UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

NED SIMERLEIN, JAMES ECKHOFF, MARICEL LOPEZ, CRAIG KAISER, JOHN F. PRENDERGAST, RAYMOND and ROSARIO ALVAREZ, KAREN EASON, JENNIFER SOWERS, JENNIFER FRANKLIN, JORDAN AMRANI, CRYSTAL GILLESPIE, MELISSA STALKER, DILLEN STEEBY, PAULA McMILLIN, JOSEPH C. HARP Jr., and JAMES and MELISSA JUGO TINNEY, individually and on behalf of
all others similarly situated,

Plaintiffs,

v.

TOYOTA MOTOR CORPORATION, TOYOTA MOTOR NORTH AMERICA, INC., TOYOTA MOTOR SALES, USA, INC., TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC. and TOYOTA MOTOR MANUFACTURING, INDIANA, INC.

Defendants.

Case No. 3:17-cv-01091-VAB

UNOPPOSED MOTION FOR ENTRY OF AN ORDER PRELIMINARILY APPROVING CLASS SETTLEMENT, DIRECTING NOTICE TO THE CLASS, AND SCHEDULING FAIRNESS HEARING

Plaintiffs Ned Simerlein, James Eckhoff, Maricel Lopez, Craig Kaiser, John F. Prendergast, Raymond and Rosario Alvarez, Karen Eason, Jennifer Sowers, Jennifer Franklin, Jordan Amrani, Crystal Gillespie, Melissa Stalker, Dillen Steeby, Paula McMillin, Joseph C. Harp Jr., and James and Melissa Jugo Tinney ("Plaintiffs"), individually and on behalf of all others similarly situated, respectfully submit this unopposed motion pursuant to Rule 23 of the Federal Rules of Civil Procedure for entry of an Order:

(a) preliminarily approving the proposed Settlement[1] as fair, reasonable and adequate;

(b) preliminarily certifying the proposed Class for settlement purposes only;

(c) appointing the proposed Class Representatives as Class Representatives;

(d) appointing the proposed Class Counsel as Class Counsel;

(e) ordering Notice to be disseminated to the Class;

(f) appointing Jeanne C. Finegan of Heffler Claims Group to act as the Settlement Notice Administrator;

(g) appointing Patrick A. Juneau and Thomas Juneau of Juneau David, APLC to act as the Settlement Claims Administrator;

(h) setting a date and procedures for a final Settlement Fairness Hearing and setting related deadlines; and

(i) issuing related relief, as appropriate.

Defendants do not oppose this motion.

This motion is based on the contemporaneously-filed memoranda of law in support of preliminary approval submitted separately by Plaintiffs and Defendants; the attached Joint Declaration of Demet Basar, W. Daniel "Dee" Miles, and Adam J. Levitt together with all exhibits thereto; the Declaration of Jeanne C. Finegan; the Declaration of Patrick A. Juneau; and all pleadings, records, and papers on file with the Court in this action.

A proposed Preliminary Approval Order is submitted contemporaneously herewith.

Dated: December 11, 2018

[1] All capitalized terms herein have the meanings given to them in the Settlement Agreement.

Respectfully submitted,

By: /s/ David A. Slossberg

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UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

NED SIMERLEIN, JAMES ECKHOFF, MARICEL LOPEZ, CRAIG KAISER, JOHN F. PRENDERGAST, RAYMOND and ROSARIO ALVAREZ, KAREN EASON, JENNIFER SOWERS, JENNIFER FRANKLIN, JORDAN AMRANI, CRYSTAL GILLESPIE, MELISSA STALKER, DILLEN STEEBY, PAULA McMILLIN, JOSEPH C. HARP Jr., and JAMES and MELISSA JUGO TINNEY, individually and on behalf of all others similarly situated,

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Defendants.

Case No. 3:17-cv-01091-VAB

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF UNOPPOSED MOTION FOR ENTRY OF AN ORDER PRELIMINARILY APPROVING CLASS SETTLEMENT, DIRECTING NOTICE TO THE CLASS, AND SCHEDULING FAIRNESS HEARING

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OTHER AUTHORITIES

Plaintiffs,[1] on behalf of themselves and the proposed Class (defined below), respectfully submit this memorandum of law in support of their motion, pursuant to Federal Rule of Civil Procedure 23, for preliminary approval of the proposed settlement ("Settlement" or "Settlement Agreement")[2] of this action, conditional certification of the proposed Class for settlement purposes only, approval of Notice and the Notice Program, and related relief. Defendants Toyota Motor Corporation ("TMC"), Toyota Motor North America, Inc. ("TMNA"), Toyota Motor Sales, USA, Inc. ("TMS"), Toyota Motor Engineering & Manufacturing North America, Inc. ("TEMA") and Toyota Motor Manufacturing, Indiana, Inc. ("TMMI") ("Toyota" or "Defendants") do not oppose the Motion.

I. INTRODUCTION

In this automotive defect class action, Plaintiffs have secured a settlement that, if approved, will confer significant benefits on the owners and lessees of an estimated 1.2 million model year 2011-2018 Toyota Siennas. Plaintiffs submit the Settlement, described in detail below, is fair, reasonable and adequate, and merits this Court's preliminary approval.[3]

This litigation arises from Toyota's December 2016 Safety Recall G04 for certain model

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[1] Plaintiffs are: Ned Simerlein, James Eckhoff, Maricel Lopez, Craig Kaiser, John Prendergast, Raymond and Rosario Alvarez, Karen Eason, Jennifer Sowers, Jennifer Franklin, Jordan Amrani, Crystal Gillespie, Melissa Stalker, Dillen Steeby, Paula McMillin, Joseph C. Harp Jr., and James and Melissa Jugo Tinney. Second Amended Class Action Complaint ("Second Amended Complaint" or "SAC"), ¶¶18-68. Citations in the form of "¶__" are to the Second Amended Complaint.

[2] A copy of the Settlement Agreement (cited as "SA") is filed contemporaneously herewith. Unless otherwise indicated, capitalized terms have the meanings given to them in the Settlement Agreement. *See* SA, § II.

[3] The proposed Settlement settles the claims asserted by plaintiffs in this Action (the "*Simerlein* Plaintiffs") as well those asserted by plaintiffs in the Related Action, *Combs et al. v. Toyota Motor Corporation et al.*, Case No. 2:17-cv-04633-VAP-AFM (C.D. Cal.) ("*Combs/Franklin* Plaintiffs" and, together with the *Simerlein* Plaintiffs, "Plaintiffs"). The *Combs/Franklin* Plaintiffs have joined this Action and all Plaintiffs' claims are now before the Court in the Second Amended Complaint. If the Court grants final approval of the Settlement, the *Combs/Franklin* Plaintiffs and Toyota, within 5 business days of the issuance of the Final Order and Final Judgment, shall file a stipulation of dismissal with prejudice or substantial equivalent in the Related Action. SA, § IX.C.

year 2011 through 2016 Toyota Siennas with rear power sliding doors. According to the recall notice, if the sliding door operation of the affected doors is impeded, the sliding door motor circuit could overload and activate its fuse, and, if this occurs while the door is unlatched, the door could open while the vehicle is in motion. After conducting a comprehensive pre-filing investigation, the *Simerlein* Plaintiffs and the *Combs/Franklin* Plaintiffs commenced their respective actions against Toyota in June 2017, alleging that, in addition to the specific defect identified in the G04 Recall notice, the power sliding doors suffered from additional defects that could cause them to open and close independently, freeze in position and otherwise malfunction.

In the Settlement Agreement, Toyota agreed to implement a "Customer Confidence Program" under which Class Members are entitled to a free inspection of their Subject Vehicles' sliding doors by an authorized Toyota dealer within one year of the final approval of the Settlement. Class Members are entitled to this "Sienna Sliding Door Functional Inspection" regardless of whether they ever experienced a problem with their vehicles' sliding doors. If the inspection uncovers a problem with one or more Covered Components (defined below), Toyota will provide a repair free of charge.

Under the Customer Confidence Program, Class Members are also entitled to prospective coverage for repairs to their vehicles' sliding doors' cable sub-assembly, center hinge assembly, fuel door pin and fuel door hinge, and front and rear lock assemblies (the "Covered Components"), which the Parties identified are the possible causes for the doors to malfunction. Class Members are entitled to free repairs on the Covered Components for a period of ten years after the first use of the vehicle. This benefit "travels" with the vehicle such that if a vehicle is sold or its lease ends before the expiration of the ten-year period, the subsequent owner or lessee is still entitled to the benefit. As a convenience and savings to Class Members, Toyota also

agreed to provide loaner vehicles, free of charge, to Class Members whose vehicles are undergoing covered repairs.

The Customer Confidence Program addresses Plaintiffs' overarching concerns in this litigation. The Sienna Sliding Door Functional Inspection, which is available at no cost to all Class Members for one year, is designed to uncover any potential problems with the sliding doors and fix them, thereby ensuring that the doors of the Subject Vehicles can be used as intended and passengers will not be exposed to potentially unsafe conditions. Toyota's free repairs to the Covered Components under the Customer Confidence Program, and provision of loaner vehicles to Class Members during the repairs, ensures that Class Members will not incur any expenses for repairs that may become necessary to address problems with the Covered Components in the future.

The Settlement also includes an out-of-pocket expense reimbursement program. All Class Members who, prior to the Initial Notice Date, incurred expenses to repair a condition that is covered by the Customer Confidence Program, are entitled to reimbursement through an orderly and consumer-friendly claims administration process that ensures prompt payment of eligible claims.

The Settlement is clearly within the realm of possible judicial approval, and, as set forth in Section V.B, below, the proposed Class satisfies Rules 23(a) and 23(b)(3) and can be certified for settlement purposes. Consequently, this Court should direct notice of the Settlement to the proposed Class under Rule 23(e). Fed. R. Civ. P. 23(e). The proposed Notice Program is designed to reach more than 94% of the Class and will ensure that the Settlement, if approved, will provide concrete benefits to the overwhelming majority of Class Members.

II. BACKGROUND

On June 30, 2017, Plaintiff Simerlein filed this Action asserting class claims under Connecticut Unfair Trade Practices Act ("CUTPA") and the consumer protection statutes of various other states, express and implied warranty claims, a claim under the Magnuson-Moss Warranty Act on behalf of a proposed nationwide class, and unjust enrichment arising from the manufacture and sale of 2011-2016 Toyota Sienna minivans with allegedly defective doors. ECF 1. Simerlein alleged that the sliding doors of the Siennas are unsafe because they can open independently while on the road, close independently, freeze in position, and otherwise malfunction, thereby exposing passengers to the risk of injury. He alleged Toyota knew owners of the Subject Vehicles had reported having serious problems with their rear power sliding doors. He further alleged that Toyota marketed Siennas as safe and particularly appropriate for family use, and, given the potentials dangers posed by the doors, Toyota's marketing was materially misleading.

On October 6, 2017, Simerlein, along with additional named plaintiffs James Eckhoff, Maricel Lopez, Craig Kaiser, and John F. Prendergast, filed an amended complaint (ECF 36) adding additional allegations about the nature and extent of the problems with the sliding power doors and the state law claims of the additional plaintiffs, and extending the proposed class to include owners of model year 2017 Siennas.

