UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

NED SIMERLEIN, JAMES ECKHOFF, MARICEL LOPEZ, CRAIG KAISER, JOHN F. PRENDERGAST, RAYMOND ALVAREZ, ROSARIO ALVAREZ, KAREN EASON, JENNIFER SOWERS, JENNIFER FRANKLIN, JORDAN AMRANI, CRYSTAL GILLESPIE, MELISSA STALKER, DILLEN STEEBY, PAULA MCMILLIN, JOSEPH C. HARP JR., JAMES TINNEY, 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 U.S.A., INC., TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC., and TOYOTA MOTOR MANUFACTURING, INDIANA, INC.,
Defendants.

No. 3:17-cv-1091 (VAB)

RULING AND ORDER ON MOTION FOR PRELIMINARY APPROVAL

The parties in this consumer class action, *Simerlein v. Toyota Motor Corp. et al.*, originally filed in this District on June 30, 2017, and *Combs v. Toyota Motor Corp. et al.*, originally filed in the Central District of California on June 23, 2017, No. 2:17-cv-4633 (VAP)(AFM), have reached an agreement to resolve the product defect and consumer protection claims raised by both cases. *See* Settlement Agreement, filed Dec. 11, 2018 ("Agrmt."), ECF No. 85.

Ned Simerlein, James Eckhoff, Maricel Lopez, Craig Kaiser, and John F. Prendergast (the "*Simerlein* Plaintiffs") and Raymond Alvarez, Rosario Alvarez, Karen Eason, Jennifer Sowers, Jennifer Franklin, Jordan Amrani, Crystal Gillespie, Melissa Stalker, Dillen Steeby, Paula McMillin, Joseph C. Harp Jr., James Tinney, and Melissa Jugo Tinney (the "*Combs* Plaintiffs") (collectively, "Plaintiffs") now move, *inter alia*, for preliminary approval of the Settlement Agreement. Unopposed Motion for Entry of an Order Preliminarily Approving Class Settlement, Directing Notice to the Class, and Scheduling Fairness Hearing, dated Dec. 11, 2018 ("Mot."), ECF No. 84; *see also* Plaintiffs' Memorandum of Law in Support of Mot., dated Dec. 11, 2018 ("Pls.' Mem."), ECF No. 84-1; Defendants' Memorandum of Law in Support of Mot., dated Dec. 11, 2018 ("Defs.' Mem."), ECF No. 88.

Upon reviewing the Settlement Agreement, all the filings submitted in connection with the motion, and the information presented during a hearing on the motion, the motion is **GRANTED**.

For the reasons explained below, the Court **FINDS, CONCLUDES,** and **ORDERS** as follows.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. The Parties

1. The *Simerlein* Plaintiffs

The *Simerlein* Plaintiffs are all owners of Toyota Sienna minivans with power sliding rear passenger doors.[1] *See* Amended Complaint, dated Oct. 6, 2017 ("*Simerlein* Am. Compl."), ECF No. 36, ¶¶ 18–51; *see also* Second Amended Complaint, dated Dec. 11, 2018 (the "Operative Complaint" or "Op. Compl."), ECF No. 80. The *Simerlein* Plaintiffs reside in five

[1] As the basic facts of all the *Simerlein* Plaintiffs' standing as owners are not disputed, the Court treats these factual allegations as true.

different states: Connecticut, New York, Florida, Indiana, and Maine. *See Simerlein* Am. Compl. ¶¶ 18, 27, 32, 38, 44.

Ned Simerlein, a resident of Cheshire, Connecticut, owns a "2013 Toyota Sienna XLE, which he purchased used in or around September 30, 2016 from a Toyota dealership located in New Jersey." Op. Compl. ¶¶ 18–19.

James Eckhoff, a resident of North Babylon, New York, owns a 2013 Toyota Sienna XLE, which he purchased new in 2003 in Islip, New York. *Id.* ¶¶ 76–77.

Maricel Lopez, a resident of Port St. Lucie, Florida, owns a 2011 Toyota Sienna LE, which she purchased new in 2011 at Toyota of Vero Beach in Vero Beach, Florida. *Id.* ¶¶ 41–42.

Craig Kaiser, a resident of Noblesville, Indiana, owns a 2015 Toyota Sienna LE, which he purchased new in January 2015 in Chicago, Illinois. *Id.* ¶¶ 50–51.

John F. Prendergast, a resident of Camden, Maine, owns a 2015 Toyota Sienna XLE, which he purchased in March 2016 in Saco, Maine.

2. The *Combs* Plaintiffs

The *Combs* Plaintiffs[2] are all owners of Toyota Sienna minivans with power sliding rear passenger doors.[3] *See* Second Amended Complaint, dated January 16, 2018 ("*Combs* Am. Compl."), *Combs v. Toyota Motor Corp. et al.*, No. 2:17-cv-4633 (VAP)(AFM), ECF No. 51, ¶¶ 9–47; *see also* Op. Compl. The *Combs* Plaintiffs reside in eight different states: California, Alabama, Illinois, Kentucky, Missouri, Nevada, Pennsylvania, and West Virginia. *See Combs* Am. Compl. ¶¶ 9, 13, 16, 19, 23, 26, 34, 38, 42, 45.

[2] While the California action is still captioned as *Combs v. Toyota Motor Corp. et al.*, Tonya Combs ceased being a Plaintiff in this action upon the filing of the Second Amended Complaint. *See* Second Amended Complaint, dated January 16, 2018, *Combs v. Toyota Motor Corp. et al.*, No. 2:17-cv-4633 (VAP)(AFM), ECF No. 51.

[3] As the basic facts of all the *Combs* Plaintiffs' standing as owners are not disputed, the Court treats these factual allegations as true.

Raymond Alvarez and Rosario Alvarez, residents of Rancho Cucamonga, California, own a 2011 Toyota Sienna, which they purchased new from Power Toyota Cerritos. Op. Compl. ¶¶ 31–32.

Karen Eason, a resident of Jurupa Valley, California, owns a 2011 Toyota Sienna, which she purchased new from Larry Miller Toyota in Corona, California. *Id.* ¶¶ 35–36.

Jennifer Sowers, a resident of Lodi, California, owns a 2013 Toyota Sienna, which she purchased new from Geweke Toyota in Lodi, California. *Id.* ¶¶ 38–39.

Jennifer Franklin, a resident of Woodstock, Alabama, owns a 2014 Toyota Sienna XLE, which she purchased used from Moore Nissan in Bessemer, Alabama. *Id.* ¶¶ 27–28.

Jordan Amrani, a resident of Skokie, Illinois, owns a 2013 Toyota Sienna, which he purchased new in Schaumburg, Illinois. *Id.* ¶¶ 47–48.

Crystal Gillespie, a resident of Ulysses, Kentucky, owns a 2013 Toyota Sienna, which she purchased used from Pop's Chevrolet Buick in Prestonsburg, Kentucky. *Id.* ¶¶ 56–57.

Melissa Stalker, a resident of Van Lear, Kentucky, owns a 2017 Toyota Sienna, which she purchased new from Walters Toyota in Pikeville, Kentucky. *Id.* ¶¶ 60–61.

Dillen Steeby, a resident of Lee's Summit, Missouri, owns a 2015 Toyota Sienna, which he purchased new from Jay Wolfe Toyota in Kansas City, Missouri. *Id.* ¶¶ 72–73.

Paula McMillin, a resident of Las Vegas, Nevada, owns a 2013 Toyota Sienna, which she purchased new from Beaverton Toyota in Beaverton, Oregon. *Id.* ¶¶ 59–60.

Joseph C. Harp Jr., a resident of Fort Washington, Pennsylvania, owns a 2015 Toyota Sienna, which he purchased new from Thompson Toyota in Doylestown, Pennsylvania. *Id.* ¶¶ 63–64.

James Tinney and Melissa Jugo Tinney, residents of Charleston, West Virginia, own a 2016 Toyota Sienna, which they purchased new from Bert Wolfe Toyota in Charleston, West Virginia. *Id.* ¶¶ 45–46.

