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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

ALFONSO and ARLENE MORAN, individually, and on behalf of a class of similarly situated individuals,

Plaintiffs,

v.

FCA US LLC, a Delaware limited liability company,

Defendant.

Case No.: 3:17-CV-02594-JO-AHG

Hon. Jinsook Ohta

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

Date: February 15, 2023
Time: 9:15 a.m.
Place: Coutroom 4C

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I. INTRODUCTION

Plaintiffs Alfonso and Arlene Moran submit this memorandum in support of their Motion for Final Approval of the Class Action Settlement,[1] and for final certification of the Settlement Class. The proposed Settlement resolves allegations that certain vehicles manufactured and distributed by Defendant FCA US LLC ("Defendant" or "FCA") were sold with a defect that caused the vehicle to suddenly lose power, shut off, or stall without warning (the "Stalling Defect"), allegedly caused by a loss of engine timing, including a loss of crankshaft position synchronization, which is controlled by the powertrain control module, and exacerbated by faults from the 9HP Transmission.

The settlement provides Settlement Class Members with immediate, valuable relief in the form of: (1) an extended powertrain warranty, where FCA has expanded its 5-year/60,000 mile powertrain warranty for the Class Vehicles to include the Crankshaft Position Sensor; (2) reimbursement for Crankshaft Position Sensor repairs for Class Members who incurred out-of-pocket costs to have their Crankshaft Position Sensor repaired or replaced, which includes those Class Members who purchased or leased the Class Vehicle more than five years before the Effective Date of Settlement and before the Class Vehicle reached 60,000 miles; and (3) Vehicle Repurchase or Vehicle Replacement, wherein Class Members are entitled to an expedited, binding Arbitration to determine whether FCA should repurchase or replace their Class Vehicle.

The Court has previously found that the Settlement satisfies all of the criteria for preliminary settlement approval. (Dkt. No. 115). As detailed below, Plaintiffs now request that the Court finally approve the Settlement Agreement, as the terms are fair and reasonable, providing substantial benefits to Settlement Class Members, and because the proposed Settlement Class satisfies the requirements of Rule 23.

[1] Unless indicated otherwise, all capitalized terms used herein have the same meaning as those defined by the Settlement Agreement.

II. FACTS AND PROCEDURE

This nationwide class action arises out of an alleged defect in the 2017-2021 Chrysler Pacifica vehicles equipped with a 3.6-liter V6 engine and a 9-speed automatic transmission that were sold in the United States. FCA designed, manufactured, and distributed the Class Vehicles. The vehicles allegedly were sold with engine control software that becomes out of sync with the crankshaft position sensor, resulting in a sudden loss of engine power. Plaintiffs and Class Members have had the unnerving experience of suddenly losing power several times since their purchase, and despite multiple trips to their FCA dealerships, and despite having a safety recall performed, which purported to address the defect, they continued to experience sudden, unexpected stalling and loss of power at highway speeds.

A. Plaintiffs' Experiences with the Class Vehicle

Plaintiffs are California citizens who reside in Fountain Valley, California. (*See* Dkt. No. 26, Second Amended Complaint ("SAC") ¶ 23.) On or around March 2017, Plaintiffs purchased a new 2017 Chrysler Pacifica from Glenn Thomas Dodge Chrysler Jeep, an authorized FCA dealership in Signal Hill, California. (*Id.* at ¶ 24.) Since purchasing their vehicle, Plaintiffs have experienced symptoms of the Stalling Defect on multiple occasions. (*Id.* at ¶ 28.)

By January 2018, and having logged approximately 12,000 miles, Plaintiffs' vehicle repeatedly suffered losses of power suddenly while driving, causing it to abruptly decelerate. (*Id.*) Plaintiffs brought their vehicle back to the Glenn Thomas FCA dealership. The authorized FCA repair facility performed a software update and told Ms. Moran that the update should fix her sudden losses of power. (*Id.*) The vehicle again suddenly lost power for Ms. Moran while driving on the freeway at approximately 65 miles per hour, on or around March 1, 2018. (*Id.* at ¶ 29.) The vehicle would not exceed 20 miles per hour. (*Id.*) Ms. Moran managed to exit the freeway and bring the vehicle back to the same dealership, where, aside from resetting the powertrain control module, the dealership failed to perform any repairs. (*Id.*) Her vehicle abruptly lost power again in August 2018 while

on the freeway, but the dealership did not conduct any repairs. (*Id.* at ¶ ¶ 30-31.) The vehicle continued to exhibit abrupt, unintended decelerations. (*Id.* at ¶ 33.)

B. Overview of the Litigation and Settlement Negotiations

Plaintiffs action was initially filed by Plaintiffs Ryan and Sarah Wildin, on December 30, 2017. (*See* Dkt. No. 1; Declaration of Tarek H. Zohdy ["Zohdy Decl."] ¶ 2.) They reached out to FCA requesting that Defendant repurchase their vehicle under the California Lemon Law because they felt unsafe in their vehicle, which they contended continued to fail. (*See* Dkt. No. 23, at 1; Zohdy Decl. at ¶ 3.) Without admitting liability, FCA agreed to repurchase their vehicle pursuant to the California Lemon Law and permit the putative class to file a SAC with new plaintiffs. (Dkt. No. 23 at 1-2; Zohdy Decl. at ¶ 4.) The Wildin Plaintiffs filed their Motion of Voluntary Dismissal on October 24, 2018. (*See* Dkt. No. 27; Zohdy Decl. at ¶ 5.)

