IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY

CATHERINE DUFFY, MATTHEW EDLIN, LAWRENCE MULCAHY, PAULA HALL, individually and on behalf of all others similarly situated,	:	Case No. 3:24-cv-00388-BJB
Plaintiffs,	:	
v.	:	
MAZDA MOTOR OF AMERICA, INC. d/b/a MAZDA NORTH AMERICAN OPERATIONS,	:	CLASS ACTION
Defendant.	:	

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

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I. INTRODUCTION

Plaintiffs Catherine Duffy, Matthew Edlin, Lawrence Mulcahy, and Paula Hall ("Plaintiffs") respectfully request that the Court grant final approval to the nationwide class action Settlement[1] ("Settlement," "Settlement Agreement," or "SA") with Mazda Motor of America, Inc. d/b/a Mazda North American Operations ("MNAO" or "Mazda") that the Parties reached in this litigation.

Following entry of the Preliminary Approval Order (ECF No. 39), the Settlement Administrator successfully implemented the Court-approved Class Notice plan. It has been overwhelmingly positive: while the Claims Period remains open until August 1, 2025, there were 9,234 Claims filed as of July 11, 2025. *See* concurrently filed Declaration of Gina Intrepido-Bowden ("Intrepido-Bowden Decl.") ¶ 41. As of the July 2, 2025 deadline to object to or request exclusion from the Settlement, only 31 Settlement Class Members timely requested to be excluded, while four other individuals objected to the Settlement. As discussed below in more detail, one request for exclusion is an improper mass opt-out that should be limited to the particular class member who filed the opt-out. Further, because all the objections are without merit, they should be overruled. It also speaks volumes that only 0.001% of the Settlement Class has requested to opt out from or objected to the Settlement. This figure is miniscule relative to the 2,977,378 Settlement Class population, who stand to receive significant benefits if the Settlement receives final approval.

The proposed Settlement should receive final approval because it meets the applicable Sixth Circuit criteria for being fair, reasonable, and adequate. It provides substantial relief that includes a two-year, unlimited mileage Limited Warranty Extension ("LWE") for all Settlement

[1] All capitalized terms herein not separately defined shall have the same meaning ascribed to them in the Settlement Agreement. *See* ECF No. 18-1.

Class Members (irrespective of whether they submit a Claim Form) and creates an out-of-pocket reimbursement program for those Settlement Class Members who incurred covered expenses prior to the Preliminary Approval Order.

As discussed in the Parties' previous briefing, this Settlement is the product of litigation and extensive negotiations over a nearly two-year period that included filing and then dismissing a case in California state court; successive tolling agreements while the Parties negotiated a potential resolution; the production of voluminous data and documents from Mazda; and four mediation sessions with the Hon. Dickran M. Tevrizian (Ret.) of JAMS. The Court's decision to grant preliminary settlement approval here necessarily entailed a determination that the Settlement meets Sixth Circuit approval standards and was likely to warrant final approval. *Wilson v. Anthem Health Plans of Kentucky, Inc.*, No. 14-cv-0743, 2019 WL 6898662, at *3 (W.D. Ky. Dec. 18, 2019) (citations omitted). Nothing has changed from the record upon which this Court previously granted preliminary approval. For these reasons and those that follow, Plaintiffs request that the Court grant final Settlement approval. Mazda does not oppose the relief sought in this motion.

II. PROCEDURAL AND FACTUAL HISTORY

The Court is aware of the facts and circumstances surrounding this Litigation and the Settlement. For the purposes of brevity and efficiency, Plaintiffs incorporate by reference the Procedural and Factual History sections outlined in the Memorandum of Law in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement (ECF No. 18-6, at 2-5) and the Memorandum of Law in Support of Plaintiffs' