment claims, violations of Georgia's Uniform Deceptive Trade Practices Act and Missouri Merchandising Practices Act, and Plaintiff Sean Hunter's omission-based California Unfair Competition Law and Consumers Legal Remedies Act claims. The Defendants' motion to dismiss as to all other Litigation Claims was denied.

3.8 During the course of the Litigation, the Settling Parties and their counsel have litigated dispositive motions and conducted discovery, including written discovery, document productions, and a vehicle inspection. The parties have litigated their respective positions in connection with all aspects of the Litigation.

3.9 As a result of the Litigation, the Settling Parties and their counsel are thoroughly

familiar with the factual and legal issues presented by their respective claims and defenses and recognize the uncertainties as to the ultimate outcome of the Litigation, and that any final result would require years of further complex litigation and substantial expense.

3.10 The Settling Parties agreed to mediate the case with Hunter R. Hughes. After mediation, the parties reached agreement on the material terms of a class action settlement, other than attorneys' fees, costs, and class representative service awards. After a separate, further mediation session, the parties reached an agreement on attorneys' fees, costs and other expenses and class representative service awards, all subject to Court approval. After further negotiations, these agreements were reduced to this writing.

3.11 This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended to or will be construed as an admission by Defendants that the Litigation Claims have merit or that Defendants bear any liability to Plaintiffs or the Settlement Class on those claims or any other claims, or as an admission by Plaintiffs that Defendants' defenses in the Litigation have merit.

4. CONSIDERATION TO THE CLASS

A. Reimbursement for Qualified Past Repairs

4.1 Settlement Class Members shall be entitled to submit claims for reimbursement of out-of-pocket costs paid by them for Qualified Past Repairs to their Subject Vehicles, subject to the applicable requirements of Section 9.A below and the following limitations:

- a) For a Subject Vehicle that received a Qualified Past Repair fewer than 4 years (48 months) from the Subject Vehicle's original In-Service Date, a Settlement Class Member making a qualifying claim shall receive

reimbursement of 100% of the cost incurred to perform the Qualified Past Repair;

- b) For a Subject Vehicle that received a Qualified Past Repair that does not fall within category 4.1(a) and that is fewer than 8 years (96 months) from the Subject Vehicle's original In-Service Date, a Settlement Class Member making a qualifying claim shall receive reimbursement of 75% of the cost incurred to perform the Qualified Past Repair;
- c) For a Subject Vehicle that received a Qualified Past Repair that does not fall within category 4.1(a) or 4.1(b) and that is fewer than 10 years (120 months) from the Subject Vehicle's original In-Service Date, a Settlement Class Member making a qualifying claim shall receive reimbursement of 55% of the cost incurred to perform the Qualified Past Repair; and
- d) For a Subject Vehicle that received a Qualified Past Repair that does not fall within category 4.1(a), 4.1(b) or 4.1(c) and that is fewer than 13 years (156 months) from the Subject Vehicle's original In-Service Date, a Settlement Class Member making a qualifying claim shall receive reimbursement of 50% of the cost incurred to perform the Qualified Past Repair; and
- e) For a Subject Vehicle that received a Qualified Past Repair that does not fall within category 4.1(a), 4.1(b), 4.1(c) or 4.1(d) and that is fewer than 15 years (180 months) from the Subject Vehicle's original In-Service Date, a Settlement Class Member making a qualifying claim shall receive

reimbursement of 30% of the cost incurred to perform the Qualified Past Repair.

4.2 There shall be no double recovery under the settlement. Thus, if a Settlement Class Member is eligible for, or previously received, goodwill, extended warranty coverage, insurance, indemnity, or any other form of coverage for the repair or replacement (“Previous Repair Coverage”), the total amount of any reimbursement due to the Settlement Class Member shall be offset against prior amounts given, and shall not exceed the limits set forth in this Section 4.A (*e.g.*, if the repair or replacement occurred at 6 years and was performed at an Authorized Service Center, but 30% of the repair or replacement was previously covered by goodwill or something else, the claiming Settlement Class Member may recover only up to 45% of the repair or replacement cost assuming other qualifications are met). For the avoidance of doubt, any Previous Repair Coverage for a Subject Vehicle shall not be used to offset the total amount of reimbursement for a Qualified Past Repair if that claim for reimbursement relates solely to an additional or subsequent repair or replacement of Burl Walnut Trim for that Subject Vehicle or another Subject Vehicle for which the Class Member has not received Previous Repair Coverage.

B. Coverage for Qualified Future Repairs

4.3 For current owners and lessees, commencing on the Effective Date, Defendants will provide coverage of all or part of the cost of Qualified Future Repairs, subject to the requirements of Section 9.B below and the following limitations:

- a) For a Subject Vehicle needing a Qualified Future Repair fewer than 4 years (48 months) from the Subject Vehicle’s original In-Service Date, a Settlement Class Member presenting his or her Subject Vehicle at an

Authorized Service Center with a qualifying claim will be covered for 100% of the cost to perform the Qualified Future Repair;

- b) For a Subject Vehicle needing a Qualified Future Repair that does not fall within Section 4.4(a) and that is fewer than 8 years (96 months) from the Subject Vehicle's original In-Service Date, a Settlement Class Member presenting his or her vehicle at an Authorized Service Center with a qualifying claim will be covered for 75% of the cost to perform the Qualified Future Repair;
- c) For a Subject Vehicle needing a Qualified Future Repair that does not fall within Sections 4.4(a) or 4.4(b) and that is fewer than 10 years (120 months) from the Subject Vehicle's original In-Service Date, a Settlement Class Member presenting his or her vehicle at an Authorized Service Center with a qualifying claim will be covered for 55% of the cost to perform the Qualified Future Repair;
- d) For a Subject Vehicle needing a Qualified Future Repair that does not fall within Sections 4.4(a), 4.4(b) or 4.4(c) and that is fewer than 13 years (156 months) from the Subject Vehicle's original In-Service Date, a Settlement Class Member presenting his or her vehicle at an Authorized Service Center with a qualifying claim will be covered for 50% of the cost to perform the Qualified Future Repair;
- e) For a Subject Vehicle needing a Qualified Future Repair that does not fall within Sections 4.4(a), 4.4(b), 4.4(c) or 4.4(d) and that is fewer than 15 years (180 months) from the Subject Vehicle's original In-Service Date, a

Settlement Class Member presenting his or her vehicle at an Authorized Service Center with a qualifying claim will be covered for 30% of the cost to perform the Qualified Future Repair;

- f) If any Settlement Class Member prior to final approval of this Settlement either: (i) presents documentary evidence that he or she presented the Burl Walnut Trim of their Subject Vehicle to an Authorized Service Center for repair or replacement or provided written notice to MBUSA under the New Vehicle Limited Warranty but was denied warranty or goodwill coverage for such repair or replacement, and the Settlement Class Member for any reason chose not to repair or replace the Burl Walnut Trim; or (ii) provides to the Settlement Administrator proof of any such alleged Burl Walnut Trim defect, which proof includes a dated photograph of the alleged Burl Walnut Trim defect, then the claim is preserved and payable pursuant to the sliding scale set forth in Section 4.4(a), 4.4(b), 4.4(c), 4.4(d) and 4.4(e) based on the age of the Subject Vehicle at the time the Settlement Class Member presented the Subject Vehicle to the Authorized Service Center, provided written notice to MBUSA under the New Vehicle Limited Warranty, or submitted the claim to the Settlement Administrator. Plaintiffs are deemed to have presented on the date upon which they (1) met the conditions outlined in Section 4.3(f)(i), (2) filed their Complaint, or (3) provided notice to MBUSA prior to the filing of their Complaint through a demand letter delivered to MBUSA or to counsel for Defendants, whichever is earliest.

- g) For a Subject Vehicle needing a Qualified Future Repair that does not fall within Section 4.4(f) and that is more than 15 years (180 months) from the Subject Vehicle's original In-Service Date, Defendants shall not be required to offer any coverage.

4.4 All repairs or replacements described in Section 4.B must be performed by an Authorized Service Center.

4.5 All claims covered by Section 4.B. will be processed through MBUSA's standard payment processes with its dealers.

5. PAYMENTS BY DEFENDANTS

5.1 **To Settlement Class Members Submitting Claims:** Defendants agree to reimburse Settlement Class Members for their out-of-pocket costs paid for Qualified Past Repairs as detailed in Section 4.A above—and pursuant to the claims procedures set out in Section 9. Settlement Class Members may elect to receive payment by check or by electronic payment (*e.g.*, Venmo or Paypal) in a form agreed to by the Settling Parties.

5.2 **To Plaintiffs:** Plaintiffs, through Class Counsel, will request Class Representative Service Awards totaling no more than \$65,000 (or a maximum of \$5,000 per class representative). Payments made pursuant to this Section shall be made within twenty (20) business days of the Effective Date, care of Class Counsel. Plaintiffs, Class Counsel, and Defendants negotiated and agreed to the amount of Class Representative Service Award, by and through the Mediator, only after reaching agreement in principle on the material terms of consideration for the Settlement Class.

5.3 **To Class Counsel:** Plaintiffs, through Class Counsel, will request, and Defendants agree not to object to, and, if Class Counsel's request is granted by the Court, to pay up to a total

of \$4,500,000 for reasonable Attorneys' Fees for work performed by Class Counsel and reimbursement of reasonable costs and other expenses incurred in connection with this Litigation. Class Counsel shall file their motion requesting an award of Attorneys' Fees, Costs and All Other Expenses no later than thirty (30) days after the Court enters an order granting preliminary approval of this Settlement. Plaintiffs, Class Counsel, and Defendants negotiated and agreed to the issue of Attorneys' Fees, Costs, and All Other Expenses, by and through the Mediator, only after reaching agreement in principle on the material terms of consideration for the Settlement Class.

5.4 Plaintiffs and Class Counsel will not seek in excess of the sums specified in Sections 5.1, 5.2 and 5.3, and in any event, Plaintiffs and Class Counsel agree that Defendants shall not pay, nor be obligated to pay, any sum in excess of the cap amounts specified in Sections 5.1, 5.2 and 5.3. Plaintiffs, Class Counsel, and Defendants agreed to the amount of Attorneys' Fees, Costs, and All Other Expenses with assistance of the Mediator and only after reaching agreement upon all other material terms of this Agreement.

5.5 The Settling Parties agree the amounts in Sections 5.1, 5.2, and 5.3 represent Defendants' all-inclusive, full payment for all fees, costs, and all other expenses in this Litigation or arising from this Litigation, including but not limited to fees, costs, and any other expenses incurred by any counsel for any objectors or intervenors, by any later-appearing counsel, or in any appeals related to the foregoing. The amounts described in Sections 5.1, 5.2, and 5.3 shall constitute full satisfaction of Defendants' obligation to pay any person, attorney or law firm for attorneys' fees, costs, and all other expenses in this Litigation or arising from this Litigation.

5.6 At the election of Class Counsel, Attorneys' Fees, Costs, and All Other Expenses awarded by the Court to Class Counsel shall be paid by Defendants prior to the Effective Date if

the terms and conditions set forth in Paragraphs 5.7 and 5.8 are met.

5.7 Class Counsel may, at any time within sixty (60) days after the entry of the Final Order and Judgment by the Court approving the Settlement, notify Defense Counsel that Class Counsel elects to receive payment of Attorneys' Fees, Costs, and All Other Expenses prior to the Effective Date (and, if so, the amount sought to be paid under that Paragraph). If Class Counsel elect to receive payment of Attorneys' Fees, Costs, and All Other Expenses (in full or in part) prior to the Effective Date, and provided they comply with the security requirements set forth in Paragraph 5.8, Defendants shall make the payment via electronic wire within seven (7) business days of receipt of Class Counsel's notice. If, and to the extent, Class Counsel (i) do not timely elect to receive full payment of Attorneys' Fees, Costs, and All Other Expenses prior to the Effective Date, or (ii) do not otherwise meet the requirements of Paragraph 5.8, Attorneys' Fees, Costs, and All Other Expenses shall be paid no later than seven (7) business days from the Effective Date of the Settlement.

5.8 Payment of Attorneys' Fees, Costs, and All Other Expenses to Class Counsel prior to the Effective Date is expressly conditioned upon Class Counsel agreeing to a stipulated undertaking that, in the event that Final Order and Judgment is reversed or modified on appeal, or in the event that any award of attorneys' fees and expenses is modified or vacated on appeal, Class Counsel shall remit to Defendants all attorneys' fees and expenses paid by Defendants under the Settlement Agreement, as set forth in the Stipulated Undertaking between the Parties, the form of which is attached hereto as Exhibit A. This provision will survive this Agreement and may be enforced regardless whether the Settlement becomes effective or is otherwise terminated.

5.9 Defendants agree not to appeal, or otherwise support any appeal, of an order or judgment entered by the Court that is consistent with this provision and the terms of the Settlement.

