

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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JOSHUA RIAUBIA, individually and on behalf of all others similarly situated,	:	
	:	
Plaintiff,	:	CASE NO.: 2:16-cv-05150-CDJ
	:	
v.	:	
	:	
HYUNDAI MOTOR AMERICA,	:	
	:	
Defendant.	:	
	:	
	::	

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**PLAINTIFF’S MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

Plaintiff, Joshua Riaubia, moves the Court, pursuant to Federal Rules of Civil Procedure 23(e) for Final Approval of Class Action Settlement. In support of the Motion, Plaintiff incorporates herein the accompanying Memorandum of Law in Support of Unopposed Motion for Final Approval of Class Action Settlement.

WHEREFORE, Plaintiff respectfully requests that the Court enter the proposed Order granting Plaintiff’s Motion for Final Approval of Class Action Settlement.

Dated: November 19, 2019

Respectfully Submitted:

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**CERTIFICATE OF COUNSEL**

On November 15, 2019, I spoke with Christopher Dalton, Esquire, attorney for Defendant, and he gave his concurrence to Plaintiff's filing of this Motion. He has no objection to Plaintiff filing a brief in this matter.

*/s/ Natalie Finkelman Bennett*

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HYUNDAI MOTOR AMERICA,	:	
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Defendant.	:	
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	:	
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**MEMORANDUM OF LAW IN SUPPORT OF UNOPPOSED MOTION FOR FINAL  
APPROVAL OF CLASS ACTION SETTLEMENT**

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## I. INTRODUCTION

On August 6, 2019, this Court entered an Order Preliminarily Approving Class Action Settlement (“Preliminary Approval Order”) between Plaintiff and Class Representative, Joshua Riaubia (“Plaintiff” or “Class Representative”), and Defendant, Hyundai Motor America (“HMA” or “Defendant”) (together with Plaintiff, the “Parties”), which preliminarily approved the Class Action Settlement Agreement and Release<sup>1</sup> (“Agreement”) and conditionally certified the following class for settlement purposes:

All persons or entities in the fifty United States and the District of Columbia who currently own or lease, or previously owned or leased, a model year 2015 to 2017 U.S. specification Hyundai Sonata vehicle equipped with the Smart Trunk feature (the “Settlement Class” or “Class”).<sup>2</sup>

In granting preliminary approval, the Court determined that the Settlement – a hard-fought compromise that was the culmination of adversarial, arm’s-length negotiations – was within the range of reasonableness. (ECF 48, ¶ 2.)

In light of the significant benefits made available by the Settlement and in order to avoid the burden, expense, inconvenience, and uncertainty of continued litigation, Plaintiff now asks the Court to grant final approval to the Settlement.<sup>3</sup> It is in the best interest of Plaintiff and the

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<sup>1</sup> The Settlement details are set forth in detail in Plaintiffs’ Unopposed Motion for Preliminary Approval of the Class Settlement (ECF 42-1), the Declaration of Natalie Finkelman Bennett in support thereof (ECF 42-2) and Exhibit 1 thereto (ECF 42-3) (Settlement Agreement).

<sup>2</sup> Excluded from the Settlement Class are Defendant, as well as Defendant’s affiliates, employees, suppliers, officers, and directors, attorneys, agents, insurers, and dealers; third-party providers of extended warranty/service contracts; independent repair/service facilities; the attorneys representing Defendant in this case; the judges and mediator to whom this case is assigned and their immediate family members; all persons and entities who request exclusion from (opt-out of) the Settlement; all persons and entities that previously released any claims encompassed in this Settlement or whose vehicle was permanently transported outside the United States; and all persons or entities claiming personal injury or property damage other than to a Class Vehicle or claiming subrogation of such claims.

<sup>3</sup> On November 6, 2019, the Parties consented to the jurisdiction of Magistrate Judge Lynne A. Sitarski for purposes of ruling on the present Motion for Final Approval of Class Action

Class to resolve and settle this litigation. Notably, there have been no opt-outs and only a single objection to the Settlement was mailed to counsel for the Parties.<sup>4</sup> This is a clear affirmation of the quality of the Settlement. Accordingly, this Court should grant final approval to the Settlement and direct that its benefits be provided to the Class.

## **II. BACKGROUND**

The Court is familiar with the facts giving rise to Plaintiff's claims and Defendant's defenses. Those facts are referenced again below only to the extent that they are pertinent to the issues raised in this Memorandum.<sup>5</sup> The Settlement was reached after motion practice, the exchange of targeted, meaningful data, documents, and information pertaining to Plaintiff's claims, as well as extensive negotiations between experienced and informed counsel (with the assistance of a respected mediator), and easily meets the standard for final approval. Plaintiff and Class Counsel<sup>6</sup> – based upon their evaluation of the facts, applicable law, and their recognition of the substantial risk and expense of continued litigation – believe this Settlement to be fair, adequate, and reasonable and submit that it is in the best interest of the Class.

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Settlement (ECF 54), and on November 14, 2019, Judge Jones signed the Reference Order (ECF 56).

<sup>4</sup> The claims deadline is January 3, 2020. On November 4, 2019, one objection was received by the Claims Administrator from Victoria L. Childers ("Childers"); however, as demonstrated below, the objection is without merit and does not provide a basis to deny approval of the Settlement.

<sup>5</sup> Plaintiff incorporates by reference the detailed facts set forth in his Memorandum of Law in Support of Class Counsel's Motion for Award of Attorneys' Fees, Reimbursement of Expenses, and Service Awards ("Fee Brief") (ECF 53-1), as well as in the accompanying Declaration of James C. Shah ("Shah Decl.") (ECF 53-2).

<sup>6</sup> "Class Counsel" consist of the law firms Shepherd Finkelman Miller & Shah, LLP, Axler Goldich LLC, and Robert P. Cocco, P.C.

**A. Nature of the Case**

Plaintiff's claims center on the allegations that the Smart Trunk feature on the 2015 to 2017 Sonata vehicles ("Vehicle(s)" or "Class Vehicle(s)") was defective. The Smart Trunk, first made available on model year 2015 Vehicles, is a proximity-activated trunk lid that, due to the alleged common defect, fails to operate as advertised. HMA designed the Smart Trunk to automatically open when standing directly behind the Vehicle with a proximity key in one's hand, pocket, or purse. (Shah Decl., ¶ 14.) Plaintiff alleges that the representations made by HMA's nationwide marketing campaign were inaccurate and misleading because the Vehicles share a common defect in that the Smart Trunk merely unlatches, failing to open more than a crack, which requires consumers to manually lift the trunk lid, thereby failing to provide the "hands-free" convenience the Smart Trunk is advertised to deliver. (*Id.*)

The Vehicles come with a five-year, 60,000-mile New Vehicle Limited Warranty, which covers the Smart Trunk defect at issue here, but Plaintiff alleges that HMA has failed to provide him and Class members with conforming, non-defective Smart Trunks, notwithstanding attempts at repair. (*Id.* ¶ 15.)

On September 28, 2016, Plaintiff filed this action against Defendant in the United States District Court for the Eastern District of Pennsylvania. (ECF 1.) The Complaint asserts that the alleged defect cost owners and lessees for repairs and that owners and lessees did not get the non-defective Vehicle for which they paid. (*Id.* ¶ 16.) The Complaint states claims for violations of California consumer protection statutes, violations of the federal Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, *et seq.*, and breach of express and implied warranties. (*Id.* ¶ 13.) Before filing suit, Plaintiff's counsel reviewed dozens of complaints from Vehicle owners and lessees and spoke with owners and lessees about the Smart Trunk problems. No other firms

or entities brought similar claims. In addition, Class Counsel researched the various laws potentially applicable to the claims, including California and Pennsylvania law. (Shah Decl., ¶¶ 11, 17-18.)

Defendant vigorously denies the Class Vehicles are defective or that it violated any laws, and disputes all of Plaintiff's material allegations and, as a result, this action was vigorously litigated. On December 23, 2016, Defendant filed a Motion to Dismiss. (ECF 10.) In January 2017, the Parties met and discussed a Proposed Joint Discovery Plan. On February 20, 2017, Plaintiff served HMA with his Initial Disclosures and, on March 20, 2017, HMA served its Initial Disclosures on Plaintiff. The Parties negotiated the terms of a protocol for the inspection of Plaintiff's Vehicle, a Protective Order and an ESI Protocol. On May 16, 2017, Plaintiff filed a Report of the Parties' Rule 26(f) Conference and, on April 21, 2017, Plaintiff propounded discovery requests on HMA, which were responded to on June 20, 2017. On August 22, 2017, this Court entered its Opinion and Order denying, in full, Defendant's Motion to Dismiss. *Riaubia v. Hyundai Motor Am.*, No. CV 16-5150, 2017 WL 3602520 (E.D. Pa. Aug. 22, 2017) (ECF 22). HMA then propounded discovery requests on Plaintiff and filed its Answer to the Complaint on October 6, 2017. (ECF 29.) On October 12, 2017, this Court entered an Order scheduling a Rule 16 Conference for November 13, 2017. (Shah Decl., ¶¶ 21-25.)