3. Defendants

Toyota Motor Corporation, Toyota Motor North America, Inc., Toyota Motor Sales U.S.A., Inc., Toyota Motor Engineering & Manufacturing North America, Inc., and Toyota Motor Manufacturing, Indiana, Inc. (collectively, the "*Simerlein* Defendants") are the named defendants in the *Simerlein* class action, and have been since its inception. *See* Complaint, dated June 30, 2017, ECF No. 1. Toyota Motor Corporation, Toyota Motor Sales U.S.A., Inc., and Toyota Motor Engineering & Manufacturing North America, Inc. (the "*Combs* Defendants") are also named defendants in the *Combs* class action. *See* Complaint, dated June 23, 2017, *Combs v. Toyota Motor Corp. et al.*, No. 2:17-cv-4633 (VAP)(AFM), ECF No. 1.

Toyota Motor Corporation is a Japanese corporation with headquarters at 1 Toyota-Cho, Toyota City, Aichi Prefecture, 471-8571, Japan. Op. Compl. ¶ 69. Toyota Motor Corporation is the parent corporation of Toyota Motor Sales, U.S.A., Inc. *Id.* Toyota Motor Corporation designs, manufactures, markets, distributes, and sells Toyota automobiles through its various entities throughout the United States. *Id.* ¶ 70.

Toyota Motor North America, Inc. ("Toyota Motor North America") is a California corporation with headquarters at 6565 Headquarters Drive, Plano, Texas. *Id.* ¶ 71. Toyota Motor North America is "a holding company for sales, manufacturing, engineering, and research and development subsidiaries of Toyota Motor Corporation located in the United States." *Id.* Toyota Technical Center, a division of Toyota Motor North America, Inc., is alleged to be the driving force behind Toyota's North America engineering and research and development activities. *Id.*

¶ 72. According to Defendants, Toyota Motor North America, Inc. is a subsidiary of TMC. Corporate Disclosure Statement, dated July 28, 2017, ECF No. 1, ¶ 2.

Toyota Motor Sales, U.S.A., Inc. ("Toyota Motor Sales") is a California corporation with headquarters at 6565 Headquarters Drive, Plano, Texas. *Id.* ¶ 73. It is alleged to be the sales and marketing division for Toyota Motor Corporation in the United States, overseeing sales and other operations across the United States and distributing vehicles such as the Sienna minivan through its network of dealerships. *Id.* ¶ 74. Toyota Motor Sales also allegedly issues the express repair warranties for the Sienna minivan. *Id.* ¶ 75. According to Defendants, Toyota Motor Sales is a subsidiary of Toyota Motor North America, Inc.. Corporate Disclosure Statement, dated July 28, 2017, ECF No. 1, ¶ 2.

Toyota Motor Engineering & Manufacturing North America, Inc. ("Toyota Motor Engineering & Manufacturing North America") is a Kentucky corporation with headquarters at 6565 Headquarters Drive, Plano, Texas. Op. Compl. ¶ 76. Toyota Motor Engineering & Manufacturing North America is allegedly responsible for much of Toyota's engineering design and development, research and development, and manufacturing activity in North America. *Id.* ¶ 77. According to Defendants, Toyota Motor Engineering & Manufacturing North America is a subsidiary of Toyota Motor North America. Corporate Disclosure Statement, dated July 28, 2017, ECF No. 1, ¶ 2.

Toyota Motor Manufacturing, Indiana, Inc. ("Toyota Motor Manufacturing, Indiana") is an Indiana corporation with headquarters at 4000 Tulip Tree Drive, Princeton, Indiana. Op. Compl. ¶ 78. Toyota Motor Manufacturing, Indiana is the manufacturer of the Sienna minivan. *Id.* According to Defendants, Toyota Motor Manufacturing, Indiana is a wholly-owned

subsidiary of Toyota Motor Engineering & Manufacturing North America. Corporate Disclosure Statement, dated July 28, 2017, ECF No. 1, ¶ 1.

4. The Sienna Minivan

Defendants have allegedly designed, manufactured, marketed, and sold Toyota Sienna minivans (hereafter the "Sienna" or "Siennas") since 1998. *Id.* ¶ 80. Since 2003, Siennas have allegedly been manufactured by Toyota Motor Manufacturing, Indiana. *Id.* ¶ 81.

The Siennas, the subject of this lawsuit, are allegedly the third-generation of the Sienna, *id.* ¶ 82, and allegedly were engineered by the Toyota Technical Center (a division of Toyotoa Motor North America) and Toyota Motor Corporation. *Id.*

Power sliding rear passenger doors have allegedly been an optional feature in all but the most basic model of the Sienna since 1998. *Id.* ¶ 83. In 2011, however, the power sliding rear passenger door became a standard feature in three Sienna models (the LE, XLE, and Limited) and an optional feature in the most basic models (the "Sienna" or "Sienna L"). *Id.*

Several Plaintiffs allege that the power sliding doors were a key factor in their decision to purchase the Sienna. *See id.* ¶¶ 20 (Mr. Simerlein), 43 (Ms. Lopez), 52 (Mr. Kaiser), 78 (Mr. Eckhoff).

5. The Power Sliding Rear Passenger Door Defect

Plaintiffs have generally alleged that the power sliding rear passenger doors of the Sienna 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." Pls.' Mem. at 4; *see also* Op. Compl. ¶ 6. Plaintiffs alleged that this defect was revealed to Toyota through many complaints to the National Highway and Transportation Safety Administration (NHTSA) as well as hundreds of direct reports through warranty claims and field reports. Op.

Compl. ¶ 7. Plaintiffs alleged, *inter alia*, that Defendants were aware of the defect for many years but "continued to manufacture, market, sell, lease, and warrant its Siennas in order to reap profits, without disclosing that the power sliding doors were inherently defective, dangerous and created a grave risk of bodily harm and death." *Id.*

Plaintiffs commissioned an independent automotive engineering consultant who allegedly identified numerous flaws in the design of the power sliding rear passenger doors. *See* Op. Compl. ¶¶ 92–125. Plaintiffs allege that "[t]he overall design defect results in, among other things: (a) the doors opening independently, posing risk of passengers falling out while the vehicles are in motion and risk of accident due to driver distraction; (b) closing independently, potentially trapping any object in their path, including the arms and legs of young passengers; (c) freezing in a partially open position, sometimes resulting in consumers having to drive the car from the place at which their door froze to, at a minimum, home or a dealer with the door partially open; (d) freezing in a partially or fully closed position, which poses the risk of passengers being unable to exit or be unloaded from the vehicle in a dangerous situation; (e) failing to latch/lock, enabling small children to push open the door easily, thereby defeating and bypassing the child lock feature of the doors; (f) failing fuel door assemblies that prevent driver side door operation; and (g) failing to consistently and reliably detect objects or people on its path to prevent injury or door malfunction." *Id.* ¶ 95.

6. Defendants' Partial Recognition of the Defect

On December 23, 2016, Defendants issued an interim safety recall notice for model year 2011 through 2016 Toyota Siennas, admitting some defects in the power sliding rear passenger doors. *See* Interim Notice of NHTSA Recall No. 16V-858, dated Dec. 23, 2016 ("Interim Notice"), annexed as Ex. A to Op. Compl., Ex. A. According to that notice, Defendants found "a

possibility that if the sliding door opening operation is impeded, the sliding door motor circuit could be overloaded, opening the fuse for the motor. If this occurs when the door latch is in an unlatched position, the door could open while driving, increasing the risk of injury to a vehicle occupant." Op. Compl. ¶ 1 (quoting Interim Notice). The recall notice did not, however, identify an immediate remedy. *See* Interim Notice.

On July 12, 2017, Toyota Motor North America issued a Remedy Notice to Dealer Principals, General Managers, Service Managers, and Parts Managers. *See* Remedy Notice of NHTSA Recall No. 16V-858, dated July 12, 2017 ("Remedy Notice"), annexed as Ex. B to Op. Compl. That notice explained that, for most of the 744,400 vehicles covered by the recall, Defendants would replace the instrument panel junction block and install new wire harnesses connecting them to the power sliding doors. *Id.*

Plaintiffs allege that Defendants' proposed remedy was insufficient, as the "problem of doors closing, jamming, and freezing is not addressed at all." Op. Compl. ¶ 10. According to Plaintiffs, "this purported fix does not cure all of the defects in the power sliding doors, because the root of the problem is not solely the junction box or the harnesses, but a uniform fundamental design flaw that pervades the entire power sliding door system, including other components such as the lock assemblies/latches, hinges and fuel doors." *Id.*

B. Procedural History of the *Simerlein* Action

On June 30, 2017, Mr. Simerlein, individually and on behalf of all others similarly situated, filed a class action Complaint against the *Simerlein* Defendants. *See* Complaint, dated June 30, 2017 ("Compl."), ECF No. 1. Mr. Simerlein asserted claims on behalf of a nationwide class, a Connecticut class, and a multi-state consumer protection class under, *inter alia*, the Magnusson-Moss Warranty Act, 15 U.S.C. § 2301 *et seq.*, the Connecticut Unfair Trade

Practices Act, Conn. Gen. Stat. § 42-110a *et seq.*, and other relevant state consumer protection statutes. *Id.* ¶¶ 183, 196–251.