Plaintiffs filed the operative SAC on October 15, 2018. (*See generally* Dkt. No. 26, the SAC; Zohdy Decl. at ¶ 6.) Plaintiffs asserted material omissions claims under the California Consumers Legal Remedies Act, California Civil Code section 1750 *et seq.* ("CLRA") and the California Unfair Business Practices Act, Business and Professions Code section 17200 *et seq.*, alleging that FCA had a duty to disclose the existence of the Stalling Defect because it was a material fact in Defendant's exclusive or superior knowledge and that FCA failed to disclose and actively concealed those material facts from the Class. Plaintiffs also raised breach of implied warranty claims under the Song-Beverly Consumer Warranty Act, California Civil Code section 1791 *et seq.*, and the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301 *et seq*. They also brought an unjust enrichment claim. (*See id*; Zohdy Decl. at ¶ 7.)[2]

FCA filed its Answer and Affirmative Defenses to Plaintiffs' SAC on November 5,

[2] Prior to the withdrawal of the Wildins, FCA had brought a Motion to Dismiss their First Amended Complaint on May 11, 2018, which was denied in its entirety. (*See* Dkt. No. 14.) The court concluded that there were adequate allegations that FCA knew of the defect before it sold the Wildins their vehicle and adequate allegations that FCA fraudulently omitted to disclose this knowledge of the defect. (*Id.*) FCA accordingly had filed its Answer to the Wildin Plaintiffs' FAC on July 3, 2018. (*See* Dkt. No. 20.)

2018. (*See* Dkt. No. 33.) The parties thereafter engaged in extensive discovery, including FCA's rolling production of documents consisting of over 100,000 pages and depositions of the named Plaintiffs, as well as depositions of six FCA personnel. (Zohdy Decl. at ¶ 8.) In light of this continued discovery, the parties participated in multiple settlement conferences, beginning on September 14, 2020. (*Id.* at ¶ 9.) They elected to mediate this case before Magistrate Judge Allison H. Goddard, and settlement video conferences were held on November 18, 2020. (*Id.*) The case did not settle at that time. (*Id.*) On January 28, 2021, the Court granted a joint motion to continue pretrial deadlines in order to facilitate settlement efforts, and scheduled a settlement conference for February 12, 2021. (*Id.* at ¶ 10.) The parties were unable to settle, but the Court continued the settlement conference in order to continue settlement discussions on March 1, 2021. (*Id.*) The parties again continued to discuss settlement following the March 1, 2021 session before Magistrate Judge Goddard. (*Id.* at ¶ 11.)

On March 15, 2021, another mandatory settlement conference was held, after which Magistrate Judge Goddard issued a Mediator's Proposal in an effort to enable settlement. (*Id.* at ¶ 12.) Thereafter, the parties jointly moved for a stay on the basis that they had conducted multiple mediations before Magistrate Judge Goddard and believed a settlement was attainable if given additional time to confirm whether the mediator's proposal could be accepted. (*Id.*) On April 19, 2021, the Court subsequently granted the parties' motion to stay the case for 60 days, pending settlement discussions. (*Id.*) On June 16, 2021, the parties filed a notice of settlement, having reached an agreement in principle to resolve all claims between Plaintiffs and FCA pending in this action. (*Id.*)

The settlement is set forth in complete and final form in the Settlement Agreement. (Zohdy Decl. ¶ 13, Ex. 1.)

C. The Court Granted Preliminary Approval

Plaintiffs filed their Motion for Preliminary Approval of the Class Action Settlement on January 18, 2022. (Dkt. No. 110.) Following the hearing, the Court granted preliminary approval on April 20, 2022, and an amended order granting preliminary

approval on July 13, 2022. (Dkt. Nos. 113, 115.) In its Amended Order Granting Preliminary Approval, this Court determined that the Settlement Class, as defined, satisfies the requirements of Federal Rules of Civil Procedure 23(a) and 23(b)(3). (Dkt. No. 115, at 2-3.) The Court designated Plaintiffs as the Class Representatives of the Settlement Class. (*Id*. at 3.) The Court also appointed Capstone Law APC as Class Counsel. (*Id*. at 3-4.)

Upon review of the Settlement terms, this Court found that "the Settlement Agreement is fair, reasonable, and adequate," and that "[t]he proceedings that occurred before the Parties reached resolution of this matter gave counsel the opportunity to adequately assess this case's strengths, weaknesses, and the risks to each Party." (*Id.* at 1-2.) The Court further concluded "the settlement is non-collusive, a product of arms'-length negotiations between counsel for Plaintiff and Defendant presided over by an experienced Magistrate Judge." (*Id.* at 1.)

The Court approved the Class Notice plan and form of the notice to be disseminated to Class Members and that has been uploaded to the Settlement website. *Id*. at 4-5.

III. MATERIAL TERMS OF THE SETTLEMENT

Plaintiffs' Counsel negotiated a Settlement with several tiers of benefits to provide relief to Settlement Class Members with varying experiences and suffering different types of harms associated with the Stalling Defect. The Settlement Class consisting of all current residents of the United States (including territories of the United States) who, prior to the Preliminary Approval Date, purchased or leased new 2017-2021 Chrysler Pacifica vehicles equipped with a 3.6-liter V6 engine and a 9-speed automatic transmission that were originally sold in the United States (including territories of the United States).[3] (Settlement Agreement, § I.L.)

[3] The following are expressly excluded from the Settlement: (1) all owners or lessees of Class Vehicles who have filed and served litigation against FCA asserting problems with stalling in Class Vehicles that was pending as of the Notice Date and who do not dismiss their actions before final judgment and affirmatively elect to opt-in to the Settlement. However, Owners or lessees of Class Vehicles who dismiss such litigation and affirmatively opt-in to the Settlement shall be members of the Class for all purposes; (2)

A. Benefit I: Extended Powertrain Warranty

FCA has agreed to extend coverage for repair or replacement of engine crankshaft synchronization sensors under FCA US LLC's Powertrain Limited Warranty, which extends five years from the date of a Class Member's purchase or lease of a Class Vehicle, or until that vehicle has an odometer reading of 60,000 miles, whichever occurs first. (Settlement Agreement, § II.B.)

B. Benefit II: Reimbursement for Crankshaft Position Sensor Repairs

Under the Settlement, FCA shall reimburse Class Members for their out-of-pocket costs paid to repair their Class Vehicle's crankshaft position sensors if the Class Members purchased or leased their Class Vehicles more than five (5) years before the Effective Date of Settlement and before the Class Vehicle reached 60,000 miles. Class Members must submit Proof of Ownership and Claim Forms to the Claims Administrator within 180 days of the Effective Date of Settlement. (Settlement Agreement, § II.C.)

