UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

JULIE KIMBALL, individually and on behalf of all others similarly situated, Plaintiffs, v. VOLKSWAGEN GROUP OF AMERICA, INC., Defendant.	Civil Action No. 2:22-cv-04163-JMV-MAH

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

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INTRODUCTION

Plaintiff,[1] on behalf of herself and all others similarly situated, by and through her counsel, respectfully moves the Court for preliminary approval of the proposed Class Settlement ("Settlement") set forth in the Settlement Agreement ("Agreement"), attached as Exhibit A to the Declaration of Gary S. Graifman in support of this motion ("Graifman Decl.").

Plaintiff, with the consent of Defendant, requests that the Court enter an Order:

1) granting preliminary approval of the proposed Settlement;

2) preliminarily certifying, for settlement purposes only and pursuant to the terms of the Agreement, the proposed Settlement Class[2] for the purpose of providing notice to the members of the proposed Settlement Class;

3) approving the Parties' Notice Plan, including the form and content of the proposed Claim Form and Class Notices, annexed to the Agreement as Exhibits 1, 2 and 3;

4) directing the distribution of the Class Notice pursuant to the proposed Notice Plan;

5) authorizing and directing the Parties to retain JND Legal Administration as the Settlement Claims Administrator;

6) preliminarily appointing Kantrowitz, Goldhamer & Graifman, P.C .and Thomas P. Sobran, P.C., as Settlement Class Counsel;

7) preliminarily appointing named Plaintiff as Settlement Class Representative; and

8) scheduling relevant dates including a date for the Final Fairness Hearing not earlier than one hundred sixty (160) days after Preliminary Approval is granted.

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[1] All capitalized terms used throughout this memorandum shall have the meanings ascribed to them in the Agreement.

[2] As set forth in Exhibit A, the Settlement Class is defined as "All persons and entities who purchased or leased a Settlement Class Vehicle, as defined in § I.X. of this Agreement, in the United States of America or Puerto Rico." The Agreement defines "Settlement Class Vehicles" to mean "certain specific Volkswagen and Audi brand vehicles, distributed by VWGoA in the United States and Puerto Rico, which are equipped with Generation 1, Generation 2 or Generation 3 EA888 engines (as delineated in X(1)-(3) [of the Agreement], and specifically identified by Vehicle Identification Number ("VIN") on VIN lists attached as Exhibits 4A-C to this Agreement."

This litigation has been vigorously contested for over two years. Proposed Settlement Class Counsel[3] have significant experience litigating numerous consumer class actions. After extensive investigation, in-depth analysis of the factual and legal issues presented, consultation with experts, and arm's-length negotiations with Defendant, Plaintiff is pleased to present this nationwide Class Settlement between Plaintiff and Defendant Volkswagen Group of America, Inc. ("VWGoA"), which will provide substantial benefits to the Settlement Class comprised of current and former owners and lessees of certain enumerated Volkswagen and Audi Settlement Class Vehicles.

As set forth in the Settlement Agreement, the Settlement will provide reimbursement of up to fifty (50%) percent of the past paid out-of-pocket repair or replacement costs for Settlement Class Members whose Settlement Class Vehicles had certain covered turbocharger failures or malfunctions prior to the Notice Date and within 8.5 years or 85,000 miles (whichever occurred first) of the vehicles' In-Service Date. The Settlement also provides a warranty extension to 8.5 years or 85,000 miles (whichever occurs first) from the original In-Service Date for Generation 3 Settlement Class Vehicles to cover 50% of the cost to repair or replace a turbocharger that fails or malfunctions due to fork head or link pin corrosion. The Settlement is clearly a fair, reasonable, and adequate resolution of the Action, especially when considering the risks and delays of continued litigation, and satisfies all of the prerequisites for preliminary approval. For these and other reasons articulated below, Plaintiff respectfully requests that the Court preliminarily approve the Settlement and enter the proposed Preliminary Approval Order filed contemporaneously herewith.

I. FACTUAL BACKGROUND

[3] Proposed Lead Settlement Class Counsel shall refer to Gary Graifman and Thomas Sobran, and their respective firms Kantrowitz, Goldhamer & Graifman, P.C. and Thomas P. Sobran P.C. (collectively, "Settlement Class Counsel").

A. THE ALLEGED TURBOCHARGER DEFECT

Plaintiff alleges that Defendant knew or should have known that the turbochargers installed in the Settlement Class Vehicles were defective and may prematurely fail or malfunction. *See, e.g.*, Third Amended Complaint ("TAC") at ¶¶ 2, 8, 11-19, 53-65. Plaintiff claims that the allegedly defective turbochargers created the potential for substantial expense for Settlement Class Members, with necessary repairs sometimes costing several thousand dollars. *Id*. at ¶¶ 2, 14-15, n. 2. Defendant maintains that the Settlement Class Vehicles are not defective, that the turbochargers and their components function safely and properly, and that they were properly designed, tested, manufactured, distributed, marketed, advertised, warranted and sold. Defendant further maintains that no applicable warranties were breached nor applicable statutes or common law, legal duties, laws, rules and/or regulations were violated.

B. THE ACTION

Plaintiff commenced this putative class action on June 21, 2022 asserting various individual and putative class claims on behalf of herself and a nationwide class and state subclass. *See* ECF No. 1. On September 15, 2022, Defendant filed a Motion to Dismiss the Complaint (ECF No. 20), which, after full briefing, was granted by the Court on March 2, 2023 with leave for Plaintiff to replead the claims in an amended complaint. On March 31, 2023, Plaintiff filed an [Amended] Class Action Complaint alleging substantially similar facts and individual and class claims sounding in fraud, breach of express warranties, negligent misrepresentation, and various violations state consumer protection statutes. *See* ECF No. 30. On May 15, 2023, Defendant filed a Motion to Dismiss the Amended Class Action Complaint (ECF No. 33), which, on August 28, 2023, the Court granted in part and denied in part, with leave to replead (ECF No. 45). On October 6, 2023, Plaintiff filed a Second Amended Complaint asserting essentially the same causes of

action (ECF No. 51). On December 11, 2023, Defendant filed a Motion to Dismiss the Second Amended Class Action Complaint (ECF No. 60), which the Court granted in part and denied in part on September 3, 2024, again with leave to replead (ECF No. 78). On November 14, 2024, Plaintiff filed her Third Amended Class Action Complaint (ECF No. 85), which is now the operative pleading.

C. INVESTIGATION OF CLAIMS

Prior to filing the initial complaint, Plaintiff's counsel conducted a thorough investigation into the instant claims and allegations. Likewise, during the course of this Action, the Parties exchanged Initial Disclosures and other information that enabled them to properly assess the strengths and weaknesses of their respective positions, claims and defenses, and to negotiate an excellent class settlement that is fair, reasonable and adequate and fully compliant with Rule 23 while balancing all of those factors, as discussed more fully below.