Any costs incurred by Class Counsel to settle any claims by objectors or intervenors shall be the sole responsibility of Class Counsel.

6. RELEASE

6.1 Upon the entry of the Final Order and Judgment, Plaintiffs and each Settlement Class Member, on behalf of themselves and their current and former/predecessor agents, heirs, executors and administrators, successors, assigns, insurers, attorneys, representatives, shareholders, and any and all persons who in the future seek to claim through or in the name or right of any of them (the “Releasing Parties”), release and forever discharge (as by an instrument under seal without further act by any person, and upon good and sufficient consideration), Defendants and each of their current or former administrators, insurers, reinsurers, agents, firms, parent companies/corporations, sister companies/corporations, subsidiaries and affiliates (including without limitation Mercedes-Benz US International), and all other entities, including without limitation manufacturers, suppliers, and distributors (including wholesale and retail distributors), and affiliated dealerships, and all of the foregoing persons’ or entities’ respective predecessors, successors, assigns and present and former officers, directors, shareholders, employees, agents, attorneys, representatives, as well as their insurers (collectively, the “Released Parties”) from each and every claim of liability, on any legal or equitable ground whatsoever, whether known or unknown, including relief under federal law or the laws of any state, that was or could have been made relating to, connected with, or resulting from the Litigation Claims and the Symptoms Alleged, including any claim that the Burl Walnut Trim in the Subject Vehicles is inadequate, of poor or insufficient quality or design, or defective, due to fading, discoloration, or cloudiness (the “Released Claims”).

6.2 The releases provided for herein are as a result of membership as a Settlement Class

Member or status as a Person with a legal right to assert claims of a Settlement Class Member, the Court's approval process herein, and occurrence of the Effective Date, and are not conditional on receipt of payment by any particular Settlement Class Member. Persons who, after the date of the Preliminary Approval Order, acquire legal rights to assert claims within the scope of this Agreement that belong initially to a Settlement Class Member shall take such rights subject to all of the terms, time periods, releases, caps, prohibitions against overlapping or double recoveries, and other provisions contained herein.

6.3 The release provided by this Agreement shall include the release of all damages, burdens, obligations of liability of any sort, including, without limitation, penalties, punitive damages, exemplary damages, statutory damages, damages based upon a multiplication of compensatory damages, court costs, or attorneys' fees or expenses, which might otherwise have been made in connection with any Released Claims.

6.4 The release includes all claims that the Releasing Parties have or may hereafter discover including, without limitation, claims, injuries, damages, or facts in addition to or different from those now known or believed to be true with respect to any matter disposed of by this Settlement. The Releasing Parties have fully, finally, and forever settled and released any and all such claims, injuries, damages, or facts, whether known or unknown, suspected or unsuspected, contingent or non-contingent, past or future, whether or not concealed or hidden, which exist, could exist in the future, or heretofore have existed upon any theory of law or equity now existing or coming into existence in the future related to matters arising from or in any way related to, connected with, or resulting from the Litigation Claims or the Symptoms Alleged (*i.e.*, alleging that the Burl Walnut Trim in the Subject Vehicles substantially fades, grows discolored, and becomes cloudy over time), including, but not limited to, conduct which is negligent, reckless,

willful, intentional, with or without malice, or a breach of any duty, law, or rule, without regard to the subsequent discovery or existence of such different or additional facts.

6.5 The Releasing Parties shall be deemed by operation of the Final Order and Judgment in the Litigation to have acknowledged that the foregoing release was separately bargained for and a key element of this Settlement of which the releases herein are a part. The Releasing Parties expressly and intentionally release any and all rights and benefits which they now have or in the future may have under the terms of the law (whether statutory, common law, regulation, or otherwise) of any other state or territory of the United States within the scope of the Released Claims.

6.6 Class Counsel shall cooperate with Released Parties to ensure that the releases set forth in the Final Approval Order are given their full force and effect (including by seeking the inclusion of the releases in the Final Order and Judgment and the Reimbursement Claims Forms) and to ensure that Releasing Parties comply with their obligations set forth in this Agreement.

6.7 In the event that any Releasing Party seeks to invoke California Civil Code § 1542, which provides that:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

(or any other like provision or principle of law of any jurisdiction) in connection with claims related to the Litigation Claims and the Symptoms Alleged (*i.e.*, alleging that Burl Walnut Trim in the Subject Vehicles substantially fades, grows discolored, and becomes cloudy over time), the Releasing Parties and each of them expressly waive the provision of California Civil Code § 1542 (or any other like provision or principle of law of any jurisdiction) to the full extent that these

provisions may be applicable to this release. Each of the Releasing Parties hereby does, and shall be deemed to, have considered the possibility that the number or magnitude of all claims may not currently be known; nevertheless, each of the Releasing Parties assumes the risk that claims and facts additional, different, or contrary to the claims and facts that each believes or understands to exist may now exist or may be discovered after the settlement becomes effective. Each of the Releasing Parties agrees that any such additional, different, or contrary claims and facts shall in no way limit, waive, or reduce the foregoing release, which shall remain in full force and effect. Nothing in this paragraph shall be construed as modifying or limiting the other provisions of the settlement concerning the potential availability of claims.

6.8 No Releasing Party shall recover, directly or indirectly, any sums for Released Claims from the Released Parties, other than consideration and sums received under this Agreement and that the Released Parties shall have no obligation to make any payments to any non-parties for liability arising out of the Released Claims, other than as set forth in this Settlement.

7. APPROVAL OF THE SETTLEMENT; JUDGMENT AS TO DEFENDANTS

7.1 Plaintiffs will file, and Defendants will not oppose, a motion consistent with the terms of this Agreement seeking an order conditionally certifying the Settlement Class, granting preliminary approval of this Settlement, approving the notice to be provided the Settlement Class and the procedures for providing such notice, setting a briefing schedule and hearing for final approval and a briefing schedule for a motion for an award of Attorneys' Fees, Costs and All Other Expenses, and otherwise staying this Litigation and, pursuant to the All Writs Act or other law that authorizes the Court to stay such proceedings, all current or future parallel proceedings addressing the same subject matter.