C. Benefit III: Certification of Parts Used in Future Repairs

FCA shall certify that all replacement crankshaft position sensors installed from the date of Final Settlement Approval are Part Number 68079375AD, or a subsequent iteration.

D. Benefit IV: Vehicle Repurchase or Vehicle Replacement

Class Members are entitled to an expedited, binding Arbitration for claims seeking a vehicle repurchase or replacement based in whole or in part on alleged defects in the Class Vehicles relating to stalling. (Settlement Agreement, § II.L; *Id.* at § I.GG.) The Arbitrator will apply the lemon law of the state where the Class Member took delivery of

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FCA's officers, directors, employees, affiliates and affiliates' officers, directors and employees; their distributors and distributors' officers, directors, and employees; and FCA Dealers and FCA Dealers' officers and directors; (3) judicial officers assigned to the Action and their immediate family members, and any judicial officers who may hear an appeal on this matter; (4) all entities and natural persons who have previously executed and delivered to FCA releases of their claims based on stalling in the Class Vehicles; (5) all parties to litigation against FCA alleging stalling in Class Vehicles in which final judgment has been entered; and (6) all those otherwise in the Class who timely and properly exclude themselves from the Class as provided in the Settlement. (Settlement Agreement § I.L.)

the vehicle and may award a repurchase or replacement if the Arbitrator finds the Class Member is entitled under the provisions of that state's lemon law. (*Id.* at II.L.1.a.). In nearly every case, Class Members will have their lemon law claims resolved on the merits more quickly in Arbitration than through a court action. FCA must be given a final opportunity to repair the Class Vehicle, free of charge to the Class Member. (*Id.* at § II.L.1.b.)

Under the Arbitration Program provided in the Settlement Agreement, FCA will pay for the costs of Arbitration. (Settlement Agreement, § II.L.) A repurchase or replacement claim may be submitted up to five years after the original sale to the first buyer or six months after the Approval Date of the Settlement, whichever is later.[4] (*Id.* at § II.L.1.d.) If a Class Member chooses to use an attorney, FCA will pay up to $5,000 in attorneys' fees if the Class Member wins in an Arbitration. (*Id.* at § II.L.1.g.) Class Members are not obligated to pay FCA's attorneys' fees if they lose. (*Id.*) Class Members also have the right to appeal the initial Arbitration decision to a second Arbitrator, if they advance the costs of the appeal, but do not have the right to seek further review with a court. (*Id.* at § II.L.1.f.) Class Members are not entitled to civil penalties or punitive damages. (*Id.* at § II.L.3.)

Class Members who do not qualify for a Vehicle Repurchase but claim a breach of FCA's New Vehicle Limited Warranty, or any extensions of that warranty, based in whole or in part on stalling in Class Vehicles may submit these claims to the Arbitrator. (Settlement Agreement at § II.L.2.) If a breach is established, the Arbitrator may, as appropriate, order a repair, or reimbursement for any amounts paid by the Class Member for a repair. (*Id.*) No other relief may be awarded. Such claims must be filed within the

[4] Thus, the Settlement Agreement provides for an extension of the statute of limitations for class members who still own or lease class vehicles at the time of an arbitration hearing. (Settlement Agreement § II.L.1.d.) Regardless of the applicable state law governing the claims of an Arbitration Claimant who still owns or leases a Class Vehicle as of the time of an Arbitration Hearing, the Statute of Limitations for a Vehicle Repurchase claim brought by such a Claimant that is based in whole or in part on alleged defects that cause stalling in the Class Vehicle shall be five years after delivery of the Class Vehicle to the first retail purchaser, or 180 days after the Approval Date, whichever is later. (*Id.*)

statute of limitations for express warranty claims established by the law of the state where Class Members purchased their vehicles. (*Id.*) The Arbitrator may not award attorney fees for pursuing a claim for breach of FCA's New Vehicle Limited Warranty or any extension of that warranty. (*Id.*)

E. Release of Liability

In consideration of the Settlement benefits, FCA US and its related entities and affiliates (the "Released Parties," as defined in the Settlement Agreement, § I.Z.) will receive a release of claims and potential claims related to the alleged stalling in the Class Vehicles that is the subject of this litigation and Settlement, except with respect to claims that qualify for the Arbitration Program. (*Id.* at §§ I.Y.; III.H.1.) Claims which were or could have been asserted in the litigation are likewise released. (*Id.*) The release excludes personal injury and wrongful death claims, and excludes claims for damages to property other than Class Vehicles. (*Id.*) Therefore, the scope of the release properly reflects the issues in this case and the proposed Settlement.

F. Claim Submission

The Parties agreed to retain CPT Group ("CPT") as Claim Administrator. (Settlement Agreement, § I.I.) The Claim Administrator has implemented the notice plan, distributed the Class Notice, administered any requests for exclusion, and is continuing to administer the claim process including the review of reimbursement claims, and distribution of payments to eligible claimants whose claims are approved. (*Id.* at §§ II.C., II.M., III.C-D.; *see* Declaration of Jeremy Talavera ["Talavera Decl."]). FCA will pay all administrative costs. (*Id.*, §§ II.A; II.M.)

The Settlement provides for a fair, equitable and straightforward process for submission, review and determination of reimbursement claims. (Settlement Agreement, § II.E.-K.) Approved claims for cash payments will be paid by prepaid card. (*Id.* at § II.K.) Any unused balance on a prepaid card will be issued to the owner via check after six months of issuance of the prepaid card. (*Id.*) Significantly, if a claim is rejected due to missing information and the original claim was submitted by the applicable deadline, the

Settlement provides a 30-day period for the Class Member to cure deficiencies and resubmit the claim with additional information. (*Id.* at § II.G.) Finally, the Class Notice and its accompanying Claim Form provide all of the necessary details, including when and how a reimbursement claim must be submitted, what information and proof is required for a valid claim, and how to contact the Claims Administrator, or Class Counsel, with any questions or requests for assistance.

G. The Notice to The Settlement Class Was Disseminated

Before approving a class settlement, "[t]he 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). Where the settlement class is certified under Rule 23(b)(3), the notice must also be 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).