In July 2017, Mr. Simerlein served this lawsuit on Toyota Motor Sales, Toyota Motor Manufacturing, Indiana, Toyota Motor North America, and Toyota Motor Engineering and Manufacturing North America. *See* Affidavits of Service, filed July 21, 2017 and July 24, 2017, ECF Nos. 13–16. On July 28, 2017, counsel for Toyota Motor Sales, Toyota Motor Engineering and Manufacturing North America, and Toyota Motor Manufacturing, Indiana appeared. *See* Notice of Appearance, dated July 28, 2017, ECF No. 23.

On September 18, 2017, Toyota Motor Corporation and Mr. Simerlein stipulated to forego the formalities of the Hague Service Convention and for Toyota Motor Corporation to be deemed served in exchange for additional time for Toyota Motor Corporation to answer or respond, as well as additional time to respond to discovery requests and certain additional conditions for a Rule 30(b)(6) deposition. *See* Stipulation Regarding Service on Toyota Motor Corporation, dated Sept. 18, 2017, ECF No. 35.

On October 6, 2017, with the *Simerlein* Defendants' consent, Mr. Simerlein filed an Amended Complaint naming Mr. Eckhoff, Ms. Lopez, Mr. Kaiser, and Mr. Prendergast as additional Plaintiffs. Amended Compl., dated Oct. 6, 2017 ("Am. *Simerlein* Compl."), ECF No. 36.

In the Amended Complaint, the *Simerlein* Plaintiffs asserted claims on behalf of a nationwide class, consisting of "all persons who purchased or leased, anywhere in the United States, including the District of Columbia, Puerto Rico, and all U.S. territories, one or more 2011 through 2017 model year Toyota Sienna vehicles with power sliding doors." *Id.* ¶ 258. The *Simerlein* Plaintiffs also asserted claims on behalf of a multi-state consumer protection class,

consisting of "all persons who purchased or leased in, or purchased or lease while residing in, one of the following states one or more 2011 through 2017 model year Toyota Sienna vehicles with power sliding doors: Alaska, Arkansas, California, Connecticut, Delaware, Florida, Hawaii, Illinois, Massachusetts, Michigan, Missouri, New Jersey, New York, Rhode Island, Vermont, Washington, Wisconsin, and the District of [Columbia], [and] any additional states which the Court determines to have sufficiently similar law to Connecticut without creating manageability issues." *Id.* Finally, the *Simerlein* Plaintiffs asserted claims on behalf of five state-specific classes: a Connecticut Class, a New York Class, a Florida Class, an Indiana Class, and a Maine Class. *Id.*

The *Simerlein* Plaintiffs asserted the following causes of action against the *Simerlein* Defendants: (1) violations of the Connecticut Unfair Trade Practices Act and materially identical state consumer protection statutes, on behalf of the Multi-State Consumer Protection Class (Count One); (2) violations of the Connecticut Unfair Trade Practices Act, on behalf of the Connecticut Class (Count Two); (3) breach of express warranty, on behalf of the Connecticut Class (Count Three); (4) breach of implied warranty, on behalf of the Connecticut Class (Count Four); (5) unjust enrichment on behalf of the Connecticut Class (Count Five); (6) violation of New York General Business Law Section 349, on behalf of the New York class (Count Six); (7) breach of express warranty on behalf of the New York Class (Count Seven); (8) breach of implied warranty on behalf of the New York Class (Count Eight); (9) unjust enrichment on behalf of the New York Class (Count Nine); (10) violation of the Florida Deceptive and Unfair Trade Practices Act, FLA. STAT. § 501.201 *et seq.*, on behalf of the Florida Class (Count Ten); (11) breach of express warranty on behalf of the Florida Class (Count Eleven); (12) breach of implied warranty, on behalf of the Florida Class (Count Twelve); (13) unjust enrichment, on

behalf of the Florida Class (Count Thirteen); (14) violations of the Indiana Deceptive Consumer Sales Act, IND. CODE § 24-5-0.5 *et seq.*, on behalf of the Indiana Class (Count Fourteen); (15) breach of express warranty, on behalf of the Indiana Class (Count Fifteen); (16) breach of implied warranty, on behalf of the Indiana Class (Count Sixteen); (17) unjust enrichment, on behalf of the Indiana Class (Count Seventeen); (18) violations of the Maine Unfair Trade Practices Act, MAINE REV. STAT. ANN. tit. 5, § 205-A *et seq.*, on behalf of the Maine Class (Count Eighteen); (19) breach of express warranty, on behalf of the Maine Class (Count Nineteen); (20) breach of implied warranty, on behalf of the Maine Class (Count Twenty); (21) unjust enrichment, on behalf of the Maine Class (Count Twenty-One); (22) violation of Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, *et seq.*, on behalf of the Nationwide Class (Count Twenty-Two). *See id.* at 76–132.

On November 30, 2017, additional counsel appeared on behalf of Toyota Motor North America, Toyota Motor Corporation, and the other *Simerlein* Defendants. *See* Motions for *Pro Hac Vice* Admission, dated Nov. 30, 2017, ECF Nos. 39–41.

On December 4, 2017, the *Simerlein* Defendants moved to dismiss the action. Motion to Dismiss, dated Dec. 4, 2017, ECF No. 45. Toyota argued that the out-of-state *Simerlein* Plaintiffs' claims failed for lack of personal jurisdiction. *Id.* at 5–10. Toyota also argued that Mr. Simerlein's claims failed to state a claim for relief under Federal Rule of Civil Procedure 12(b)(6). *Id.* at 10–25.

On January 22, 2018, the *Simerlein* Plaintiffs opposed the motion to dismiss. Opp. to Mot. to Dismiss, ECF No. 53. Several months of additional briefing followed, *see* ECF Nos. 55–64, and oral argument ultimately was scheduled for September 26, 2018, *see* Notice of E-Filed Calendar, dated Aug. 24, 2018, ECF No. 67.

On September 24, 2018, the parties filed a joint status report, seeking to adjourn the oral argument and re-convene for a telephonic status conference in November. Joint Status Report, dated Sept. 24, 2018, ECF No. 69.

On September 25, 2018, the Court granted the motion to adjourn and set a telephonic status conference for November 15, 2018. Order, dated Sept. 25, 2018, ECF No. 70; Scheduling Order, dated Sept. 25, 2018, ECF No. 71. The Court also denied the motion to dismiss without prejudice, with leave to refile the motion following the telephonic status conference. Order, dated Sept. 25, 2018, ECF No. 70.

On November 6, 2018, the parties reported substantial progress in the matter and requested to continue the status conference to December. Joint Motion, dated Nov. 6, 2018, ECF No. 74. On November 7, 2018, the Court granted the motion and continued the telephonic status conference to December 12, 2018. Order, dated Nov. 7, 2018, ECF No. 75.

On December 11, 2018, the *Simerlein* Plaintiffs filed a Second Amended Complaint, with the consent of Defendants but without leave of the Court. *See* Op. Compl. The Second Amended Complaint names the *Combs* Plaintiffs as Plaintiffs in the *Simerlein* action. *Id.* It also incorporates the specific state-level causes of action alleged in the *Combs* action.

That same day, the *Simerlein* and *Combs* Plaintiffs filed a proposed Settlement Agreement, executed on December 10, 2018 by W. Daniel "Dee" Miles III of Beasley, Allen, Crow, Methvin, Portis & Miles, P.C. (who has represented the *Combs* Plaintiffs), Adam Levitt of DiCello Levitt & Casey LLC (who has represented the *Combs* Plaintiffs), Demet Basar of Wolf Haldenstein Adler Freeman & Herz LLP (who has represented the *Simerlein* Plaintiffs), John P. Hooper of King & Spalding LLP (who represents all Defendants), and Toyota Motor North

America Group Vice President, General Counsel and Chief Legal Officer Sandra Phillips Rogers. *See* Agrmt. at 50–51.