On December 20, 2017, the parties submitted a joint Rule 26(f) Report. ECF 46. On January 12, 2018, the Court entered a Scheduling Order governing this Action. ECF 51.

On December 4, 2017, the *Simerlein* Defendants filed their motion to dismiss the amended complaint, contending this Court lacked jurisdiction over any claims brought on behalf of non-Connecticut Plaintiffs Eckhoff, Lopez, Kaiser and Prendergast. The *Simerlein*

Defendants also argued that Plaintiff Simerlein's CUTPA claim did not meet the requisite pleading standards and that his other state law claims were not well-pled. Plaintiffs filed their opposition to the motion to dismiss on January 22, 2018, and on February 2018, the *Simerlein* Defendants filed their reply in further support of their motion. Plaintiffs subsequently moved to strike portions of the *Simerlein* Defendants' reply or, in the alternative, leave to file a sur-reply. The *Simerlein* Defendants opposed the motion. The Court granted the *Simerlein* Plaintiffs' motion to file a sur-reply on August 1, 2018, and the *Simerlein* Plaintiffs filed their sur-reply the same day. The *Simerlein* Defendants' motion to dismiss is fully briefed.

On June 23, 2017, the *Combs/Franklin* Plaintiffs filed the Related Action in the United States District Court for the Central District of California. The *Combs/Franklin* Plaintiffs asserted class claims under various states' consumer protection statutes, express and implied warranty claims, a claim under the Magnuson-Moss Warranty Act on behalf of a proposed nationwide class, fraudulent omission, and an unjust enrichment claim arising from the manufacture and sale of 2011-2017 Toyota Sienna minivans with allegedly defective doors.

On October 6, 2017, the *Combs/Franklin* Plaintiffs filed their first amended complaint which added Jennifer Franklin, Jordan Amrani, Dillen Steeby, and Paula McMillin as plaintiffs. On January 16, 2018, the *Combs/Franklin* Plaintiffs filed their second amended complaint naming Raymond and Rosario Alvarez, Karen Eason, and Jennifer Sowers as additional plaintiffs and removing Tonya Combs as a plaintiff. Each of the amended complaints asserted state law claims on behalf of the new plaintiffs and included additional detailed factual allegations.

On February 20, 2018, the *Combs/Franklin* Defendants filed a motion to dismiss the second amended complaint, arguing that: the *Combs/Franklin* Plaintiffs had not met the

pleading requirements of Rule 9(b) for claims, including their statutory consumer claims, that sounded in fraud; that the warranty claims failed to allege a breach and were time-barred; and that all other claims alleged in the action lacked necessary factual and/or legal foundation. The *Combs/Franklin* Plaintiffs filed their opposition to that motion to dismiss on April 20, 2018, and on May 25, 2018, Toyota filed its reply in further support of the motion. The motion is fully briefed.

Subsequently, as settlement negotiations advanced, the Parties in both this Action and the Related Action sought and were granted adjournments of the scheduled hearings on the pending motions to dismiss in their actions.

On December 11, 2018, the Plaintiffs filed the Second Amended Complaint adding the *Combs/Franklin* Plaintiffs as additional plaintiffs and asserting all Plaintiffs' claims for relief.

III. THE SETTLEMENT

A. Class Definition

The proposed Settlement Class consists of:

> All persons, entities or organizations who, at any time as of the entry of the Initial Notice Date, own or owned, purchase(d) or lease(d) Subject Vehicles distributed for sale or lease in any of the fifty States, the District of Columbia, Puerto Rico and all other United States territories and/or possessions. Excluded from the Class are: (a) Toyota, its officers, directors and employees; its affiliates and affiliates' officers, directors and employees; its distributors and distributors' officers, directors and employees; and Toyota Dealers and Toyota Dealers' officers and directors; (b) Plaintiffs' Counsel; (c) judicial officers and their immediate family members and associated court staff assigned to this case; and (d) persons or entities who or which timely and properly exclude themselves from the Class as provided in the Settlement Agreement.

The proposed Class Representatives are Plaintiffs Ned Simerlein, James Eckhoff, Maricel Lopez, Craig Kaiser, John F. Prendergast, Raymond and Rosario Alvarez, Karen Eason, Jennifer Sowers, Jennifer Franklin, Jordan Amrani, Crystal Gillespie, Melissa Stalker, Dillen Steeby,

Paula McMillin, Joseph C. Harp Jr., and James and Melissa Jugo Tinney.

B. Settlement Negotiations

The negotiations culminating in this Settlement were complex, conducted in good faith and at arms' length over a period of more than a year by informed and experienced counsel. Instead of engaging in prolonged and costly litigation prior to exploring the possibility of settlement, Plaintiffs, with the goal of obtaining immediate benefits for Class Members, and Toyota began to explore the possibility of an early resolution even while Toyota's motions to dismiss were being vigorously litigated. In the initial stages of the discussions, the parties retained Patrick A. Juneau to serve as a neutral third-party mediator. Subsequently, during the course of the negotiations among Counsel, Class Counsel, armed with the knowledge they gained through the informal and confirmatory discovery described below, and in consultation with their independent automotive engineering experts, were able to meaningfully assess the reasons for the reported malfunctioning of the doors. Class Counsel and Toyota's counsel had multiple in-person meetings, which often required long distance travel by counsel for the *Combs/Franklin* Plaintiffs, and, as negotiations intensified, frequent lengthy conference calls for the Parties to exchange their views concerning the settlement terms then under discussion. Numerous drafts of the Settlement Agreement were exchanged, with alterations being painstakingly negotiated and refined before a final agreement could be reached. As a result of Counsels' efforts, the Parties have reached a Settlement that provides concrete benefits to all members of the proposed Class.

C. Informal and Confirmatory Discovery

During the course of the negotiations, Class Counsel conducted extensive informal and confirmatory discovery. Toyota produced over 100,000 pages of internal Toyota documents on a

rolling basis, which Class Counsel reviewed and analyzed. Class Counsel consulted with their own engineering experts about the technical information in these documents. As part of their informal and confirmatory discovery, Class Counsel also interviewed a Toyota engineer who is knowledgeable about the Sienna vehicles and the Covered Components. In order to evaluate and supplement the discovery received from Toyota, Class Counsel conducted their own contemporaneous investigation of the potential defects of the sliding doors, consulted with their experts, and purchased two exemplar Siennas whose doors were thoroughly inspected by independent automotive engineers. The information Class Counsel obtained during this rigorous investigation allowed them to meaningfully assess Toyota's proposals for addressing the problems with the operations of the Subject Vehicles' sliding doors.

D. Benefits to the Class Under the Settlement Agreement

1. Customer Confidence Program

As set forth above, under the Customer Confidence Program, Class Members who have a concern about their Subject Vehicle's sliding doors may have them inspected by an authorized Toyota Dealer at no cost to them. Each Subject Vehicle is eligible for one Sienna Sliding Door Functional Inspection within one year from the entry of the Final Order and Final Judgment approving the Settlement. When a Class Member brings her or his Sienna in for a free inspection during that period, Toyota Dealers will inspect the Subject Vehicle's sliding doors using an Inspection Protocol designed specifically to conduct the Sienna Sliding Door Functional Inspection. SA, § III.A.3. After the issuance of the Final Order and Final Judgment, Toyota, in its sole discretion, may periodically send Class Members reminder notices about their right to a Sienna Sliding Door Functional Inspection and the duration of this benefit under the Customer Confidence Program. SA, § III.A.4.

As part of the Customer Confidence Program, Toyota will also provide prospective coverage for repairs to certain parts of sliding door assembly where the need for those repairs arises from internal functional concerns that impede the opening and closing operations of the sliding doors in manual and power modes. A Class Member's rights under the Customer Confidence Program are transferred with the Subject Vehicle.[4] The coverage includes the parts identified below for ten years from the date of First Use[5] of the Subject Vehicle. As described below, Class Counsel, in consultation with their experts, previously identified these parts as potential causes for the doors' faulty operation.

- **Sliding Door Cable Sub-Assembly:** The sliding door cables connect the door frames to the door motors and pull the doors open and closed along their tracks. Plaintiffs alleged these cables are prone to premature failure which can lead to "false latching," *i.e.*, where the doors appear to be latched but are not (¶¶109-12), and cite customer reports on the National Highway Traffic Safety Administration ("NHTSA") website that their vehicles' sliding door cables had snapped or become stuck, causing the doors to open or jam. ¶¶136, 173-75, 180.[6]
- **Sliding Door Center Hinge Assembly:** The sliding door center hinges support the doors from the rear and enable them to travel smoothly within their upper and lower tracks. Plaintiffs alleged these hinges were also prone to corrosion and

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

[5] The "First Use" of the Subject Vehicle is the date that the Subject Vehicle was originally sold or leased. SA, § II.V.

[6] Toyota's Defect Investigation Report ("DIR"), which was filed with NHTSA in connection with the G04 Recall, also references a report from a Toyota dealer involving a vehicle in which a door cable was not attached to the latch mechanism in the front lock assembly and the cable end was bent. ¶205.

premature failure which can cause false latching, thereby allowing the doors to fail to open or close, and jam. ¶¶10, 94-95.

- **Fuel Door Pin and Fuel Door Hinge:** Plaintiffs allege the fuel doors of the Subject Vehicles are prone to hinge failure which can cause those doors to shift away from a full closed and locked position. This can trigger a mechanical lock out feature designed to prevent collision of the driver side power sliding door and the fuel door, which creates a safety hazard by disabling the driver side power sliding door. ¶¶124-25.
- **Sliding Door Front Lock Assembly:** The front lock systems are designed to prevent the doors from opening at improper times. The Second Amended Complaint sets forth numerous consumer complaints concerning the failure of sliding door lock assemblies. ¶¶133, 135, 140, 142, 143, 150, 172, 219, 220. Toyota's Defect Information Report also references a dealer report stating that, in a vehicle inspected during the investigation giving rise to the G04 Recall, it was found that the door cable was not attached to the latch mechanism in the front lock assembly, and that the cable end was bent. ¶205.[7]
- **Sliding Door Rear Lock Assembly:** The rear lock systems, like the front lock systems, are designed to prevent the doors from opening at improper times. The Complaint quotes consumer complaints concerning the failure of the Subject Vehicles' sliding door lock assemblies (¶¶133, 135, 140, 142, 143, 150, 172, 219,

[7] For the Sliding Door Front Lock Assembly for 2011-2015 and certain 2016 Siennas, Toyota had previously provided warranty adjustments that lasted for 9 years, but the Settlement adds certain 2016 Siennas, as well as 2017 – 2018 Siennas. Settlement also extends the warranty to ten years from First Use for all Class Members. § SA, III.A.1.iv

220; *see also* ¶104), and Toyota's Defect Information Report states that investigation had "found binding in the rear lock mechanism of some vehicles possibly caused by corrosion/debris in the rear lock." ¶205.[8]

- **G04 Recall Remedy Kit:** This kit consists of a set of parts produced by Toyota to remedy the condition that gave rise to the G04 Recall. The kit includes a replacement door motor junction box and wiring harness and allows the power sliding door motors to draw significantly more current for a longer period time before activating a fuse than the originally installed components. The activation of the fuse was one cause for the doors opening independently, but this remedy also addresses the problem of the doors freezing in the closed position and jamming while attempting to open or close. Under the G04 Recall, this Remedy Kit was available only to owners of 2011-2016 Siennas and was covered by a warranty of only one year. Under the Customer Confidence Program, the Remedy Kit is available to owners of 2017 and 2018 models, and extends the warranty by one additional year for a total of two years from the date a Class Member's Recall Repair is performed, or, if that repair was performed more than one year prior to the entry of the Final Order and Final Judgment, extends the warranty by one additional year from the date of entry of the Final Order and Final Judgment.