D. SETTLEMENT DISCUSSIONS

This Settlement is the product of vigorous arm's-length negotiations over a substantial period of time. Counsel for the Parties held multiple negotiation sessions, which involved numerous communications via telephone, email and videoconference. Over the course of the ensuing months, vigorous and extensive arm's-length negotiations of the disputed claims ensued, with counsel on both sides having adequate knowledge of the facts, issues, and the strengths or weaknesses of their respective positions. Following further vigorous arm's-length negotiations, the Parties ultimately came to agreement upon the specific terms and conditions of the formal Settlement Agreement, which was executed on January 6, 2025.

To date, there has been no negotiation or discussion of attorneys' fees and expenses or a class representative service award beyond the scheduling of a mediation to try to negotiate those

issues. If agreement on those issues cannot be reached, the Parties will discuss, agree upon, and submit to this Court a proposed briefing schedule relating to Class Counsel's motion for reasonable attorney fees/expenses and a class representative service award.

II. SUMMARY OF THE SETTLEMENT

A. THE PROPOSED SETTLEMENT CLASS

The Settlement Class consists of current and former U.S. owners and lessees of Settlement Class Vehicles, defined in §I(X) of the Agreement as: Certain specific Volkswagen and Audi brand vehicles, distributed by VWGoA in the United States and Puerto Rico, which are equipped with Generation 1, Generation 2, or Generation 3 EA888 engines and specifically identified by Vehicle Identification Number ("VIN") on VIN lists that are attached to the Settlement Agreement:

(i) Generation 1 Settlement Class Vehicles means certain of the following Settlement Class Vehicles equipped with Generation 1 EA888 engines: certain model year 2008-2014 VW GTI and Golf R vehicles, 2012-2013 VW Beetle vehicles, 2009 VW Jetta Sportwagen vehicles, 2008-2013 VW Jetta Sedan and GLI vehicles, 2009-2016 VW Eos vehicles, 2008-2010 VW Passat vehicles, 2009-2017 VW CC vehicles, 2009-2018 VW Tiguan vehicles, 2008-2009 Audi A3 11 vehicles, and 2015-2018 Audi Q3 vehicles, which are specifically identified by Vehicle Identification Number ("VIN") on a VIN list that is attached as Exhibit 4A to the Agreement.

(ii) Generation 2 Settlement Class Vehicles means certain of the following Settlement Class Vehicles equipped with Generation 2 EA888 engines: 2009-2014 Audi A4 vehicles, 2010-2014 Audi A5 vehicles, 2013-2015 Audi A6 vehicles, 2011-2014 Audi Q5 vehicles, and 2011-2012 Audi TT vehicles, which are specifically

identified by Vehicle Identification Number ("VIN") on a VIN list that is attached as Exhibit 4B to the Agreement.

(iii) Generation 3 Settlement Class Vehicles means certain of the following Settlement Class Vehicles equipped with Generation 3 EA888 engines: 2015-2018 VW Golf vehicles, 2015-2021 VW GTI vehicles, 2015-2019 VW Golf R vehicles, 2015-2019 VW Golf Sportwagen and Alltrack vehicles, 2019-2024 VW Jetta GLI vehicles, 2019-2021 VW Arteon vehicles, 2018-2023 VW Atlas vehicles, 2020-2023 VW Atlas Cross Sport vehicles, 2015-2020 Audi A3, 2019-2024 Audi Q3 vehicles, and 2016-2023 Audi TT vehicles, which are specifically identified by Vehicle Identification Number ("VIN") on a VIN list that is attached as Exhibit 4C to the Agreement.[4]

Excluded from the Settlement Class are: (a) all Judges who have presided over the Action and their spouses; (b) all current employees, officers, directors, agents, and representatives of Defendant, and their family members; (c) any affiliate, parent, or subsidiary of Defendant, and any entity in which Defendant has a controlling interest; (d) anyone acting as a used car dealer; (e) anyone who purchased a Settlement Class Vehicle for the purpose of commercial resale; (f) anyone who purchased a Settlement Class Vehicle with salvaged title and/or any insurance company who acquired a Settlement Class Vehicle as a result of a total loss; (g) any insurer of a Settlement Class Vehicle; (h) issuers of extended vehicle warranties and service contracts; (i) any Settlement Class Member who, prior to the date of the Agreement, settled with and released Defendant or any Released

[4] For confidentiality, the VIN lists for Generation 1, 2, and 3 Settlement Class Vehicles have not been filed on the public docket, but will be provided to the Court for in camera review upon request.

Parties from any Released Claims; and (j) any Settlement Class Member who files a timely and proper Request for Exclusion from the Settlement Class.

B. REIMBURSEMENT OF CERTAIN PAST PAID REPAIR EXPENSES

The Settlement provides that Settlement Class Members may be entitled to reimbursement for certain past paid and unreimbursed out-of-pocket expenses for enumerated covered repairs as follows:

1. 50% reimbursement of the paid out-of-pocket expenses for one (1) repair or replacement (parts and labor) of a failed or malfunctioned turbocharger that was performed prior to the Notice Date and within 8.5 years or 85,000 miles (whichever occurred first) from the Settlement Class Vehicle's In-Service Date, if (i) for a Generation 1 or Generation 2 Settlement Class Vehicle, the past paid turbocharger repair/replacement was due to the wastegate having no longer functioned properly because of wear at the link plate and pin, and (ii) for a Generation 3 Settlement Class Vehicle, the past paid turbocharger repair/replacement was due to the wastegate having failed because of fork head and/or link pin corrosion.[5] However, if the past paid covered repair was not performed by an authorized Volkswagen dealer (for Volkswagen vehicles) or Audi dealer (for Audi vehicles), then the invoice amount from which the 50% reimbursement is applied shall not exceed $3,850; or

2. 40% reimbursement for the one (1) covered turbocharger repair or replacement detailed above, performed prior to the Notice Date and within 8.5 years or 85,000 miles (whichever occurred first) from the Settlement Class Vehicle's In-Service Date, if the Proof of Repair Expense documentation does not specifically state that the reason for the past paid turbocharger repair/replacement was one of the enumerated repairs in (i) [Generation 1 or Generation 2 vehicles] or (ii) [Generation 3 vehicles] above, provided that, in addition to the Proof of Repair Expense, the Settlement Class Member submits Proof of Adherence to the vehicle's oil maintenance requirements within a 10% variance (leeway) of each scheduled time and mileage interval. In addition, as stated above, if the past paid covered repair was not performed by an authorized Volkswagen or Audi dealer, then the invoice amount from which the 40% reimbursement is applied shall not exceed $3,850.

In order to obtain the monetary benefits, a Settlement Class Member need only submit a simple Claim Form (Exhibit 1 to the Agreement) together with basic supporting documents such

[5] This reflects the differences among the involved Generations of the Settlement Class Vehicles.

as the invoice for the covered repair, proof of payment, and, if applicable, Proof of Adherence to the vehicle's oil requirements within the 10% variance.