Thereafter, the Parties agreed to engage in mediation before David Geronemus (the "Mediator") of JAMS in New York City. In connection with, and in preparation for mediation, Plaintiff's Counsel reviewed more than 20,000 pages of documents produced by HMA, including: engineering testing, engineering data and Vehicle and component specifications; warranty complaints and repairs; information as to the difference between the Sonata Smart Trunk components and the components in Hyundai's other models; and Quality Information

Reports regarding the Smart Trunk. (ECF 42-1.) In addition, Plaintiff's Vehicle was inspected by Defendant and Plaintiff's expert reviewed HMA's materials and the Vehicle. (ECF 42-1, Decl., ¶¶ 14, 27.) The Parties had an initial mediation session on January 9, 2018, followed by several meet and confer sessions to exchange further information, and a second mediation session on May 15, 2018. During the months that followed, the Parties continued to negotiate the final details of the benefits to the proposed Class, as well as mutual releases and the reimbursement of attorneys' fees and costs and a service award, and then finalized the supporting documents, including the Class Notice and Claim Form. At the same time, the Parties engaged in confirmatory discovery, including receiving information from engineers at HMA's parent, Hyundai Motor Company, and Plaintiff received additional information about countermeasures and failure rates, which is reflected in Hyundai Technical Service Bulletin Number 19-BD-222, Trunk Lid Torsion Bar Inspection and Repair ("TSB"). Both during and after that time frame, the Parties also participated in numerous telephonic negotiations with the Mediator. Ultimately, the Parties' prolonged efforts resulted in the Settlement, the details of which are set forth below. (Shah Decl., ¶¶ 26-31.)

**B. The Settlement**

The Agreement provides for the release of Settlement Class Members' claims in exchange for a cash payment in the form of a debit card or dealer credit, warranty extension, replacement of current torsion bars on the Class Vehicles (as well as a second replacement if necessary), and reimbursement of any previous repair costs incurred by Class Members in an attempt to repair the Vehicle to allow the Smart Trunk to open to expectation.

Under the Settlement, all Class Members who have a documented complaint, repair, or warranty claim pertaining to the Smart Trunk not opening to expectation that was made to a

Hyundai dealer, to HMA directly, or made on a publicly available complaint forum prior to the Class Notice, may submit one claim for payment of \$50 cash in the form of a debit card or a \$100 HMA dealer credit, regardless of whether the Class Member has any out-of-pocket loss. (Shah Decl., ¶ 9a.)

In addition to providing substantial monetary relief based on documented complaints, the Settlement also provides Class Members who believe that the Smart Trunk is not opening 7.5 inches or more with relief in the form of free repair and a dealer credit. Such Class Members may make an appointment with an authorized Hyundai Dealer for an inspection of eligible Vehicle(s). If an authorized Hyundai Dealer determines that any Smart Trunk on a Class Vehicle opens less than 7.5 inches, replacement of the torsion bars will then be performed by the authorized Hyundai Dealer. All costs associated with the repair will be covered and the inspection and any necessary repair or replacement will be provided to the Class Member free of charge. (Shah Decl., ¶ 9b.) After the installation of the replacement torsion bars, the Class member is also entitled to submit one claim for payment of a \$70 HMA dealer credit to be used at another time.

The Settlement further provides additional relief to Class Members whose torsion bars *still* fail to open 7.5 inches or more after replacement torsion bars are installed. If the torsion bars still fail to open 7.5 inches after the second free installation of replacement torsion bars, the Class Member may submit one additional claim for payment of a \$100 debit card payment or a \$200 HMA dealer credit. The inspection and any necessary repair or replacement of the Smart Trunk torsion bars is available for Class Vehicles within six and one-half years of the Vehicle entering service or less than 78,000 miles, whichever comes first. (*Id.*)



In addition to the repair and monetary relief set forth above, the Settlement also provides that any Vehicle(s) under warranty will receive a warranty extension for the Smart Trunk torsion bars from five years or 60,000 miles to six and one-half years or 78,000 miles. Vehicles that are outside the warranty as of the date of the Final Approval Order will receive a warranty extension specific to the Smart Trunk Torsion Bars for a period of eighteen (18) months or 18,000 miles. The warranty extension is subject to the terms and conditions of the original warranty, as are the replacement parts, but is transferrable in connection with any transfer of ownership of the Class Vehicle. (*Id.*, ¶ 9c.)

In addition to the warranty extension and service campaign, any Class Member who has incurred any out-of-pocket expense for repair will be entitled to submit one claim for reimbursement of those repair expenses if the Class Member submits proof of payment of repairs involving the Smart Truck. Further, HMA will act in good faith and ensure that its advertising conforms to the design expectations for the Smart Trunk feature and no longer depicts the trunks fully opening. (*Id.*, ¶¶ 9d-9e.) Finally, the Settlement contains a dispute resolution process if any Class member wishes to contest the reimbursement decision, and Class Members will have the right to participate in a Better Business Bureau alternative dispute resolution process, for which all fees and expenses (other than attorneys' fees) will be borne by HMA. (*Id.*, ¶ 9f.)

Class Counsel has also requested an award of Attorneys' Fees and Expenses of \$828,876.00, which request is the subject of the motion filed on November 4, 2019. (ECF 53.) Class Counsel also seeks a service award of \$5,000 for Plaintiff. (*Id.*) As set forth in detail in the Fee Brief, Class Counsel's request is reasonable based on the benefits achieved for the Class and applicable legal principles. Like the Settlement itself, the Parties negotiated the fee amount

under the auspices and with the assistance of the Mediator and only after all other terms of the Settlement were agreed upon.

Plaintiff and Class Counsel believe that the Settlement Agreement is fair, reasonable, adequate, and in the best interest of the Class in light of all known facts and circumstances, including the significant risks and delays of litigation that are presented by all of the defenses that Defendant may assert, and any potential appellate issues that may arise. Class Counsel has fully advised the Plaintiff and Class Representative of the terms of the Agreement and represent that Plaintiff approves of and consents to the Settlement.

**C. Preliminary Approval and Class Notice**

On August 6, 2019, the Court granted preliminary approval to the proposed Settlement. (ECF 48.) The Court approved the Notice Plan, including the two proposed forms of notice, (ECF No. 42-3, Ex. A (Claims Form), Ex. B (Notice Form)), and found that they were reasonable, adequate, and met the requirements of Rule 23(c) and (e). The Court appointed Hyundai Motor America's Consumer Affairs Division as the Settlement Administrator, with the fees and costs of the Settlement Administrator to be borne by Defendant, as set forth in the Settlement Agreement. The Settlement Administrator implemented the Notice Plan, in accordance with the Implementation Schedule of Class Action Settlement (ECF 50), and disseminated the Notice to Settlement Class Members in accordance with the plan for Notice, which this Court found to be reasonable, adequate, and consistent with the requirements of due process. (ECF 48.) The Settlement Administrator also created a Settlement website, [www.sonatasmarttrunksettlement.com/](http://www.sonatasmarttrunksettlement.com/), which contains electronic versions of the Claim Form that can be submitted online (but is not required to be submitted online), as well as important Court documents and answers to frequently asked questions. The Declaration of Daniel Lee

Regarding Class Notice (“HMA Decl.”), which will be filed today by HMA, discusses in detail the implementation of the Notice Plan and dissemination of the Class Notice.

### **III. ARGUMENT**

#### **A. The Court Should Finally Approve the Settlement**

Plaintiff moves under Rule 23 for final approval of the Settlement and certification of a class for settlement purposes only. As discussed in detail below, final approval of a class action settlement involves two fundamental inquiries. First, the Court must determine whether a class can be certified under Rule 23(a) and at least one prong of Rule 23(b). *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997). The second inquiry is whether the proposed settlement appears “fair, reasonable and adequate.” Fed. R. Civ. P. 23(e); *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 534 (3d Cir. 2004). In determining whether to approve a settlement, the Third Circuit has noted that “there is an overriding public interest in settling class action litigation, and it should therefore be encouraged.” *Id.* at 535; *see also In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 784 (3d Cir. 1995) (“The law favors settlement, particularly in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation.”); *In re Sch. Asbestos Litig.*, 921 F.2d 1330, 1333 (3d Cir. 1990) (noting Third Circuit’s policy of “encouraging settlement of complex litigation that otherwise could linger for years”); *In re Cmty. Bank of N. Va.* 418 F.3d 277, 299 (3d Cir. 2005) (“all Federal Circuits recognize the utility of ... settlement classes’ as a means to facilitate the settlement of complex nationwide class actions”).

Approval of a proposed class action settlement is a matter within the sound discretion of the court. *Lazy Oil Co. v. Witco Corp.*, 166 F.3d 581, 587 (3d Cir. 1999); *see also Walsh v. Great Atl. & Pac. Tea Co.*, 726 F.2d 956 at 965 (3d Cir. 1983); *Ace Heating & Plumbing Co. v. Crane Co.*, 453 F.2d 30, 34 (3d Cir. 1971). While this Court has discretion in determining

whether to approve the Settlement, it should be hesitant to substitute its judgment for that of the Parties who negotiated the Settlement. *See Fisher Bros. v. Phelps Dodge Indus., Inc.*, 604 F. Supp. 446, 452 (E.D. Pa. 1985). “Courts judge the fairness of a proposed compromise by weighing the plaintiff’s likelihood of success on the merits against the amount and form of the relief offered in the settlement. . . . They do not decide the merits of the case or resolve unsettled legal questions.” *Carson v. Am. Brands, Inc.*, 450 U.S. 79, 88 n.14 (1981); *Walsh v. Great Atl. & Pac. Tea Co.*, 96 F.R.D. 632, 642-43 (D.N.J.), *aff’d*, 726 F.2d 956 (3d Cir. 1983); *see also In re Comcast Corp. Set-Top Cable Television Box Antitrust Litig.* (“*Comcast Set-Top Box*”), No. CV 09-MD-2034, 2019 WL 4645331, at \*10 (E.D. Pa. Sept. 24, 2019).