2. Loaner Vehicles to Class Members During Repair

As part of the Settlement, Toyota will offer, and provide upon request, a Loaner Vehicle to eligible Class Members whose Subject Vehicles are undergoing a repair covered by the

[8] For the Sliding Door Front and Rear Lock Assembly, for 2011-2014 and certain 2015 Siennas, Toyota had previously provided warranty adjustments that lasted for 9 years, but the Settlement adds certain 2015 Siennas, as well as 2016 – 2018 Siennas, and extends the warranty to ten years from First Use for all Class Members.

Customer Confidence Program. If a Class Member has a demonstrable need for a vehicle similar to a Toyota Sienna – such as a parent who uses the Subject Vehicle to transport her large family, or a Subject Vehicle that will be used to transport a person in a wheelchair – Toyota, through its dealers, will use good faith efforts to provide one.

3. Reimbursement of Previously Incurred Expenses for Repairs to Covered Parts

The Settlement provides for an Out-of-Pocket Claims Process under which Class Members who do not opt out of the Settlement can submit claims for unreimbursed out-of-pocket expenses incurred prior to the Initial Notice Date to repair a condition that is covered by the Customer Confidence Program.[9] SA, § III.B.1. Eligible claims will be paid by Toyota. Class Members may submit claim forms from the date of the Initial Notice Date up to and including sixty days (60) after the Court's issuance of the Final Order and Final Judgment. SA, § II.H. By agreement of the Parties and subject to this Court approval, the Out-of-Pocket Claims Process will be administered by Patrick A. Juneau and Thomas Juneau of Juneau David, APLC, at Toyota's expense. The Juneaus have extensive experience in claims administration and have administered the claims in some of the largest class action settlements providing for reimbursement of claims. *See* Affidavit of Patrick A. Juneau, submitted herewith, at ¶5. As described in Section III.D.3, below, the Out-of-Pocket Claims Process provides for the orderly and timely administration of Class Member claims and for prompt payment of eligible claims. It is simple and convenient for Class Members, who can submit Claim Forms in hard copy or via the interactive Settlement website. Only reasonable supporting documentation is required to support claims. SA, § III.B.2.

[9] Out-of-pocket expenses that are the result of damage, post-collision issues, and/or misuse/abuse are not covered. SA, § III.B.1.

4. Robust Notice Program

As described in Section III.D.3 below, as part of the Settlement, Toyota will fund a state of the art Notice Program designed to reach over 94% of Class Members.

E. The Release

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

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

SA, § VII.B.

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

IV. ATTORNEYS' FEES, COSTS AND EXPENSES AND CLASS REPRESENTATIVE SERVICE AWARDS

After reaching agreement on the substantive terms of the Settlement, Class Counsel and Toyota's counsel commenced their discussions concerning Class Counsel's intended application for attorneys' fees, costs and expenses, and request for service awards for the proposed Class

Representatives. As a result of these discussions, Class Counsel agreed to limit their application for fees, costs and expenses to $6,500,000 for attorneys' fees and up to $500,000 in costs and expenses, which amount will include class representative service awards. If this Court grants Class Counsel's application for fees, costs and expenses, and class representative service awards, any awarded amounts will be paid by Toyota. The awarded amounts will not be paid until the expiration of 30 days after the Final Effective Date.[10] No court order concerning the amount of attorneys' fees, costs and expenses and/or class representative service awards will affect the finality of the Settlement or constitute grounds for termination of the Settlement Agreement. SA, § VIII.

V. ARGUMENT

A. The Proposed Settlement Meets All Requirements for Preliminary Approval and Notice to the Class

The recently amended Federal Rule of Civil Procedure Rule 23(e) sets forth a streamlined protocol for preliminary approval of class action settlements. As a first step, the "parties must provide the court with information sufficient to enable it to determine whether to give notice of the proposal to the class." Rule 23(e)(1)(A).[11] The Court must direct notice if the parties have shown that the court "will likely be able to: (i) approve the proposal under Rule 23(e)(2); and (ii) certify the class for the purposes of judgment on the proposal." Here, notice is warranted because the proposed Settlement is likely to meet the requirements of Rule 23(e)(2), and this

[10] Under the Settlement Agreement, the Final Effective Date is when the appeal period from the Final Order/Final Judgment expires, or, if there are any appeals, all appeals are resolved, or, subject to Court approval, if Class Counsel and Toyota agree in writing, the Final Effective Date can occur on any other agreed date. SA, § II.S.

[11] *See also* Advisory Comm. Notes to 2018 Amendments to Subdivision (c)(2) ("As amended, Rule 23(e)(1) provides that the court must direct notice to the class regarding a proposed class-action settlement only after determining that the prospect of class certification and approval of the proposed settlement justifies giving notice. This decision has been called 'preliminary approval' of the proposed class certification in Rule 23(b)(3) actions.").

proposed class action satisfies the requirements of Rules 23(a), 23(b)(3) and 23(g), and, therefore, the Class can be conditionally certified for purposes of settlement.

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

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

Thus, amended Rule 23(e) is entirely consistent with the long-standing rule that "[p]reliminary approval of a class action settlement, in contrast to final approval, 'is at most a determination that there is what might be termed "probable cause" to submit the proposal to class members and hold a full-scale hearing as to its fairness.'" *Edwards v. N. Am. Power & Gas, LLC*, No. 3:14-cv-01714 (VAB), 2018 U.S. Dist. LEXIS 54242, at *13-14 (D. Conn. Mar. 30, 2018) (Bolden, J.), quoting *Menkes v. Stolt-Nielsen S.A.*, 270 F.R.D. 80, 101 (D. Conn. 2010) (additional internal citation omitted). At the preliminary approval stage, the Court's task is to evaluate whether the Settlement is within the "range of reasonableness." 4 NEWBERG ON CLASS ACTIONS § 11.26 (4th ed. 2010). "In evaluating a proposed settlement for preliminary approval, … the Court is required to determine only whether 'it is the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representative or segments of the class and falls within the

reasonable range of approval.'" *In re Aggrenox Antitrust Litig.*, No. 3:14-md-02516 (SRU), 2018 U.S. Dist. LEXIS 36834, at *20-21 (D. Conn. Mar. 6, 2018) (quoting *O'Connor v. AR Res.*, No. 3:08-cv-01703(VLB), 2010 U.S. Dist. LEXIS 30345, at *3 (D. Conn. Mar. 30, 2010)).

a) The Proposed Class Representatives and Class Counsel Adequately Represented the Class

Proposed Class Representatives and Class Counsel submit that, at final approval, Rule 23(e)(2)(A) will be satisfied because they have adequately – indeed, zealously – represented and pursued the best interests of the proposed Class. They did so during their prefiling investigation, throughout the course of their respective litigations, and when engaging in settlement negotiations with Toyota's counsel.

After receiving the G04 Recall Notice nearly two years ago, the initial Plaintiffs brought their concerns about the power sliding doors of their Siennas to the attention of Class Counsel. Counsel then conducted a comprehensive investigation into the G04 Recall, reviewing and analyzing Recall-related information on the NHTSA website, and other public sources. Counsel conferred extensively with the Sienna owners who consulted them about their own experiences with their Siennas' doors and, where appropriate, had their automotive experts examine their vehicles. Counsel attempted to determine if the reported problems were due solely to the condition identified in the G04 Recall Notice or indicated additional defects in the engineering and manufacturing of the doors. Counsel carefully studied the customer complaints and reports on the NHTSA website as well as other publicly available information as part of this inquiry. Counsel retained and conferred with their independent automotive engineering experts to better understand the causes of the door problems experienced by Class Members and to explore potential remedies for these problems. *See* Joint Declaration of Demet Basar, W. Daniel "Dee" Miles III, and Adam J. Levitt ("Joint Decl."), submitted herewith, at ¶9.

Counsel also conducted legal research to determine the viability of asserting various claims against Toyota, including claims under the consumer protection statutes of their potential clients' home states. Counsel interviewed the potential clients about the internet and other research they did prior to purchasing or leasing their Siennas, and examined Toyota's marketing and advertising materials in various media outlets to assess whether they could properly allege that Toyota made material misrepresentations and/or omissions. Counsel researched the viability of express and implied warranty claims, including a nationwide claim for violation of the Magnuson-Moss Warranty Act, and state law claims for unjust enrichment and fraudulent omission. After Counsel satisfied themselves that Plaintiffs had viable claims, they conferred with and got approval from their clients to commence litigation and filed their complaints, which were reviewed and approved by Plaintiffs. Joint Decl. at ¶10.

The proposed Class Representatives and Class Counsel were equally diligent in prosecuting their actions. In both this and the Related Action, Toyota was represented by highly regarded counsel with expertise in defending major consumer fraud class actions, including automotive defect cases. Class Counsel, who are equally expert in complex class action litigation, prosecuted their respective cases vigorously. Plaintiffs in both actions amended their pleadings after conferring with their automotive experts and others, and supplemented their allegations with additional facts about the nature of the claimed defects in the doors. Plaintiffs in both actions also vigorously opposed Toyota's efforts to dismiss their claims. During this same period, they sought to promote the Class' interests by beginning to explore the possibility of an early resolution with Toyota, with the goal of securing a favorable settlement that would benefit the Class. As described above, Class Counsel, through their hard fought, well informed, arms' length negotiations with Toyota's counsel, successfully resolved the litigation in a manner that

benefits all Class Members and avoids the costs, risks and delay of continued litigation. Joint Decl. at ¶23-24.

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

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

A "presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arms-length negotiations between experienced, capable counsel after meaningful discovery." *In re Aggrenox Antitrust*, 2018 U.S. Dist. LEXIS 36834, at *21 (quoting *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 116 (2d Cir. 2005) (additional internal citation omitted)). "Courts presume that a proposed class action settlement is fair when certain factors are present, particularly evidence that the settlement is the product of arms'-length negotiation, untainted by collusion." *Kemp-Delisser v. Saint Francis Hosp. & Med. Ctr.*, No. 3:15-CV-1113 (VAB), 2016 WL 10033380, at *4 (D. Conn. July 12, 2016) (Bolden, J.) (internal citation omitted). Moreover, courts have consistently found that "[r]ecommendations of experienced counsel are entitled to great weight in evaluating a proposed settlement in a class action because such counsel are most closely acquainted with the facts of the underlying litigation." *Godson v. Eltman, Eltman, & Cooper, P.C.*, No. 1:11-CV-764 EAW, 2018 U.S. Dist. LEXIS 182034, at *21 (W.D.N.Y. Oct. 23, 2018) (citation omitted).