The proposed settlement is sought on behalf of a proposed nationwide Settlement Class, whose members are defined as follows:

> All persons, entities or organizations who, at any time as of the entry of the Initial Notice Date [the date on which the first notice is disseminated to the Class], own or owned, purchase(d) or lease(d) Subject Vehicles [2011 through 2018 model year Toyota Sienna 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.

Agrmt. ¶ II.J. Excluded from the proposed Settlement Class are:

> (a) Toyota [the *Simerlein* Defendants], 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.

Id.

The Agreement, as written, provides two distinct types of relief to Class Members.

First, Defendants will establish a forward-looking Customer Confidence Program. Agrmt. ¶ III.A.1. Class Members will be entitled to several forms of prospective relief through this program. For example, within one year of the Court's final approval of a settlement, all Class Members with a Subject Vehicle may take their vehicle to an authorized Toyota Dealer and receive a free Sienna Sliding Door Functional Inspection. This is a "use it or lose it" benefit.

Defendants will also provide prospective coverage for all Class Members, who will be able to bring their vehicle into authorized Toyota Dealers for these repairs for up to ten years

after the date the vehicle was originally sold or leased, provided that their vehicles are not salvaged, inoperable, or flood-damaged (according to the vehicle title). The Program will cover repairs to specific sliding door parts that are related to internal functional concerns of specified parts that impede the closing and opening operations of the sliding door in manual and power modes: sliding door cable sub-assembly, sliding door center hinge assembly, fuel door pin and fuel door hinge, sliding door front lock assembly, and the sliding door rear lock assembly. *Id.* ¶ III.A.1(i)–(v).

The repair benefits generally will be available from the date on which the Court enters a Final Order and Final Judgment approving the Settlement and run for ten years from the date of First Use of the Subject Vehicle. *See id.* For certain parts—the sliding door front lock assembly and rear lock assembly on 2011 through 2015 model year Subject Vehicles and some 2016 Subject Vehicles—which are already be covered by Defendants' Warranty Enhancement Programs ZH4 and ZH5, those programs' warranty benefits for those parts will be extended by an additional year. *See id.* ¶ III.A.1(iv)–(v). Finally, those Class Members who have already had a G04 Recall Remedy performed on their vehicle will receive an additional year of warranty coverage for the replacement parts provided by that Remedy. *See id.* ¶ III.A.1(vi). Defendants also will provide eligible Class Members undergoing repairs under the Program with a Loaner Vehicle upon request. *Id.* ¶ III.A.2.

Second, the Agreement will provide retrospective relief by establishing an out-of-pocket claims process under which Defendants will reimburse Class Members for their expenses, where those Class Members previously incurred out-of-pocket expenses to repair a condition covered by the Customer Confidence Program that was not otherwise reimbursed and was incurred prior to the Initial Notice Date. *Id.* ¶ III.B. Those claims may be submitted at any time during the

Claim Period—i.e., commencing on the Initial Notice Date and ending sixty days after the Court's issuance of a Final Order and Final Judgment. *Id.* ¶ II.H. The parties propose that the Court appoint Patrick A. Juneau and Thomas Juneau of Juneau David, APLC, at Defendants' expense, to administer the out-of-pocket claims process. *Id.* ¶ II.LL.

As part of the Settlement, Class Counsel have agreed to cap their application for attorneys' fees and costs—which will be made prior to the final approval hearing—at $6,500,000 in attorneys' fees and $500,000 in costs and expenses (including payment of Class Representative service awards), subject to the review and approval of this Court. *Id.* ¶ VIII.B. Class Counsel will also apply for Class Representatives to receive service awards of up to $2,500 each, subject to the Court's approval. *Id.* ¶ VIII.C.

In return for the material benefits outlined above, "Class Representatives, and each Class Member, on behalf of themselves and any other legal or natural persons who may claim by, through, or under them, 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' sliding doors, and/or associated parts that are, or could have been, defined, alleged, or described in the Class Action Complaint, the Action, the Related Action or any amendments of the Action or the Related Action." *Id.* ¶ VII.B.

Class Representatives and Class Members are not, however, releasing claims "for personal injury, wrongful death[,] or actual physical property damage arising from an accident involving a Subject Vehicle." *Id.* While Class Representatives "acknowledge that they and other Class Members may hereafter discover claims presently unknown or unsuspected, or facts in addition to or different from those that they now know or believe to be true concerning the subject matter of the Action or the Related Action and/or the Release herein," "it is the intention of Class Counsel and Class Representatives in executing this Settlement Agreement to fully, finally, and forever settle, release, discharge, and hold harmless all such matters, and all claims relating thereto which exist, hereafter may exist, or might have existed (whether or not previously or currently asserted in any action or proceeding) with respect to the Action and the Related Action." *Id.* ¶ VII.G.

Attached to the Settlement Agreement are several important supporting documents: (1) a proposed claim form for Class Members seeking reimbursement of past out-of-pocket repairs, Reimbursement Claim Form, annexed as Ex. A to Agrmt., ECF No. 85-1; (2) a proposed notice to be mailed to Class Members informing them of the proposed Settlement, Direct Mail Notice, annexed as Ex. B. to Agrmt., ECF No. 85-2; (3) a proposed longer and more comprehensive notice of the proposed Settlement, Long Form Notice, annexed as Ex. E to Agrmt., ECF No. 85-5; and (4) a declaration from the proposed Settlement Notice Administrator, outlining the details of her proposed Notice Program and her qualifications to execute that program, Declaration of

Jeanne C. Finegan, APR, annexed as Ex. G to Agrmt., ECF No. 85-8.

On December 11, 2018, the *Simerlein* and *Combs* Plaintiffs moved, under Federal Rule of Civil Procedure 23, for an order: (1) preliminarily approving the proposed Settlement Agreement outlined above as fair, reasonable and adequate; (2) preliminarily certifying the proposed Class for settlement purposes only; (3) appointing the proposed Class Representatives as Class Representatives; (4) appointing the proposed Class Counsel as Class Counsel; (5) ordering Notice to be disseminated to the Class; (6) appointing Jeanne C. Finegan of Heffler Claims Group as the Settlement Notice Administrator; (7) appointing Patrick A. Juneau and Thomas Juneau of Juneau David, APLC as the Settlement Claims Administrator; (8) setting a date and procedures for a final Settlement Fairness Hearing and setting related deadlines; and (9) issuing related relief, as appropriate. Mot. at 1–2.

The *Simerlein* and *Combs* Plaintiffs also filed several additional submissions in support of the motion: (1) a memorandum of law in support of the motion, Pls.' Mem.; (2) a joint declaration from the proposed Class Counsel in support of the motion, outlining the details of their efforts in pursuing this litigation and negotiating the Settlement as well as their qualifications to serve as Class Counsel, Joint Declaration, dated Dec. 11, 2018, ECF No. 86; and (3) an affidavit from Patrick A. Juneau outlining his qualifications to serve as Settlement Claims Administrator, Affidavit of Patrick A. Juneau, dated Dec. 10, 2018, ECF No. 87.

That same day, the *Simerlein* Defendants also filed a memorandum of law in support of the motion. Defs.' Mem.

On December 12, 2018, the Court held a telephonic status conference with the parties. Minute Entry, dated Dec. 12, 2018, ECF No. 94. The Court granted the *Simerlein* Defendants'

oral motion to continue all discovery deadlines and scheduled a hearing on the motion for preliminary approval. *Id.*; Notice of E-Filed Calendar, dated Dec. 12, 2018, ECF No. 95.

On January 7, 2019, the Court held a telephonic motion hearing on the motion for preliminary approval. *See* Minute Entry, dated Jan. 8, 2019, ECF No. 103. The Court granted the *Simerlein* Plaintiffs' oral motion for leave to amend the complaint, thus the Second Amended Complaint is now the Operative Complaint. *See id.*; Oral Motion, dated Jan. 7, 2019, ECF No. 102.

On January 9, 2019, Plaintiffs filed an amended memorandum of law in support of their motion. Amended Memorandum of Law, dated Jan. 9, 2019 ("Am. Pls.' Mem."), ECF No. 105.

II. STANDARD OF REVIEW

Federal Rule of Civil Procedure 23(e) requires that "[t]he claims, issues, or defenses of a certified class—or a class proposed to be certified for purposes of settlement—may be settled, voluntarily dismissed, or compromised only with the court's approval." FED. R. CIV. P. 23(e).