There is a strong judicial policy in favor of resolution of litigation before trial, particularly in “class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation.” *In re CertainTeed Corp. Roofing Shingle Prods. Liab. Litig.*, 269 F.R.D. 468, 484 (E.D. Pa. 2010) (quoting *Ehrheart v. Verizon Wireless*, 609 F.3d 590, 595 (3d Cir. 2010)); *see also GM Trucks*, 55 F.3d 768 (“The law favors settlement, particularly in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation.”). The *Ehrheart* court held:

This presumption is especially strong in “class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation.” *GMC Truck*, 55 F.3d at 784. The strong judicial policy in favor of class action settlement contemplates a circumscribed role for the district courts in settlement review and approval proceedings. . . . Settlement agreements are to be encouraged because they promote the amicable resolution of disputes and lighten the increasing load of litigation faced by the federal courts [and] the parties may also gain significantly from avoiding the costs and risks of a lengthy and complex trial.

*Ehrheart*, 609 F.3d at 594-95. *See also Bell Atl. Corp. v. Bolger*, 2 F.3d 1304, 1314 n.16 (3d Cir. 1993); *Weiss v. Mercedes-Benz of N. Am.*, 899 F. Supp. 1297, 1300-01 (D.N.J. 1995) (“[W]hen

parties negotiate a settlement they have far greater control of their destiny than when a matter is submitted to a jury. Moreover, the time and expense that precedes the taking of such a risk can be staggering. This is especially true in complex commercial litigation.”).

Settlements enjoy a presumption that they are fair and reasonable when they are the product of arm’s-length negotiations conducted by experienced counsel who are fully familiar with all aspects of class action litigation. *See, e.g., GMC Trucks*, 55 F.3d at 785; *Sullivan v. DB Invs.*, 667 F.3d 273, 320 (3d Cir. 2011); *Gates v. Rohm & Haas Co.*, 248 F.R.D. 434, 439, 444 (E.D. Pa. 2008) (stressing the importance of arm’s-length negotiations and highlighting the fact that the negotiations included “two full days of mediation”); *Bredbenner v. Liberty Travel, Inc.*, Civ. Nos. 09-905 (MF), 09-1248 (MF), 09-4587 (MF), 2011 WL 1344745, at \*10 (D.N.J. Apr. 8, 2011) (“A class settlement is entitled to an ‘initial presumption of fairness’ when ‘(1) the negotiations occurred at arm’s length; (2) there was sufficient discovery; (3) the proponents of the settlement are experienced in similar litigation; and (4) only a small fraction of the class objected.’”) (quoting *GM Trucks*, 55 F.3d at 785); *see also* MANUAL FOR COMPLEX LITIGATION, FOURTH § 21.641 (2004). Thus, although a court must evaluate a proposed settlement, a court may rely on the judgment of experienced counsel in so doing.

A fair, reasonable, and adequate settlement is not necessarily an “ideal settlement.” A settlement is, after all, “a compromise, a yielding of the highest hopes in exchange for certainty and resolution.” *In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 962 F. Supp. 450, 534 (D.N.J. 1997), *aff’d*, 148 F.3d 283 (3d Cir. 1998) (citations omitted); *see also Comcast Set-Top Box*, 2019 WL 4645331, at \*10; *In re Am. Family Enters.*, 256 B.R. 377, 421 (D.N.J. 2000) (“Significant weight should be attributed ‘to the belief of experienced counsel that the settlement is in the best interest of the class.’”); *In re Cendant Corp. Sec. Litig.*, 109 F. Supp. 2d 235

(D.N.J. 2000), *aff'd* 264 F.3d 201 (3d Cir. 2001). In light of this public policy in favor of settlement generally and because this Settlement easily meets the Rule 23 requirements, the Settlement Class should be certified and the Settlement should be approved.

**B. Class Certification Should be Granted For Settlement Purposes**

Class certification under Rule 23 has two primary components. First, the party seeking class certification must establish the four requirements of Rule 23(a): “(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’).” *Warfarin Sodium II*, 391 F.3d at 527 (quoting F.R.Civ.P. 23(a)). Second, the Court must find that the class fits within one of the three categories of class actions set forth in Rule 23(b). *Cnty. Bank*, 418 F.3d at 302. In the present case, Plaintiff seeks certification under Rule 23(b)(3), “the customary vehicle for damage actions.” *Id.* Rule 23(b)(3) requires that common questions “predominate over any questions affecting only individual members” and that class resolution be “superior to other available methods for the fair and efficient adjudication of the controversy.” *Amchem*, 521 U.S. at 592-93.

In making the certification analysis, the district court may take the proposed settlement into consideration. *In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 148 F.3d 283, 308 (3d Cir. 1998); *Cnty. Bank*, 418 F.3d at 300. In this respect, there is one material difference between the certification of litigation classes and settlement classes: “Whether trial would present intractable management problems . . . is not a consideration when settlement-only certification is requested, for the proposal is that there be no trial.” *Amchem*, 521 U.S. at 620; *Cnty. Bank*, 418 F.3d at 309. “The difference is key.” *Warfarin Sodium II*, 391 F.3d at 529 (“when dealing with

variations in state laws, the same concerns with regards to case manageability that arise with litigation classes are not present with settlement classes, and thus those variations are irrelevant to certification of a settlement class.”).

As discussed below, all the Rule 23 requirements are met. The Court was correct in preliminarily certifying the Class for settlement purposes pursuant to Rules 23(a) and (b)(3). *See Riaubia v. Hyundai Motor Am.*, No. CV 16-5150, 2019 WL 3714497, at \*7 (E.D. Pa. Aug. 7, 2019). Nothing has changed to alter the propriety of the Court’s certification, and, therefore, the Class should now be finally certified.

**C. The Rule 23(a) Factors Are Satisfied**

In light of the proposed Settlement, Plaintiff and the Class meet the requirements of Rule 23(a), which are commonly referred to as numerosity, commonality, typicality, and adequacy of representation. *See Warfarin Sodium II*, 391 F.3d at 527.

**1. Numerosity**

“To meet the numerosity requirement, class representatives must demonstrate only that ‘common sense’ suggests that it would be difficult or inconvenient to join all class members.” *Prudential I*, 962 F. Supp. at 510. Here, Plaintiff easily establishes the numerosity requirement. Rule 23(a)(1) requires that the class be so numerous that joinder of all class members is “impracticable.” *Liberty Lincoln Mercury, Inc. v. Ford Mktg. Corp.*, 149 F.R.D. 65, 73 (D.N.J. 1993). For purposes of Rule 23(a)(1), “impracticable” does not mean impossible, “only that common sense suggests that it would be difficult or inconvenient to join all class members.” *See Prudential I*, 962 F. Supp. at 510; *see also Stewart v. Abraham*, 275 F.3d 220, 226-27 (3d Cir.

2001) (numerosity requirement satisfied “if the named plaintiff demonstrates that the potential number of plaintiffs exceeds 40”).

Here, over 300,000 Notices were mailed directly to Class Members. (Shah Decl. ¶ 37.) Given the number and geographic distribution of the Class Members, joinder of all Class Members would be impracticable, and the proposed Settlement Class easily satisfies Rule 23’s numerosity requirement. *Liberty*, 149 F.R.D. at 73.

## **2. Commonality**

“Rule 23(a)(2)’s commonality element requires that the proposed class members share at least one question of fact or law in common with each other.” *Warfarin Sodium II*, 391 F.3d at 527-28. “Because the [commonality] requirement may be satisfied by a single common issue, it is easily met.” *Baby Neal v. Casey*, 43 F.3d 48, 56 (3d Cir. 1994). Here, the Settlement Class Members share many common issues of law and fact.

In the context of consumer and warranty-based class actions, a class asserting claims based on a common course of conduct and common warranty satisfies the commonality requirement. *Prudential I*, 962 F. Supp. at 511-14. Here, several common questions of fact and law exist that pertain to the central issue in this matter – whether the Class Vehicles are defective and breach Defendant’s express warranty, whether HMA’s conduct violated consumer fraud statutes, and whether HMA’s conduct caused Plaintiff and Class Members to be damaged. Accordingly, all Class Members share the same causes of action and suffered the same or similar harm from the same conduct, and all are entitled to pursue claims for damages. Rule 23(a)(2)’s requirement of a common question of law or fact is satisfied.

## **3. Typicality**

In considering typicality under Rule 23(a)(3), the court must determine whether “the named plaintiffs[’] individual circumstances are markedly different or ... the legal theory upon



which the claims are based differs from that upon which the claims of other class members will perforce be based.” *Johnston v. HBO Film Mgmt., Inc.*, 265 F.3d 178, 184 (3d Cir. 2001).

Typicality does not require that all class members share identical claims. *Id.* So long as “the claims of the named plaintiffs and putative class members involve the same conduct by the defendant, typicality is usually established regardless of factual differences.” *Newton v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 259 F.3d 154, 183-84 (3d Cir. 2001); *Barnes v. Am. Tobacco, Inc.*, 161 F.3d 127, 141 (3d Cir. 1998).

The typicality requirement is permissive: representative claims are “typical” if they are reasonably co-extensive with those of absent class members; they need not be substantially identical. *See Newton*, 259 F.3d at 183-84; *Barnes*, 161 F.3d at 141. Courts have held that if the claims of the named plaintiffs and putative class members involve the same conduct by the defendant, typicality is established regardless of factual differences. *Danvers Motor Co., Inc. v. Ford Motor Co.*, 543 F.3d 141, 150 (3d Cir. 2008) (“factual differences will not defeat typicality if named plaintiffs’ claims arise from same event or course of conduct that gives rise to claims of other class members and are based on same legal theory”); *Eisenberg v. Gagnon*, 766 F.2d 770, 786 (3d Cir. 1985) (typicality not defeated by investments in different limited partnerships because claims were based on same alleged omissions and misrepresentations).

Here, Plaintiff’s claims are typical of all other Class Members in that he experienced a common defect and was subject to the same warranties as all other Class Members. Plaintiff asserts the same legal claims on behalf of himself and the proposed Class; namely, that he sustained damages as a result of Defendant’s common course of conduct and is not subject to any unique defenses. The typicality requirement is satisfied.

**4. Adequacy**

The adequacy requirement has two components intended to ensure that the absent Class Members' interests are fully pursued: (a) the named plaintiffs' interests must be sufficiently aligned with the interests of the absent Class Members, and (b) the plaintiffs' counsel must be qualified to represent the class. *GM Trucks*, 55 F.3d at 800. Here, all of the requirements for adequacy are satisfied.

As for the first component, the court must determine whether "the representatives' interests conflict with those of the class." *Johnston*, 265 F.3d at 185. There is no conflict between the proposed Class Representative and the Class, because, like all Members of the Class, Plaintiff seeks compensation for the same defective Smart Trunks in the Vehicles. Plaintiff has no interests antagonistic to or in conflict with the Class he seeks to represent and his alleged injuries are identical to those suffered by Settlement Class Members. *See Amchem*, 521 U.S. at 625-27 (courts look at whether the representatives' interests are in any way antagonistic to or in conflict with those of the class members).

With regard to the adequacy of counsel, the Class is represented by Shepherd Finkelman Miller & Shah, LLP, Axler Goldich LLC, and Robert P. Cocco, P.C., law firms with national reputations in the class action field, as demonstrated by the firm resumes submitted in connection with the Motion for Preliminary Approval. (*See* ECF No. 42-1, Decl. ¶ 13, Exhibits 2-4.) Class Counsel possess adequate experience, as they are active practitioners who are highly experienced in class action and consumer fraud litigation. Further, Class Counsel vigorously prosecuted the action and acted at arms'-length from the Defendant, and, as a result of their efforts, all Class Members can receive benefits through the Settlement. (*See* Shah Decl. ¶¶ 5-40.) This Court previously reviewed and considered, and is thus acquainted with, the relevant qualifications and

experience of these law firms, and preliminarily approved these firms as Class Counsel. (*See* ECF 48, ¶ 3.) There is no reason to deviate from that holding and, accordingly, both prongs of the adequacy inquiry are satisfied.

**D. The Rule 23(b)(3) Factors Are Satisfied**

In addition to meeting the requirements of Rule 23(a), the Class also must satisfy Rule 23(b)(3). The rule is satisfied here because (i) questions of law or fact common to the Class Members predominate over any questions affecting only individual Class Members, especially in light of the proposed Settlement, which eliminates any individual issues, and (ii) a class action is superior to all other available methods for the fair and efficient adjudication of this controversy.

**1. Predominance**

As the Supreme Court explained in *Amchem*, “[p]redominance is a test readily met in certain cases alleging consumer fraud.” 521 U.S. at 625. “This is even more true in a settlement-only class action, where the court certifying the class need not examine issues of manageability.” *Cnty. Bank*, 418 F.3d at 306. The Third Circuit has reaffirmed the principles that inform the predominance analysis when considering certification of a settlement class:

From our case law, we can distill at least three guideposts that direct the predominance inquiry: first, that commonality is informed by the defendant’s conduct as to all class members and any resulting injuries common to all class members; second, that variations in state law do not necessarily defeat predominance; and third, that concerns regarding variations in state law largely dissipate when a court is considering the certification of a settlement class.

*Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 297 (3d Cir. 2011).

“Common issues predominate when the focus is on the defendants’ conduct and not on the conduct of the individual class members.” *In re Mercedes-Benz Antitrust Litig.*, 213 F.R.D. 180, 187 (D.N.J. 2003); *see also Cnty. Bank*, 418 F.3d at 309 (predominance requirement satisfied where “[a]ll plaintiffs’ claims arise from the same alleged fraudulent scheme”; “[t]he

presence of potential state or federal claims that were not asserted by the named plaintiffs does not defeat a finding of predominance”). “Predominance is met when there exists generalized evidence which proves or disproves an element on a simultaneous, class-wide basis, since such proof obviates the need to examine each class members’ individual position.” *Zeno v. Ford Motor Co.*, 238 F.R.D. 173, 190 (W.D. Pa. 2006) (citations omitted) (quotations omitted). The Third Circuit has noted that the predominance requirement is “readily met” in certain cases alleging consumer fraud. *Prudential II*, 148 F.3d at 314 (quoting *Amchem*, 521 U.S. at 625).

Here, there are a number of questions common to the Members of the Settlement Class, and all of the Class Members have been injured by the same wrongful course of conduct. The common legal and factual questions are at the core of the litigation and are focused on the actions of HMA, not Plaintiff. The predominating questions include whether the Class Vehicles have similarly defective Smart Trunks, whether HMA issued the same warranties on the Class Vehicles to all Class Members, whether HMA breached those warranties and whether HMA violated consumer fraud statutes, and whether Class Members were harmed by HMA’s conduct. Accordingly, the predominance requirement is satisfied.

## **2. Superiority**

Rule 23(b)(3) also requires that class resolution be “superior to other available methods for fairly and efficiently adjudicating the controversy.” The following factors are relevant to the superiority inquiry:

- (A) the class members’ interests in individually controlling the prosecution or defense of separate actions;
- (B) the extent and nature of any litigation concerning the controversy already begun by or against class members;
- (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum;
- (D) the likely difficulties in managing a class action.

*Id.*; see also *Danvers*, 543 F.3d at 149. When certifying a settlement-only class, the Court need not inquire whether the case, if tried, would pose intractable management problems, for the purpose of the settlement is to not have a trial. *Amchem*, 521 U.S. at 620. Moreover, “[f]or the purposes of settlement, concentrating litigation in one forum is desirable.” *Varacallo v. Mass. Mutual Life Ins. Co.*, 226 F.R.D. 207, 234 (D.N.J. 2005).

A class action is superior to other available methods for the fair and efficient adjudication of this litigation within the meaning of Rule 23(b)(3) because (i) absent class action certification, the Court is faced with the potential burden of litigating numerous individual lawsuits, all of which would arise out of the same set of operative facts alleged by Plaintiff; (ii) the resolution of common issues alleged in one action will both produce an efficient use of judicial resources and result in a single outcome that is binding on all Class Members; (iii) any administrative difficulties in handling potential individual issues under the class action device are less burdensome than the problems that are likely to arise in handling the same claims in numerous separate actions; and (iv) because of the expense of maintaining individual actions, denial of class certification here would effectively prevent certain individuals from asserting their claims against Defendant. See, e.g., *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 809 (1985) (class action plaintiffs’ claims are uneconomical to litigate individually); *Varacallo*, 226 F.R.D. at 234 (“Without question, class adjudication of this matter will achieve an appreciable savings of effort, time and expense, and will promote uniformity of decision on the issues resolved and to which the parties will be bound.”).

Here, a class action is the superior method of resolving the Class Members’ claims. All of the Class Members’ claims are based upon the same basic operative facts and legal standards. It would be a far better use of judicial resources to adjudicate all of these identical issues once,

on a common basis, rather than repeatedly, literally thousands of times. Further, the Settlement provides Class Members the ability to obtain predictable, certain, and definite compensatory relief promptly and contains well-defined claim and administrative procedures to assure due process for each Class Member. By contrast, individualized litigation carries with it great uncertainty, risk, and costs, and provides no guaranty that injured Class Members will obtain necessary and timely compensatory relief at the conclusion of the litigation. Further, to the extent there is a recovery to Plaintiff or the Class as a result of a judgment, any such recovery may very well be subject to the substantial delay associated with appellate proceedings. In sum, the requirements of Rule 23(b)(3) are satisfied and certification of the Settlement Class is appropriate.<sup>7</sup>

**E. The Settlement Is Fair, Reasonable and Adequate**

Rule 23(e)(2) requires a district court to determine that the proposed settlement is “fair, reasonable and adequate.” *GM Trucks*, 55 F.3d at 785. In making this determination, the Court should consider whether:

- (A) the class representatives and class counsel have adequately represented the class;
- (B) the proposal was negotiated at arm’s length;
- (C) the relief provided for the class is adequate, taking into account:
  - (i) the costs, risks, and delay of trial and appeal;

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<sup>7</sup>The ascertainability inquiry requires a plaintiff to show that: (1) the class is “defined with reference to objective criteria”; and (2) there is “a reliable and administratively feasible mechanism for determining whether putative class members fall within the class definition.” *Byrd v. Aaron's Inc.*, 784 F.3d 154, 163 (3d Cir. 2015), as amended (Apr. 28, 2015). Here, the Class was ascertainable as it was defined objectively as owners or lessees of the Vehicles. Further, the Parties’ used a reliable mechanism for determining Class membership. (*See* HMA Decl. ¶ 5.) Thus, ascertainability has been satisfied.