Here, as described above, the negotiations were arms'-length, good faith and intensive, lasting more than a year. In addition, Class Counsel have substantial experience serving as class counsel in a multitude of complex class actions, and, as such, were well-positioned to assess the benefits of the proposed Settlement balanced against the strengths and weaknesses of their claims and Toyota's defenses (*see* § I.B., *infra*), and fully endorse the Settlement as fair,

reasonable, and adequate. Joint Decl. at ¶¶41-43, Exs. A-C.

c) The Relief Provided by the Proposed Settlement is Adequate

Under Rule 23(e)(2)(c), a court's assessment of whether a proposed settlement is adequate takes into account: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney's fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3). Fed. R. Civ. P. 23(e)(2)(c)(i)-(iv). A preliminary consideration of these factors shows that it is likely that Plaintiffs will be able to satisfy this prong of Rule 23(e)(2) when seeking final approval, and thus further supports preliminary approval.

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

The proposed Settlement, if approved, confers significant immediate benefits to the Class that outweigh the costs, risks, and delay of continued litigation, which strongly supports preliminary approval. Indeed, under the Settlement Agreement, if this Court preliminarily approves the proposed Settlement, Toyota, after consultation with Class Counsel, and in its sole discretion, may implement the Customer Confidence Program in advance of the Final Effective Date of the Settlement.

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

"provides significant benefits and advantages for the class." *In re Nissan Radiator*, No. 10 CV 7493 (VB), 2013 U.S. Dist. LEXIS 116720, at *20 (S.D.N.Y. May 30, 2013) (approving settlement consisting of repair benefits even where many class members would have to pay significant co-pay for repairs). The value of repairs as settlement consideration is regularly recognized in the consumer class action context. *See, e.g., In re Sony SXRD Rear Projection TV Class Action Litig.*, No. 06 Civ. 5173 (RPP), 2008 U.S. Dist. LEXIS 36093, at *23 (S.D.N.Y. May 1, 2008) (approving settlement although defendant could withstand larger judgment where "the Settlement reasonably provides Plaintiffs with benefit-of-the-bargain relief in the form of repair or replacement of the defective Optical Block, a warranty extension, and reimbursement of repair costs previously incurred.").

The Customer Confidence Program provides prospective coverage for repairs to certain door parts that impede the opening and closing function of the Siennas' sliding doors with the precise goal of ensuring that the doors function as intended in the future, and no longer pose any risks to, or require repair costs to be borne by, Class Members. Thus, while automobile repair and reimbursement-centered settlements do not provide for monetary relief, they still "provide Class members with much of the relief they seek" and merit approval. *Skeen v. BMW of N. Am., Ltd. Liab. Co.*, No. 2:13-cv-1531-WHW-CLW, 2016 U.S. Dist. LEXIS 97188, at *54-55 (D.N.J. July 26, 2016) (approving settlement consisting largely of repairs and reimbursement).[12]

Here, the proposed Settlement, with its Customer Confidence Program and out-of-pocket expense reimbursement process, provides relief specifically sought by the Plaintiffs in their

[12] Indeed, "there is no reason, at least in theory, why a satisfactory settlement could not amount to a hundredth or even a thousandth part of a single percent of the potential recovery." *Detroit v. Grinnell Corp.*, 495 F.2d 448, 455 n.2 (2d Cir. 1974).

complaints. In their Second Amended Complaint, as was the case in their earlier complaints, Plaintiffs seek injunctive relief "requiring Toyota to create and implement, at no expense to consumers, a mechanism by which to repair the Defective Doors such that the Doors can safely be used as advertised," and "[e]stablishing a Toyota-funded program, using transparent, consistent, and reasonable protocols, under which out-of-pocket … claims associated with the Defective Doors in Plaintiffs' and Class members' Class Vehicles, can be made and paid …." SAC, Prayer for Relief (c)(ii) and (f).

In contrast, if the litigation were to proceed, the Class would be faced with significant litigation risks. Settlements resolve any inherent uncertainty on the merits, and are therefore strongly favored by the courts, particularly in class actions. *See Wal-Mart*, 396 F.3d at 116. The parties disagree about the merits of Plaintiffs' claims and there is substantial uncertainty about the ultimate outcome of this litigation. If the litigation were to proceed, the hurdles that Plaintiffs face prior to certification and trial are significant.

The risks are demonstrated by hard fought litigation on the still-pending motions to dismiss in this and the Related Action. While Plaintiffs are confident in their positions, the motions have yet to be decided, and Toyota may succeed in securing the dismissal of some or all of Plaintiffs' claims.

Moreover, allegations of product defects like those asserted here require a battle of the experts. Whether the doors or some of their parts are defective, whether the alleged defects are present in all of the Subject Vehicles, whether the defects pose an unreasonable risk of harm, and the existence and quantum of damages, would all be the subject of expert testimony. As this Court has recognized, reliance on expert testimony "often increases the risk that a jury may not find liability or would limit damages." *Edwards v. N. Am. Power & Gas, LLC*, No. 3:14-cv-

01714(VAB), 2018 U.S. Dist. LEXIS 130535, at *40 (D. Conn. Aug. 3, 2018) (granting final approval).

In addition, while the Settlement provides relief for Class Members nationwide, if the Settlement is not ultimately approved, securing certification of a nationwide class or state-wide classes is far from certain. There is sure to be a battle of the experts with respect to Plaintiffs' damages theories and methodologies under *Comcast Corp. v. Behrend*, 569 U.S. 27 (2013). While Plaintiffs are confident that they will be able to provide a viable damages model, this has proved an impossible hurdle for many proposed consumer classes. *See, e.g., Singleton v. Fifth Generation, Inc.*, No. 5:15-CV-474 (BKS/TWD), 2017 U.S. Dist. LEXIS 170415, at *67-68 (N.D.N.Y. Sept. 27, 2017); *Hughes v. The Ester C Co., NBTY, Inc.*, 320 F.R.D. 337, 344 (E.D.N.Y. 2017). For claims where reliance is at issue, Toyota can be expected to present vigorous arguments as to differences in Class Members' exposure to and reliance on alleged misrepresentations and omissions. Moreover, bringing an array of state law claims may present serious manageability issues due to what Toyota can be expected to argue are insurmountable conflicts between the laws of different states.

The risks of securing and maintaining class status are also evidenced by the many decisions denying class certification in automobile defect cases. *See, e.g., Luppino v. Mercedes Benz USA*, 718 F. App'x 143, 148 (3d Cir. 2017)*; Tomassini v. FCA US LLC*, 326 F.R.D. 375, 391 (N.D.N.Y. 2018); *Oscar v. BMW of N. Am., LLC*, No. 09 Civ. 11 (PAE), 2012 U.S. Dist. LEXIS 84922 (S.D.N.Y. June 19, 2012); *Nguyen v. Nissan N. Am., Inc.*, No. 16-CV-05591-LHK, 2018 U.S. Dist. LEXIS 93861 (N.D. Cal. Apr. 9, 2018); *Daigle v. Ford Motor Co.*, Civ. No. 09-3214 (MJD/LIB), 2012 U.S. Dist. LEXIS 106172 (D. Minn. July 31, 2012); *Cholakyan v. Mercedes-Benz USA, LLC*, 281 F.R.D. 534 (C.D. Cal. 2012); *In re Ford Motor Co. E-350 Van*

Prods. Liab. Litig., Civ. No. 03-4558, 2012 U.S. Dist. LEXIS 13887 (D.N.J. Feb. 6, 2012). Furthermore, even if a nationwide or any state-wide classes were to be certified, they are subject to decertification.

Plaintiffs reasonably expect that this case, if not settled, will continue to be zealously contested through summary judgment, trial, and appeal.

Moreover, were litigation to proceed, the class would incur significant expense and delay. The expense and duration of litigation are significant factors considered in evaluating the reasonableness of a settlement. *See* Rule 23(e)(2)(C)(i). "Most class actions are inherently complex and settlement avoids the costs, delays and multitude of other problems associated with them," and this class action is no different. *In re Austrian & German Bank Holocaust Litig.*, 80 F. Supp. 2d 164, 174 (S.D.N.Y. 2000). If litigation were to proceed, a great deal of additional expert work, with its concomitant significant expenses, would be required to address key components of the claims and damages. It would also take significant time and expense to bring the class through the motions to dismiss, and to conduct full discovery, brief and argue class certification and summary judgment, conduct trial, and litigate appeals. These high expenses weigh strongly in favor of settlement approval.

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

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

The benefit distribution process is well-tailored for the convenience and benefit of Class Members. First, to obtain an inspection, all that a Class Member need do is bring a covered vehicle to a Toyota dealership within one year of the entry of Final Order and Final Judgment in this Action. Second, to obtain a covered repair, all that a Class Member need do is bring her

vehicle to a Toyota dealership for a covered problem within 10 years of the first use of their vehicle. For the added convenience of Class Members, they will receive a loaner vehicle to use while their own vehicles are undergoing covered repairs.

The Out-of-Pocket Claims Process is similarly simple and convenient. Plaintiffs have selected highly experienced claims administrators, Patrick A. Juneau and Thomas Juneau of Juneau David, APLC, to oversee this process. As part of the Settlement, Class Members shall be eligible for reimbursement of covered repairs that they paid for prior to the Initial Notice Date so long as they timely submit Claim Forms with supporting documentation to the Claims Administrator, have eligible claims, and do not opt out of the settlement. The required documentation is of a type that Class Members are likely to possess or be able to obtain, such as proof of ownership, proof of loss incurred, proof of the covered condition, and proof of the remedy that was provided for the condition. Adding convenience for Class Members, the Claim Forms can be submitted in hard copy or online. If a claim is deficient, the Claims administrator will advise the claimant so that they may complete the claim. If a claim is accepted for payment, the Claims Administrator will use best efforts to pay the claimant within 90 days after receipt, provided that is after the final Order and Judgment approving the Settlement. SA, § III.B.

(3) The Terms of the Proposed Attorneys' Fees Support Preliminary Approval

The terms and negotiation of the proposed Attorneys' Fees support preliminary approval. The amounts to be sought are reasonable, the Parties did not negotiate fees, expenses, or Class Representative service awards until they had completed negotiation on all material settlement terms. *See Blessing v. Sirius Xm Radio*, Inc., 507 F. App'x 1, 4 (2d Cir. 2012) (upholding $13 million fee award in case with no cash payout to class where "fees were negotiated only after the terms of the settlement were reached, and the fee award comes directly from Sirius XM, rather

than from funds (or coupons) earmarked for the class"). Notice to the Class will advise them of these planned requests, and advise them of the procedures for them to comment on or object to the fee petition before Final Approval.

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

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

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

The final element for consideration under Rule 23(e)(3) is whether a proposed settlement treats Class Members equitably in relation to one another. Here, all Class Members are entitled to a Sienna Sliding Door Functional Inspection for their Subject Vehicles and are entitled to covered repairs under the Customer Confidence Program. In addition, all Class Members may submit claims for reimbursement. All Class Members are thus treated identically.[13]

B. Notice to the Class is Warranted Because the Court Will Likely be Able to Certify the Class Pursuant to Rules 23(a) and 23(b)(3)

The second consideration in assessing whether to authorize Notice to the proposed Class

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

is whether the Parties can demonstrate that the Court will likely be able to certify the class for judgment and settlement purposes. Fed. R. Civ. P. 23(e)(1)(B)(ii). This requirement is easily met here.