C. WARRANTY EXTENSION

The Agreement also provides another valuable benefit to eligible Settlement Class Members by extending the New Vehicle Limited Warranty (NVLW) applicable to the Generation 3 Settlement Class Vehicles to cover 50% of the cost of a turbocharger repair or replacement, by an authorized Audi dealer (for Audi vehicles) or Volkswagen dealer (for Volkswagen vehicles), for a period of 8.5 years or eighty-five thousand (85,000) miles (whichever occurs first) from the vehicle's In-Service Date, if the cause of the turbocharger failure or malfunction is that the wastegate failed due to fork head and/or link pin corrosion. In addition, for Generation 3 Settlement Class Vehicles that are more than 8.5 years old as of the Notice Date, the Warranty Extension will be up to 60 days after the Notice Date or 85,000 miles from the vehicle's In-Service Date (whichever occurs first).

The Warranty Extension is subject to the same terms, conditions, and limitations set forth in the Settlement Class Vehicle's original NVLW and Warranty Information Booklet, and shall be fully transferable to subsequent owners to the extent that its time and mileage limitation periods have not expired.

D. CLASS NOTICE PLAN

The Agreement provides that on a date not more than one hundred (100) days after the entry of the Preliminary Approval Order, the Claims Administrator will mail the individual postcard Class Notice to Settlement Class Members, substantially in the form attached to the Agreement as Exhibit 2. A longer and detailed "long-form" Class Notice, substantially in the form attached to the Agreement as Exhibit 3, will be made available on the Settlement Website as

discussed below. The postcard Class Notice will be sent by first-class mail to the current or last known address of all reasonably identifiable Settlement Class Members. Exh. A, §IV(B)(1). Settlement Class Members will be located based on the Settlement Class Vehicles' VIN (vehicle identification numbers) and using the services of S & P Global or an equivalent company. These established services obtain vehicle ownership histories through state title and registration records, thereby identifying the names and addresses of record of the Settlement Class Members. The Settlement Claim Administrator will then compare the obtained addresses to information in the National Change of Address database to confirm that addresses for mailing are the most current addresses possible. In addition, after the postcard Class Notice is mailed, for any individual mailed Notice that is returned as undeliverable, the Claim Administrator will re-mail to any provided forwarding address, and for any undeliverable Class Notice where no forwarding address is provided, the Claim Administrator will perform an advanced address search (*e.g.*, a skip trace) and re-mail any undeliverable postcard Class Notice to any new and current address located. *Id.*, at §IV(B)(2)-(5).

Pursuant to the Settlement, the Claims Administrator shall also implement a Settlement website containing: (1) instructions on how to submit a Claim for reimbursement by online submission or by mail; (2) instructions on how to contact the Claims Administrator by email or toll-free telephone, defense Counsel, and/or Settlement Class Counsel for assistance; (3) a "VIN lookup" tool allowing individuals to easily input their vehicle's VIN and determine whether it is a Settlement Class Vehicle; (4) a copy of the Claim Form, Class Notices, including the long-form class notice, the Settlement Agreement, the Preliminary Approval Order, the motions for final approval and for Class Counsel fees and expenses and the Class Representative service award, and other pertinent orders and documents to be agreed upon by counsel for the Parties; (5) the

deadlines and requirements for any objections, requests for exclusion, and submission of reimbursement Claims; (6) the date, time, and location of the final fairness hearing; (7) answers to Frequently Asked Questions; and (8) any other relevant information agreed upon by counsel for the Parties. *Id*. at §IV(B)(6).

Additionally, VWGoA will advise its authorized Volkswagen and Audi dealers of the Warranty Extension so that they can effectuate the Warranty Extension pursuant to its terms. *Id*. at §IV(B)(8).

E. CLAIMS PROCESS

The Warranty Extension does not require a Claim Form. Those Settlement Class Members who sustain a turbocharger failure or malfunction that is covered under the Warranty Extension need only take the Settlement Class Vehicle to an authorized Volkswagen or Audi dealer in order to receive the warranty repair.

For reimbursement of certain past paid covered repairs, there is a very easy and consumer-friendly claims process in which, prior to the claims deadline, Settlement Class Members may submit to the Claim Administrator a fully completed, signed and dated Claim Form, together with the required supporting documentation spelled out in the Settlement, either by U.S. mail or online via the settlement website. JND Legal Administration, an experienced class action claim administrator, will administer the Settlement and will review all claims. Counsel for the Parties have the right to monitor the claims process to ensure that it is functioning as intended. Further, any Settlement Class Member that submits a claim that is deficient in any respect will receive notice of the deficiency(ies) and an opportunity to cure it/them within 30 days of the date of that notice. While the Claim Administrator's claims determinations are binding and not appealable, the Settlement provides yet another benefit in that any Settlement Class Member whose claim was

denied in whole or in part may, within fourteen (14) days, request an "attorney review" of the denial, whereupon counsel will meet and confer and determine whether said denial, based upon the Claim Form and documentation previously submitted, whether the denial was correct, or whether the denial should be modified or reversed. Exh. A at §III(B)(3) and (4).

For those Settlement Class Members whose claims are approved, the Claims Administrator shall mail to him/her a reimbursement check to the address on the Claim Form within one-hundred and fifty (150) days of the date of the receipt of a valid and complete Claim for reimbursement, or within one-hundred and fifty (150) days of the Effective Date of the Settlement, whichever is later. All costs of the Class Notice and the Claims process will be borne by Defendant and will not reduce any benefits to which a Settlement Class Member may be entitled under the Settlement. Exh. A at §III(A).

F. RELEASE OF CLAIMS AGAINST DEFENDANTS

The Settlement contains a reasonable release of claims tailored to the litigation. In exchange for the Settlement benefits, Settlement Class Members who do not submit timely and valid opt-outs will release all claims which arise from, involve or relate to the Settlement Class Vehicles' turbochargers (and any of their component and related parts including wastegate linkages and actuators), and any claims that were or could have been asserted in the Action relating to the class vehicles' turbochargers.

G. OPT-OUT RIGHTS

The Settlement provides reasonable opt-out rights in which any Settlement Class Member may mail a request to be excluded from the Settlement Class within thirty (30) days after the Notice Date. The Request for Exclusion requires basic information such as the requester's name, address and telephone number, the model/model year and VIN of the Settlement Class Vehicle, and a

statement that he/she/it is a current or former owner or lessee of said Settlement Class Vehicle (*i.e.*, a Settlement Class Member) and desires to be excluded from the Settlement Class (Agreement at §V(B)). And like most other class settlements, Settlement Class Members who do not timely and properly opt out remain in the Settlement Class and are bound by all subsequent proceedings, orders, and judgments.