(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); *see also Fulton-Green v. Accolade, Inc.*, No. CV 18-274, 2019 WL 4677954, at \*7–8 (E.D. Pa. Sept. 24, 2019). A presumption of fairness applies to a settlement where, as here: “1) the negotiations occurred at arms’-length; (2) there was sufficient discovery; (3) the proponents of the settlement are experienced in similar litigation; and (4) only a small fraction of the class objected.” *In re: Google Inc. Cookie Placement Consumer Privacy Litig.*, 934 F.3d 316, 326 (3d Cir. 2019) (citing *In re Nat’l Football League Players Concussion Injury Litig.*, 821 F.3d 410, 436 (3d Cir. 2016), as amended (May 2, 2016)).

“Notwithstanding the amendment of Rule 23(e)(2), the Third Circuit continues to advise district courts to assess the fairness, reasonableness, and adequacy of a settlement applying the *Girsh* factors, the relevant *Prudential* considerations, and the *Baby Products* direct benefit consideration.” *Comcast Set-Top Box*, 2019 WL 4645331, at \*11 and n.10 (citing *Google*, 934 F.3d at 329). The Third Circuit’s guidance recognizes that these factors and considerations amply address “the core concerns and procedure and substance” listed in the amended Rule 23(e)(2). *See Fed. R. Civ. P. 23(e)(2) advisory committee’s notes (2018 amendments)*.

The Third Circuit has adopted a nine-factor test to determine whether a settlement is “fair, reasonable, and adequate.” The elements of this test – known as the “*Girsh* factors” – are:

(1) the complexity and duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining a class action; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement in light of the best recovery; and (9) the range of reasonableness of the settlement in light of all the attendant risks of litigation. *Comcast Set-Top Box*, 2019 WL 4645331, at \*12 (citing *Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975)). “These factors are a guide and the absence of one or more does not automatically render the settlement unfair.” *Am. Family*, 256 B.R. at 418. The Settlement meets each of these factors, and, thus, should be finally approved.

**1. The Complexity, Expense and Duration of Continued Litigation Weigh In Favor of Final Approval**

The first *Girsh* factor is whether the settlement avoids a lengthy, complex and expensive continuation of litigation. This factor “captures the probable costs, in both time and money, of continued litigation.” *Cendant II*, 264 F.3d at 233-34 (quotations omitted). “Where the complexity, expense, and duration of litigation are significant, the Court will view this factor as favoring settlement.” *Bredbenner*, 2011 WL 1344745, at \*11. Courts consistently have held that the expense and possible duration of litigation are factors to be considered in evaluating the reasonableness of a settlement. *Comcast Set-Top Box*, 2019 WL 4645331, at \*12; *In re Janney Montgomery Scott LLC Fin. Consultant Litig.*, No. 06-3202, 2009 WL 2137224, at \*8 (E.D. Pa. July 16, 2009); *Lake v. First Nationwide Bank*, 900 F. Supp. 726, 732 (E.D. Pa. 1995); *see also GM Trucks*, 55 F.3d at 812 (concluding that lengthy discovery and ardent opposition from the defendant with “a plethora of pretrial motions” were facts favoring settlements, which offer immediate benefits and avoid delay and expense). Under this analysis, courts consider the vagaries of litigation and “compare the significance of immediate recovery by way of



compromise,” *Bullock v. Administrator of Kircher's Estate*, 84 F.R.D. 1, 10-11 (D.N.J. 1979), to “the mere possibility of relief in the future, after protracted and expensive litigation.” *Careccio v. BMW of N. Am. LLC*, No. 08-2619, 2010 WL 1752347 (D.N.J. Apr. 29, 2010). “It has been held proper ‘to take the bird in hand instead of a prospective flock in the bush.’” *Bullock*, 84 F.R.D. at 11 (citation omitted). This factor undoubtedly weighs in favor of settlement.

Here, due to the factual and legal complexities involved in this case, continued litigation would be fiercely contested by the Parties, which necessarily would be expensive and time-consuming. As a complex automotive defect class action on behalf of Class Members from numerous states, the case did entail, and, absent Settlement, would continue to entail, hard-fought and lengthy litigation. Additional class and merits discovery, as well as additional non-party discovery would be sought, requiring time-consuming review and analysis.

This case also would require continued extensive expert analysis and likely would shape up to be a battle of the experts, and thus, expert expenses would continue to grow. As a putative class action, complex legal and factual issues would be the subject of additional pretrial motions, including for class certification. In addition, an even more complicated analysis regarding how HMA’s actions damaged hundreds of thousands of current and former owners and lessees of Class Vehicles would continue to be necessary to maintain class litigation—an analysis that would be the subject of a costly battle of experts. Defendant would likely challenge all facets of the Rule 23 analysis, including advancing its argument that there was no defect or that any defect was not material. The class certification decision would almost certainly lead to a Rule 23(f) interlocutory appeal, potentially delaying prosecution of the case should a stay pending appeal be granted. Indeed, this case, like other complex motor vehicle defect class actions, involves high levels of complexity and expense, which is one reason that judicial policy so strongly favors

resolution through settlement. *See O'Keefe v. Mercedes-Benz United States, LLC*, 214 F.R.D. 266, 311 (E.D. Pa. 2003). Simply put, absent the Settlement, the case would be vigorously litigated for at least several additional years, given the complex factual and engineering issues that would require extensive discovery and expert opinion.

Additionally, the risks of substantial delay are palpable. As described herein, although the case has been the subject of motion practice, substantial additional work would be required before the case would be ready to bring to trial, including additional discovery, certification motion practice and summary judgment motions. Further, a trial would involve extensive pretrial motions involving complex questions of law and fact, and the trial itself would be lengthy and complicated. *See Warfarin Sodium II*, 391 F.3d at 536 (finding the first *Girsh* factor to weigh in favor of settlement after three years of litigation); *Weiss*, 899 F. Supp. at 1301 (approving settlement that was the “result of an arm’s length negotiation between two very capable parties” and where “Mercedes was prepared to contest this class action vigorously.”). Post-trial motions and appeal would further delay resolution and increase costs. *Id.* at 536 (“it was inevitable that post-trial motions and appeals would not only further prolong the litigation but also reduce the value of any recovery to the class”); *In re Merck & Co., Inc. Vytorin ERISA Litig.*, Civ. No. 08-CV-285 (DMC), 2010 WL 547613, at \*7 (D.N.J. Feb. 9, 2010) (noting that additional costs associated with trial of multi-district class action and the delayed recovery for the class weighs in favor of settlement). Even if Plaintiff were successful, Defendant would undoubtedly appeal an adverse judgment, adding further time to a final resolution of this matter if it continued to be litigated.

In this case, while continued litigation offers the uncertainty of class certification and the diminishing returns associated with the passage of time, the proposed Settlement would provide

Class members with most of what they could have received at trial. HMA is offering all Class members a free extended warranty and a free inspection and installation of up to two sets of torsion bars at no cost. Class members with documented complaints can receive a \$50 debit card or \$100 in dealer credit even if they had no expenses, and HMA is also reimbursing Class members for past repair expenses, with minimal documents required. Under all of the circumstances, a certain result now rather than an uncertain result years in the future, weighs in favor of approval of the Settlement. For these reasons, the first *Girsh* factor weighs heavily in favor of final approval of the Settlement.

**2. The Reaction of the Class to the Settlement Favors Final Approval**

The second *Girsh* factor “attempts to gauge whether members of the class support the Settlement.” *Prudential II*, 148 F.3d at 318. In order to properly evaluate it, “the number and vociferousness of the objectors” must be examined. *GM Trucks*, 55 F.3d at 812. Generally, “silence constitutes tacit consent to the agreement.” *Id.* (quotation omitted). Here, notwithstanding that over 300,000 Notices were mailed directly to Class Members, to date, only one objection has been raised; a strong indicator that the Settlement is fair, reasonable, and adequate. *See, e.g., Cendant*, 264 F.3d at 234-35 (affirming trial court decision that class reaction was “extremely favorable,” where 478,000 notices were sent, four objections were made, and 234 class members opted out). Indeed, Class Counsel have spoken with Settlement Class Members to answer their questions and the comments from Class Members have been overwhelmingly positive.

Under *Girsh*, a small number of exclusions and objections and there is only one objection here, favors approval of a class action settlement agreement. *See Bell Atl.*, 2 F.3d at 1314 n.15 (silence is “tacit consent” to settlement). “The Third Circuit has looked to the number of

objectors from the class as an indication of the reaction of the class.” *CertainTeed*, 269 F.R.D. at 485 (citing *Cendant*, 264 F.3d at 234-35). A “paucity of protestors . . . militates in favor of the settlement,” *See Bell Atl.*, 2 F.3d at 1314; *see also Stoezner v. U. S. Steel Corp.*, 897 F.2d 115, 119 (3d Cir. 1990) (objections by 29 members of a class comprised of 281 “strongly favors settlement”); *Prudential I*, 962 F. Supp. at 537 (small number of negative responses to settlement favors approval); *Weiss*, 899 F. Supp. at 1301 (100 objections out of 30,000 class members weighs in favor of settlement). The percentage of Class Members that object to the settlement is an appropriate gauge of the reaction of the class as a whole. *See id.* at 1313-14 (factor favors settlement where less than 30 of approximately 1.1 million shareholders objected); *McGee v. Cont’l Tire N. Am., Inc.*, Civ. No. 06-6234 (GEB), 2009 WL 539893, at \*4 (D.N.J. Mar. 4, 2009); *see also Comcast Set-Top Box*, 2019 WL 4645331 at \*12 (out of an estimated 3.5 million Class Members, only four individuals objected to the Settlement and none of the objections provided a legitimate reason to disturb the settlement). Here, there was only one objection to the Settlement, and it does not provide any “legitimate reason” to disturb the Settlement.