"'Certification of a settlement class has been recognized throughout the country as the best, most practical way to effectuate settlements involving large numbers of claims by relatively small claimants.'" *In re Sturm*, No. 3:09cv1293 (VLB), 2012 U.S. Dist. LEXIS 116930, at *24 (D. Conn. Aug. 20, 2012) (quoting *In re IMAX Sec. Litig.*, 283 F.R.D. 178, 186 (S.D.N.Y. 2012)). "Conditional settlement class certification and appointment of class counsel have several practical purposes, including avoiding the costs of litigating class status while facilitating a global settlement, ensuring notification of all class members of the terms of the proposed settlement agreement, and setting the date and time of the final approval hearing." *Almonte v. Marina Ice Cream Corp.*, No. 1:16-cv-00660 (GBD), 2016 U.S. Dist. LEXIS 171033, at *5 (S.D.N.Y. Dec. 8, 2016). "Preliminary certification is appropriate [where, as here,] claims … would 'focus predominantly on common evidence.'" *Edwards*, 2018 U.S. Dist. LEXIS 54242, at *16 n.2, quoting *In re U.S. Foodservice Inc. Pricing Litigation*, 729 F.3d 108, 125 (2d Cir. 2013).

As described below, because the proposed Settlement Class here meets the requirements of both Rule 23(a)[14] and 23(b)(3),[15] the proposed Class should be certified for settlement purposes only.

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[14] Rule 23(a) requires that: (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.

[15] Rule 23(b)(3) requires "that questions of law or fact common to Class members predominate over individual ones and that a class action is superior to other means of addressing the controversy."

1. Rule 23(a) Is Satisfied

a) The Class Is Sufficiently Numerous

Rule 23(a)(1) requires that "the class is so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a). "Impracticable does not mean impossible," *Robidoux v. Celani*, 987 F.2d 931, 935 (2d Cir. 1993), but "only that the difficulty or inconvenience of joining all members of the class make use of the class action appropriate." *Kaye v. Amicus Mediation & Arbitration Grp., Inc.*, 300 F.R.D. 67, 78 (D. Conn. 2014) (internal quotation omitted). "Numerosity is presumed at a level of 40 members." *Consol. Rail Corp. v. Town of Hyde Park*, 47 F.3d 473, 483 (2d Cir. 1995).

Here, the G04 Recall covered approximately 744,000 Subject Vehicles, and, with the inclusion of 2017 and 2018 model years in this Settlement, the number of Subject Vehicles is now estimated at 1,190,000. *See* Declaration of Jeanne C. Finegan ("Finegan Decl."), SA, Ex. H, at ¶15. The numerosity requirement is clearly met. *See, e.g., Keegan v. Am. Honda Motor Co.*, 284 F.R.D. 504, 522 (C.D. Cal. 2012) (certifying class of 620,000 Honda vehicles); *Edwards*, 2018 U.S. Dist. LEXIS 54242, at *6 (class of approximately 2,000 adequately numerous).

2. There Are Common Questions of Law and Fact

In order to satisfy Rule 23(a)(2)'s commonality requirement, a "common contention must be of such a nature that it is capable of classwide resolution – which means that the determination of its truth or falsity will resolve an issue that is central to the validity of each of the claims in one stroke." *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551 (2011). Rule 23(a)(2)'s standard "is not a demanding standard, as it 'is established so long as the plaintiffs can identify some unifying thread among the [class] members' claims.'" *Menkes*, 270 F.R.D. at 90

(quoting *Haddock v. Nationwide Fin. Servs., Inc.*, 262 F.R.D. 97, 116 (D. Conn. 2009)); *see also Raymond v. Rowland*, 220 F.R.D. 173, 179 (D. Conn. 2004) ("Courts have found that 'the test for commonality is not demanding' and is met so long as there is at least one issue common to the class." (internal quotation omitted)).

Courts addressing automobile defect claims routinely find commonality. *See, e.g., Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1172 (9th Cir. 2010) (commonality was "easily satisfied" where prospective class members' claims involved same alleged defect and common questions included, as here, whether the defect existed, whether the defendant had concealed it, and whether that violated consumer protection law); *Skeen*, 2016 U.S. Dist. LEXIS 97188, at *17 (commonality requirement met where all class vehicles had allegedly defective timing chain tensioner installed); *Keegan*, 284 F.R.D. at 524 (finding commonality where plaintiffs alleged a common defect and holding that "[t]he fact that some vehicles have not yet manifested premature or excessive tire wear is not sufficient, standing alone, to defeat commonality").

Here, the claims of all prospective Class Members involve the same issues which are central to this case. These include, among others, whether the Subject Vehicles have a safety-related defect; whether Toyota knew of the defect; whether Toyota misrepresented the safety and quality of the Subject Vehicles; whether Toyota's alleged misrepresentations and omissions were misleading to reasonable consumers; if misleading, whether these misrepresentations and omissions were material; whether the Class Members were damaged thereby; how to measure such damages; and whether equitable relief is warranted. SAC, ¶282. The commonality requirement is satisfied. *See Menkes*, 270 F.R.D. at 90 (Commonality met "because identical questions of both law and fact would be raised by the claims of each class member if these were

to be asserted individually.").

3. The Class Representatives' Claims Are Typical of Those of Other Class Members

Typicality under Rule 23(a)(3) is established where, as here, "each class member's claim arises from the same course of events, and each class member makes similar legal arguments to prove the defendant's liability." *Marisol A. by Forbes v. Giuliani*, 126 F.3d 372, 376 (2d Cir. 1997) (internal quotation omitted). "[T]he typicality requirement is usually met irrespective of minor variations in the fact patterns underlying individual claims." *Robidoux*, 987 F.2d at 937. "[T]ypicality does not require the representative party's claims to be identical to those of all class members." *Wilson v. LSB Indus.*, No. 15 Civ. 7614 (RA)(GWC), 2018 U.S. Dist. LEXIS 138832, at *13 (S.D.N.Y. Aug. 13, 2018) (internal quotation omitted). "When the same unlawful conduct was directed at both the named plaintiff and the class to be represented, the typicality requirement is usually met irrespective of varying fact patterns which underlie individual claims." *Rincon-Marin v. Credit Control, LLC*, 3:17-cv-00007, 2018 U.S. Dist. LEXIS 29312, at *8-9 (D. Conn. 2018).

Typicality is met here as Plaintiffs and the proposed Settlement Class assert the same claims, arising from the same course of conduct. The Class Representatives and the Class Members all own(ed) or lease(d) a Subject Vehicle, and their claims arise from the same course of events and rely on the same legal grounds. On the basis of the G04 Recall and the defects alleged in their complaints, they assert nearly identical claims under various state consumer protection statutes, express and implied warranty claims, claims for unjust enrichment, and claims under the Magnuson-Moss Warranty Act on behalf of a nationwide class. The Class Representatives and the other Class Members will derive the same benefit from the Settlement, including the Customer Confidence Program, which covers all Subject Vehicles, and Toyota's

reimbursement of out-of-pocket costs of covered repairs and the other relief provided by the Settlement.[16] Accordingly, the typicality requirement of Rule 23(a)(3) is satisfied here. *See, e.g.*, *Robidoux,* 987 F.2d at 936.

4. The Class Representatives Will Fairly and Adequately Protect the Interests of the Class

Rule 23(a)(4) is satisfied if "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). "To ensure that all members of the class are adequately represented, district courts must make sure that the members of the class possess the same interests, and that no fundamental conflicts exist among the members." *Charron v. Wiener*, 731 F.3d 241, 249 (2d Cir. 2013). To defeat class certification, any conflict between the Class Representatives and members of the proposed Settlement Class must be "fundamental." *In re Flag Telecom Holdings, Ltd. Sec. Litig.*, 574 F.3d 29, 35 (2d Cir. 2009).

Here, there is no conflict or antagonism between the proposed Class Representatives and the other Class members. Rather, the proposed Class Representatives, as owners or lessees of the Subject Vehicles, have brought substantively identical claims to and seek the same relief as the proposed Class, and have the same incentive to obtain the best possible result through prosecution of their claims. As such, the "claims of anticipated class members are expected to be homogeneous in nature, and nothing suggests the possible existence of subgroups with interest sufficiently adverse to warrant the creation of subclasses." *Menkes*, 270 F.R.D. at 92 (citing *Amchem Prods. Inc. v. Windsor*, 521 U.S. 591, 625-27(1997)).

Further, the proposed Class Representatives retained the services of highly qualified and competent counsel who are well-versed in class action litigation, and who vigorously prosecuted

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

the interests of the proposed Class Members throughout the course of their respective actions, which culminated in a settlement that confers meaningful benefits to the proposed Class. *See* Joint Decl. ¶25. As set forth below, proposed Class Counsel are well-qualified to represent the proposed Class and should be appointed Class Counsel under Rule 23(g). *See* Section VI, below.

The requirements of Rule 23(a)(4) are plainly satisfied.

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

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

1. Common Issues of Law and Fact Predominate

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

"Predominance is a test readily met in certain cases alleging consumer … fraud."

Amchem, 521 U.S. at 625, (1997) (citing Adv. Comm. Notes, 28 U.S.C. App., p. 697). Indeed, courts routinely hold the predominance requirement is satisfied in automobile defect class actions. *See, e.g., Carriuolo v. GM Co.*, 823 F.3d 977, 985 (11th Cir. 2016) (upholding district court finding of "predominance requirement to be satisfied by an essential question common to each class member: whether the inaccurate Monroney safety standard sticker provided by General Motors constituted a misrepresentation prohibited by FDUTPA"); *Wolin*, 617 F.3d at 1173 (common issues predominate such as whether Land Rover was aware of the existence of the alleged defect, had a duty to disclose its knowledge and whether it violated consumer protection laws when it failed to do so); *Skeen*, 2016 U.S. Dist. LEXIS 97188, at *20 (common questions of law or fact concerning defective timing chain tensioner predominated over any questions affecting only individual class members; *Motley v. Jaguar Land Rover N. Am., LLC*, No. X03CV84057552S, 2012 Conn. Super. LEXIS 2701, at *29 (Super. Ct. Conn. Nov. 1, 2012) ("predominant issue of the common defect outweighs that more discrete inquiry into damages"); *In re Nissan Radiator*, 2013 U.S. Dist. LEXIS 116720, at *4 (finding predominance in case concerning defects that allegedly cause coolant from car radiators to contaminate transmission systems).

Here, there are significant common questions, as set forth above, regarding the existence of a defect, Toyota's knowledge of it and other elements of Plaintiffs' claims. SAC, ¶282. The resolution of these questions does not depend on the individual facts or circumstances of an individual person's purchase and/or lease of the Subject Vehicles. The Subject Vehicles either had this defect, or they did not, and the other elements of Plaintiffs' claims are met or not, all in one stroke. These questions predominate over all others in this Action, and in the Related Action, and are common to the Class Representatives and the Class. Predominance is met.

2. Class Treatment Is Superior

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

3. The Class Is Ascertainable

Although Rule 23 does not reference ascertainability, many courts have found it to be an implied precedent to certification. *See, e.g.*, *Edwards*, 2018 U.S. Dist. LEXIS 54242, at *16. In this Circuit, a class is ascertainable if it is defined "using objective criteria that establish a membership with definite boundaries." *In re Petrobras Sec. Litig.*, 862 F.3d 250, 264 (2d Cir. 2017). "This modest threshold requirement will only preclude certification if a proposed class definition is indeterminate in some fundamental way." *Id.* at 269. Here, Class membership may be easily verified using the unique vehicle identification numbers ("VIN") assigned to all vehicles.