7.2 Should the Court decline to conditionally certify the Settlement Class or to approve

any material aspect of the Settlement (including but not limited to the scope of the release or the binding effect of the Settlement), and the Settling Parties, despite their best efforts, are unable to agree upon revisions to the Agreement that alleviate the Court's concerns, or the Agreement is otherwise terminated or fails to become effective in accordance with the terms of this Agreement, the Settling Parties will be restored to their respective positions in the Litigation as of November 1, 2021. In such event, the terms and provisions of this Agreement will have no further force and effect and shall not be used in this Litigation or in any other proceeding for any purpose, and any judgment or order entered by the Court in accordance with the terms of this Agreement will be treated as vacated, *nunc pro tunc*.

7.3 No order of the Court or modification or reversal on appeal of any order of the Court concerning any award of Attorneys' Fees, Costs, and All Other Expenses to Class Counsel will constitute grounds for cancellation or termination of this Agreement, unless the order substantially changes a material term of the settlement.

8. SETTLEMENT ADMINISTRATION AND NOTICE

8.1 **Appointment of Settlement Administrator.** The Parties will ask the Court to appoint a qualified administrator, to serve as the Settlement Administrator, subject to the Court's approval. As a condition of appointment, the Settlement Administrator will agree to be bound by this Agreement with respect to the performance of its duties and its compensation.

8.2 **Duties of the Settlement Administrator.** The Settlement Administrator's duties will include sending the Class Notice to all Members of the Settlement Class; sending CAFA notice; creating, maintaining, and monitoring a settlement website; receiving and administering claims for Qualified Past Repair reimbursements; receiving and determining validity of opt-out notices and objections; providing the Settling Parties with periodic status reports about the delivery

of the notices, claims administration status, and receipt of objections to and requests to opt out; and otherwise administering the Settlement pursuant to this Agreement. Along with the motion for preliminary approval, the proposed Settlement Administrator shall file a declaration describing in detail the Notice Plan.

8.3 As a condition of its retention, the Settlement Administrator must agree that (a) it will fulfill all responsibilities and duties assigned to the Settlement Administrator under the terms of this Agreement, and (b) the Settling Parties and their Counsel, as well as the Released Parties, reserve all claims and rights for any failure by the Settlement Administrator to fulfill its responsibilities and duties. In no event shall the Settling Parties or their Counsel have any liability for claims of wrongful or negligent conduct on the part of the Settlement Administrator, the Third-Party Neutral, or their agents.

8.4 **Protection of Personal Information.** The Settlement Administrator shall:

- a) Use personal information acquired as a result of this Agreement solely for purposes of evaluating and paying claims under this Agreement; and
- b) Assign a manager to oversee the protection and appropriate management of personal information and review its internal system to manage the protection of personal information to ensure consistent performance and constant improvement; and
- c) Take security countermeasures to prevent unauthorized access to personal information, and loss, destruction, falsification, and leakage of personal information; and
- d) If outsourcing the handling of personal information, determine that outsourced companies take steps to ensure appropriate management of the

information to prevent leaks of personal or confidential information, and prohibit re-use of information for other purposes; and

- e) Respond immediately with appropriate measures then necessary to disclose, correct, stop using, or eliminate contents of information; and
- f) Once all timely, valid claims have been paid, and in compliance with applicable retention law, destroy all personal information obtained in connection with this Settlement in a manner most likely to guarantee that such information not be obtained by unauthorized persons.

8.5 **CAFA Notice.** Within ten (10) days after this Agreement is filed in Court, the Settlement Administrator will cause a notice of the proposed settlement consisting of the materials required by the Class Action Fairness Act (28 U.S.C. § 1715) (“CAFA”) to be served upon the appropriate state official in each state of the United States as well as the appropriate federal officials. Within fifteen (15) days after the Notice Date, the Settlement Administrator shall provide declarations to the Court, with a copy to Class Counsel and Defense Counsel, attesting to the measures undertaken to provide notice as directed by CAFA.

8.6 **Notice to Settlement Class Members.** The Settlement Administrator shall send the Court-approved Class Notice via postcard to all Settlement Class Members who have addresses identified through the sources specified in the Notice Plan within sixty (60) days of the entry of the Preliminary Approval Order. The Settlement Administrator shall also provide a copy of the Class Notice to any Settlement Class Member who requests the Class Notice.

8.7 **Information to Settlement Administrator.** As soon as possible, and in no event later than five (5) court days after Plaintiffs have filed the motion for preliminary approval of this Settlement, Defendants shall provide a list of applicable Vehicle Identification Numbers (“VINs”)

to the Settlement Administrator, so that it may obtain contact information of owners and lessees associated with each VIN.

8.8 **Settlement Website.** As part of its duties, the Settlement Administrator shall reserve, create, maintain, and monitor a website on which the Class Notice and this Agreement shall be posted. The website shall also include a link to download a copy of the Reimbursement Claim Form and will have an electronic version of the Reimbursement Claim Form online that allows Claims to be submitted electronically and any required documentation to be uploaded electronically to the settlement website. Claims shall be submitted by mail or online through the electronic Reimbursement Claim Form on the settlement website. The settlement website will be made available (“go live”) no later than the date the Notice is mailed to Settlement Class Members as set forth in Section 8.6. The settlement website shall be active until all valid claims submitted under the claims process set forth in Section 9 have been paid. Thereafter, Class Counsel shall have the option of maintaining the website live through December 31, 2034 as an informational website at Class Counsel’s expense, provided that Class Counsel and Defendants mutually agree on the content of the website and any future changes thereto. The settlement website shall list contact information (telephone number and email address) of the Settlement Administrator up until the time all valid claims submitted under the claims process have been paid.

8.9 **Weekly Report.** As part of its duties, the Settlement Administrator shall provide Class Counsel and Defense Counsel with a weekly status report that tracks the notices that have been mailed and requests to opt out that the Settlement Administrator receives.

8.10 **Returned Notices.** Unless the Settlement Administrator receives a Notice returned from the United States Postal Service for reasons discussed below in this paragraph, the Notice shall be deemed mailed and received by the Settlement Class Member to whom it was sent three

(3) days after mailing. In the event that subsequent to the first mailing of the Notice, the Notice is returned to the Settlement Administrator by the United States Postal Service within twenty-eight (28) days of the original mailing of the Notice, with a forwarding address for the recipient, the Settlement Administrator shall re-mail the Notice to that address, and the forwarding address shall be deemed the updated address for that Settlement Class Member. In the event that subsequent to the first mailing of the Notice, the Notice is returned to the Settlement Administrator by the United States Postal Service within twenty-eight (28) days of the original mailing of the Notice because the address of the recipient is no longer valid, and the name of the Settlement Class member is known, the Settlement Administrator shall perform a standard skip trace in an effort to attempt to ascertain the current address of the Settlement Class Member in question and, if such an address is ascertained, the Settlement Administrator will promptly re-send the Notice. If no updated address is obtained for that Settlement Class Member, the Notice shall be sent again to the last known address.