Thus, "[b]efore reaching the merits of the proposed settlement," this Court "must first ensure that the settlement class, as defined by the parties, is certifiable under the standards of Rule 23(a) and (b)." *Bourlas v. Davis Law Assocs.*, 237 F.R.D. 345, 349 (E.D.N.Y. 2006); *see also Denney v. Deutsche Bank AG*, 443 F.3d 253, 270 (2d Cir. 2006) (holding that Rule 23(a) and (b) analysis is independent of Rule 23(e) fairness review); *see also* Fed. R. Civ. P. 23(e)(1), Advisory Committee's noteto 2018 amendment ("[I]f a class has not been certified, the parties must ensure that the court has a basis for concluding that it likely will be able, after the final hearing, to certify the class. Although the standards for certification differ for settlement and litigation purposes, the court cannot make the decision regarding the prospects for certification

without a suitable basis in the record. The ultimate decision to certify the class for purposes of settlement cannot be made until the hearing on final approval of the proposed settlement.").

"Rule 23(a) states four threshold requirements applicable to all class actions: (1) numerosity (a 'class [so large] that joinder of all members is impracticable'); (2) commonality ('questions of law or fact common to the class'); (3) typicality (named parties' claims or defenses 'are typical ... of the class'); and (4) adequacy of representation (representatives 'will fairly and adequately protect the interests of the class')." *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 613 (1997) (quoting FED. R. CIV. P. 23(a)). "In addition to satisfying Rule 23(a)'s prerequisites, parties seeking class certification must show that the action is maintainable under Rule 23(b)(1), (2), or (3)." *Id*. at 614.

These requirements apply equally to "conditional certification of a class for settlement purposes." *Cohen v. J.P. Morgan Chase & Co.*, 262 F.R.D. 153, 157 (E.D.N.Y. 2009); *see also Reade-Alvarez v. Eltman, Eltman & Cooper, P.C.*, 237 F.R.D. 26, 31 (E.D.N.Y. 2006) ("Certification of a class for settlement purposes only is permissible and appropriate, provided these [Rule 23(a) and (b)] standards are met."). The settlement-only class certification inquiry requires this Court to "demand undiluted, even heightened, attention in the settlement context" to Rule 23's "specifications . . . designed to protect absentees by blocking unwarranted or overbroad class definitions." *Amchem Prod., Inc.*, 521 U.S. at 620. "Such attention is of vital importance, for a court asked to certify a settlement class will lack the opportunity, present when a case is litigated, to adjust the class, informed by the proceedings as they unfold." *Id.*

"Preliminary 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.'" *Menkes v. Stolt-Nielsen S.A.*,

270 F.R.D. 80, 101 (D. Conn. 2010) (quoting *In re Traffic Executive Association–Eastern Railroads*, 627 F.2d 631, 634 (2d Cir.1980)); *see also* 4 NEWBERG ON CLASS ACTIONS § 13.10 (5th ed. 2017) ("Preliminary approval is thus the first stage of the settlement process, and the court's primary objective at that point is to establish whether to direct notice of the proposed settlement to the class, invite the class's reaction, and schedule a final fairness hearing. . . . the general rule is that a court will grant preliminary approval where the proposed settlement is neither illegal nor collusive and is within the range of possible approval.") (internal quotation marks omitted).

III. DISCUSSION

The parties have reached and entered into a Settlement Agreement for a proposed class of Plaintiffs located throughout the United States. As a result, Plaintiffs move for preliminary approval of this settlement, including the preliminary certification of the proposed nationwide class, and Defendants support Plaintiffs' motion.

As outlined below, the Court finds that, for the purposes of preliminary approval, the proposed settlement is fair, reasonable, adequate, and in the best interest of the class. The Court further finds that the Settlement Agreement was the product of extensive arm's length negotiations conducted by highly experienced counsel. The Court therefore preliminarily approves the proposed Settlement Agreement.

A. Preliminary Certification of the Settlement Class

Plaintiffs move for preliminary certification of a class for settlement purposes under Federal Rule of Civil Procedure 23. The parties seek to certify a settlement class 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." Agrmt. ¶ II.J. "Subject Vehicles" are defined as "2011 through 2018 model year Toyota Sienna vehicles." Agrmt. ¶ II.OO.

The Second Circuit has recognized that Rule 23 contains an "'implied requirement of ascertainability.'" *Brecher v. Republic of Argentina*, 806 F.3d 22, 24 (2d Cir. 2015) (quoting *In re Initial Public Offerings Sec. Litig.*, 471 F.3d 24, 30 (2d Cir. 2006)). "[T]he touchstone of ascertainability is whether the class is sufficiently definite so that it is administratively feasible for the court to determine whether a particular individual is a member." *Id.* (internal quotation marks and citation omitted). The Second Circuit has since clarified, however, that this is not a "freestanding administrative feasibility requirement," but simply requires "only that a class be defined using objective criteria that establish a membership with definite boundaries." *In re Petrobas Sec.*, 862 F.3d 250, 264 (2d Cir. 2017); *see also id.* at 265–267 ("a class must be 'sufficiently definite *so that* it is administratively feasible for the court to determine whether a particular individual is a member'; a class must be 'defined by objective criteria' *so that* it will not be necessary to hold 'a mini-hearing on the merits of each case.'") (internal citations omitted).

Additionally, Rule 23(a) requires that any putative class be "so numerous that joinder of all members is impracticable;" that "there are questions of law or fact common to the class;" that the representative parties and their claims and defenses are typical of the class as a whole; and that "the representative parties will fairly and adequately protect the interests of the class." FED. R. CIV. P. 23(a)(1)–(4).

Finally, Rule 23(b)(3) of the Federal Rules of Civil Procedure requires that, before certifying a class, a court must find "that the questions of law or fact common to class members

predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy."

For the purposes of preliminary approval, the Court makes the following findings:

1. The proposed Settlement Class is ascertainable. The class is defined solely with reference to objective criteria that make it administratively feasible to determine class membership during the Class Period: class members must, at any time as of the entry of the Initial Notice Date, own or have owned, purchase or have purchased, or lease or have leased a 2011 through 2018 model year Toyota Sienna. Under the Agreement, Defendants will obtain VIN numbers for the relevant vehicles using information provided by a reputable automotive data provider, HIS Automotive, Driven by Polk, which will then be used to identify current names and address information from state vehicle registration records. Agrmt. ¶ III.A.5; Pls.' Mem. 33–34.
2. The proposed Settlement Class is "so numerous that joinder of all members is impracticable." FED. R. CIV. P. 23(a)(1). While courts "have not required evidence of exact class size or identity of class members to satisfy the numerosity requirement," *Robidoux v. Celani*, 987 F.2d 931, 935 (2d Cir. 1993), the Second Circuit has recognized that "numerosity is presumed at a level of 40 members," *Consolidated Rail Corp. v. Town of Hyde Park*, 47 F.3d 473, 483 (2d Cir. 1995) (citation omitted). Here, the 2016 Sienna recall covered approximately 744,000 Subject Vehicles, and Plaintiffs estimate that with the addition of the 2017 and 2018 model years the proposed Subject Vehicles is estimated at 1,190,000. Pls.' Mem. at 27. The numerosity requirement therefore is satisfied.
3. Rule 23(a)(2) requires the existence of "questions of law or fact common to the

class." Fed. R. Civ. P. 23(a)(2); *see also Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011) ("That common contention, moreover, must be of such a nature that it is capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke."). While a number of different state statues are implicated in this class action, there are common questions of fact that are capable of class-wide resolution, regardless of the individual state a proposed Class Member is located in, including: (1) whether the Subject Vehicles' rear sliding doors were defective; (2) whether and for how long Defendants knew about the defect; (3) whether Defendants misrepresented or omitted information about the defect to consumers; (4) whether those misrepresentations or omissions were material; (5) whether proposed Class Members were damaged by those misrepresentations or omissions; (6) whether proposed Class Members were damaged by the defect; and (7) whether equitable relief is warranted for proposed Class Members' claims. In addition, all Class Members have federal claims under the Magnusson-Moss Warranty Act presenting common questions of law that are capable of class-wide resolution. The commonality requirement therefore is satisfied.

4. The proposed representative parties and their claims and defenses are typical of the class as a whole. FED. R. CIV. P. 23(a)(3). Here, the proposed Class Members' claims arise from defects, and alleged misrepresentations and omissions about those defects, that would be shared across the class and ultimately arise from the same conduct by the Defendants. Each proposed representative party is a member of the proposed Settlement Class and allege to have been damaged by the same conduct as the class

more broadly. Additionally, the claims of the class and class representatives share corresponding legal theories. Finally, the proposed representative parties will receive the same benefits as the other proposed Class Members, including access to the Customer Confidence Program, which covers all Subject Vehicles, and reimbursement by Defendants' of all out-of-pocket cost of covered repairs. The typicality requirement therefore is satisfied.