H. CLASS COUNSEL FEES AND EXPENSES AND NAMED PLAINTIFF SERVICE AWARDS

As stated above, to date there has been no discussion regarding reasonable Class Counsel fees and expenses and a Class Representative service award. Moreover, any such fees/expenses and service award shall not affect or, in any way, reduce any benefits to which a Settlement Class Member may be entitled under the Settlement. The Parties will attempt to mediate these issues prior to Plaintiffs' filing of a fee/expense/service award application, and if an agreement cannot be reached, the Parties will meet and confer and present to the Court for approval an agreed briefing schedule regarding same.

I. OBJECTIONS AND SETTLEMENT APPROVAL

Any potential Settlement Class Member who does not opt out of the Settlement may object to the Settlement and/or the request for Class Counsel fees/expenses and/or the Class Representative service award. To object, the Settlement Class Member must file a written objection with the Court within 30 days of the Notice Date, or mail the objection, postmarked within 30 days of the Notice Date, the Court and counsel for the Parties. Any objection must demonstrate that the objector is a Settlement Class Member, and include the basis for the objection, any documents or information in support of the objection, and state whether the Settlement Class Member intends to appear at the Final Fairness Hearing after filing a timely Notice of Intention to Appear.

III. THE SETTLEMENT WARRANTS PRELIMINARY APPROVAL

"Review of a proposed class action settlement is a two-step process: (1) preliminary approval, and (2) a subsequent fairness hearing." *Smith v. Merck & Co.*, 2019 WL 3281609, at *4 (D.N.J. July 19, 2019). "[P]reliminary approval is not binding and is granted unless the proposed settlement is obviously deficient." *Kress v. Fulton Bank, N.A.*, 2021 WL 9031639, at *9 (D.N.J. Sept. 17, 2021), *R. & R. adopted*, 2022 WL 2357296 (D.N.J. June 30, 2022). Moreover, there is an "overriding public interest in settling class action litigation." *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 535 (3d Cir. 2004); *see also Ortho-Clinical Diagnostics, Inc. v. Fulcrum Clinical Lab'ys, Inc.*, 2023 WL 3983877, at *3 (D.N.J. June 13, 2023) ("[T]here is a strong public policy in favor of settlements. . . . Courts, therefore, will 'strain to give effect to the terms of a settlement whenever possible.'"). Settlement is particularly favored "in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation." *Warfarin*, 391 F.3d at 535 (quoting *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prod. Liab. Litig.*, 55 F.3d 768, 784 (3d Cir. 1995)); *see also In re Google Inc. Cookie Placement Consumer Priv. Litig.*, 934 F.3d 316, 326 (3d Cir. 2019) (for motions seeking approval of "settlement only" class actions, "we favor the parties reaching an amicable agreement" and should not "intrude overly on the parties' hard-fought bargain[,]" but also, "[a]t the same time, [a] district court has an obligation as a fiduciary for absent class members to examine the proposed settlement with care").

Amendments to Rule 23 that took effect on December 1, 2018 require that the court must be satisfied that it "will likely be able to (i) approve the proposal under Rule 23(e)(2); and (ii) certify the class for purposes of judgment on the proposal." Fed. R. Civ. P. 23(e)(1)(B); *see also Maverick Neutral Levered Fund, Ltd. v. Valeant Pharms. Int'l, Inc.*, 2021 WL 7872087, at *5

(D.N.J. Jan. 26, 2021) ("Thus, in connection with an order preliminarily granting approval of a class action settlement, the Court is not certifying the class at the preliminary approval stage, but rather, is making a preliminary determination that it will likely be able to certify the class at the final approval stage.") (citing William B. Rubenstein, *4 Newberg on Class Actions* §13:17 (5th Ed.)). If these requirements are satisfied, then notice of the proposed settlement will be disseminated to the class. Fed. R. Civ. P. 23(e)(1). The court considers two sets of factors in assessing the fairness of a settlement agreement: (i) whether it "will likely be able to . . . approve the proposal under Rule 23(e)(2)" and (ii) whether it "will likely be able to . . . certify the class for purposes of judgment on the proposal." Fed. R. Civ. P. 23(e)(1)(B).

This proposed Settlement easily satisfies the standard for preliminary approval. It is the product of extensive and adversarial arm's-length negotiations between experienced class action counsel on both sides. As shown above, the Settlement provides a robust reimbursement program for certain enumerated past paid (and unreimbursed) expenses or a covered repair, and a substantial Warranty Extension for Generation 3 Settlement Class Vehicles. These prompt and substantial benefits avoid the significant risks and delays of litigating this mater to conclusion, would not be available absent this Settlement, and thus, Plaintiff submits that the fairness, reasonableness, and adequacy of the Settlement is apparent on its face. Moreover, Settlement Class Counsel conducted extensive investigation, including consultation with experts. And, avoidance of the potential risks including no class certification, no-recovery or substantially reduced recovery, and of the uncertainties and substantial delays of further litigation, allows Settlement Class Members to reap these substantial Settlement benefits promptly. For these reasons, Plaintiff requests that the Court grant preliminary approval.

A. RULE 23(E)(2) FACTORS

Each of the Rule 23(e)(2) factors is satisfied:

1. Rule 23(e)(2)(A) – Whether Plaintiff and Plaintiff's Counsel "have adequately represented the class"

Plaintiff and Settlement Class Counsel have more than adequately represented the Settlement Class. Prior to reaching settlement, Settlement Class Counsel reviewed substantial documents, inspected and analyzed relevant engines and engine components,[6] worked with automotive engineering experts, and analyzed the pertinent factual, legal and damages issues. Settlement Class Counsel has spent significant time and resources over three years representing the class, including extensive motion practice. Settlement Class Counsel also have significant experience as class counsel in numerous automotive class actions. *See* Graifman Decl. In retaining Settlement Class Counsel, Plaintiff has "employed counsel who are qualified and experienced in complex class litigation and who have resources, zeal, and a successful record in class cases." *In re Mercedes-Benz Emissions Litig.*, 2021 WL 7833193, at *9 (D.N.J. Aug. 2, 2021). Settlement Class Counsel's approval of the Settlement should weigh in favor of the Settlement's fairness. *Varacallo*, 226 F.R.D. at 240 ("[T]he Court puts credence in the fact that Class Counsel consider the Proposed Settlement to be fair, reasonable and adequate.").

Further, as evidenced by the typicality and commonality considerations discussed below, the interests of the named Plaintiff representative and the Settlement Class Members are aligned and there are no apparent conflicts of interest. Settlement Class Counsel and the named plaintiff have adequately represented the interests of the class.

2. Rule 23(e)(2)(B) – Whether the settlement "was negotiated at arm's-length"

[6] Co-Class Counsel Thomas Sobran, in addition to being an attorney with substantial class action experience, is a Volvo, BMW and Mercedes factory-trained mechanic. *See* Sobran Resumé, Exh. D to Graifman Decl.

This excellent Settlement was the result of extensive arm's-length negotiations conducted by sophisticated counsel who had sufficient information and expertise to understand the relevant factual, technical and legal issues, the strengths and weaknesses of their respective positions, and to craft a Settlement which is fair, reasonable and adequate in every sense. At all times the negotiations were vigorous and adversarial; attorney fees/expenses were never discussed, and there was no collusion whatsoever.