8.11 **Final Report.** Not later than ten (10) court days after the deadline for submission of requests to opt out, the Settlement Administrator shall provide the Parties a declaration of due diligence setting forth its compliance with its obligations under this Agreement to be filed in conjunction with a motion for final approval. The declaration shall identify those individuals who have submitted a valid and timely request to opt out. Prior to the hearing on the motion for final approval, the Settlement Administrator will supplement its declaration of due diligence if any material changes occur from the date of the filing of its prior declaration.

8.12 **Request to Opt Out.** Persons falling within the definition of the Settlement Class may exclude themselves from the Settlement by notifying the Settlement Administrator of their intent to opt out not later than sixty (60) days after the Notice Date. Such notice must be made in

writing and contain (1) the Person's name, (2) his or her current address and telephone number, (3) his or her Subject Vehicle Identification Number and the dates of ownership or lease for such Subject Vehicle; (4) a dated, handwritten signature; and (5) a written statement that such Person has reviewed the Class Notice and wishes to be excluded from the Settlement. If a question is raised about the authenticity of a request to opt out, the Settlement Administrator will have the right to demand additional proof of the individual's identity and intent. Anyone who has submitted a valid request to opt out will not participate in or be bound by the Settlement or the Final Order and Judgment and may not file an Objection. Any Person falling within the definition of the Settlement Class who does not complete and submit a valid request to opt out in the manner and by the deadline specified above will automatically become a Settlement Class Member and be bound by all terms and conditions of the Settlement and the Final Order and Judgment entered by the Court, including the release of claims set forth in Section 6.

8.13 **Objections to the Settlement.** Any Settlement Class Member who intends to object to the Settlement must do so by filing the objection with the Court (and serving it on Class Counsel and Defense Counsel) not later than sixty (60) days after the Notice Date. The objection must be in writing and include (1) the Settlement Class Member's full name, current address, and telephone number; (2) the Subject Vehicle Identification Number associated with the vehicle giving rise to standing to make an Objection, and the dates of ownership or leasing of said vehicle; (3) a statement that the objector has reviewed the Settlement Class definition and understands that he/she is a Settlement Class Member, and has not opted out and does not plan to opt out of the Settlement Class; (4) a complete statement of all legal and factual bases for any Objection that the objector wishes to assert; (5) a statement of whether the Settlement Class Member intends to appear at the final approval hearing, (6) copies of any documents or witnesses that support the

Objection, (7) a statement indicating whether they are being represented or assisted by counsel with respect to their objection and, if so, identifying such counsel, and (8) a dated, handwritten signature. Only Settlement Class Members may object to the Settlement. A Settlement Class Member who does not submit a written Objection in the manner and by the deadline specified in this Section will be deemed to have waived any objections and will be foreclosed from making any objections (whether by appeal or otherwise) to the Settlement. A Settlement Class Member who does not timely submit a notice of intent to appear at the final approval hearing in accordance with all of the requirements of this Section shall not be allowed to appear at the hearing (whether individually or through separate counsel).

9. CLAIMS ADMINISTRATION AND CLAIMS PROCEDURE

9.1 Only Settlement Class Members shall be eligible to make a claim for reimbursement of Qualified Past Repair(s) or coverage of Qualified Future Repair(s).

A. Reimbursement Claims for Qualified Past Repairs.

9.2 Any Settlement Class Member who wishes to make a reimbursement claim for a Qualified Past Repair(s) must submit a completed and signed Reimbursement Claim Form and the following items of proof within the deadlines set forth in Paragraph 9.4:

- a) Itemized repair order or invoice or other documentation showing that the Subject Vehicle received a qualified repair or replacement (e.g., the repair invoice must show that the Burl Walnut Trim was repaired or replaced) and the cost of the qualified repair or replacement. A repair or replacement shall not qualify for reimbursement if the reason for the repair or replacement described in any related repair order is for conditions other than fading or discoloration (e.g., automobile accidents, scratches, cracks, or loose parts)

or is due to external influences such as chemical exposure, harsh abrasive cleaners, or other external influence unrelated to the alleged Burl Walnut Trim defect, or if other exclusions from coverage as set forth in the New Vehicle Limited Warranty that are unrelated to ultraviolet radiation exposure apply;

- b) Proof of documentation of the Settlement Class Member's payment for the repair (e.g., credit card statement, invoice showing zero balance, receipt showing payment, etc.); and
- c) Proof of the Settlement Class Member's ownership or leasing of the Subject Vehicle at the time of the repair.

9.3 Any Settlement Class Member who wishes to make a claim must timely submit a properly completed Reimbursement Claim Form attesting that s/he is a Settlement Class Member and that the information in the completed Reimbursement Claim Form is true and correct under penalty of perjury. Claims must include the information required by this Settlement and be mailed to the Settlement Administrator or submitted online through the electronic version of Reimbursement Claim Form on the settlement website within the Claims Period specified in Section 9.4 of this Agreement.

9.4 **Reimbursement Claims Submission Deadlines.** For a Qualified Past Repair that occurred prior to the Notice Date, a Reimbursement Claim Form must be submitted to the Settlement Administrator postmarked or submitted electronically within sixty (60) days of the Notice Date. For a Qualified Past Repair that occurred after the Notice Date, but before the Effective Date, the Reimbursement Claim Form must be submitted to the Settlement Administrator postmarked or submitted electronically within sixty (60) days of the date of repair or replacement.

No Reimbursement Claim Forms can be submitted for repairs or replacements occurring on or after the Effective Date; rather, in such circumstances, Settlement Class Members must seek to have those repairs or replacements covered as Qualified Future Repairs pursuant to Section 4.B and Section 9.B.

9.5 Upon receipt, the Settlement Administrator shall review all claims on a uniform and non-arbitrary basis. The Settlement Administrator will notify Settlement Class Members who submit deficient claims by first-class mail and or email (to the extent such email address is provided at the time any Class Member submits a claim through the electronic version of the Reimbursement Claim Form on the settlement website). A Settlement Class Member receiving such notice will be allowed thirty (30) days from the postmarked date on the notice to submit materials to cure the deficiencies.

9.6 For completed claims timely submitted within the Claims Period before the Effective Date, the Settlement Administrator shall perform any review of the claim within ninety (90) days of the Effective Date; otherwise, such review shall be made within ninety (90) days of receipt of the completed claim.