Moreover, it will be "administratively feasible [for the court] to determine class membership during the Class Period." *Edwards*, 2018 U.S. Dist. LEXIS 54242, at *16. In the Settlement Agreement, Toyota identifies the VIN numbers for the Subject Vehicles using information provided by IHS Automotive, Driven by Polk, R.L. Polk & Co., an automotive data provider. SA, §§ III.A.5, IV.B.1, Finegan Decl. at ¶15. As vehicle owners must register their vehicles, this information can and will be used to identify current names and addresses for Class Members. Courts regularly hold similar classes to be ascertainable where, the class definition,

among other things, identified class vehicles' make, model, and production period. *See, e.g.*, *Parkinson v. Hyundai Motor Am.*, 258 F.R.D. 580, 594 (C.D. Cal. 2008) (finding a class ascertainable when, among other things, the class definition identified a particular make, model, and production period for the class vehicle); *see also In re Longwei Petroleum Inv. Holding Ltd. Sec. Litig.*, No. 13 Civ. 214 (RMB)(RLE), 2017 U.S. Dist. LEXIS 85004, at *6 (S.D.N.Y. May 22, 2017) (certifying class where it was "ascertainable from business records and/or from objective criteria."). Accordingly, the Class is ascertainable.

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

Rule 23(g) provides that "a court that certifies a class must appoint class counsel" taking into consideration their experience, knowledge, resources, and work on the case. The *Simerlein* Plaintiffs are represented by Wolf Haldenstein Adler Freeman & Herz LLP and the *Combs*/*Franklin* Plaintiffs are represented by Beasley, Allen, Crow, Methvin, Portis & Miles, P.C. Law and DiCello Levitt & Casey LLC, each of which has been recognized by both federal and state courts across the country as being highly skilled and experienced in complex litigation, including successfully leading a multitude of consumer class actions concerning fraud, misrepresentation and unfair practices. These firms' performance in representative litigation has repeatedly garnered outstanding results. *See* Joint Decl. at ¶¶41-43, Exs. A-C. Here, Counsel investigated potential claims upon being contacted by aggrieved consumers, vigorously prosecuted their respective actions, negotiated the proposed Settlement and obtained valuable relief for all proposed Class members. The Court should conclude the adequacy requirements under Rule 23(g) are met and appoint Counsel for the *Simerlein* Plaintiffs and the *Combs/Franklin* Plaintiffs as Class Counsel.

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

A. The Court Should Authorize Notice to the Class

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

The adequacy of a class notice program is measured by whether the means employed to distribute the notice was reasonably calculated to apprise the class of the pendency of the action, the proposed settlement and the class members' rights to opt out or object. *See Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974). Under Rule 23(c)(2)(B), class members must receive "the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B). The rule expressly approves of notice through "United States mail, electronic means, or other appropriate means." In order for "due process to be satisfied, not every class member need receive actual notice, as long as class counsel 'acted reasonably in selecting means likely to inform persons affected.'" *In re Adelphia Communs. Corp. Sec. & Derivatives Litig.*, 271 F. App'x 41, 44 (2d Cir. 2008) (citation omitted); *see also In re Sinus Buster Prods. Consumer Litig.*, No. 12-CV-2429 (ADS)(AKT), 2014 U.S. Dist. LEXIS 158415, at *29-30 (E.D.N.Y. Nov. 10, 2014) ("Where, as here, the parties seek to simultaneously certify a settlement class and to settle a class action, the elements of Rule 23(c) and 23(e) are combined … [and] [i]n such circumstances, Due Process and the Federal Rules require notice that is practical under the circumstances and does not require actual notice to each class member.").

Rule 23(c)(2)(B) also requires that any such notice clearly and concisely state in plain,

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

The Notice Program set forth in the Settlement was designed by HF Media, LLC, Inc. ("HF Media"), a division of Heffler Claims Group LLC ("Heffler"), and HF Media's president, Jeanne C. Finegan. Ms. Finegan has more than 30 years of relevant experience, and has been directly responsible for the design and implementation of hundreds of class action notice programs, including some of the largest and most complex notice programs ever implemented in both the United States and Canada. *See* Finegan Decl. at ¶¶6-9. Plaintiffs respectfully request that the Court appoint Ms. Finegan of Heffler as Settlement Notice Administrator.

The Settlement provides that the Notice will be provided by direct mail to all known Class Members, and also via class website and a broad campaign of paid publication through print and online media, including targeted internet advertising through webpages, the Google search engine, and social networks. *See* Finegan Decl. at ¶¶13-45. All of these avenues for notice have been approved by courts as satisfying due process. *See*, *e.g.*, *In re Aggrenox Antitrust Litig.*, 2018 U.S. Dist. LEXIS 36834, at *22 (approving notice "via first-class mail to those members of the Class who can reasonably and economically be identified, by publication, and email"); *In re Sturm*, 2012 U.S. Dist. LEXIS 116930, at *11 (notice adequate where mailed and published); *In re Michael Milken & Assocs. Sec. Litig.*, 150 F.R.D. 57, 60 (S.D.N.Y. 1993) (notice by mail to identified class members and publication in USA Today). *See also Mullane v.*

Cent. Hanover Bank & Tr. Co., 339 U.S. 306, 317 (1950) ("This Court has not hesitated to approve of resort to publication as a customary substitute in another class of cases where it is not reasonably possible or practicable to give more adequate warning.").

It is estimated that the Notice Program will reach more than 94% percent of Class Members, with an average frequency of 4 times. Finegan Decl. at ¶¶4, 45. Toyota will cover all costs of this extensive Notice Program. SA, § IV.A.1.

1. Direct Notice

Beginning on or about March 1, 2019, the Settlement Administrator will begin to send the Direct Mail Notice, substantially in the form attached to the Settlement Agreement as Exhibit B, by First Class United States prepaid mail to all registered current and former owners of Subject Vehicles. The Settlement Notice Administrator will identify these based on data provided by IHS Automotive, Driven by Polk. SA, § IV.B. Before the Direct Notices are mailed, the Settlement Notice Administrator will check all addresses against the United States Post Office's National Change of Address database. Finegan Decl. at ¶16. If any Direct Mail Notices are returned by the United States Post Office as undeliverable, the Settlement Notice Administrator will make appropriate efforts to obtain current addresses and resend them. SA, § IV.B; Finegan Decl. at ¶17.

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

2. Website and Toll-Free Line

The Notice Administrator will also set up a settlement website that will provide access to the Long Form Notice (SA, Ex. E), the Claim Form for reimbursement (SA, Ex. A) and other documents relevant to the Settlement. Finegan Decl. at ¶¶41-42. The Settlement Website will set forth all applicable deadlines and will provide information about the proper methods for filing a claim. In addition, the Notice Administrator will set up a toll-free 24-hour phone line through which consumers may request copies of the Long Form Notice, the Claim Form, and additional information. *Id.* at ¶43. The URL address for the Settlement Website and the toll-free phone number will be provided on the published notices as well as the Direct Mail Notices.

3. Paid Media Publication

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

The Publication Notice, attached as Exhibit G to the Settlement Agreement, will be published in People Magazine, a national magazine with demographically appropriate circulation. Finegan Decl. at ¶¶24-25. The magazine was selected based on the highest coverage and indexed against the target audience characteristics. *Id.* at ¶24.

The Notice Program will also make extensive use of the internet. The Notice Administrator will run online display ads across approximately 4,000 preselected websites and on social media platforms including Facebook, Twitter, Instagram and Pinterest. *Id.* at ¶¶28, 35. It is expected that the internet notice components will serve approximately 59,000,000 impressions. *Id.* at ¶28. Notice will be targeted to appropriate demographics, such as, on

Facebook, parents 35-64 years old, including parents of 3+ children, people who are married, homemakers, etc., and those who follow Toyota's Facebook page, and on Twitter, those who have used relevant key words or follow Toyota on Twitter. *Id.* at ¶¶35-38. *See Edwards v. Nat'l Milk Producers Fed'n,* No. 11-CV-04766-JSW, 2017 U.S. Dist. LEXIS 145217, at *13 (N.D. Cal. June 26, 2017) (referencing approval of similar "extensive" internet campaign.). As a further targeting mechanism, the Notice Program will also make use of Google AdWords and key search terms. When an internet user runs a Google search that includes relevant keywords (*e.g.*, Toyota Sienna, etc.) the results pages will include links to the Settlement Website. Finegan Decl. at ¶34. The Notice Program will use online banner advertisements on both computers and mobile devices which will allow users who believe they may be Class Members to click on a link that will take them to the Settlement Website. *Id.* at ¶¶30-31, 36, 42.

The paid media component of the Notice Program will also include a press release issued over PR Newswire's USI Newslines. This will include the link for the Settlement Website.

4. Contents of the Long Form Notice

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

binding effect of a final judgment on Class members; the fairness hearing date; and how to obtain additional information.

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

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

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

Event	**Proposed Due Date**	**Date/Deadline**
Direct Mail Notice Dissemination Begins	Ninety-one (91) days prior to the Settlement Fairness Hearing.	March 1, 2019
Deadline for Settlement Class Members to submit exclusion requests or objections.	Thirty (30) days prior to the Settlement Fairness Hearing.	May 1, 2019
Deadline for filing papers in support of final approval of Settlement, and the request for attorneys' fees and expenses, and class representative service awards.	Twenty-one (21) days prior to the Settlement Fairness Hearing.	May 10, 2019
Deadline for Settlement Notice Administrator to file Final Declaration	Twenty-one (21) days prior to the Settlement Fairness Hearing.	May 10, 2019
Deadline for filing and serving reply papers in further support of the Settlement and the request for attorneys' fees and expenses and/or in response to the objections.	Seven (7) days prior to the Settlement Fairness Hearing	May 24, 2019
Settlement Fairness Hearing	.	May 31, 2019

VIII. CONCLUSION

For all the above-stated reasons, Plaintiffs respectfully request that the Motion be granted and the Court enter an order: (a) preliminary approving the proposed Settlement; (b) conditionally certifying the proposed Class for settlement purposes only; (c) appointing the proposed Class Representatives as Class Representatives; (d) appointing the proposed Class Counsel as Class Counsel; (e) ordering Notice to be disseminated to the Class; (f) appointing Jeanne C. Finegan as the Settlement Notice Administrator; (g) appointing Patrick A. Juneau and Thomas Juneau as the Settlement Claims Administrators; and (h) setting a date and procedures for the final Settlement Fairness Hearing and setting related deadlines; and (i) issuing related relief as appropriate.