3. Rule 23(e)(2)(C)(i) – Whether the relief "is adequate, taking into account the costs, risks, and delay of trial and appeal"

This factor "balances the 'relief that the settlement is expected to provide to class members' against 'the cost and risk involved in pursuing a litigated outcome.'" *Hall v. Accolade, Inc*., 2019 WL 3996621, at *4 (E.D. Pa. Aug. 23, 2019) (quoting Fed. R. Civ. P. 23 advisory comm.'s notes (Dec. 1, 2018)). Such analysis "cannot be done with arithmetic accuracy, but it can provide a benchmark for comparison with the settlement figure." *Id.* As the Third Circuit has observed, "[t]he role of a district court is not to determine whether the settlement is the fairest possible resolution – a task particularly ill-advised given that the likelihood of success at trial . . . can only be estimated imperfectly." *In re Baby Prods. Antitrust Litig.*, 708 F.3d at 173-74.

Here, the adequacy of benefits provided by this Settlement is not only apparent but compares favorably to other approved automotive class action settlements in this district, by reimbursing half of the costs of a documented covered turbocharger failure, within the agreed-upon time/mileage parameters, and further extending the warranty of certain Settlement Class Vehicles. Importantly, the prospective Warranty Extension will be applied without Settlement Class Members having to fill out any claim form. These factors weigh in favor of granting preliminary approval of the proposed Settlement here. *See, e.g.*, *Henderson v. Volvo Cars of N. Am., LLC*, 2013 WL 1192479, at *2 (D.N.J. Mar. 22, 2013) (granting final approval of settlement

for transmission repair or replacements with 50% reimbursement for new and certified pre-owned vehicles with failures prior to 100,000, and 25% reimbursement for used vehicles that were not certified pre-owned); *Careccio v. BMW of N. Am., LLC*, 2010 WL 1752347, at *2-3 (D.N.J. Apr. 29, 2010) (granting final approval of settlement for defective tires with a sliding scale of reimbursement up to 50% for cost of replacement tires).

Absent settlement, there would be significant costs and delay, including further motions to dismiss, a highly contested motion for class certification, motions for summary judgment, other pretrial proceedings, and trial, with the results at every stage substantially uncertain. Although Plaintiff and Class Counsel are confident in the merits of their case, there are nevertheless substantial risks of litigation including failure to obtain class certification or maintain it through trial, summary judgement, and non-recovery or much more limited recovery, as well as the substantial costs and delays of further litigation. Conversely, the Settlement proposed here affords substantial benefits now, without the costs, delays, risks and uncertainties. *See, e.g.*, *Myers v. Jani-King of Phila., Inc.*, 2019 WL 4034736, at *9 (E.D. Pa. Aug. 26, 2019) (approving settlement amount representing "between 20% and 39% of the maximum damages' calculations").

4. Rule 23(e)(2)(C)(ii) – Effectiveness of the "proposed method of distributing relief" and "the method of processing class-member claims"

This factor is clearly satisfied where, as here, the Agreement provides for a generous warranty extension and a very reasonable and consumer friendly claims process, administered by an experienced Claims Administrator, which merely requires the timely submission of a completed claim with basic supporting documentation which is standard for automotive class action settlements.

5. Rule 23(e)(2)(C)(iii) – The terms and timing of any proposed attorney's fee award

This factor recognizes that "[e]xamination of the attorney-fee provisions may also be valuable in assessing the fairness of the proposed settlement." Fed. R. Civ. P. 23, advisory comm.'s notes to 2018 amendment. Here, there have been no discussions about reasonable attorneys' fees, expenses, or a class representative service award, and any such awards will not affect or reduce the benefits to which any Settlement Class Member may be eligible At the final approval stage, Plaintiff will fully brief the fairness and reasonableness of the requested attorneys' fees under the Third Circuit's *Gunter* factors. *See, e.g.*, *Tumpa v. IOC-PA, LLC*, 2021 WL 62144, *10-12 (W.D. Pa. Jan. 7, 2021). However, such detailed analysis is not necessary at the preliminary approval stage. *See, e.g.*, *Altnor v. Preferred Freezer Servs., Inc*., 2016 WL 9776078, at *1 n.1 (E.D. Pa. Feb. 9, 2016) (attorney's fees "will be addressed at the final fairness hearing"); *Kopchak v. United Res. Sys*., 2016 WL 4138633, at *5 n.8 (E.D. Pa. Aug. 4, 2016) ("I will defer approval of attorneys' fees until after the final fairness hearing.").

6. Rule 23(e)(2)(C)(iv) – Any agreement required to be identified under Rule 23(e)(3)

Rule 23(e)(3) requires settling parties to "file a statement identifying any agreement made in connection with the proposal." Here, the accompanying Settlement Agreement is the *only* agreement connected to the subject matter of this lawsuit or settlement.

7. Rule 23(e)(2)(D) – Whether the settlement treats class members equitably relative to each other

This factor seeks to prevent the "inequitable treatment of some class members *vis-a-vis* others." Fed. R. Civ. P. 23, advisory comm.'s notes to 2018 amendment. Here, this factor is satisfied because, as discussed above, each Settlement Class Member can be eligible for reimbursement of certain past paid out-of-pocket expenses for covered repairs if they meet the settlement criteria for reimbursement, and all Settlement Class Members with Generation 3

engines will receive the Warranty Extension repair if, within the enumerated period, their vehicles' turbochargers malfunction due to fork head or link pin corrosion. And although the Warranty Extension does not apply to the older vehicles that have Generation 1 and Generation 2 engines, Settlement Class Members with those vehicles can still seek reimbursement if they had and paid for an enumerated covered turbocharger repair or replacement prior to the Notice Date and within the same 8.5 year or 85,000 mile (whichever occurred first) period that is covered by the Warranty Extension for the Generation 3 vehicles. Accordingly, this factor supports approving the Settlement. *See Hays v. Eaton Grp. Att'ys, LLC*, 2019 WL 427331, at *13 (M.D. La. Feb. 4, 2019) (the equitable-treatment factor "easily met as each class member, save the Class representative, will receive the same amount").