The lone objector, Victoria Childers (“Childers”) mailed a document on October 31, 2019, to Class Counsel and Defendant’s counsel. The document is labeled as an “objection” but also states that Childers has not “opted out” of a settlement in the last five years, raising some confusion as to whether she intended to object or opt out. (HMA Decl., Ex. B).<sup>8</sup> Childers asserts that the Settlement should include relief that the Smart Trunks open “per the manufacturer design,” seemingly ignoring that the Settlement provides for precisely that relief. In the course of the litigation and settlement discussions, Plaintiff received information about the opening

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<sup>8</sup>To the extent that the Childers filing can be construed as an objection, the Class Notice sets forth the requirement in the Settlement Agreement that all objections be filed with the Court as well as mailed to Class Counsel and that the objections provide certain information; however, the Childers objection was not filed with the Court and should be overruled for that reason alone.

specifications, which call for the truck to open 7.5 inches, and information about countermeasures and failure rates, all of which is reflected in Hyundai Technical Service Bulletin Number 19-BD-222, Trunk Lid Torsion Bar Inspection and Repair. Based on her submission, it appears that Childers' trunk may, in fact, open more than the specifications provide. Further, Childers appears to assert that Class Members who made oral complaints to dealers, where there is no record of a complaint, should also be entitled to relief. In fact, Class Members in that situation will receive several forms of relief from the proposed Settlement, including the extended warranty and the opportunity for a replacement torsion bar. Moreover, Childers could receive the extended warranty and the opportunity for a replacement torsion bar, as well as relief in the form of cash or dealer credit under the terms of the Settlement assuming she can show, as she asserts, that she made a complaint about her Vehicle on a publicly-available complaint forum. (HMA Decl., Ex. B).

The Settlement offers every Class Member several forms of relief and represents a compromise between the maximum possible recovery and the inherent risk of litigation, including a difficult burden to show liability and certify a trial class. "The test is whether the settlement is adequate and reasonable and not whether a better settlement is conceivable." *Rougvie v. Ascena Retail Grp., Inc.*, No. CV 15-724, 2016 WL 4111320, at \*22 (E.D. Pa. July 29, 2016) (citation omitted). Therefore, Childers' "objection" should be dismissed as without merit. The lack of any meaningful negative response to the Settlement reflects overwhelming support from the Class and evinces the quality and value of the Settlement.

**3. The Stage of the Proceedings Weighs in Favor of Final Approval**

The stage of the proceedings and the amount of discovery completed is another factor that courts consider in determining the fairness, reasonableness and adequacy of a settlement.

*GM Trucks*, 55 F.3d at 785; *Girsh*, 521 F.2d at 157. “This factor considers the degree of case development accomplished by counsel prior to settlement.” *Bredbenner*, 2011 WL 1344745, at \*12. “Through this lens,” the Court of Appeals for the Third Circuit has written, “courts can determine whether counsel had an adequate appreciation of the merits of the case before negotiating.” *GM Trucks*, 55 F.3d at 813; *In re Nat’l Football League Players Concussion Injury Litig.*, 821 F.3d 410, 439 (3d Cir. 2016), as amended (May 2, 2016) (“What matters is not the amount or type of discovery class counsel pursued, but whether they had developed enough information about the case to appreciate sufficiently the value of the claims.”). Class Counsel spent significant time on this case, including, *inter alia*: conducting an extensive pre-suit factual and legal investigation that laid the groundwork for the complaint; drafting the complaint and working with the Plaintiff to develop the asserted factual and legal claims; researching and drafting oppositions to the Defendant’s motion to dismiss; conducting Rule 26(f) conferences, exchanging initial disclosures with defense counsel and filing a joint discovery plan with the Court; negotiating a confidentiality agreement, inspection protocol, and an ESI protocol; reviewing and analyzing Plaintiff’s documents; reviewing and analyzing documents produced by Defendant; consulting with an expert and analyzing the information underlying the claims made about the Vehicles; participating in lengthy arm’s-length Settlement negotiation conferences and telephone conferences with defense counsel and a respected mediator; drafting and negotiating the Settlement Agreement with defense counsel, as well as the ancillary Notice documents and Notice plan and proposed orders; working with the Settlement Administrator in connection with the effectuation of the Settlement; drafting the briefing for preliminary approval of the Settlement; fielding telephone calls and other inquiries from Settlement Class Members concerning the Settlement; monitoring the Claims Administrator to assure that the Notice Plan

and claims administration process are being implemented properly; communicating with the named Plaintiff throughout the litigation; and preparing the present motion. (Shah Decl., ¶8.) In addition, Class Counsel will devote further time and effort to appearing at the Final Approval Hearing, responding to ongoing inquiries from Class Members going forward, and monitoring the distribution of Settlement payments by the Settlement Administrator. (Shah Decl., ¶ 48.)

As a result of all of these efforts, Class Counsel have a thorough understanding of the potential damages along with myriad other issues that would need to be overcome to certify a Class and to ultimately prevail at trial, which helped inform the Parties' negotiations and shape the Settlement. With this comprehensive understanding, Class Counsel assessed both the prospects of continued litigation and the value of the Settlement. Simply put, there was no shortage of information and no rush to settlement here.

**4. The Risks of Establishing Liability Weigh in Favor of Final Approval**

The risks of establishing liability should be considered to “examine what potential rewards (or downside) of litigation might have been had class counsel decided to litigate the claims rather than settle them.” *Cendant II*, 264 F.3d at 237, (quoting *GM Trucks*, 55 F.3d at 814). “By evaluating the risks of establishing liability, the district court can examine what the potential rewards (or downside) of litigation might have been had class counsel elected to litigate the claims rather than settle them.” *GM Trucks*, 55 F.3d at 814. “The inquiry requires a balancing of the likelihood of success if the case were taken to trial against the benefits of immediate settlement.” *In re Safety Components, Inc. Sec. Litig.*, 166 F. Supp. 2d 72, 89 (D.N.J. 2001); *see also In re Viropharma Inc. Sec. Litig.*, No. CV 12-2714, 2016 WL 312108, at \*13 (E.D. Pa. Jan. 25, 2016) (establishing causation would have necessitated an extensive battle of experts and it would have been impossible to predict how the jury would have responded).

Although Class Counsel believe that the claims presented in this litigation are meritorious, they

are experienced counsel who understand that the “the risks surrounding a trial on the merits are always considerable.” *Weiss*, 899 F. Supp. at 1301. Defendant has vigorously contested these claims, and would surely continue to do so if the case proceeded. The Settlement here presents the Class with real relief now. Such a consideration is not to be taken lightly. *See Hall v. AT&T Mobility, LLC*, 2010 WL 4053547 at \*12 (D.N.J. Oct. 13, 2010), citing *Clark v. Lomas & Nettleton Fin. Corp.*, 79 F.R.D. 641, 651 (N.D. Tex. 1978), *vacated on other grounds*, 625 F.2d 49 (5th Cir. 1980) (“no contested lawsuit is ever a ‘sure thing.’”). The risks and delays inherent in taking this case to trial viewed against the certainty of the proposed Settlement, weigh in favor of Settlement, particularly, as is the case here, one that provides the Class with substantial benefits that is not only fair, reasonable and adequate, but an excellent result. And, although Plaintiff is confident that his claims are legally sound, there is always the possibility that the Court may disagree. These risks include the possibility of denial of class certification or the granting of summary judgment. The Settlement provides substantial monetary benefits without the inherent risk of establishing liability at trial. Thus, these inherently unpredictable risks in establishing liability weigh in favor of settlement, particularly here, where the Settlement provides the Class with a substantial benefit that is not only fair, reasonable, and adequate, but an excellent result.

**5. The Risks of Establishing Damages Weigh In Favor of Final Approval**

As with establishing liability, the risk associated with establishing damages factor “attempts to measure the expected value of litigating the action rather than settling it at the current time.” *Cendant II*, 264 F.3d at 238 (citation omitted). The court looks at the potential damage award if the case were taken to trial against the benefits of immediate settlement. *Prudential II*, 148 F.3d at 319. In *Warfarin Sodium I*, the trial court found that the risk of establishing damages strongly favored settlement, observing that “[d]amages would likely be



established at trial through ‘a “battle of experts,” with each side presenting its figures to the jury and with no guarantee whom the jury would believe.’” *In re Warfarin Sodium Antitrust Litig.*, 212 F.R.D. 231, 256 (D. Del. 2002), *aff’d* 391 F.3d 516, 537 (3d Cir. 2004) (quotation omitted). Similarly, in *Cendant II*, the Third Circuit reasoned that there was no compelling reason to think that “a jury confronted with competing expert opinions” would accept the plaintiff’s damages theory rather than that of the defendant, and thus the risk in establishing damages weighed in favor of approval of the settlement. 264 F.3d at 239. The same is true here. Moreover, proving damages here would not have been a sure thing and would be complicated by the fact that HMA covered some repairs under warranty and that some Class Members may not have found the Smart Trunk opening to be material. *See O’Keefe*, 214 F.R.D. at 301 (granting final approval and noting the risk that “some members of the class may not be entitled to damages under their state warranty claims or state consumer protection claim”). Thus, this factor weighs in favor of final approval.