9.7 In the event the Settlement Administrator reviews and evaluates a Reimbursement Claim Form and determines the claim is ineligible for reimbursement or is not entitled to the full amount being sought, the Settlement Administrator will inform the Settlement Class Member via first-class mail and will also inform Defense Counsel and Class Counsel by email. The Settlement Class Member shall have thirty (30) days to dispute the Settlement Administrator's evaluation that the Settlement Class Member is ineligible or is not entitled to the full amount being sought, measured from the date the notice of ineligibility to the Settlement Class Member was postmarked. If the Settlement Class Member does not timely dispute the Settlement Administrator's

determination, the Settlement Administrator's determination shall stand. If the Settlement Class Member timely disputes the Settlement Administrator's evaluation—including where the claim is rejected because the alleged fading or discoloration was determined to have been caused by external influences such as chemical exposure, harsh or abrasive cleaners, accidents, or alterations or because other exclusions set forth in the New Vehicle Limited Warranty that are unrelated to ultraviolet radiation exposure apply—the dispute will be adjudicated by the Third-Party Neutral who shall independently determine the validity of the claim. The Settlement Class Member, Class Counsel, Defense Counsel, and Defendants will have a reasonable opportunity to present two-page statements to the Third-Party Neutral setting forth their positions about the eligibility of the claim for reimbursement and the proper reimbursement amount, if any, but there shall be no formal hearing or trial. The Settlement Class Member must submit its position statement with its notice that it is disputing the Settlement Administrator's determination. The Settlement Administrator shall provide that statement to Class Counsel, Defense Counsel, and Defendants, which shall each have thirty (30) days to submit their responsive position statements. The Third-Party neutral shall review the position papers submitted and make a final determination of eligibility and reimbursement amount. The decisions of the Third-Party Neutral pursuant to this Agreement shall be final and binding on the Settlement Class Member and all the Settling Parties.

9.8 Settlement Class Members may elect to receive payment of their claims via electronic payment (*e.g.* Venmo or PayPal) in a form agreed to by the Settling Parties, or by written check. In the event a Settlement Class Member elects to receive payment by written check, the check will be valid for 180 days from the date of issue, and will be sent via first-class United States mail to the address shown on the Settlement Class Member's Reimbursement Claim Form, which check shall be mailed to each such Settlement Class Member with an approved claim within thirty

(30) days of the final decision regarding the claim. If the check issued to a Settlement Class Member under the terms of this Agreement is not cashed within the 180 day period, there shall be no further obligation to make payment to such Settlement Class Member.

B. Coverage Claims for Qualified Future Repairs.

9.9 Any Settlement Class Member who wishes to receive a Qualified Future Repair pursuant to Sections 4.4(a), 4.4(b), 4.4(c), 4.4(d), or 4.4(e) or who has preserved his or her claim for a Qualified Future Repair pursuant to Section 4.4(f) must bring their Subject Vehicle to an Authorized Service Center.

9.10 Any Settlement Class Member who wishes to preserve his or her claim for a Qualified Future Repair as set forth in Section 4.3(f) must submit a completed and signed Qualified Future Repair Claim Form and the following items of proof:

- a) Itemized repair order or invoice or other documentation showing that the Subject Vehicle was presented to an Authorized Service Center for repair or replacement of the Burl Walnut Trim or provided written notice to MBUSA under the New Vehicle Limited Warranty but was denied warranty or goodwill coverage for such repair or replacement; or
- b) Proof that the Burl Walnut Trim in the Subject Vehicle is experiencing fading, discoloration, or cloudiness, which proof includes a dated photo of these conditions in the Burl Walnut Trim.

9.11 Any Settlement Class Member who wishes to preserve his or her claim for a Qualified Future Repair as set forth in Section 4.3(f) must timely submit a properly completed Reimbursement Claim Form attesting that s/he is a Settlement Class Member and that the information in the completed Qualified Future Repair Claim Form is true and correct under penalty of perjury. Claims must include the information required by this Settlement and be mailed to the

Settlement Administrator or submitted online through the electronic version of Qualified Future Repair Claim Form on the settlement website within sixty (60) days of the Notice Date.

9.12 In order to determine that a Subject Vehicle needs a Qualified Future Repair, a service technician at the Authorized Service Center where coverage is requested must confirm that fading or discoloration of the Burl Walnut Trim is present; that such conditions are not caused by external influences such as chemical exposure, harsh or abrasive cleaners, accidents, or alterations; that exclusions set forth in the New Vehicle Limited Warranty and that are unrelated to ultraviolet radiation exposure do not otherwise apply; and that the New Vehicle Limited Warranty has not been voided.

9.13 In the event a Settlement Class Member informs Defendants that he or she brought his or her Subject Vehicle to an Authorized Service Center to request coverage for a Qualified Future Repair and was, in the opinion of the Settlement Class Member, wrongfully denied coverage by the Authorized Service Center, Defendants will inform the Settlement Class Member that Class Counsel will contact him or her regarding the concern. Defendants will then provide Class Counsel with the name and contact information of such Settlement Class Member so that Class Counsel may contact him or her. Class Counsel, Defendants, and Defense Counsel shall make good faith efforts to resolve the alleged wrongful denial, and if Class Counsel, Defendants, and Defense Counsel cannot resolve the concern, they may submit the dispute to a Third-Party Neutral, who will be jointly selected by the Settling Parties and who will decide the coverage issue, which will be a final and non-appealable decision.

9.14 No Person shall have any claim against the Settling Parties, their respective counsel, or the Settlement Administrator arising from or related to determinations or payments made in accordance with this Settlement Agreement.

10. DISPUTE RESOLUTION

10.1 **Court's Continuing Jurisdiction.** The Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Agreement and all orders and judgments entered in connection therewith, and Plaintiffs, Defendants, and their respective counsel submit to the jurisdiction of the Court for purposes of interpreting, implementing and enforcing the Settlement Agreement and all orders and judgments entered in connection therewith, except that the Court shall not have authority under the Settlement Agreement to increase Defendants' payment obligations hereunder.

10.2 **Dispute Resolution Procedure.** Except as otherwise set forth herein, all disputes concerning the interpretation, calculation, or payment of settlement claims, or other disputes regarding compliance with this Settlement Agreement, shall be resolved as follows:

- a) If Plaintiffs or Class Counsel, on the one hand, or Defendants, on the other hand, at any time believes the other party has materially breached the Settlement Agreement, that party shall notify the other party in writing of the alleged violation.
- b) Upon receiving notice of the alleged violation or dispute, the responding party shall have twenty (20) days to correct the alleged violation and/or respond in writing to the initiating party with the reasons why the party disputes all or part of the allegation.
- c) If the response does not address the alleged violation to the initiating party's satisfaction, Plaintiffs, Class Counsel, and Defendants shall negotiate in good faith for up to twenty (20) days to resolve their differences.