The named Plaintiff will seek a reasonable Service Award, which has not yet been negotiated, and any ultimate Service Award is subject to the Court's approval. Because of Ms. Kimball's efforts and willingness to become involved in this action, hundreds of thousands of passive class members will potentially receive significant benefits from the Settlement. "[S]ubstantial authority exists for the payment of an incentive award to the named plaintiff."[7] *Smith*, 2007 WL 4191749, at *3 (citing *Varacallo v. Mass. Mut. Life Ins. Co*., 226 F.R.D. 207, 257 (D.N.J. 2005)). In addition, the proposed Service Award is in line with awards that have been approved in this Circuit. *See, e.g., Weissman v. Philip C. Gutworth, P.A.*, 2015 WL 333465, at *4 (D.N.J. Jan. 23, 2015) ($2,500 service award); Henderson, 2013 WL 1192479, at *19 ($6,000 and $5,000 service awards); *Alin*, 2012 WL 8751045, at *16-17 ($2,500 and $12,500 service awards); *Moore v. Comcast Corp.*, 2011 WL 238821, at *6 (E.D. Pa. Jan. 24, 2011) ($10,000 service award);

[7] Courts generally defer assessment of service awards until the final approval stage. *Hardy v. Embark Tech., Inc.*, 2023 WL 6276728, at *8 (N.D. Cal. Sept. 26, 2023); *Hale v. Manna Pro Prods., LLC*, 2020 WL 3642490, at *12 (E.D. Cal. July 6, 2020).

Careccio, 2010 WL 1752347, at *7 ($5,000 and $3,500 service awards); *In re Am. Inv'rs Life Ins. Co. Annuity Mktg. & Sales Practices Litig.*, 263 F.R.D. 226, 245 (E.D. Pa. 2009) (incentive awards up to $10,500).

In sum, as discussed above, the Court "will likely be able to … approve the proposal under Rule 23(e)(2)." Fed. R. Civ. P. 23(e)(1)(B)(i).

B. The *Girsh* Factors Support Preliminary Approval

Although the foregoing analysis is sufficient for the Court to grant preliminary approval, courts sometimes consider the final approval factors to mitigate any potential issues in the future. *Udeen v. Subaru of Am., Inc.*, 2019 WL 4894568, at *3 (D.N.J. Oct. 4, 2019). The Third Circuit directs district courts to analyze the following nine factors at the final approval stage:

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

Girsh, 521 F.2d at 157. All of the *Girsh* factors that the Court can analyze at this stage support preliminary approval.[8]

As to the first factor, the complexity, expense, and likely duration support preliminary approval because, without the Settlement, the parties would be engaged in contested motion practice and adversarial litigation for years. The claims advanced on behalf of the Settlement Class Members involve complex technical, engineering and legal issues. Continued litigation would be complex, time consuming and expensive, with no certainty of a favorable outcome. The Settlement

[8] The reaction of the class cannot be evaluated until after Class Notice is distributed.

Agreement secures substantial benefits for the Settlement Class while avoiding the delays, risks and uncertainties of continued litigation.

The third factor, the stage of the proceedings and the amount of discovery completed, also supports preliminary approval. Plaintiff's counsel conducted their own extensive independent investigation into the alleged issues, and informally obtained detailed information from Defendant. The information investigated and obtained allowed Plaintiff's counsel to understand the strengths and weaknesses of the case, and to analyze the risks of future litigation in comparison to the relief offered by the Settlement. *Udeen*, 2019 WL 4894568, at *3.

The fourth, fifth, and sixth factors all analyze risks of continued litigation. If the parties had been unable to resolve this case through the Settlement, the litigation would likely have been protracted and costly. Plaintiff's counsel have litigated many automotive class actions that have taken several years to conclude. Before ever approaching a trial in this case, the parties likely would have briefed, and the Court would have had to decide, an additional motion to dismiss, discovery-related motions, a motion for class certification (along with a potential Rule 23(f) appeal), motions for summary judgment, as well as FRE 702 motions and other pre-trial and trial-related motions. Additionally, considerable resources would have been expended on discovery, depositions, and expert witnesses.

Moreover, there is a risk of not obtaining class certification should this action be litigated rather than settled. Defendant is likely to assert numerous defenses that may apply to many individual putative class members under the applicable laws of their respective states, such as lack of standing, statute of limitations, privity, and others, which, if litigated, could substantially if not completely bar many Settlements Class Members' claims and/or recoveries. Likewise, if this action is litigated, there are other potentially predominating individualized issues relating to each putative

class member's claim including the facts and circumstances of each putative class member's purchase or lease transaction; what, if anything, each putative class member viewed, heard and/or relied upon prior to purchase or lease; individual vehicle-related facts including the maintenance, use, repair history, and physical and mechanical condition of each vehicle; whether individual putative class members ever experienced the alleged issues; and the individual facts and circumstances of any putative class member's interactions, if any, with Volkswagen or Audi dealers with respect to the breach of warranty claims.

Conversely, in the context of a class settlement, these potential impediments do not preclude certification of a nationwide Settlement Class, since the Court is not faced with the significant manageability problems of a trial. *See Amchem Prods., Inc.*, 521 U.S. at 620 (individual issues that may preclude class certification in litigation do not preclude class certification for settlement purposes, since manageability at trial is no longer a concern).

Courts routinely find the seventh factor – Defendant's ability to withstand a greater judgement – to be neutral, as it is here. Such a factor is typically only relevant when "the defendant's professed inability to pay is used to justify the amount of the settlement." *In re NFL Players Concussion Injury Litig.*, 821 F.3d at 440. This not a factor here.

Finally, the remaining *Girsh* factors – the range of reasonableness of the settlement both independently and weighed against the risk of further litigation – support preliminary approval. The settlement must be judged "against the realistic, rather than theoretical potential for recovery after trial." *Sullivan*, 667 F.3d at 323. In conducting the analysis, the court must "guard against demanding too large a settlement based on its view of the merits of the litigation; after all, settlement is a compromise, a yielding of the highest hopes in exchange for certainty and resolution." *In re General Motors Corp. Pick-Up Truck Fuel Tank Prods. Litig.*, 55 F.3d at 806;

see also In re Shop-Vac Mktg. & Sales Pracs. Litig., 2016 WL 3015219, at *2 (M.D. Pa. May 26, 2016) ("The proposed settlement amount does not have to be dollar-for-dollar the equivalent of the claim…and a satisfactory settlement may only amount to a hundredth or even a thousandth part of a single percent of the potential recovery.") (internal citations and quotations omitted). Here, as shown, the settlement provides significant benefits to the Settlement Class Members in the form of a Warranty Extension and reimbursements for certain out-of-pocket costs of repair of failed or malfunctioning turbochargers.

C. THE COURT "WILL LIKELY BE ABLE TO CERTIFY THE CLASS"

Having determined that the parties "will likely be able to … approve the proposal under Rule 23(e)(2)," Plaintiff addresses the second part of the preliminary approval analysis concerning whether the Court "will likely be able to … certify the class." Fed. R. Civ. P. 23(e)(1)(B)(ii).

Plaintiff requests that the Court preliminarily certify a Settlement Class and direct dissemination of notice concerning the Action and the Settlement. Defendant does not object to certification of the Settlement Class for purposes of settlement only and the Supreme Court has acknowledged the propriety of certifying a class solely for settlement purposes. *See, e.g.*, *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 618 (1997). In conducting this task, a court's "dominant concern" is "whether a proposed class has sufficient unity so that absent members can fairly be bound by decisions of class representatives." *Id.* at 621. To be certified under Rule 23, a putative class must for purposes of the settlement satisfy, by a preponderance of the evidence, each of the four requirements of Rule 23(a) as well as the requirements of one of the three provisions of Rule 23(b). *See* Fed R. Civ. P. 23.