5. Rule 23(a)(4) of the Federal Rules of Civil Procedure requires that the representative parties "will fairly and adequately protect the interests of the class." The proposed Class Counsel, W. Daniel "Dee" Miles III of Beasley, Allen, Crow, Methvin, Portis & Miles, P.C. (who has represented the *Combs* Plaintiffs), Adam Levitt of DiCello Levitt & Casey LLC (who has represented the *Combs* Plaintiffs), and Demet Basar of Wolf Haldenstein Adler Freeman & Herz LLP (who has represented the *Simerlein* Plaintiffs) all appear to be well-experienced and to have litigated complex class actions in the past.[4] Additionally, the Court is not aware of any conflicts between the proposed representative parties, the proposed Class Counsel, and the claims of the proposed Class Members. The representative parties

[4] Mr. Miles is a named principal of Beasley, Allen, Crow, Methvin, Portis & Miles, a law firm located in Montgomery, Alabama and Atlanta, Georgia that specializes, *inter alia*, in products liability and class action litigation. He has nearly thirty years of experience in litigating complex class action. Over the past decade he has worked on a number of other major, multi-district vehicle defect class actions, *See* Joint Decl. ¶ 42; Firm Resume, annexed to Joint Decl. as Ex. B, ECF No. 86-2.

Mr. Levitt is a founding partner of DiCello Levitt & Casey, a law firm located in Chicago, Illinois and Cleveland, Ohio that specializes, *inter alia*, in products liability and consumer class actions. He has nearly twenty-five years of experience in litigating nationwide class action lawsuits. Over that period he has had a substantial focus on vehicle defect cases. *See* Joint Decl. ¶ 43; Firm Resume, annexed to Joint Decl. as Ex. C, ECF No. 86-3.

Ms. Basar is a partner of Wolf Haldenstein Adler Freeman & Herz LLP, a law firm located in New York, New York, Chicago, Illinois, and San Diego, California that specializes in complex class actions and other representative litigation. She has more than twenty-five years of experience in litigating complex class actions. *See* Joint Decl. ¶ 41; Firm Resume, annexed to Joint Decl. as Ex. A, ECF No. 86-1.

therefore will fairly and adequately protect the interest of the proposed Settlement Class.

6. Under Federal Rule of Procedure 23(b)(3), the Court also finds that the common questions of law and fact likely predominate over any question affecting only individual members of the proposed Settlement Class. There do not appear to be any significant differences between the claims of proposed Settlement Class members, apart from where they are located and the specific state consumer protection statutes therefore that apply to them. Additionally, a class action is superior to other available methods for the fair and efficient adjudication of this controversy.

Based on these findings, the Court conditionally certifies the proposed Settlement Class as defined above.

B. Appointment of Class Representatives

Based on the Court's findings stated above, the Court appoints all of the following Plaintiffs as Class Representatives of the proposed Settlement Class: Ned Simerlein, James Eckhoff, Maricel Lopez, Craig Kaiser, John F. Prendergast, Raymond Alvarez, Rosario Alvarez, Karen Eason, Jennifer Sowers, Jennifer Franklin, Jordan Amrani, Crystal Gillespie, Melissa Stalker, Dillen Steeby, Paula McMillin, Joseph C. Harp Jr., James Tinney, and Melissa Jugo Tinney.

C. Appointment of Class Counsel

Based on the Court's findings stated above, the Court appoints W. Daniel "Dee" Miles III of Beasley, Allen, Crow, Methvin, Portis & Miles, P.C., Adam Levitt of DiCello Levitt & Casey LLC, and Demet Basar of Wolf Haldenstein Adler Freeman & Herz LLP to act as Class Counsel to the Settlement Class.

D. Preliminary Approval of the Terms of the Settlement

As one court in this District has noted:

> Preliminary 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 . . . . As such, it is appropriate where it is the result of serious, informed, and noncollusive negotiations, where there are no grounds to doubt its fairness and no other obvious deficiencies, and where the settlement appears to fall within the range of possible approval.

Menkes, 270 F.R.D. at 101 (granting preliminary approval of settlement agreement in securities class action) (citing *In re Traffic Exec. Assoc.*, 627 F.2d at 634); *see also* 4 NEWBERG ON CLASS ACTIONS § 13:13 ("The general test—holding that a settlement will be preliminarily approved if it 'is neither illegal nor collusive and is within the range of possible approval'—contains both procedural and substantive elements. The procedural element focuses on the nature of the settlement negotiations and the possibility of collusion, while the substantive element focuses on the terms of the agreement itself.").

First, the Settlement Agreement meets the procedural requirements for preliminary approval. *See, e.g.*, 4 NEWBERG ON CLASS ACTIONS § 13:14 ("The primary procedural factor courts consider in determining whether to preliminarily approve a proposed settlement is whether the agreement arose out of arms-length, noncollusive negotiations"); *see also Menkes*, 270 F.R.D. at 101 (approving settlement where "where it is the result of serious, informed, and non-collusive negotiations."). The parties have vigorously litigated this case, and were engaged in extensive, arms-length settlement discussions in this matter and the *Combs* action for more than a year. Pls.' Mem. at 18. Furthermore, the Court is not aware of any evidence or indicia suggesting that the negotiations were collusive.

Second, the Settlement Agreement appears to meet the substantive requirements for

preliminary approval. *See* 4 NEWBERG ON CLASS ACTIONS § 13:15 (noting courts generally consider the percentage of the class's potential recovery at trial represented in the agreement, the likelihood of prevailing, the complexity and costs of trial, and the capacity for the defendant to withstand a larger judgment at the final stage of approval, and that "[a]t the preliminary approval stage, courts focus on many of the same factors, though with somewhat less scrutiny.").

Indeed, the substantive relief provided by the proposed Customer Confidence Program has been sought by the *Simerlein* Plaintiffs throughout this litigation. *See* Op. Compl. at 198 (seeking, in Prayer for Relief, 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 communicating this information to dealership and repair shops, as well as consumers, such that it can be implemented in a timely manner . . . ."); Am. *Simerlein* Compl. at 132 (same).

In addition, as Plaintiffs describe in their supporting memorandum, there were significant litigation risks involved in proceeding with this action. Pls.' Mem. at 20–21. These included multiple motions to dismiss that were pending in both the *Simerlein* and *Combs* actions, which may have resulted in the dismissal of some or all of Plaintiffs' claims. *Id.*

It is also likely that extremely costly litigation would have ensued over the many different state jurisdictions involved here. *See Langan v. Johnson & Johnson Consumer Cos.*, 897 F.3d 88, 97 (2d Cir. 2018) (requiring "rigorous analysis of the similarities and differences in the various state laws at issue . . . .").

Finally, the heavy reliance on expert testimony that would have been required to prove liability and damages at trial would have been extremely costly to Plaintiffs. As this Court has recognized, heavy reliance on expert testimony "often increases the risk that a jury may not find

liability or would limit damages." *Edwards v. N.A. Power & Gas, LLC*, No. 3:14-cv-1714 (VAB), 2018 WL 3715273, at *14 (D. Conn. Aug. 3, 2018).

Taking all these considerations into account, the Court finds that the Settlement Agreement is within the range of approvable settlements and there is "probable cause" to submit the agreement to the class. Preliminary approval is granted.

E. Notice to Potential Class Members

As the parties have shown that the Court will likely be able to approve the proposal under Rule 23(e)(2) and certify the class for purposes of judgment on the proposal, the Court "must direct notice in a reasonable manner to all class members who would be bound by the proposal[.]" FED. R. CIV. P. 23(e)(1)(B).

"For any class certified under Rule 23(b)(3)--or upon ordering notice under Rule 23(e)(1) to a class proposed to be certified for purposes of settlement under Rule 23(b)(3)--the court must direct to class members 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 notice may be by one or more of the following: United States mail, electronic means, or other appropriate means." *Id.* The notice must "clearly and concisely state in plain, easily understood language": "(i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3)." *Id.*

In the Second Circuit, a settlement notice must also "fairly apprise the prospective members of the class of the terms of the proposed settlement and of the options that are open to

them in connection with the proceedings." *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 114 (2d Cir. 2005) (quotation marks omitted).