- d) If Plaintiffs, Class Counsel, and Defendants are unable to resolve their differences after twenty (20) days, either party may file an appropriate motion to enforce the Settlement Agreement with the Court.

11. TAXES

11.1 Neither Class Counsel nor Defense Counsel intends anything contained herein to constitute legal advice regarding the taxability of any amount paid hereunder, nor shall it be relied upon as such. The tax issues for each Settlement Class Member may be unique, and each Settlement Class Member is advised to obtain tax advice from his or her own tax advisor with respect to any payments resulting from this Agreement. Each Settlement Class Member will be responsible for paying all applicable state, local, and federal income taxes on all amounts the Settlement Class Member receives pursuant to this Settlement Agreement.

11.2 No person shall have any claim against the Settling Parties, their respective counsel, or the Settlement Administrator based on the mailings, distributions, and payments made in accordance with or pursuant to this Settlement Agreement.

12. MISCELLANEOUS TERMS

12.1 **Integrated Agreement.** After this Agreement is signed and delivered by Plaintiffs, Defendants and their respective counsel, this Agreement and its exhibits will constitute the entire agreement between Plaintiffs and Defendants relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants, or inducements have been made by Plaintiffs and/or Defendants concerning this Agreement or its exhibits other than the representations, warranties, covenants, and inducements expressly stated in this Agreement and its exhibits.

12.2 **Attorney Authorization.** Class Counsel and Defense Counsel warrant and represent that they are authorized by Plaintiffs and Defendants, respectively, to take all appropriate

action required or permitted to be taken pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. Plaintiffs, Defendants and their respective counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. In the event Plaintiffs and Defendants are unable to reach agreement on the form or content of any document needed to implement the Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, Plaintiffs and Defendants will seek the assistance of the Court, and in all cases all such documents, supplemental provisions and assistance of the court will be consistent with this Agreement.

12.3 **Modification of Agreement.** This Agreement, and any and all parts of it, may be amended, modified, changed, or waived in writing by Plaintiffs' or Defendants' counsel with each party's consent.

12.4 **Agreement Binding on Successors.** This Agreement will be binding upon, and inure to the benefit of, the successors of each of Plaintiffs, Defendants, and the Settlement Administrator.

12.5 **Applicable Law.** All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the laws of the State of Georgia, without giving effect to any conflict of law principles or choice of law principles.

12.6 **Cooperation in Drafting.** Plaintiffs and Defendants have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any party on the basis that the party was the drafter or participated in the drafting.

12.7 **Fair Settlement.** Plaintiffs, Defendants, and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the claims

against Defendants and have arrived at this Agreement through arms-length negotiations, taking into account all relevant factors, current and potential.

12.8 **Stay of Proceedings.** The Settling Parties hereby agree and stipulate to stay all proceedings in this Litigation until the approval of this Agreement has been finally determined, except the stay of proceedings shall not prevent the filing of any motions, declarations, and other matters necessary to the approval of this Agreement. The Settling Parties also agree and stipulate that a stay as to all other current or future parallel proceedings involving the same subject matter, through the All Writs Act or other law authorizing the Court to stay such proceeding, will conserve the parties' and courts' resources, minimize interference with the Court's ability to rule on the proposed Settlement, avoid the risk of conflicting results, and preserve the Settlement for a short period of time while class members receive notice and evaluate their options. The Settling Parties agree and stipulate the Settlement provides substantial benefits to Plaintiffs and the Class that will be jeopardized by ongoing competing cases covering overlapping claims or classes; maintaining the status quo protects the integrity of the Settlement, while the Court evaluates whether it is fair, reasonable and adequate. A standstill of litigation will be efficient, promotes the public policy favoring settlement and aids resolution of claims on a nationwide basis, which is in the public interest.

12.9 **Dismissal of the Litigation.** Upon the Effective Date of the Settlement, the Settling Parties shall stipulate to voluntarily dismiss with prejudice the Litigation pursuant to Federal Rule of Civil Procedure 41(a)(1)A(ii).

12.10 Defendants or any Authorized Service Center may continue to effect or implement any goodwill policy, program, or procedure during the pendency of the settlement approval proceedings.

12.11 **Headings.** The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.

12.12 **Notice.** All notices, demands or other communications given under this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, addressed as follows:

To Plaintiff and the Class:

To Defendants:

HENINGER GARRISON DAVIS, LLC
W. Lewis Garrison, Jr.
2224 1st Avenue North
Birmingham, AL 35203
Tel: (205) 326-3336
Fax: (205) 326-3332

SQUIRE PATTON BOGGS (US) LLP
Troy M. Yoshino
275 Battery Street, Suite 2600
San Francisco, CA 94111
Tel: (415) 954-0200
Fax: (415) 393-9887

12.13 **Execution in Counterparts.** This Agreement may be executed in one or more counterparts and may be delivered by facsimile or electronic scan, each of which, when so executed and delivered, shall be an original, but such counterparts together shall constitute but one and the same instrument and Agreement, provided that counsel for Plaintiffs and Defendants will exchange between themselves original signed counterparts. Plaintiffs and Defendants further agree to accept a digital image, printout, facsimile or photocopy of this Agreement, as executed, as a true and correct original and admissible as best evidence for the purposes of state law, California Evidence Code 1520, Federal Rule of Evidence 1002, and like statutes and regulations.