1. Rule 23(a) is Satisfied for Settlement Purposes

Rule 23(a) provides:

> One or more members of a class may sue or be sued as representative parties on behalf of all members only if:
>
> (1) the class is so numerous that joinder of all members is impracticable;
>
> (2) there are questions of law or fact common to the class;
>
> (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and
>
> (4) the representative parties will fairly and adequately protect the interests of the class.

Fed. R Civ. P. 23(a). Here, as set forth below, all four elements are satisfied in regard to the proposed Settlement Class.

2. Rule 23(a)(1) – "Numerosity" – is met

Rule 23(a)(1) requires that the class be "so numerous that joinder of all members is impracticable[.]" Fed. R Civ. P. 23(a)(1). "[G]enerally, where the potential number of plaintiffs is likely to exceed forty members, the numerosity requirement will be met." *Martinez-Santiago v. Public Storage*, 312 F.R.D. 380, 388 (D.N.J. 2015) (citing *Marcus v. BMW of N. Am., LLC*, 687 F.3d 583, 595 (3d Cir. 2012)). Here, based on the applicable VIN numbers, there are approximately 1.6 million Settlement Class Vehicles (some with multiple owners.) The numerosity requirement is therefore readily satisfied.

3. Rule 23(a)(2) – "Commonality" – is met

Rule 23(a)(2) requires that there be "questions of law or fact common to the class," and that the class members "have suffered the same injury." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 345-50 (2011). The commonality inquiry focuses on the defendant's conduct. *Sullivan v. DB Invs., Inc.*, 667 F. 3d 273, 297 (3d Cir. 2011) ("[C]ommonality is informed by the defendant's conduct as to all class members and any resulting injuries common to all class members[.]"). A finding of commonality does not require that all class members share identical claims as long as

there are common questions at the heart of the case. *In re NFL Players*, 821 F.3d at 426-27 (stating that Rule 23(a) commonality is satisfied "if the named plaintiffs share at least one question of fact or law with the grievances of the prospective class"); *Warfarin*, 391 F.3d at 530. "For purposes of Rule 23(a)(2), 'even a single common question will do.'" *Wal-Mart Stores, Inc.*, 564 U.S. at 360.

Here, the claims of the Settlement Class raise common questions of law and fact. These common questions include whether the subject turbochargers are defective, whether Defendant knew of and ached a duty to disclose it, and whether the alleged defect caused an economic loss.

4. Rule 23(a)(3) – "Typicality" –is satisfied

Rule 23(a)(3) requires that a representative plaintiff's claims be "typical" of those of other class members. As the Third Circuit has stated, "the named plaintiffs' claims must merely be 'typical, in common-sense terms, of the class, thus suggesting that the incentives of the plaintiffs are aligned with those of the class.'" *In re Schering Plough Corp. ERISA Litig.*, 589 F.3d 585, 598 (3d Cir. 2009). Where it is alleged that the defendant engaged in a behavior common to all members of the class, "there is a strong presumption that the claims of the representative parties will be typical of the absent class members." *In re Merck & Co., Vytorin/Zetia Sec. Litig.*, 2012 WL 4482041, at *4 (D.N.J., Sept. 25, 2012); *see also Yaeger*, 2016 WL 4541861, at *6 (finding typicality where "plaintiffs allege that the class claims arise out of the same conduct of the defendants related to their design, manufacture, and sale of the class vehicles that suffered from an alleged oil consumption defect, and defendants' alleged failure to disclose that material fact").

Here, the named Plaintiff's claim, and those of the Settlement Class, arose from a common course of alleged conduct by Defendant of providing Settlement Class Vehicles containing allegedly defective turbochargers which, Plaintiffs claim, were known but not disclosed.

5. Rule 23(a)(4) – "Adequacy"

The final requirement of Rule 23(a) requires that "the representative parties will fairly and adequately protect the interests of the class." Fed. R Civ. P. 23(a)(4). In the Third Circuit, this requirement is met when two prongs are satisfied: 1) the plaintiff has no interests antagonistic to those of the class; and 2) the plaintiff's counsel is qualified, experienced, and generally able to conduct the proposed litigation. *In re Schering Plough Corp.*, 589 F.3d at 602. The core analysis for the first prong is whether Plaintiff has an interest antagonistic to those of the Settlement Class. The second prong analyzes the capabilities and performance of Class Counsel based upon factors set forth in Rule 23(g). *See Sheinberg v. Sorensen*, 606 F.3d 130, 132 (3d Cir. 2010). Here, Plaintiffs satisfy both prongs.

First, Plaintiff has no interests adverse or "antagonistic" to absent Settlement Class Members. Plaintiff seeks to hold Defendant accountable for, among other things, manufacturing and distributing Settlement Class Vehicles containing allegedly defective turbochargers that fail or malfunction, causing monetary losses. Further, Plaintiff has demonstrated her allegiance and commitment to this litigation by consulting with Plaintiff's Counsel, collecting documents for litigation, reviewing the pleadings, and keeping informed of the progress of the litigation. Plaintiff's interests are aligned with the interests of absent Settlement Class Members.

Second, as discussed more extensively in the exhibits filed with this brief, Plaintiff's Counsel are qualified, experienced, and competent in complex class litigation and have an established, successful track record with consumer class cases.[9] Accordingly, the adequacy requirement is satisfied.

6. Rule 23(b)(3) – "Predominance" of Common Issues

[9] *See* Graifman Decl., at Exhibits C and D.

Having demonstrated that each of the mandatory requirements of Rule 23(a) are met for settlement purposes only, Plaintiff now turns to consideration of the Rule 23(b)(3) factors – predominance and superiority. Under Rule 23(b)(3), a class action should be certified when the court finds that common questions of law or fact predominate over individual issues and a class action would be superior to other methods of resolving the controversy. Predominance "tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Amchem Prods., Inc.*, 521 U.S. at 623. Superiority requires the court "to balance, in terms of fairness and efficiency, the merits of a class action against those of alternative available methods of adjudication." *In re NFL Players*, 821 F.3d at 434. Here, the Settlement Class readily meets both requirements.

First, common questions of both law and fact predominate for settlement purposes. The Settlement Class Members' claims arise out of an allegedly common defect in their vehicles' turbochargers and alleged conduct by Defendant in failing to disclose it, which for settlement purposes, predominate over any factual variations. Further, since the class is being certified in the context of a settlement, there are no "manageability" concerns as may exist if the case were litigated. *Amchem Prods. v. Windsor,* 521 U.S. 591, 620 (1997); *In re Merck & Co., Inc. Vytorin Erisa Litigation*, 2010 WL 547613, *5 (D.N.J. Feb. 9, 2010) (citing *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 519 (3d Cir. 2004).