**6. The Risks of Maintaining the Class Action Through Trial Weigh in Favor of Final Approval**

Because the prospects for obtaining certification have a great impact on the range of recovery one can expect to reap from the class action, *GM Trucks*, 55 F.3d at 817, the Court must measure the likelihood of obtaining and maintaining a certified class if the action were to proceed to trial. *Girsh*, 521 F.2d at 157. Class Counsel believe that this case is wholly appropriate for class certification in the litigation context. Notwithstanding that belief, there is always a risk that a Court would not find this action suitable for certification as a litigated class, or not find that it was suitable for litigation on a multi-state basis. This is especially the case considering Defendant’s inevitable and likely vigorous challenges to predominance, such that there were various reasons for a Smart Trunk not working as represented, the existence of Smart

Trunks that did work, various representations seen by Class Members, and Defendant’s probable argument that damages were not susceptible to Class-wide proof, which argument could have engendered an expensive battle of experts. Further, even if class certification were granted in the litigation context, class certification can always be reviewed or modified before trial, so “the specter of decertification makes settlement an appealing alternative.” *Dewey v. Volkswagen of Am.*, 728 F. Supp. 2d 546, 585 (D.N.J. 2010); *see also Eggleston v. Chi. Journeyman Plumbers Local Union No. 130 U.A.*, 657 F.2d 890, 896 (7th Cir. 1981) (“a favorable class determination by the court is not cast in stone.”); *In re Comcast Corp. Set-Top Cable TV Box Antitrust Litig.*, No. 09-md-2034, 2019 U.S. Dist. LEXIS 162545, at \*37-38 (E.D. Pa. Sep. 24, 2019); *Fulton-Green v. Accolade, Inc.*, No. CV 18-274, 2019 WL 4677954, at \*10 (E.D. Pa. Sept. 24, 2019) (quoting *In re Warfarin*, 391 F.3d at 537) (“Because the prospects for obtaining certification have a great impact on the range of recovery one can expect to reap from the [class] action, this factor [concerning the risks of maintaining the class action through trial] measures the likelihood of obtaining and keeping a class certified if the action were to proceed to trial.”). Thus, this factor weighs in favor of final approval.

**7. Defendant’s Ability to Withstand Greater Judgment, and Reasonableness of the Settlement in Light of the Best Possible Recovery and All Attendant Risks of Litigation**

The last three *Girsh* factors are the reasonableness of the settlement in light of (i) defendant’s ability to withstand a greater judgment, (ii) the best possible recovery, and (iii) all the attendant risks of litigation. These factors, too, support approval of this Settlement and its significant benefits.

While there is no dispute that Defendant has ample resources, countless settlements have been approved where a settling defendant has had the ability to pay greater amounts, and the Third Circuit has noted that this fact alone does not weigh against settlement approval. *See, e.g.*,

*NFL Concussion Litig.*, 821 F.3d at 440; *Warfarin Sodium II*, 391 F.3d at 538. This factor is generally neutral when the defendant's ability to pay greatly exceeds the potential liability, and was not a factor in settlement negotiations. *CertainTeed*, 269 F.R.D. at 489 ("because ability to pay was not an issue in the settlement negotiations, this factor is neutral"); *Warfarin Sodium II*, 391 F.3d at 538 ("fact that [defendant] could afford to pay more does not mean that it is obligated to pay any more than what the . . . class members are entitled to under the theories of liability that existed at the time the settlement was reached"); *Bredbenner*, 2011 WL 1344745, at \*15 ("courts in this district regularly find a settlement to be fair even though the defendant has the practical ability to pay greater amounts").

More importantly, the court must "measure [] the value of the settlement itself to determine whether the decision to settle represents a good value for a relatively weak case or a sell-out of an otherwise strong case." *GM Trucks*, 55 F.3d at 806. The Third Circuit further stated:

[I]n cases primarily seeking monetary relief, the present value of the damages plaintiffs would likely recover if successful, appropriately discounted for the risk of not prevailing, should be compared with the amount of the proposed settlement .... The evaluating court must, of course, guard against demanding too large a settlement based on its view of the merits of the litigation; after all, settlement is a compromise, a yielding of the highest hopes in exchange for certainty and resolution.

*Id.*

Defendant has the resources to vigorously litigate the claims in this case, and has presented considered positions to oppose not only the theories of liability and class certification, but also any eventual finding of liability. Indeed, at both class certification and at trial the Class would face what may amount to an all-or-nothing proposition. In this case, while continued litigation offers the uncertainty of class certification and the diminishing returns associated with

the passage of time, the proposed Settlement would provide Class members with most of what they could have received at trial. HMA is offering all Class members a free extended warranty and a free inspection and installation of up to two sets of torsion bars at no cost. Class members with documented complaints can receive a \$50 debit card or \$100 in dealer credit even if they had no expenses, and HMA is also reimbursing Class members for past repair expenses, with minimal documents required. Further, HMA will ensure that its advertising conforms to the design expectations for the Smart Trunk as indicated in the Settlement.

Overall, the *Girsh* factors militate strongly in favor of approving the proposed Settlement. The Settlement allows a substantial, real recovery for all Class Members now, which is directed at the claims asserted, rather than waiting for years for a recovery which could be more than the amount of the Settlement, but where there is a substantial risk of recovering nothing. Class Counsel have made a full evaluation of the relevant facts and law and believe that, under all of the facts and circumstances, the Settlement is not only fair and reasonable, but represents a significant victory for the Class.

**F. The Relevant *Prudential* and *Baby Products* Factors Also Support Settlement**

The Third Circuit has articulated additional factors that can be relevant to the evaluation of some, but not all, class settlements. In *Prudential*, the Third Circuit identified several additional factors that “are illustrative of additional inquiries that in many instances will be useful for a thoroughgoing analysis of a settlement’s terms.” *In re Pet Food Product Liability Litig*, 629 F.3d 333, 350 (3d Cir. 2010). Those factors are the following:

[1] [T]he maturity of the underlying substantive issues, as measured by experience in adjudicating individual actions, the development of scientific knowledge, the extent of discovery on the merits, and other factors that bear on the ability to assess the probable outcome of a trial on the merits of liability and individual damages; the existence and probable outcome of claims by other classes and subclasses; [2] the comparison between the results achieved by the

settlement for individual class or subclass members and the results achieved—or likely to be achieved—for other claimants; [3] whether class or subclass members are accorded the right to opt out of the settlement; [4] whether any provisions for attorneys’ fees are reasonable; and [5] whether the procedure for processing individual claims under the settlement is fair and reasonable.

*Prudential*, 148 F.3d at 323. Although not all of the *Prudential* factors are relevant to approval of the proposed Settlement here, those that are weigh in favor of final approval.

First, the underlying substantive issues in this case are mature. As discussed above, there has been a significant exchange of information and Class Counsel is aware of the complexity and risks inherent in a trial on the merits. Second, all Settlement Class Members are being treated fairly, as the Settlement is being allocated such that each Class Member receives a free extended warranty and a free inspection and installation of up to two sets of torsion bars at no cost; Class Members with documented complaints will receive their choice of a debit card or a dealer credit; and HMA is also reimbursing Class Members for past repair expenses, with minimal documents required. Third, as discussed above, Settlement Class Members were provided with robust notice and were provided with the opportunity to opt-out, which no Class Members did. (HMA Decl., ¶¶ 5-9.). Fourth, the fees requested are reasonable, as more fully discussed in Plaintiff’s previously-filed Fee Brief (ECF 53.)<sup>9</sup> Finally, the claims process is straightforward and Settlement Class Members have ample time to seek assistance, if necessary, and to complete the Claim Form.

Finally, the Third Circuit added an additional factor in *In re Baby Prods. Antitrust Litig.*, in which it examined the degree to which a proposed settlement provided a “direct benefit” to the class. 708 F.3d 163, 174 (3d Cir. 2013); *see also McDonough v. Toys R. Us, Inc.*, 80 F. Supp. 3d

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<sup>9</sup> Because Class Counsel is not aware of other classes, or subclasses asserting similar claims against Defendant, the *Prudential* factors calling for comparison to other such claimants is not relevant to the analysis of the proposed Settlement in this matter.

626, 650-51 (E.D. Pa. 2015) (discussing “*Baby Products* factor”). Here, Class Members who fill out a Claim Form and do not request exclusion receive a direct benefit from the Settlement. Moreover, as discussed above, the Settlement allows elements of recovery that were not allowed under Defendant’s warranty, which is an exceedingly fair and reasonable result. For all the foregoing reasons, the proposed Settlement satisfies the factors articulated by the Third Circuit and should be approved as fair, reasonable, and adequate.

**G. The Notice Program is Constitutionally Sound and Fully Implemented**

To protect the rights of absent Members of the Class, the Court must ensure that all Class Members who would be bound by a class settlement are provided the best practicable notice. *See* Fed. Rule Civ. P. 23(e)(1)(B); *Phillips*, 472 U.S. at 811-12. The best practicable notice is one that is “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). Both the content and the means of dissemination of the notice must satisfy the “best practicable notice” standard.

The MANUAL FOR COMPLEX LITIGATION provides that notice of a class settlement should: define the class; describe clearly the options open to the class members and the deadlines for taking action; describe the essential terms of the proposed settlement; disclose any special benefits provided to the class representatives; provide information regarding attorneys’ fees; indicate the time and place of the hearing to consider approval of the settlement, and the method for objecting to or opting out of the settlement; explain the procedures for allocating and distributing settlement funds, and, if the settlement provides different kinds of relief for different categories of class members, clearly set out those variations; provide information that will enable class members to calculate or at least estimate their individual recoveries; and prominently display the address and phone number of class counsel and the procedure for making inquiries.