Pursuant to the Settlement Agreement and the Amended Preliminary Approval Order, the Claims Administrator substantially implemented the Class Notice plan. On September 9, 2022, the Claims Administrator mailed the Short Form Class Notice, which was approved by the Court, to 725,817 potential Class Members identified through DMV records.[5] (Talavera Decl. ¶ 5.) On September 9, 2022, the Claims Administrator also made available an interactive, case-specific Settlement Website, www.pacificastallingsettlement.com, which features instructions on how to submit a claim for reimbursement, information on the Arbitration Program, a page with answers to

[5] On November 23, 2022, CPT informed Plaintiffs' Counsel that New Hampshire's Department of Motor Vehicles had not provided data for New Hampshire Class Members, of which there are 19, until this date. After the Parties conferred, Plaintiffs' counsel instructed CPT to immediately issue notice to the nineteen New Hampshire Class Members, reflecting an extended deadline of 60 days from the notice mailing date of December 1, 2022, in accordance with the Court's Amended Order Granting Preliminary Approval, (Dkt. No. 118). CPT updated the settlement website with the NH Notice. As the deadline to object falls after the January 11, 2023 deadline for this Motion for Final Approval, Plaintiffs' Counsel will address potential objections to the class settlement by any of the 19 New Hampshire Class Members in their supplemental briefing in support of such Motion, due February 8, 2023. (*Id.*)

frequently asked questions ("FAQs"), instructions on how to contact the Claims Administrator and Class Counsel for assistance, Class Action Settlement deadlines including the date/time of the Fairness Hearing, and links to important case documents, including but not limited to the Claim Form, the Long Form Class Notice, and the Settlement Agreement. (Talavera Decl. at ¶ 7; *see also* Settlement Agreement § I.DD.) The Short Form Class Notice also provided the Settlement website address. (*Id.* at ¶ 5, Ex. A). The Claim Administrator also made arrangements for the Publication Notice, a 1/8 page ad in the Marketplace/Legal Notice Section of USA Today. (*Id.* at ¶ 10, Ex. D.)

The deadline for Class Members to opt out or object expired on November 9, 2022. **No Class Members have objected.** Only 194 Class Members have opted out, representing less than one percent of the class. (Talavera Decl. at ¶ 12-13.) The deadline to submit claims for reimbursement is 180 days after the effective date of settlement.

H. Proposed Class Counsel Fees, Litigation Expenses, And Class Representative Service Award

Subject to Court approval, the Parties separately negotiated, after having reached agreement on the class benefits, sums for reasonable Class Counsel fees and expenses, and a class representative service award, which is the subject of a separate fee motion filed on October 26, 2022, pursuant to the schedule set forth in the Preliminary Approval Order. (Dkt. Nos. 115, 116.)

IV. ARGUMENT

A. Class Certification Requirements Are Met

The Court certified the Class for settlement purposes upon Preliminary Approval, finding that requirements under Rule 23(a) and Rule 23(b)(3) are satisfied. (*See* Dkt. No. 115, at 2-3.) Nothing has changed that would affect the Court's ruling on class certification. *See Chambers v. Whirlpool Corp.*, 214 F. Supp. 3d 877 (C.D. Cal. 2016) (reconfirming the certification set forth in the preliminary approval order "[b]ecause the circumstances have not changed" since that order); *In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 556 (9th Cir. 2019) (en banc) (courts must apply the criteria for class certification "differently in

litigation classes and settlement classes").

Therefore, the Court should grant final certification of the settlement class.

B. The Court Should Grant Final Approval of the Class Settlement

Upon final approval, the Court's duty is to determine whether the proposed Settlement is "fundamentally fair, adequate, and reasonable." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). In evaluating the Settlement, the Court is guided by several important policies. First, federal courts favor settlements, particularly in class actions, where the costs, delays and risks of continued litigation might otherwise overwhelm any potential benefit the class could hope to obtain. *See Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992) (noting the "strong policy that favors settlements, particularly where complex class action litigation is concerned"). Second, for settlements reached through arms'-length negotiations, courts are to give:

> [P]roper deference to the private consensual decision of the parties. . . . [T]he court's intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.

Hanlon, 150 F.3d at 1027.

Guided by these policies, the district court then may consider some or all of the following factors in evaluating the reasonableness of a settlement: (1) the strength of the plaintiff's case and the risk, expense, complexity, and likely duration of further litigation; (2) the risk of maintaining class action status throughout trial; (3) the amount offered in settlement; (4) the extent of discovery completed and the stage of proceedings; (5) the participation of a governmental participant; (6) the experience and views of counsel; and (7) the reaction of class members. *See Hanlon*, 150 F.3d at 1026 ("*Hanlon* factors").

The recent amendments to Rule 23 direct the Court to consider a similar list of factors, including whether: (A) the Class Representative 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: (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); and (D) the proposal treats class members equitably relative to each other. FED. R. CIV. P. 23(e)(2). The Advisory Committee's notes clarify that this list of factors does not "displace" the *Hanlon* factors, "but instead aim to focus the court and attorneys on 'the core concerns of procedure and substance that should guide the decision whether to approve the proposal.'" *In re Extreme Networks, Inc. Sec. Litig.*, No. 15-04883, 2019 WL 3290770, at *6 (N.D. Cal. July 22, 2019) (quoting FED. R. CIV. P. 23(e)(2) advisory committee's note to 2018 amendment).

Additionally, for class action settlements prior to contested certification, the Ninth Circuit further requires that the Court scrutinize the settlement even more closely, applying the so-called *Bluetooth* factors.[6] *See Allen v. Bedolla*, 787 F.3d 1218, 1224 (9th Cir. 2015). As set forth below, the Settlement satisfies all of these factors, meriting final approval.

1. Class Representatives and Plaintiffs' Counsel Have Adequately Represented the Class and the Settlement Was Negotiated at Arms'-Length

Under Rule 23(e)(2)(A)-(B), the Court considers whether Plaintiffs and Plaintiffs' Counsel adequately represented the class and whether the proposed settlement was negotiated at arm's length. Both factors are amply satisfied. There is no suggestion of a conflict between the Class Representatives and Plaintiffs' Counsel on the one hand, and Class Members on the other. *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 942 (9th Cir. 2015) (conflict cannot be "speculative" or "trivial" but must go to "the heart of the litigation"). Plaintiffs and Plaintiffs' Counsel have vigorously pursued the claims on behalf of the Class, adducing important facts regarding FCA's pre-sale knowledge of the

[6] *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 938 (9th Cir. 2011).