Dated: 1/12/2022

DocuSigned by:
Teri Callen
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TERI CALLEN

Dated: _____

STEVE BURTON

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To Plaintiff and the Class:

To Defendants:

HENINGER GARRISON DAVIS, LLC
W. Lewis Garrison, Jr.
2224 1st Avenue North
Birmingham, AL 35203
Tel: (205) 326-3336
Fax: (205) 326-3332

SQUIRE PATTON BOGGS (US) LLP
Troy M. Yoshino
275 Battery Street, Suite 2600
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Dated: _____

Dated: 1/13/2022 _____

TERI CALLEN

DocuSigned by:

Steve Burton

STEVE BURTON

Dated: _____

LORNE COLLIER

Dated: 1/12/2022 _____

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Paul Finkenauer

~~JOSE FIGUEROA~~

PAUL FINKENAUER

Dated: _____

GLENN SCUDDER

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ANN FULMER

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RUDI ROSENFELD

Dated: _____

TARYN ARMSTRONG

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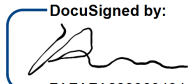
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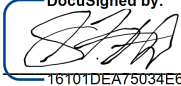
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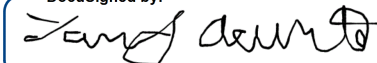
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LARRY ACUNTO

Dated: _____

HENINGER GARRISON DAVIS, LLC

By: _____


W. Lewis Garrison, Jr.
Attorneys for Plaintiff

Dated: _____

DAIMLER AG

By: _____

[NAME]
[TITLE]
Daimler AG

Dated: _____

DAIMLER AG

By: _____

[NAME]
[NAME]
Daimler AG

Dated: _____

MERCEDES-BENZ USA, LLC

By: _____

Audra Dial
Assistant General Counsel – Litigation
Mercedes-Benz USA, LLC

Dated: _____

SQUIRE PATTON BOGGS (US) LLP

By: _____

Troy M. Yoshino
Attorneys for Daimler AG and MBUSA

Dated: _____

HENINGER GARRISON DAVIS, LLC

By: _____

W. Lewis Garrison, Jr.
Attorneys for Plaintiff

Dated: _____

DAIMLER AG

By: **KOELBLA** _____

Dr. Angela Kobl
Director of Global Litigation
Daimler AG

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DAIMLER AG

By: _____

Marc Linkenbach
Director of Product Analysis & Product Safety
Daimler AG

Dated: _____

MERCEDES-BENZ USA, LLC

By: _____

Matthew J. Everitt
General Counsel
Mercedes-Benz USA, LLC

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SQUIRE PATTON BOGGS (US) LLP

By: _____

Troy M. Yoshino
Attorneys for Daimler AG and MBUSA

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HENINGER GARRISON DAVIS, LLC

By: _____

W. Lewis Garrison, Jr.
Attorneys for Plaintiff

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DAIMLER AG

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Dr. Angela Kölbl
Director of Global Litigation
Daimler AG

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Marc Linkenbach
Director of Product Analysis & Product Safety
Daimler AG

Dated: February 10, 2022

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Matthew J. Everitt
General Counsel
Mercedes-Benz USA, LLC

Dated: FEBRUARY 10, 2022

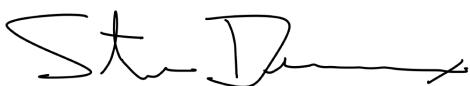
SQUIRE PATTON BOGGS (US) LLP

By:  _____

Troy M. Yoshino
Attorneys for Daimler AG and MBUSA

Dated: 2/10/2022

KING & SPALDING LLP

By: _____

Stephen B. Devereaux
Attorneys for Daimler AG and MBUSA

EXHIBIT A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

TERI CALLEN, STEVE BURTON,
PAUL FINKENAUER, LORNE
COLLIER, JOSE FIGUEROA,
GLENN SCUDDER, ANN
FULMER, RUDI ROSENFELD,
TARYN ARMSTRONG, SEAN
HUNTER, RICHARD HALL,
ANGELO FARROW, and LARRY
ACUNTO

Plaintiffs,

v.

MERCEDES-BENZ USA, LLC and
DAIMLER AG,

Defendants.

Case No. 1:19-CV-01411-TWT

**STIPULATED UNDERTAKING REGARDING
ATTORNEYS' FEES, COSTS AND EXPENSES**

Plaintiffs Teri Callen, Steve Burton, Paul Finkenauer, Lorne Collier, Jose Figueroa, Glenn Scudder, Ann Fulmer, Rudi Rosenfeld, Taryn Armstrong, Sean Hunter, Richard Hall, Angelo Farrow, and Larry Acunto (“Plaintiffs”), by and through their undersigned counsel, stipulate and agree as follows:

WHEREAS, Class Counsel (as defined in the underlying Settlement Agreement) and their respective law firm(s) desire to give an undertaking for repayment of their award of attorney fees, costs and expenses (“Undertaking”), as is required by the Settlement Agreement,

NOW, THEREFORE, each of the undersigned Class Counsel, on behalf of themselves as individuals and as agents for their respective law firms, hereby submit themselves and their respective law firms to the jurisdiction of the Court to enforce the provisions of this Undertaking. Capitalized terms used herein without definition have the meanings given to them in the Settlement Agreement. The obligations of Class Counsel and their respective law firms are joint and several.

In the event that the Final Order and Judgment is reversed on appeal, in whole or in part, Class Counsel shall, within ten (10) business days after the order reversing the Final Order and Judgment, in whole or in part, becomes final, repay to Defendants the full amount of the attorneys' fees, costs and expenses paid by Defendants to Class Counsel, including any accrued interest.

In the event the Final Order and Judgment is not reversed on appeal, in whole or in part, but the attorneys' fees, costs and expenses awarded by the Court are vacated or modified on appeal, Class Counsel shall, within ten (10) business days after the order vacating or modifying the award of attorneys' fees, costs and expenses becomes final, repay to Defendants the attorneys' fees, costs and expenses paid by Defendants to Class Counsel in the amount vacated or modified, including any accrued interest.

In the event that the Final Order and Judgment is reversed or modified on appeal, in whole or in part, any action that may be required thereafter may be addressed to this Court on shortened notice not less than five (5) business days.

This Undertaking and all obligations set forth herein shall expire upon finality of all direct appeals of the Final Order and Judgment. In the event Class

Counsel fails to repay to Defendants any of attorneys' fees, costs and/or expenses that are owed to it pursuant to this Stipulated Undertaking, the Court shall, upon application of Defendants and notice to Class Counsel, summarily issue orders including, but not limited to, judgments and attachment orders against Class Counsel, and each of them, and may make appropriate findings for sanctions for contempt of court.

The undersigned stipulate, warrant and represent that they are equity partners in their respective law firm(s) and have both actual and apparent authority to enter into this stipulation, agreement and undertaking on behalf of their respective law firm(s).

This Undertaking may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Signatures by facsimile shall be as effective as original signatures.

The undersigned declare under penalty of perjury under the laws of the State of Georgia and the United States that they have read and understand the foregoing and that it is true and correct.

IT IS SO STIPULATED THROUGH COUNSEL OF RECORD:

Dated: _____ HENINGER GARRISON DAVIS, LLC

By: _____
W. Lewis Garrison, Jr.
Attorneys for Plaintiff