MANUAL FOR COMPLEX LITIGATION, FOURTH § 21.312 (2004); *see also Cendant I*, 109 F. Supp. at 254. The form and manner of Notice, negotiated and agreed upon by the Parties, approved by this Court, and disseminated by the Settlement Administrator meets all of these requirements.

As detailed above and in the HMA Declaration, Class Members received direct mail Notice of the Settlement in conformance with Rule 23(e)(1)(B), which is the best practicable notice under the circumstances. The addresses for potential Members of the Settlement Class were updated utilizing an industry-accepted address updating service, and all Class Notices returned with a forwarding address were re-mailed. (HMA Decl., ¶¶ 5-7.) Notice of the proposed Settlement was also served on the Attorney General of the United States and to the Attorneys General of the states in which Class Members reside, pursuant to the Class Action Fairness Act, 28 U.S.C. § 1715. The Settlement Administrator also established a national toll-free number, a dedicated address, and published a Settlement Website featuring copies of the Class Notices, the Claim Form, the Agreement, and other detailed information relating to the terms and benefits of the Settlement. (HMA Decl., ¶¶ 3-4, 8.) Thus, the Notice program that the Court initially and preliminarily approved was fully implemented and has informed the Class fully of their rights and benefits under the Settlement. All required points of information have been clearly and completely presented to the Class. (See HMA Decl.)

The direct mail Notice sent to all reasonably identifiable Class Members, supplemented by the other forms of notice, provided the best notice practical under the circumstances, giving Class Members a full and fair opportunity to consider the terms of the Settlement and make a well-informed decision as to whether to participate, object, or opt-out of the Settlement. *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (U.S. 1974) (noting that individual notice is preferred method where addresses of class members can be ascertained through reasonable effort);

*Prudential I*, 962 F. Supp. at 527 (actual notice by mail and published notice was “ideal”); *In re Chambers Dev. Sec. Litig.*, 912 F. Supp. 822, 836 (W.D. Pa. 1995) (actual notice by mail and published notice was “best possible notice.”); *see also Myers v. Jani-King of Phila., Inc.*, No. 09-1738, 2019 U.S. Dist. LEXIS 144929, at \*25 n.5 (E.D. Pa. Aug. 26, 2019) (effectiveness of proposed relief to the class and processing of claims under Fed. R. Civ. P. 23(e)(2)(C)(ii)). Therefore, the Notice fulfilled the requirements of due process and those of Rule 23.

#### IV. **CONCLUSION**

Because the Settlement that Plaintiff reached with Defendant is fair, reasonable, and adequate, Plaintiff respectfully submits that final approval of the Settlement is warranted. A proposed Order is submitted herewith.

Dated: November 19, 2019

Respectfully submitted,

**SHEPHERD, FINKELMAN,  
MILLER & SHAH, LLP**

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*Counsel for Plaintiff and the Class*



considered the record of these proceedings, the representations, arguments, and recommendations of counsel, and the requirements of the governing law; and for good cause shown

IT IS THIS \_\_\_ day of \_\_\_\_\_, 2019:

ORDERED that the Final Approval and Judgment is GRANTED, subject to the following terms and conditions:

1. For the purposes of this Order, the Court hereby adopts all defined terms as set forth in the Settlement Agreement.

2. The “Settlement Class” certified for the sole purpose of consummating the Settlement in this Action, consists of and is hereinafter defined as:

All persons or entities in the fifty United States and the District of Columbia who currently own or lease, or previously owned or leased, a model year 2015 to 2017 U.S. specification Hyundai Sonata vehicle equipped with the Smart Trunk feature.

Excluded from the Settlement Class are Defendant, as well as Defendant’s affiliates, employees, officers, and directors, attorneys, agents, insurers, and dealers; third-party providers of extended warranty/service contracts; independent repair/service facilities; the attorneys representing Defendant in this case; the judges and mediator to whom this case is assigned and their immediate family members; all persons and entities who request exclusion from (opt-out of) the Settlement, who previously released any claims encompassed in this Settlement, or whose vehicle was permanently transported outside the United States after sale; and all persons or entities claiming personal injury or property damage other than to a Class Vehicle or claiming subrogation of such claims.

3. The Court finds that there have been no requests for exclusion from the Settlement Class.

4. The Court finds that there have been no valid Objections filed to the Settlement and that the deadlines for Objections have passed.

5. The Court hereby finds that the direct mail Notice provided to the Settlement Class constituted the best notice practicable under the circumstances. Said Notice provided due and adequate notice of these proceedings and the matters set forth herein, including the terms of the

Settlement Agreement, to all persons entitled to such notice, and said notice fully satisfied the requirements of Fed. R. Civ. P. 23, the requirements of due process, and any other applicable law.

6. The Court finds that the proposed Settlement Class meets all the applicable requirements of Fed. R. Civ. P. 23, affirms certification of the Settlement Class, and approves the Settlement set forth in the Agreement as being fair, just, reasonable, and adequate.

7. Based upon the Court's familiarity with the claims and parties, the Court finds that Joshua Riaubia adequately represents the interests of the Settlement Class and hereby appoints him as Class Representative for the Settlement Class.

8. The Court finds that the following firms fairly and adequately represent the interests of the Settlement Class and hereby confirms them as Lead Class Counsel pursuant to Rule 23:

JAMES C. SHAH  
NATALIE FINKELMAN BENNETT  
SHEPHERD, FINKELMAN, MILLER & SHAH, LLP  
1845 Walnut Street, Suite 806  
Philadelphia, PA 19103  
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NOAH AXLER  
MARC A. GOLDICH  
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ROBERT P. COCCO  
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9. The Court finds, upon review of the Settlement and consideration of the Rule 23 (e) factors as well as the nine factors enunciated in *Girsh v. Jepsen*, 521 F.2d 153, 157 (3d Cir.

1975), that the Settlement and the proposed extended warranty, inspection and service, and reimbursement program available from the Settlement are fair, reasonable, and adequate. Accordingly, the Settlement is finally approved by the Court.

10. The Final Approval Order and Judgment as provided under the Settlement Agreement should be entered. Such order and judgment shall be fully binding with respect to all members of the Class and shall have *res judicata*, collateral estoppel, and all other preclusive effect in any claims for relief, causes of action, suits, petitions, demands in law or equity, or any allegations of liability, damages, debts, contracts, agreements, obligations, promises, attorneys' fees, costs, interest, or expenses that are based on or in any way related to any of the claims for relief, causes of action, suits, damages, debts, contracts, petitions, demands in law or equity, or any allegations of liability, obligations, promises, attorneys' fees, costs, interest, or expenses that were asserted in this action

11. The operative Complaint (ECF 1) in this action is dismissed with prejudice, and the claims against Defendant are released.

12. The Settlement Administrator shall distribute to each Settlement Class Member who timely submitted a properly executed, valid Claim Form, the benefits to which they are entitled under the terms of the Settlement Agreement.

13. Class Counsel is hereby awarded \$828,876.00 in attorneys' fees and expenses.

14. Class Representative is to receive an incentive award of \$5,000.

15. The awarded attorneys' fees and costs, and the Class Representative incentive award, are to be paid and distributed in accordance with the Settlement.

16. The Court authorizes Class Counsel to allocate the fee award.

17. Each and every term and provision of the Settlement Agreement shall be deemed

incorporated into the Final Approval Order and Judgment as if expressly set forth and shall have the full force and effect of an Order of the Court.

18. The terms of this Final Approval Order and Judgment, and the Settlement Agreement, are binding on the Plaintiff and all other Settlement Class Members, as well as their heirs, executors and administrators, successors, and assigns.

19. The parties and their counsel are ordered to implement and to consummate the Settlement according to its terms and provisions.

20. Other than as set forth herein, the parties shall bear their own costs and attorneys' fees.

21. The releases set forth in the Settlement Agreement are incorporated by reference.

22. All Class Members, as of the Effective Date, shall be bound by the releases set forth in the Settlement Agreement whether or not they have availed themselves of the benefits of the Settlement.

23. The parties are authorized, without further approval from the Court, to agree to and to adopt such amendments, modifications, and expansions of the Settlement as are consistent with the Final Approval Order and Judgment.

24. No Settlement Class Member, either directly, representatively, or in any other capacity (other than a Settlement Class Member who validly and timely submitted a valid request for exclusion), shall commence, continue, or prosecute any action or proceeding against Defendant in any court or tribunal asserting any of the claims released by the Settlement or Settlement Agreement, and are hereby permanently enjoined from so proceeding.

25. Without affecting the finality of the Final Approval Order and Judgment, the Court shall retain continuing jurisdiction over this action, the parties, and the Settlement Class, and the administration and enforcement of the Settlement. Any disputes or controversies arising with

respect to the enforcement or implementation of the Settlement shall be presented by motion to the Court.

26. Neither this Order nor the Settlement Agreement, nor any documents or statements related thereto, shall constitute any evidence or admission of liability by Defendant, nor shall any such document or statement be offered in evidence in this or any other proceeding except to consummate or enforce the Settlement or the terms of this Order.

27. There being no just reason to delay, the Clerk is directed to enter this Final Approval Order and Judgment forthwith and designate this case as closed.

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HONORABLE JUDGE LYNNE A. SITARSKI, U.S.M.J.

**CERTIFICATE OF SERVICE**

I hereby certify that I caused a true and correct copy of the foregoing Plaintiff's Motion for Final Approval of Class Action Settlement to be served on all counsel of record via the Court's ECF system on November 19, 2019.

*/s/ Natalie Finkelman Bennett*