Second, certification of the Settlement Class under Rule 23 is "superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R Civ. P. 23(b)(3). The settlement affords substantial benefits to numerous putative Settlement Class Members who, absent a class settlement, may not have been aware of their legal rights or may not have had the desire or resources to pursue an individual suit involving the complex matters at issue. The class

settlement also serves the interest of judicial economy by avoiding multiple similar lawsuits. Thus, resolving the Settlement Class Members' claims in a single, consolidated settlement proceeding is far superior to individual adjudication of their claims. And, as this is a class settlement, the court need not address manageability issues that may otherwise exist in a contested class action. *Amchem Prods., Inc*., 521 U.S. at 620.

Accordingly, Plaintiff has satisfied this Circuit's standards for preliminary approval of the Settlement. This Court should grant preliminary approval so the proposed class may be certified for settlement purposes, Settlement Class Counsel and the Settlement Class Representative may be appointed, and Class Notices may be mailed. Once the Class Notice process is complete, the Court can then fully evaluate the fairness and adequacy of the Settlement at a Final Approval hearing.

IV. THE FORM, CONTENT, AND PLAN FOR DISSEMINATION OF THE CLASS NOTICE ARE PROPER AND SHOULD BE APPROVED

The manner in which Class Notice is disseminated, as well as its content, must satisfy Rule 23(c)(2) (governing class certification notice), Rule 23(e)(1) (governing settlement notice), and due process. *See In re Ocean Power Techs, Inc.*, 2016 WL 6778218, at *9 (D.N.J. Nov. 15, 2016). Plaintiffs meet these requirements.

Rule 23(e) requires that notice of a proposed settlement be provided to class members. Fed. R. Civ. P. 23. "[D]ue process requires that notice be 'reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" *In re NFL Players*, 821 F.3d at 446. Additionally, Rule 23(c)(2) requires "the best notice practicable under the circumstances" and that such notice contain "sufficient information to enable class members to make informed decisions on whether they should take steps to protect their rights, including objecting to the settlement or, when

relevant, opting out of the class." *In re Ocean Power Techs., Inc.*, 2016 WL 6778218 at *10 (quoting *In re NFL Players*, 821 F.3d at 435).

Here, the Class Notice plan satisfies all requirements. The language of the Class Notice was drafted and agreed to by the Parties. The proposed Class Notice will be disseminated via postcard written in plain, simple terminology, containing a description of the Settlement benefits, instructions on how to request exclusion from the class or object to the Settlement, the date, time and location of the Final Fairness Hearing, and directing Settlement Class Members to the Settlement Website that includes the long-form class notice and detailed information about this Settlement and ligation, including: (1) a description of the Settlement Class; (2) a description of the claims asserted in the action; (3) Settlement Class Member's rights and options with respect to the Settlement; (4) a VIN lookup tool that will allow individuals to check whether their vehicles are included in the Settlement; (5) instructions on how to file claim for reimbursement; (6) the long form Class Notice with further detailed information regarding the Settlement and the Settlement Class Members' rights, options, and relevant deadlines and procedures; (7) a description of the Settlement and release of claims; (8) the deadlines and procedures for objecting to, and requesting exclusion from, the Settlement; (9) the identity and contact information of counsel for the Settlement Class; (10) the Final Approval Hearing date; (11) an explanation of eligibility for appearing at the Final Approval Hearing; and (12) the email and toll-free number of the Claim Administrator which es Settlement Class Members to obtain further information and address any questions they may have. The Class Notice provides Settlement Class Members with clear and accurate information as to the nature and principal terms of the Agreement to make an informed and intelligent decision whether to object to the Settlement.

The dissemination of the Class Notice likewise satisfies all requirements. Under the Agreement, the Claims Administrator will send individualized postcard Class Notice to Settlement Class Members that can be reasonably identified through Department of Motor Vehicle records via first class mail. Mail Notice will be sent to the current or last known address reflected in the records of each state Department of Motor Vehicles as obtained by S&P Global or an equivalent company (such as Experian) for each Settlement Class Member. Additionally, prior to the mailing of Class Notice, an address search through the United States Postal Service's National Change of Address database will be conducted. For any Mail Notice that is returned as undeliverable, the Claims Administrator shall re-mail the Class Notice where a forwarding address has been provided. For any remaining undeliverable notice packets where no forwarding address is provided, the Claims Administrator will perform an advanced address search (*e.g.,* a skip trace) and re-mail any undeliverable Class Notices to the extent any new and current address are located. In addition, a website will be created so that Settlement Class Members can readily have questions answered, obtain additional copies of materials sent by the Claims Administrator, and find instructions on how to submit a Claim for reimbursement either by mail or online submission.

Accordingly, the proposed Class Notice complies with the standards of fairness, completeness, and neutrality required of a settlement class notice, is the best practicable notice under the circumstances and fully comports with the requirements of Rule 23, applicable law and due process. *See, e.g.*, *In re Ins. Brokerage Antitrust Litig.*, 297 F.R.D. 136, 151 (D.N.J. 2013) (approving notice plan that utilized postcard notices and website to provide settlement information as the "notice plan was thorough and included all of the essential elements necessary to properly apprise absent Settlement Class members of their rights").

V. PROPOSED SCHEDULE FOLLOWING PRELIMINARY APPROVAL

Plaintiff, with the consent of Defendant, proposes that along with granting preliminary approval of the Agreement, the Court adopt the schedule for further proceedings set forth below and in the proposed Preliminary Approval Order:

Event	Timing
Deadline for Mailing of postcard Class Notice to the Settlement Class and Settlement Website to go live (the "Notice Date")	100 days after issuance of Preliminary Approval Order
Deadline for Class Counsel's Fee and Expense Application and Request for Service Awards for the Settlement Class Representative (Briefing schedule for Defendant's Response, if Contested, to Be Agreed and Determined)	No later than 115 days after Preliminary Approval Order
Deadline to Request Exclusion from the Settlement or to file an Objection to the Settlement, Class Counsel's Fee and Expenses, and/or the Class Representative service award.	No later than 130 days after issuance of Preliminary Approval Order
Deadline for Plaintiff to file Motion for Final Approval of the Settlement.	No later than 150 days after issuance of Preliminary Approval Order
Claim Administrator to submit a declaration to the Court (i) reporting the names of all persons and entities that submitted requests for exclusion; and (ii) attesting that Class Notice was disseminated in accordance with the Settlement Agreement and Preliminary Approval Order	No later than 150 days after issuance of Preliminary Approval Order
Any Submissions by any party in response to objections and opt-out requests and by Defendant in support of Final Approval	No later than 165 days after Issuance of Preliminary Approval Order
Final Fairness Hearing	Not earlier than one-hundred and eighty (180) days after Preliminary Approval

VI. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant this Motion for Preliminary Approval, and enter the Proposed Order.

Dated: February 28, 2025

Respectfully submitted,

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