Stalling Defect, litigating the matter, and negotiating a valuable Settlement to deliver immediate relief to the Class. (Zohdy Decl. ¶¶ 14-18.)

Rule 23(e)(2)(B) is also satisfied, as the Settlement is the product of arm's length negotiations after multiple settlement conferences before Magistrate Judge Goddard, who issued a Mediator's Proposal. (Zohdy Decl. ¶¶ 9-12.)

2. The Settlement Provides Valuable Relief to the Class

Under Rule 23(e)(2)(C), the Court is to examine the relief to the Class in light of the costs, risks, and delay of trial and appeal, the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims, the terms of any proposed award of attorney's fees, including timing of payment; and any agreement required to be identified. This overlaps with first three *Hanlon* factors, the strength of the plaintiff's case balanced against the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class certification through trial, and the amount of settlement. In evaluating these considerations, a court assesses "objectively the strengths and weaknesses inherent in the litigation and the impact of those considerations on the parties' decisions to reach [a settlement]." *Adoma v. Univ. of Phoenix, Inc.*, 913 F. Supp. 2d 964, 975 (E.D. Cal. 2012). However, there is "no single formula" to be applied. *Rodriguez v. West Pub. Corp*., 463 F.3d 948, 965 (9th Cir. 2009).

In assessing the settlement's value, courts are instructed to take into account that "the very essence of a settlement is compromise, 'a yielding of absolutes and an abandoning of highest hopes.'" *Officers for Justice v. Civil Service Comm'n*, 688 F.2d 615, 624 (9th Cir. 1982) (citations omitted). But this Court "put[s] a good deal of stock in the product of an arms-length, non-collusive negotiated resolution, and ha[s] **never prescribed a particular formula** by which that outcome must be tested." *Rodriguez*, 563 F.3d at 965 (internal citations omitted; emphasis added). The Court "need not include a specific finding of fact as to the potential recovery for each of the plaintiffs' causes of action." *Lane v. Facebook, Inc.*, 696 F.3d 811, 823 (9th Cir. 2012). Indeed, *Lane* expressly rejected any requirement that district courts calculate the value of the claims—explaining

that "not only would such a requirement be onerous, it would often be impossible... [since] the amount of damages of a given plaintiff (or class of plaintiffs) has suffered in a question of fact that must be proved at trial." *Id.* [7]

(a) The Relief Provided for the Class Is Fair, Adequate, and Reasonable Considering the Costs, Risks, and Delay of Trial and Appeal

As discussed above, the Settlement offers substantial benefits to Class Members, including an extended powertrain warranty, reimbursement for out-of-pocket expenses incurred to repair the Class Vehicle's crankshaft position sensors, certification of all replacement crankshaft position sensors installed from the date of Final Settlement Approval as Part Number 68079375AD or subsequent iteration, and an expedited, binding Arbitration for claims seeking vehicle repurchase or replacement. When weighed against the risk of further litigation, the Settlement is fair, adequate, and reasonable. While Plaintiffs believe that this case is strong on the merits, FCA has raised a number of substantive defenses that present serious risks to Plaintiffs' case. These defenses include, among others, that no Stalling Defect exists, or that, even if a defect existed, Plaintiffs would not be able to show that it constitutes a safety concern. And FCA would likely have argued that individual issues as to liability and damages would prevail over common issues.

[7] Accordingly, courts, in evaluating automotive defect settlements, do not require the plaintiff to present speculative measures of the maximum value of the action upon a successful trial. *See, e.g., Warner v. Toyota Motor Sales U.S.A.*, No. 15-02171-FMO (C.D. Cal. May 21, 2017), Dkt. No. 140, at *13 (granting final approval without a maximum valuation, noting that settlements involve "abandoning of highest hopes"); *Corson v. Toyota Motor Sales U.S.A.*, No. 12-8499-JGB, 2016 WL 1375838, *7 (C.D. Cal. Apr. 4, 2016) (granting final approval, based in part, on "substantial recovery" that class members would receive as a result of the settlement); *See also Chambers*, 214 F. Supp. 3d at 888-89 (no valuation required to approve consumer class action settlement); *Zakskorn v. Am. Honda Motor Co.*, No. 11-02610-KJM, 2015 WL 3622990, at *8 (E.D. Cal. June 9, 2015) (same); (finding that settlement provides adequate compensation without requiring extensive valuation); *Sadowska v. Volkswagen Group of America*, No. 11-00665-BRO, 2013 WL 9500948, *4 (C.D. Cal. Sep. 25, 2013) (same).

Moreover, there is a risk that even if the existence of a defect can be proven, it may not lead to legal liability under federal or state statutes. *See, e.g.*, *Smith v. Ford Motor Co.*, 749 F. Supp. 2d 980, 991-92 (N.D. Cal. 2010) (granting defendant's motion for summary judgment and finding no safety risk), *aff'd*, 462 F. App'x 660 (9th Cir. 2011). Plaintiff would have to establish violations of individual state and federal consumer protection and warranty statutes.

There is also a substantial risk that if the litigation proceeds, class certification may not be granted. FCA would have raised various defenses to class certification in the litigation context, including that the variations in the loss of power and in the defects preclude class certification of the consumer fraud claims for omission. In addition, FCA would have argued that, among other individual variations, questions regarding each customer's proper maintenance of the vehicle, driving conditions, and repair attempts, such as whether the vehicle was taken to the dealer in a reasonable time period for repairs, among others, would preclude certification of the warranty claims. FCA also would have undoubtedly argued that variations in state law would defeat a finding of predominance under *Mazza v. American Honda Motor Co.*, 666 F.3d 581 (9th Cir. 2012).[8]

While Plaintiffs would vigorously dispute these claims, consumers bringing automotive defect actions are frequently denied class certification due to lack of common proof.[9] *See, e.g., Stockinger v. Toyota Motor Sales, U.S.A., Inc.*, 2020 WL 1289549, at *6 (C.D. Cal. Mar. 3, 2020) (finding plaintiffs failed to satisfy the commonality and predominance requirements of Rule 23 in a similar automotive defect

[8] Courts do not require a comparative state law analysis to find predominance for settlement classes. *See Jabbari v. Farmer*, 965 F.3d 1001, 1007 (9th Cir. 2020) (the court need not conduct a "choice-of-law analysis, despite variations in state law," to find that predominance has been met for settlement classes).