Dated: December 11, 2018

Respectfully submitted,

PLAINTIFFS

By: /s/ David A. Slossberg

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

NED SIMERLEIN, JAMES ECKHOFF, MARICEL LOPEZ, CRAIG KAISER, JOHN F. PRENDERGAST, RAYMOND and ROSARIO ALVAREZ, KAREN EASON, JENNIFER SOWERS, JENNIFER FRANKLIN, JORDAN AMRANI, CRYSTAL GILLESPIE, MELISSA STALKER, DILLEN STEEBY, PAUL McMILLIN, JOSEPH C. HARP Jr., and JAMES and MELISSA JUGO TINNEY, individually and on behalf of all others similarly situated, v. TOYOTA MOTOR CORPORATION, TOYOTA MOTOR NORTH AMERICA, INC., TOYOTA MOTOR SALES, USA, INC., TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC. and TOYOTA MOTOR MANUFACTURING, INDIANA, INC.	CASE NO. 3:17-CV-01091-VAB

[PROPOSED] ORDER PRELIMINARILY APPROVING CLASS SETTLEMENT DIRECTING NOTICE TO THE CLASS AND SCHEDULING FAIRNESS HEARING

The Parties to the above-captioned action currently pending against Toyota Motor Corporation, Toyota Motor North America, Inc., Toyota Motor Sales, U.S.A., Inc., Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Manufacturing, Indiana, Inc. and their affiliates (collectively, "Toyota") as part of this litigation have agreed to a proposed class action settlement, the terms and conditions of which are set forth in an executed Settlement Agreement (the "Settlement" or "Settlement Agreement").[1] The Parties reached the Settlement through arm's-length negotiations lasting more than one year. Under the Settlement

[1] Capitalized terms shall have the definitions and meanings accorded to them in the Settlement Agreement.

Agreement, subject to the terms and conditions therein and subject to Court approval, the Action and the Related Action will be dismissed with prejudice, and Class Representatives and the proposed Class would fully, finally, and forever resolve, discharge, and release their claims against the Released Parties in exchange for Toyota's agreement to implement a Customer Confidence Program and reimburse Class Members for previously paid out-of-pocket expenses incurred to repair a condition that is covered by the Customer Confidence Program, and Toyota's payment of the costs and expenses associated with providing and implementing the relief, as set forth in the Settlement Agreement.

The Settlement Agreement has been filed with the Court, and Plaintiffs' Counsel has filed an Unopposed Motion for Preliminary Approval of Class Settlement with Toyota Defendants, and for Preliminary Certification of the Class for settlement purposes only (the "Motion"). Upon considering the Motion and exhibits thereto, the Settlement Agreement, the record in these proceedings, the representations and recommendations of counsel, and the requirements of law, the Court finds that: (1) this Court has jurisdiction over the subject matter and Parties to these proceedings; (2) the proposed Class meets the requirements of Rule 23 of the Federal Rules of Civil Procedure[2] and should be preliminarily certified for settlement purposes only; (3) the persons and entities identified below should be appointed Class Representatives, and Class Counsel; (4) the Settlement is the result of informed, good-faith, arm's-length negotiations between the Parties and their capable and experienced counsel and is not the result of collusion; (5) the Settlement is fair, reasonable, and adequate and should be preliminarily approved; (6) the proposed Settlement is sufficiently fair, reasonable, and adequate to warrant sending notice of the Settlement to the Class; (7) the proposed Notice Program and proposed forms of notice satisfy Rule 23 and Constitutional Due Process requirements and are reasonably calculated under

[2] All citations to the Rules shall refer to the Federal Rules of Civil Procedure.

the circumstances to apprise the Class of the pendency of the Action, preliminary class certification for settlement purposes only, the terms of the Settlement, Class Counsel's application for an award of attorneys' fees and expenses ("Fee Application") and request for Class Representative service awards for, their rights to opt-out of the Class and object to the Settlement, and the process for submitting a Claim to request a payment from the Settlement Fund; (8) good cause exists to schedule and conduct a Fairness Hearing, pursuant to Rule 23(e), to assist the Court in determining whether to grant final approval of the Settlement, certify the Class, for settlement purposes only, and issue a Final Order and Final Judgment, and whether to grant Class Counsel's Fee Application and request for Class Representative service awards; and (9) the other related matters pertinent to the preliminary approval of the Settlement should also be approved.

Based on the foregoing, **IT IS HEREBY ORDERED AND ADJUDGED** as follows:

1. The Court has jurisdiction over the subject matter and Parties to this proceeding pursuant to 28 U.S.C. §§ 1331 and 1332 and in light of Toyota's express waiver of its challenge to personal jurisdiction under Rule 12.

2. Venue is proper in this District pursuant to 28 U.S.C. § 1391(a) because a substantial part of the events or omissions alleged by the Class Representatives occurred in this District.

Preliminary Class Certification for Settlement Purposes Only and Appointment of Class Representatives and Class Counsel

3. In deciding whether to preliminarily certify a settlement class, a court must consider the same factors that it would consider in connection with a proposed litigation class—*i.e.*, all Rule 23(a) factors and at least one subsection of Rule 23(b) must be satisfied—except that the Court need not consider the manageability of a potential trial, since the settlement, if

approved, would obviate the need for a trial. *Amchem Prod., Inc. v. Windsor*, 521 U.S. 591, 620 (1997).

4. The Court finds, for settlement purposes, that the Rule 23 factors are satisfied and that preliminary certification of the proposed Class is appropriate under Rule 23. The Court, therefore, preliminarily certifies the following Class for settlement purposes only:

> All persons, entities or organizations who, at any time as of the entry of the Initial Notice Date, own or owned, purchase(d) or lease(d) Subject Vehicles distributed for sale or lease in any of the fifty States, the District of Columbia, Puerto Rico and all other United States territories and/or possessions. Excluded from the Class are: (a) Toyota, its officers, directors and employees; its affiliates and affiliates' officers, directors and employees; its distributors and distributors' officers, directors and employees; and Toyota Dealers and Toyota Dealers' officers and directors; (b) Plaintiffs' Counsel; (c) judicial officers and their immediate family members and associated court staff assigned to this case; and (d) persons or entities who or which timely and properly exclude themselves from the Class as provided in the Settlement Agreement.

5. The "Subject Vehicles" are defined in the Settlement Agreement as 2011 through 2018 model year Toyota Sienna vehicles.

6. Specifically, the Court finds, for settlement purposes, that the Class, for preliminary approval only, satisfies the following factors of Rule 23:

(a) Numerosity: The Court preliminarily finds that the Settlement Class is ascertainable from Toyota's confirmatory discovery as well as from other objective criteria, and the members of the Settlement Class are so numerous that their joinder before the Court would be impracticable. *See Consol. Rail Corp. v. Town of Hyde Park*, 47 F.3d 473, 483 (2d Cir. 1995) (finding class of 40 members was large enough to meet the numerosity requirement). Thus, the Rule 23(a)(1) numerosity requirement is met.

(b) Commonality: The commonality requirement of Rule 23(a)(2) is satisfied for settlement purposes because there are multiple questions of law and fact that center on Toyota's manufacturing and sale of Subject Vehicles equipped with sliding doors, as alleged

and/or described in the Class Action Complaint, which are common to the Class. *See Raymond v. Rowland*, 220 F.R.D. 173, 179 (D. Conn. 2004) ("Courts have found that 'the test for commonality is not demanding' and is met so long as there is at least one issue common to the class.").

(c) Typicality: The Class Representatives' claims are typical of the other Class Members' claims for purposes of Settlement because they concern the same alleged Toyota conduct, arise from the same legal theories, and allege the same types of harm and entitlement to relief. *See Rincon-Marin v. Credit Control, LLC*, 3:17-cv-00007 (D. Conn. 2018) ("When the same unlawful conduct was directed at both the named plaintiff and the class to be represented, the typicality requirement is usually met irrespective of varying fact patterns which underlie individual claims.") (citation omitted). Rule 23(a)(3) is therefore satisfied.

(d) Adequacy: The Court preliminarily finds that the Class Representatives will fairly and adequately protect the interests of the Settlement Class in that: (i) the Class Representatives' interests and the nature of claims alleged are consistent with those of the members of the Settlement Class; (ii) there appear to be no conflicts between or among the Class Representatives and the Settlement Class; and (iii) the Class Representatives and the members of the Settlement Class are represented by qualified, reputable counsel who are experienced in preparing and prosecuting complex class actions. Rule 23(a)(4) is therefore satisfied.

(e) Predominance and Superiority: Rule 23(b)(3) is satisfied for settlement purposes as well because the common legal and alleged factual issues here predominate over individualized issues, and resolution of the common issues for Class Members in a single, coordinated proceeding is superior to individual lawsuits addressing the same legal and factual issues.

7. The Court appoints the following persons as Class Representatives: Ned Simerlein, James Eckhoff, Marciel Lopez, Craig Kaiser, John Prendergast, plaintiffs in the Action, and James Tinney, Melissa Jugo Tinney, Crystal Gillespie, Melissa Stalker, Joseph C. Harp Jr., Jordan Amrani, Dillen Steeby, Paula McMillin, Raymond Alvarez, Rosario Alvarez, Karen Eason, Jennifer Franklin and Jennifer Sowers, plaintiffs in the Related Action.

8. The Court appoints the following persons and entities as Class Counsel:

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Preliminary Approval of the Settlement

9. Pursuant to Rule 23(e)(2), in order to grant preliminary approval, the Court must find that the proposed Settlement is "fair, reasonable, and adequate" by considering after considering whether: (A) the class representatives and class counsel have adequately represented the class; (B) the proposal was negotiated at arm's length; (C) the relief provided for the class is adequate – taking into account the costs, risks, and delay of trial and appeal, the effectiveness of any the proposed method of distributing relief to the class, including the method of processing

class-member claims, if required; the terms of any proposed award of attorney's fees, including timing of payment; and any agreement required to be identified under Rule 23(e)(3) – and (D) the proposal treats class members are treated equitably relative to each other. FED. R. CIV. P. 23(e)(2) (amended Dec. 2018).

10. Preliminary approval is appropriate where "the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representative or segments of the class and falls within the reasonable range of approval." *O'Connor v. AR Resources, Inc.*, 3:08 cv 1703, 2010 WL 1279023, at *3 (D. Conn. Mar. 30, 2010) (citation omitted).

11. The Court preliminarily approves the Settlement Agreement and the exhibits appended to the Motion as fair, reasonable, and adequate under Rule 23(e)(2), after taking into account that the class representatives and class counsel have adequately represented the class; the Settlement was reached in the absence of collusion and is the product of informed, good-faith, arm's-length negotiations between the Parties and their capable and experienced counsel; the relief provided is adequate given (i) the costs, risks and delay of trial and appeal, (ii) Notice is sufficient to notify the Class, (iii) the terms of the proposed attorney's fees and timing of payment; and (iv) the remaining terms of the Settlement Agreement. The Court also finds that the Parties have submitted sufficient information for the Court to support that Notice should be disseminated as "the proposed settlement will likely earn final approval." *See* FED R. CIV. PROC. 23(e) Advisory Committee Note.

12. The Court further finds that the Settlement, including the exhibits appended to the Motion, is within the range of reasonableness and possible judicial approval, such that: (a) a presumption of fairness is appropriate for the purposes of preliminary settlement approval; and

(b) it is appropriate to effectuate notice to the Class, as set forth below and in the Settlement Agreement, and schedule a Fairness Hearing to assist the Court in determining whether to grant final approval to the Settlement and enter Final Judgment. *See Kemp-Delisser v. Saint Francis Hosp. & Med. Ctr.*, No. 3:15-CV-1113 (VAB), 2016 WL 10033380, at *1 (D. Conn. July 12, 2016) (J. Bolden).