The Court approves, as to form and content, the Direct Mail Notice and Long Form Notice attached as Exhibit B and E, respectively, to the Settlement Agreement, and finds that the distribution of these Notices, substantially in accordance with Section IV of the Settlement Agreement—as well as the distribution of Publication Notice, the creation of an Internet Website, and the use of Internet Banner Notifications and social media, as contemplated by the Agreement—meets the requirements of Federal Rule of Civil Procedure 23(c) and due process, fairly apprises the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings, and is the best notice practicable under the circumstances and shall constitute due and sufficient notice to all persons entitled thereto.[5]

The Court hereby appoints Jeanne C. Finegan of Heffler Claims Group to act as the Settlement Notice Administrator, with all the responsibilities and obligations set forth in the Settlement Agreement, and orders Notice to be disseminated to the Class beginning on March 1, 2019.

F. Out-of-Pocket Claims Administration

The Court approves of and therefore appoints Patrick A. Juneau and Thomas Juneau of Juneau David, APLC, as Settlement Claims Administrators, at Defendants' expense, to administer the out-of-pocket claims process, with all the responsibilities and obligations set forth

[5] In finding that notice is sufficient to meet both the requirements of Rule 23(c) and due process, the Court has reviewed and appreciated the high-quality submission of proposed Settlement Notice Administrator Jeanne C. Finegan. *See* Declaration of Jeanne C. Finegan, APR, annexed as Ex. G to Agrmt., ECF No. 85-8.

in the Settlement Agreement.[6]

G. Opt-Out Procedure

The Court hereby adopts the opt-out procedure proposed by the Settlement Agreement. Thus, "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, specifying that he or she wants to be excluded and otherwise complying with the terms stated in the Long Form Notice and Preliminary Approval Order." *Id.* ¶ V.A. The written request must include:

1. The name of the Action;

2. The excluding Class Member's full name, current residential address, mailing address (if different), telephone number, and e-mail address;

3. An explanation of the basis upon which the excluding Class Member claims to be a Class Member, including the make, model year, and VIN(s) of the Subject Vehicle(s);

4. A request that the Class Member wants to be excluded from the Class;

5. The excluding Class Member's dated, handwritten signature (an electronic signature or attorney's signature is not sufficient).

Id. All requests for exclusion from the class must be submitted by **May 3, 2019**.

H. Objection Procedure

Any Settlement Class Member who intends to object to the Settlement must do so by the Objection Deadline, which is **May 3, 2019**. In order to object, the Settlement Class Member must file with the Court before the Objection Deadline, and provide a copy to Class Counsel and Defendant's Counsel, also before the Objection Deadline, a document that includes all of the

[6] In approving of and appointing Patrick Juneau and Thomas Juneau as Settlement Claims Administrators, the Court finds that their significant experience in this area should be an asset to this case. *See* Affidavit of Patrick A. Juneau, dated Dec. 10, 2018, ECF No. 87.

following:

a. attaches documents establishing, or provide information sufficient to allow the Parties to confirm that the objector is a Class Member;

b. includes a statement of such Class Member's specific Objection;

c. state the grounds for the Objection;

d. identify any documents such objector desires the Court to consider;

e. provide all information requested on the Claim Form; and,

f. provide a list of all other Objections submitted by the objector, or the objector's counsel, to any class action settlements submitted in any Court in the United States in the previous five years (if the Settlement Class Member or his/her or its counsel has not objected to any other class action settlement in the United States in the previous five years, he/she or it shall affirmatively so state in the Objection).

Any Settlement Class Member who fails to file and serve timely: (a) a written objection containing all of the information listed in items (a) through (f) of the previous paragraph; and, (b) notice of his/her intent to appear at the Final Approval Hearing, as detailed in this paragraph, shall not be permitted to object to the Settlement and shall be foreclosed from seeking any review of the Settlement or the terms of the Settlement Agreement by any means, including but not limited to an appeal.

Upon the filing of an objection, Class Counsel and Defendant's Counsel may take the deposition of the objecting Settlement Class Member under the Federal Rules of Civil Procedure at an agreed-upon time and location, and to obtain any evidence relevant to the objection. Failure by an objector to make himself of herself available for deposition or comply with expedited discovery may result in the Court striking the objection. The Court may tax the costs of any such discovery to the objector or the objector's counsel, if the Court determines that the objection is frivolous or is made for an improper purpose.

I. Fairness Hearing

The Court will hold a Final Approval Hearing (also known as a "Fairness Hearing") on on **June 4, 2019, at 11:00 a.m.**, in Courtroom Two of the United States District Court for the District of Connecticut, located at 915 Lafayette Boulevard, Bridgeport, Connecticut, to consider the fairness, reasonableness and adequacy of the Settlement Agreement, the entry of a Final Order and Judgment in the case, any petition for attorneys' fees, costs and reimbursement of expenses made by Class Counsel, Service Awards to Class Representatives, and any other related matters that are brought to the attention of the Court in a timely fashion.

Any member of the Class that has not filed a Request for Exclusion may appear at the Fairness Hearing in person or by counsel and may be heard, to the extent allowed by the Court, either in support of or in opposition to the fairness, reasonableness, and adequacy of the Settlement Agreement; provided, however, that no person shall be heard in opposition to the Settlement Agreement, and no papers or briefs submitted by or on behalf of any such person shall be accepted or considered by the Court, unless, in accordance with the deadlines above, such person: (a) filed with the Clerk of the Court a notice of such person's intention to appear as well as a statement that indicates the basis for such person's opposition to the Settlement Agreement, and any documentation in support of such opposition; and (b) serves copies of such notice, statement and documentation upon all counsel.

The date and time of the Fairness Hearing shall be set forth in the Notice but shall be subject to adjournment by the Court without further notice to the members of the Class other than which may be posted on the Court's Electronic Case Filing (ECF) system or the website created under the Settlement Agreement, as set forth in the Short Form Notice.

J. Deadlines for Final Approval Submissions

The Court hereby adopts the following deadlines concerning the schedule for final approval:

- Briefing in support of final approval of the Settlement, including Plaintiffs' motions for attorneys' fees and expenses and for class representative service awards, shall be filed by **May 10, 2019**.

- The Settlement Notice Administrator's final declaration, advising the Court of the efficacy of the notice procedures adopted in this Order, shall be filed by **May 10, 2019**.

- Any opposition to the motion for attorneys' fees and expenses, or to the motion for class representative service awards, shall be filed by **May 17, 2019**.

  Reply papers in further support of the Settlement, the request for attorneys' fees and expenses, and/or in response to any objections, shall be filed by **May 24, 2019**.

K. Injunction

Plaintiffs also seek a preliminary injunction (1) staying all other actions concerning the Sienna sliding door defect, pending final approval by the Court of the proposed Settlement and (2) enjoining potential Class Members from challenging in any other action or proceeding any matter covered by this Settlement Agreement. Am. Pls.' Mem. at 40. Plaintiffs argue that the Court has authority to issue such an injunction as "necessary in aid of its jurisdiction," under the Anti-Injunction Act, 28 U.S.C. § 2283, and as "necessary or appropriate in aid of" its jurisdiction, under the All Writs Act. *Id.*

The Second Circuit has recognized that injunctions under the All Writs Act may be necessary or appropriate to "prevent third parties from thwarting the court's ability to reach and resolve the merits of the federal suit before it," and that such injunctions may be issued without strict adherence to the requirements of Federal Rule of Civil Procedure 65. *In re Baldwin United Corp.*, 770 F.2d 328, 338–339 (2d Cir. 1985).

The Second Circuit has also recognized that these injunctions may be issued after a settlement has been reached but prior to final court approval, to prevent third parties' filing (or

threat of filing) parallel state court actions from jeopardizing the settlement. *Id.* at 335. ("[T]he potential for an onslaught of state actions posed more than a risk of inconvenience or duplicative litigation; rather, such a development threatened to seriously impair the federal court's flexibility and authority to approve settlements in the multi-district litigation. The circumstances faced by Judge Brieant threatened to frustrate proceedings in a federal action of substantial scope, which had already consumed vast amounts of judicial time and was nearing completion . . . . The existence of multiple and harassing actions by the states could only serve to frustrate the district court's efforts to craft a settlement in the multidistrict litigation before it."); *Standard Microsys. Corp. v. Tex. Instruments Inc.*, 916 F.2d 58, 60 (2d Cir. 1990) ("A number of circumstances may justify a finding that the exceptions [to the Anti-Injunction Act] govern . . . . [including] where a federal court is on the verge of settling a complex matter, and state court proceedings may undermine its ability to achieve that objective . . . .") (citing *Baldwin United*, 770 F.2d at 337); *see also In re Joint E. and S. Dist. Asbestos Litig.*, 134 F.R.D. 32, 37 (E.D.N.Y. & S.D.N.Y. 1990) ("A mandatory national class action certified pursuant to Rule 23(b)(1)(B) falls squarely within the rationale of these controlling Second Circuit precedents. The court is in the process of reviewing the settlement agreement of the proposed class action encompassing all asbestos-related claims against Eagle–Picher. At this critical juncture, the court can only continue its evaluation if the assets available to settle the case remain intact. An injunction of all proceedings is necessary to implement the terms of the settlement and to protect the court's jurisdiction over the class action.").