[9] *See, e.g.*, *Grodzitsky v. Am. Honda Motor Co.*, 2014 U.S. Dist. LEXIS 24599 (C.D. Cal. Feb. 19, 2014) (denying certification due to lack of evidence that common materials were used for all defective "window regulators" in the class); *Cholakyan v. Mercedes-Benz USA, LLC*, 281 F.R.D. 534, 553 (C.D. Cal. 2012) ("There is also no evidence that a single design flaw that is common across all of the drains in question is responsible for the alleged water leak defect…").

action alleging material omissions and breaches of the implied warranty of merchantability).

This body of recent case law demonstrates that, had the case continued, "plaintiffs [would] face[] a substantial risk of incurring the expense of a trial without any recovery." *In re Toys "R" Us-Del., Inc. FACTA Litig.*, 295 F.R.D. 438, 451 (C.D. Cal. 2014). Indeed, the risk of continuing litigation, including the risk of new adverse statutory or case law, increased costs, and expiration of a substantial amount of time, weigh heavily in favor of settlement. *Rodriguez*, 463 F.3d at 966. A class action against a major automotive manufacturer, where Plaintiffs allege that over 700,000 vehicles suffer from a stalling defect, has the strong potential to engulf plaintiffs and attorneys in protracted court battles where the outcome is uncertain. This proposed Settlement resolves such uncertainties in favor of the Class Members, who will be eligible for prompt and substantial relief.

In a contested certification motion, FCA would likely submit expert testimony from a FCA engineer showing that the crankshaft position sensors for various Class Vehicles differ in kind. Plaintiffs, for their part, would proffer the testimony of a technical expert to dispute the import of these minor part variations, along with that of an expert on consumer expectations and a damages expert. These hefty costs would have to be advanced by Plaintiffs and Class Counsel and would add significantly to the risks of proceeding in litigation. *See Aarons v. BMW of N. Am. LLC*, No. 11-7667, 2014 U.S. Dist. LEXIS 118442, at *29-31 (C.D. Cal. Apr. 29, 2014) (approving a settlement for repairs/reimbursement of transmission defect and observing that "it is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements." [citation omitted]).

Aside from certification risk, Plaintiffs could face the termination of their action at summary judgment or at trial. For instance, in a long-running action alleging failure to disclose a known defect involving the same class counsel, summary judgment was recently entered in favor of the automotive manufacturer after years of litigation and exorbitant out-

of-pocket costs, underscoring the difficulties faced by Plaintiffs here. *See Coba v. Ford Motor Co.*, No. 12-1622-KM, 2017 WL 3332264 (D.N.J. Aug. 4, 2017).

Even if Plaintiffs were to certify the Class on a contested motion, and prevail on dispositive motions and at trial,[10] the years of litigating this action would almost certainly diminish the value of the relief to Class Members, as their Class Vehicles' value will depreciate over time. Any restitution remedies they could obtain would also be subject to offsets for car owners' use of the vehicles. For example, even under consumer-friendly California law (the Song-Beverly Consumer Warranty Act), a repurchase would require an offset for the mileage driven. *See* Cal. Civ. Code § 1793.2(d)(2)(C); *see also Robbins v. Hyundai Motor America, Inc.*, 2015 WL 304142, at *6 (C.D. Cal. Jan. 14, 2015). State law offsets could also apply to claims under the federal Magnuson-Moss Warranty Act, which applies state substantive law for federal causes of action. *See Clemens v. DaimlerChrysler Corp.*, 534 F.3d 1017, 1022 (9th Cir. 2008) ("[C]laims under the Magnuson-Moss Act stand or fall with… express and implied warranty claims under state law").

Given the substantial risks of continued litigation, including maintaining class certification, and the significant relief secured for the Class, the proposed Settlement should be viewed as a fair, reasonable, and adequate compromise of the issues in dispute.

(b) The Method of Distribution, Attorneys' Fees, and Other Agreements

Under Rule 23(e)(2)(C)(ii)-(iv), the Court is to review the method of distribution, attorneys' fees and the existence of other agreements. As set forth above, claims for reimbursement for repairs can be submitted using the Settlement's user-friendly claim forms. *See Hyundai*, 926 F.3d at 568 (finding that online claims process where class member must input VIN and class member ID not overly burdensome). Claims for reimbursement require documentation, but it is standard in settlements to require repair

[10] The inherent risks of proceeding to trial weigh in favor of settlement. *See In re Portal Software, Inc. Sec. Litig.*, 2007 U.S. Dist. LEXIS 88886, *7-8 (N.D. Cal. Nov. 26, 2007) (recognizing that "inherent risks of proceeding to… trial and appeal also support the settlement").

orders or receipts to substantiate a claim. *See Keegan, v. Am. Honda Motor Co.*, No. 10-09508-MMM, 2014 WL 12551213, *15 (C.D. Cal. Jan. 21, 2014) ("Courts frequently approve settlements that require class members to submit receipts or other documentation."). In fact, most states have record-retention laws, and "dealerships and service centers routinely maintain such records; thus, to the extent that class members do not have an invoice in their possession, it is likely that they would be able to secure such documentation." *Asghari v. Volkswagen Grp. of Am.*, No. 13-02529-MMM, 2015 WL 12732462, at *29 (C.D. Cal. May 29, 2015) (overruling objection that requiring claimants to submit proof of compliance with scheduled oil changes in warranty maintenance manual is unfair and overly burdensome).