Approval of Notice Program and
Direction to Effectuate the Notice

13. The Court approves the form and content of the notices to be provided to the Class, substantially in the forms appended as Exhibits B, E and G to the Settlement Agreement. The Court further finds that the Notice Program, described in Section IV of the Settlement Agreement, is the best practicable under the circumstances. The Notice Program is reasonably calculated under the circumstances to apprise the Class of the pendency of the Action, class certification for settlement purposes only, the terms of the Settlement, their rights to opt-out of the Class and object to the Settlement, Class Counsel's Fee Application, and the request for Class Representative service awards. The notices and Notice Program constitute sufficient notice to all persons and entities entitled to notice. The notices and Notice Program satisfy all applicable requirements of law, including, but not limited to, Rule 23 and the constitutional requirement of due process. The Court finds that the forms of notice are written in simple terminology, are readily understandable by Class Members and comply with the Federal Judicial Center's illustrative class action notices. The Court orders that the notices be disseminated to the Class as per the Notice Program.

14. The Court directs that Patrick A. Juneau and Thomas Juneau of Juneau David, APLC shall act as the Settlement Claims Administrator.

15. The Court directs that Jeanne Finegan of Heffler Claims Group act as the Settlement Notice Administrator.

16. The Settlement Notice Administrator shall implement the Notice Program, as set forth in the Settlement, using substantially the forms of notice appended as Exhibits B, E and G to the Settlement Agreement and approved by this Order. Notice shall be provided to the Class Members pursuant to the Notice Program and the Settlement Notice Administrator's declaration (Settlement Agreement, Ex. H), as specified in Section IV of the Settlement Agreement and approved by this Order.

17. The Settlement Notice Administrator shall send the Direct Mail Notice, substantially in the form attached to the Settlement Agreement as Exhibit B, by U.S. Mail, proper postage prepaid to Class Members, as identified by data to be forwarded to the Settlement Notice Administrator by IHS Automotive, Driven by Polk. The mailings of the Direct Mail Notice to the persons and entities identified by IHS Automotive, Driven by Polk shall be substantially completed in accordance with the Notice Program. Toyota is hereby ordered to obtain such vehicle registration information through IHS Automotive, Driven by Polk, which specializes in obtaining such information, from, inter alia, the applicable Departments of Motor Vehicles.

Fairness Hearing, Opt-Outs, and Objections

18. The Court directs that a Fairness Hearing shall be scheduled for [_____] at _____ [a.m. or p.m.], to assist the Court in determining whether to grant final approval to the Settlement Agreement, certify the Class, and enter the Final Order and Final Judgment, and whether Class Counsel's Fee Application and request for Class Representative service awards should be granted.

19. Any Class Member who wishes to be excluded from the Class must mail a written request for exclusion to the Settlement Notice Administrator at the address provided in the Long Form Notice, postmarked on a date ordered by the Court specifying that he or she wants to be excluded and otherwise complying with the terms stated in the Long Form Notice. The Settlement Notice Administrator shall forward copies of any written requests for exclusion to Class Counsel and Toyota's Counsel. A list reflecting all requests for exclusion shall be filed with the Court by the Settlement Notice Administrator no later than 20 days before the Fairness Hearing. If a potential Class Member files a request for exclusion, he, she or it may not file an objection under Section VI of the Settlement Agreement.

20. Any Class Member who does not file a timely written request for exclusion as provided in Section V of the Settlement Agreement shall be bound by all subsequent proceedings, orders and judgments, including, but not limited to, the Release, Final Order and Final Judgment in the Action, even if he, she or it has litigation pending or subsequently initiates litigation against Toyota relating to the claims and transactions released in the Action and the Related Action. Toyota's Counsel shall provide to the Settlement Notice Administrator, within 20 business days of the entry of the Preliminary Approval Order, a list of all counsel for anyone who has then-pending litigation against Toyota relating to claims involving the Subject Vehicles and/or otherwise covered by the Release.

21. The Opt-Out Deadline shall be specified in the Direct Mail Notice, Publication Notice, and Long Form Notice. All persons and entities within the Class definition who do not timely and validly opt out of the Class shall be bound by all determinations and judgments in the Action concerning the Settlement, including, but not limited to, the Releases set forth in Section VII of the Settlement.

22. The Court further directs that any person or entity in the Class who does not opt out of the Class may object, directly or through a lawyer at his, her or its expense, to the Settlement Agreement, the Fee Application and/or the requested service awards to the Class Representatives. Objections must be filed electronically with the Court, or mailed to the Clerk of the Court, Class Counsel, and counsel for Toyota at the following addresses:

(a) Clerk of the Court

Clerk of the Court
United States District Court
District of Connecticut
915 Lafayette Boulevard
Bridgeport, Connecticut 06606
Re: Simerlein, Case No. 3:17-cv-01091 (VAB)

(b) Class Counsel

W. Daniel "Dee" Miles III
Beasley, Allen, Crow, Methvin, Portis & Miles, P.C.
218 Commerce Street
Montgomery, Alabama 36104
Tel.: (800) 898-2034
E-mail: Dee.Miles@BeasleyAllen.com

Adam J. Levitt
DiCello Levitt & Casey LLC
10 North Dearborn Street, Eleventh Floor
Chicago, Illinois 60602
Tel.: (312) 214-7900
E-mail: alevitt@dlcfirm.com

Demet Basar
Wolf Haldenstein Adler Freeman & Herz LLP
270 Madison Avenue
New York, New York 10016
Tel.: (212) 545-4600
E-mail: basar@whafh.com

(c) Counsel for Toyota

John P. Hooper
KING & SPALDING LLP
1185 Avenue of the Americas
34th Floor
New York, New York 10036
Tel.: (212) 556-2220
E-mail: JHooper@kslaw.com

23. For an objection to be considered by the Court, the objection must be received by the Court on or before the Opt-Out Deadline and must set forth:

(i) the name of the Action;

(ii) the objector's full name, current residential address, mailing address (if different), telephone number, and e-mail address;

(iii) an explanation of the basis upon which the objector claims to be a Class Member, including the make, model year, and VIN of the objector's Subject Vehicle(s);

(iv) whether the objection applies only to the objector, to a specific subset of the Class or to the entire Class and all grounds for the objection, accompanied by any legal support for the objection known to the objector or his or her counsel and any documents supporting the objection;

(v) the number of times the objector has objected to a class action settlement within the five (5) years preceding the date that the objector files the objection, the caption of each case in which the objector has made such objection, and a copy of any orders related to or ruling upon the objector's prior such objections that were issued by the trial and appellate courts in each listed case;

(vi) the full name, telephone number, and address of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement or Fee Application;

(vii) the identity of all counsel representing the objector who will appear at the Fairness Hearing;

(viii) a list of all persons who will be called to testify at the Fairness Hearing in support of the objection;

(ix) a statement confirming whether the objector intends to personally appear and/or testify at the Fairness Hearing; and

(x) the objector's dated signature.

24. Any objection that fails to satisfy these requirements and any other requirements found in the Long Form Notice shall not be considered by the Court.

Effect of Failure to Approve the Settlement or Termination

25. In the event the Settlement is not approved by the Court, or for any reason the Parties fail to obtain a Final Order and Final Judgment as contemplated in the Settlement, or the Settlement is terminated pursuant to its terms for any reason, then the following shall apply:

(i) This Settlement Agreement shall be null and void and shall have no force or effect;

(ii) The Parties will petition the Court to have any stay orders entered pursuant to the Settlement Agreement lifted;

(iii) All of its provisions, and all negotiations, statements, and proceedings relating to it shall be without prejudice to the rights of Toyota, Class Representatives, or any Class Member, all of whom shall be restored to their respective positions existing immediately before the execution of this Settlement Agreement, except that the Parties shall cooperate in requesting that the Court set a new scheduling order such that no Party's substantive or procedural rights are prejudiced by the settlement negotiations and proceedings;

(iv) Toyota and the other Released Parties expressly and affirmatively reserve all defenses, arguments, and motions as to all claims that have been or might

later be asserted in the Action or the Related Action, including, without limitation, the argument that the Action or the Related Action may not be litigated as a class action;

(v) Class Representatives, on behalf of themselves and their heirs, assigns, executors, administrators, predecessors, and successors, and on behalf of the Class, expressly and affirmatively reserve and do not waive all motions as to, and arguments in support of, all claims, causes of actions or remedies that have been or might later be asserted in the Action or the Related Action including, without limitation, any argument concerning class certification, and treble or other damages;

(vi) Toyota and the other Released Parties expressly and affirmatively reserve and do not waive all motions and positions as to, and arguments in support of, all defenses to the causes of action or remedies that have been sought or might be later asserted in the actions, including without limitation, any argument or position opposing class certification, liability or damages;

(vii) Neither this Settlement Agreement, the fact of its having been made, nor the negotiations leading to it, nor any discovery or action taken by a Party or Class Member pursuant to this Settlement Agreement shall be admissible or entered into evidence for any purpose whatsoever;

(viii) Any settlement-related order(s) or judgment(s) entered in this Action after the date of execution of this Settlement Agreement shall be deemed vacated and shall be without any force or effect;

(ix) All costs incurred in connection with the Settlement Agreement, including, but not limited to, notice, publication, claims administration and customer communications are the sole responsibility of Toyota and will be paid by Toyota. Neither the Class Representatives nor Class Counsel shall be responsible for any of these costs or other settlement-related costs; and

(x) Notwithstanding the terms of this paragraph, if the Settlement is not consummated, Class Counsel may include any time spent in settlement

efforts as part of any fee petition filed at the conclusion of the case, and Toyota reserves the right to object to the reasonableness of such requested fees.

Stay/Bar of Other Proceedings

26. Pending the Fairness Hearing and the Court's decision whether to finally approve the Settlement, no Class Member, either directly, representatively, or in any other capacity (even those Class Members who validly and timely elect to be excluded from the Class, with the validity of the opt out request to be determined by the Court only at the Fairness Hearing), shall commence, continue or prosecute against any of the Released Parties (as that term is defined in the Agreement) any action or proceeding in any court or tribunal asserting any of the matters, claims or causes of action that are to be released in the Agreement. Pursuant to 28 U.S.C. § 1651(a) and 2283, the Court finds that issuance of this preliminary injunction is necessary and appropriate in aid of the Court's continuing jurisdiction and authority over the Action. Upon final approval of the Settlement, all Class Members who do not timely and validly exclude themselves from the Class shall be forever enjoined and barred from asserting any of the matters, claims or causes of action released pursuant to the Agreement against any of the Released Parties, and any such Class Member shall be deemed to have forever released any and all such matters, claims, and causes of action against any of the Released Parties as provided for in the Agreement.

General Provisions

27. The terms and provisions of the Settlement Agreement may be amended, modified, or expanded by written agreement of the Parties and approval of the Court; provided, however, that after entry of the Final Order and Final Judgment, the Parties may by written agreement effect such amendments, modifications, or expansions of this Settlement Agreement

and its implementing documents (including all exhibits) without further notice to the Class or approval by the Court if such changes are consistent with the Court's Final Order and Final Judgment and do not limit the rights of Class Members under the Settlement Agreement.

28. Any confidential information made available to Class Representatives and Class Counsel through the settlement process shall not be disclosed to third parties (other than experts or consultants retained by Class Representatives in connection with the Action or the Related Action); shall not be the subject of public comment; shall not be used by Class Representatives or Class Counsel in any way in this litigation or otherwise should the Settlement Agreement not be achieved; and shall be returned if a settlement is not concluded.

SO ORDERED this ____ day of _____ 2018.

_____
Victor A. Bolden
United States District Judge