As the Second Circuit has noted, "[t]he success of any federal settlement was dependent on the parties' ability to agree to the release of any and all related civil claims the plaintiffs had against the settling defendants based on the same facts. If states or others could derivatively

assert the same claims on behalf of the same class or members of it, there could be no certainty about the finality of any federal settlement." *Id.* In that case, the Second Circuit determined "that the injunction protecting the settling defendants was unquestionably "necessary or appropriate in aid of" the federal court's jurisdiction." *Id.* (citations and internal quotation marks omitted).

Here, the parties seek to achieve a global settlement of all claims involving the following: "All persons, entities or organizations who, at any time as of the entry of the Initial Notice Date [the date on which the first notice is disseminated to the Class], own or owned, purchase(d) or lease(d) Subject Vehicles [2011 through 2018 model year Toyota Sienna 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." Agrmt. ¶ II.J. And pending final approval of and a fairness hearing on the proposed settlement here, the parties seek to stay all other actions concerning the Sienna sliding door defect and enjoin any other parties seeking to bring competing class actions on behalf of the same class members. Am. Pls.' Mem. **.**

The parties in this case as well as the *Combs* litigation are working cooperatively together in this case. The *Combs* Plaintiffs have now joined this litigation, and the *Combs* action has been stayed by the Central District of California pending final approval of the proposed Settlement. Am. Pls.' Mem. at 6 n.4. In addition, Plaintiffs and Defendants represented to the Court during the preliminary approval hearing that no other litigation concerning the Siennas was currently pending in any state or federal court. Accordingly, it does not appear a stay of any other actions is necessary.

To the extent, however, that any of the Class Members wish to litigate the issues in this case in some other forum, an injunction "enjoining potential Class Members, pending the Court's

determination whether the Settlement Agreement should be given final approval, from challenging in any action or proceeding any matter covered by this Settlement Agreement, except for proceedings in this Court to determine whether the Settlement Agreement will be given final approval," Am. Pls.' Mem at 40, is appropriate and shall be issued.

The Court thus recognizes that a preliminary injunction would be appropriate under the All Writs Act and the "necessary in aid of" exception to the Anti-Injunction Act, 28 U.S.C. § 2283, in order to prevent this Court's jurisdiction from being undermined by parallel litigation. Without this injunction, the very same class members, who are currently represented by counsel in this lawsuit, could bring litigation elsewhere, while final approval of this settlement is pending here, resulting in "duplicative motions for injunctive relief, and . . . expos[ing] defendants to the risk of inconsistent injunctions." *Retirement Sys. of Ala. v. J.P. Morgan Chase & Co.*, 386 F.3d 419, 428 (2d Cir. 2004).[7]

L. Other Relief

If Final Approval of the Settlement is not granted, or if the Settlement is terminated for any reason, the Settlement and all proceedings had in connection therewith shall be without

[7] *See also In re Diet Drugs*, 282 F.3d 220, 235 (3rd Cir. 2002) ("The threat to the federal court's jurisdiction posed by parallel state actions is particularly significant where there are conditional class certifications and impending settlements in federal actions.") (citation omitted); *Carlough v. Amchem Prods.*, 10 F.3d 189, 204 (3rd Cir. 1993) ("We hold that given the establishment of an opt out period and the *Gore* plaintiffs' ability to opt out, it is within the sound discretion of the district court to enjoin their action in state court . . . . At this mature phase of the settlement proceedings and after years of pre-trial negotiation, a mass opting out of West Virginia plaintiffs clearly would be disruptive to the district court's ongoing settlement management and would jeopardize the settlement's fruition. In addition, a mass opting out presents a likelihood that the members of the West Virginia class will be confused as to their membership status in the dueling lawsuits . . . . We note also that litigating the propriety of the federal settlement in West Virginia would subject the CCR defendants to unnecessarily duplicative and costly efforts when a fairness hearing has already been scheduled in the district court."); *In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 148 F.3d 283, 294 n.14 (3rd Cir. 1998) ("After the class notice was mailed, several named plaintiffs in a competing nationwide class action, filed and certified in Alabama state court three days after the Settlement Agreement was signed (the "Steele action"), opted out of the class."); *In re Linerboard Antitrust Litig.*, 361 F. App'x 392, 395 (3rd Cir. 2010) ("[T]he District Court found that reinstatement of the All Writs Injunction was necessary because Peoples 'intends to relitigate the fee dispute in state court if not enjoined from doing so,' which would disturb the allocation of the *Linerboard* class counsel fee.") (citation omitted).

prejudice to the parties' rights and the parties shall return to the status quo ante, and all Orders issued under the proposed Settlement and Preliminary and Final Approval process shall be vacated. If this happens, the Settlement Agreement and all negotiations concerning it shall not be used or referred to in this action for any purpose whatsoever.

In addition, the Court orders that 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 Settlement); 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.

Finally, the Court hereby stays all proceedings in this Court other than those proceedings necessary to carry out or enforce the terms and conditions of the proposed Settlement, until the Court has granted or denied Final Approval of the proposed Settlement.

IV. CONCLUSION

For the foregoing reasons, Plaintiffs' motion is **GRANTED**.

In sum, the Court:

(1) conditionally certifies the proposed Settlement Class;

(2) **APPOINTS** Ned Simerlein, James Eckhoff, Maricel Lopez, Craig Kaiser, John F. Prendergast, Raymond Alvarez, Rosario Alvarez, Karen Eason, Jennifer Sowers, Jennifer Franklin, Jordan Amrani, Crystal Gillespie, Melissa Stalker, Dillen Steeby, Paula McMillin, Joseph C. Harp Jr., James Tinney, and Melissa Jugo Tinney as Class Representatives;

(3) **APPOINTS** W. Daniel "Dee" Miles III of Beasley, Allen, Crow, Methvin, Portis & Miles, P.C., Adam Levitt of DiCello Levitt & Casey LLC, and Demet Basar of Wolf Haldenstein

Adler Freeman & Herz LLP as Class Counsel;

(4) preliminarily approves the proposed Settlement Agreement;

(5) **APPROVES** the proposed Direct Mail Notice and Long Form Notice;

(6) **APPOINTS** Jeanne C. Finegan of Heffler Claims Group as the Settlement Notice Administrator, and orders Notice to be disseminated to the Class beginning on March 1, 2019;

(7) **APPOINTS** Patrick A. Juneau and Thomas Juneau of Juneau David, APLC as Settlement Claims Administrators to administer the out-of-pocket claims reimbursement process;

(8) adopts the proposed opt-out procedure and **ORDERS** that all requests for exclusion from the class must be submitted by **May 3, 2019**;

(9) **ORDERS** that all Class Members objecting to the Settlement must file objections by **May 3, 2019**;

(10) schedules a Final Approval Hearing for **June 4, 2019 at 11:00 a.m.**;

(11) **ORDERS** all briefing in support of final approval, including motions for attorneys' fees and class representative service awards, to be filed by **May 10, 2019**;

(12) **ORDERS** the final declaration of the Settlement Notice Administrator to be filed by **May 10, 2019**;

(13) **ORDERS** any opposition to the motions for attorneys' fees and class service awards to be filed by **May 17, 2019**;

(14) **ORDERS** any reply papers to be filed by **May 24, 2019**; and

(15) **ENJOINS** potential class members from challenging in any action or proceeding any matter covered by this Settlement Agreement, except for proceedings in this Court to determine whether the Settlement Agreement will be given final approval.

SO ORDERED at Bridgeport, Connecticut, this 14th day of January, 2019.

/s/ Victor A. Bolden
Victor A. Bolden
United States District Judge