For the reasons discussed in greater detail in Plaintiffs' separately filed Motion for Attorneys' Fees, Costs, and a Class Representative Service Award (Dkt. No. 116), Plaintiffs seek reasonable attorneys' fees and costs in the amount of $835,000, and Service Awards of $10,000 each. With the exception of the Parties' settlement of attorneys' fees and litigation costs, none of the *Bluetooth* factors are present with the Parties' Settlement. Plaintiffs' Counsel do not seek a disproportionate share of fees and there is no "reverter" of unclaimed funds to FCA as the Settlement does not provide for the establishment of a common fund. Rather, the settlement was negotiated at arm's-length after multiple mediations before Magistrate Judge Goddard. Further, by agreeing to resolve attorneys' fees amicably, FCA's counsel averted the possibility that Plaintiffs' Counsel might apply for, and receive, a much larger award, and thus avoided a "second major litigation" on attorneys' fees. *See Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983) ("A request for attorney's fees should not result in a second major litigation.").

3. The Settlement Treats Class Members Equitably

The Rule 23(e)(2) factor turns on whether the proposed settlement "treats class members equitably relative to each other." Fed. R. Civ. P. 23(e)(2)(D). "Matters of concern could include whether the apportionment of relief among class members takes appropriate account of differences among their claims, and whether the scope of the release may affect

class members in different ways that bear on the apportionment of relief." Fed. R. Civ. P. 23(e)(2)(D), Advisory Committee's Notes.

Here, the Settlement generally treats all Class Members the same. The extended powertrain warranty applies equally as it extends coverage for repair or replacement of engine crankshaft synchronization sensors under FCA US LLC's Powertrain Limited Warranty, which extends five years from the date of a Class Member's purchase or lease of a Class Vehicle, or until that vehicle has an odometer reading of 60,000 miles, whichever occurs first. In addition, all Class Members are eligible for reimbursement under the Settlement to the extent that they paid out-of-pocket expenses for repair of the Class Vehicle's crankshaft position sensors and otherwise meet the settlement criteria. *See Ashgari v. Volkswagen Grp. of Am., Inc.*, 2015 WL 12732462, *7 (C. D. Cal. May 29, 2015) (approving settlement providing for reimbursement based upon proof of repairs). The same is true for the class's release: all Class Members will provide an identical release—it does not vary by class member or subset of the class. As a result, the Settlement treats all class members equitably, further supporting approval of the Settlement. Finally, though the class representatives will each receive an additional $10,000, this requested Plaintiffs' service award is in recognition for the service they performed on behalf of the class, and the Ninth Circuit has approved such awards.[11]

4. The Extent of Discovery Completed Supports Final Approval

Courts may also consider the extent of discovery and the current stage of the litigation to evaluate whether parties have sufficient information to make an informed decision to settle the action. *See Linney v. Cellular Alaska Partnership*, 151 F.3d 1234, 1239 (9th Cir. 1998). A settlement negotiated at an earlier stage in the litigation will not be denied so long as sufficient investigation has been conducted. *Eisen v. Porsche Cars N.*

[11] *Boyd v. Bank of Am. Corp.*, No. 13-cv-0561-DOC, 2014 WL 6473804, at *7 (C.D. Cal. Nov. 18, 2014) (citing *Staton v. Boeing Co.*, 327 F.3d 938, 976-77 (9th Cir. 2003)). The awards here are comparable to the "typical incentive awards in the Ninth Circuit, where $5,000 is presumptively reasonable." *Smith v. Am. Greetings Corp.*, No. 14-cv-02577, 2016 WL 362395, at *10 (N.D. Cal. Jan. 29, 2016).

Am., No. 11-09405-CAS, 2014 WL 439006 (C.D. Cal. Jan. 30, 2014) (finding that counsel had "ample information and opportunity to assess the strengths and weaknesses of their claims" despite "discovery [being] limited because the parties decided to pursue settlement discussions early on.").

Both before and after the action was filed, Plaintiffs' Counsel thoroughly investigated and researched these claims to evaluate FCA's representations and omissions concerning the alleged Stalling Defect in the case. Among other tasks, Plaintiffs' Counsel fielded hundreds of inquiries from putative class members and investigated many of their reported claims. They consulted and retained both liability and damages experts to assist them in identifying the exact defect, devise a fix, and quantify the damages suffered by the class for the purpose of filing a motion for class certification. (Zohdy Decl. ¶ 14.) Plaintiffs' Counsel also researched publicly available materials and information provided by the National Highway Traffic Safety Administration ("NHTSA") concerning consumer complaints about the alleged Stalling Defect. Plaintiff's Counsel also reviewed and researched consumer complaints and discussions of problems relating to the alleged defect in articles and forums online discussing the alleged defect. (Zohdy Decl. ¶ 15.) Finally, they conducted research into the various causes of actions and other similar automotive actions. (*Id.*)

In response to Plaintiffs' written discovery efforts, Plaintiffs received over **one hundred thousand pages of documents**, including spreadsheets with thousands of rows of data, owners' manuals, maintenance and warranty manuals, internal FCA investigation reports, TSBs, field reports, warranty data, etc. (Zohdy Decl. ¶ 16.) All of this information was thoroughly and meticulously reviewed by Class Counsel.

In addition to written discovery, Plaintiffs took the depositions of FCA corporate representatives Jim Bielenda (Manager of Product Investigations) and Vasil Germanski (Manager of the Systemic Quality Team), as well as FCA employees Douglas Swider, Alexander Sherman, Julian John, and James Kohut. (Zohdy Decl. ¶ 17.)

Additionally, in reviewing the above discovery, evidence, and testimony, Plaintiffs

identified information that was instrumental to the case and to Plaintiffs' efforts during mediation. Finally, over the course of litigation, Plaintiffs responded to hundreds of Class Members who contacted Plaintiffs' Counsel to report problems with their Class Vehicles and seek relief. Plaintiffs' Counsel also conducted detailed interviews with Class Members regarding their pre-purchase research, their purchasing decisions, and their repair histories, and developed a plan for litigation and settlement based in part on Class Members' reported experiences with their Class Vehicles and with FCA dealers. (Zohdy Decl. ¶ 18.)

5. The Views of Experienced Counsel Should Be Accorded Substantial Weight

The fact that sophisticated parties with experienced counsel have agreed to settle their dispute should be given considerable weight by courts, since "parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in the litigation." *In re Pac. Enters. Sec. Litig*., 47 F.3d 373, 378 (9th Cir. 1995). Here, the Parties achieved a settlement after a thorough review of relevant documents and testimony, as well as a rigorous analysis of the Parties' claims and defenses. The expectations of all Parties are embodied by the Settlement, which, as set forth above, is non-collusive, being the product of arms'-length negotiations and finalized with the assistance of an experienced mediator. The Parties were represented by experienced class action counsel possessing significant experience in automotive defect and class action matters. *See, e.g.*, Zohdy Decl. ¶¶ 19-25, Ex. 2) Likewise, FCA's counsel, Klein Thomas & Lee PLLC, is a renowned class action defense firm. The Parties' recommendation to approve this Settlement should therefore "be given great weight." *Eisen v. Porsche*, 2014 WL 439006, at *5 (crediting the experience and views of counsel in approving a settlement resolving automotive defect allegations).

6. The Reaction of Class Members to the Proposed Settlement[12]

As discussed above, no objections have been lodged, and only 194 individuals have

[12] There is no governmental participant in this case, and so this factor is neutral.

opted out. (Talavera Decl. ¶¶ 12-13.) This small percentage of exclusions and objections demonstrate that Class Members have reacted favorably to the Settlement, supporting final approval. *See, e.g.*, *Eisen*, 2014 WL 439006, at *5 ("Although 235,152 class notices were sent, 243 class members have asked to be excluded …."); *Milligan v. Toyota Motor Sales, U.S.A.*, No. 09-05418-RS, 2012 U.S. Dist. LEXIS 189782, at *25 (N.D. Cal. Jan. 6, 2012) (finding favorable reaction where 364 individuals opted out [0.06%] following a mailing of 613,960 notices); *Browne*, 2010 U.S. Dist. LEXIS 14575, at *49 (finding favorable class reaction where, following a mailing of 740,000 class notices, 480 or 0.65% opted out).

C. The Settlement Satisfies the *Bluetooth* Factors

Finally, pre-certification settlements require further inquiry for "more subtle signs" of potential collusion between class counsel and defendant. *In re Bluetooth*, 654 F.3d at 946-47. But in applying "all of these factors, considerations, 'subtle signs,' and red flags, the underlying question remains this: Is the settlement fair?" *In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prod. Liab. Litig.*, 895 F.3d 597, 611 (9th Cir. 2018). These factors "in the end are just guideposts." *Id.*

As discussed, this settlement does not bear the hallmarks of collusion, such as when class counsel "receive a disproportionate distribution of the settlement" or when "class receives no monetary distribution but class counsel are amply rewarded." *Bluetooth*, 654 F.3d at 947. Plaintiff's Counsel do not seek a disproportionate share of fees and there is no "reverter" of unclaimed funds to FCA as the Settlement does not provide for the establishment of a common fund. Rather, the settlement was negotiated at arm's-length after multiple mediations before the honorable Magistrate Judge Goddard. The Settlement is not collusive under the first *Bluetooth* factor.

The *Hyundai Fuel Economy* case is instructive. In *Hyundai*, the settlement delivered roughly $100 million in benefits (much of which is also attributable to a voluntary program created by automakers in response to an EPA investigation), had a clear sailing provision for several but not all of the firms serving as class counsel, and no reverter. On those facts, the Ninth Circuit en banc panel found that it bore "none of the typical signs of collusion."

Hyundai, 926 F.3d at 569. The en banc panel distinguished its facts from *Bluetooth*, in which "the settlement paid the class zero dollars," a clear-sailing provision where defendants agreed not to contest "an award of attorneys' fees totaling eight times the *cy pres* award," and a kicker clause on fees. *Id*.

Even though the Parties agreed to settle Plaintiffs' claims for attorneys' fees and litigation costs, the en banc court in *Hyundai* held that such a "clear sailing provision" was not problematic, since "[t]he settling parties agreed on the amount of class compensation" well before negotiating, "'over multiple mediation sessions with a respected and experience mediator,' the 'reasonable attorney's fees provided in the settlement agreement.'" *Hyundai*, 926 F.3d at 569-70. The en banc panel emphasized that the Ninth Circuit had "previously approved such an approach," as it "put a good deal of stock in the product of an arms-length, non-collusive, negotiated resolution." *Id*. (citation omitted). That fees were separately awarded under the lodestar method, without the need for a multiplier, also supports a finding that the settlement was not collusive. *Id*. at 571-72.

Under *Hyundai*, therefore, a "clear-sailing" provision is not inherently problematic, so long as the fees do not dwarf the class benefits and the fees were negotiated separately, with the assistance of an experienced mediator. This is in accord with pre-*Hyundai* cases. *See, e.g In Re MyFord Touch Consumer Litigation*, 2019 WL 1411510, *7 (N.D. Cal. March 28, 2019) (approving settlement with a "clear-sailing provision" partly because the fee agreement were reached under the auspices of an experienced mediator); *Schuchardt v. Law Office of Rory W. Clark*, 314 F.R.D. 673, 687 (N.D. Cal. 2016) (clear-sailing provision does not signal collusion when the agreed-upon fees are reasonable and the relief negotiated for the class is favorable). Indeed, the U.S. Supreme Court had instructed parties to "settle the amount of a fee" to avoid uncertainty, risk, and the potential of a resource-draining "second major litigation" on fees. *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983).

Thus, even though the Settlement contains a clear-sailing provision, it is not problematic and does not support collusiveness under the second *Bluetooth* factor. Finally, the third *Bluetooth* factor is also absent, as there is no reversion to FCA.

Quite simply, no badges of collusion exist. The Court, after applying the *Bluetooth* factors, should find that the Settlement is not the product of collusion and is fair, reasonable and adequate, meriting final approval.

V. CONCLUSION

Based on the foregoing, the proposed Settlement is fair, adequate, and reasonable, and satisfies the standard for final approval. Accordingly, Plaintiffs move the Court to enter the Final Order and Judgment granting final approval of the Settlement Agreement and grant such other and additional relief as the Court may deem appropriate.

Dated: January 11, 2023

Respectfully submitted,

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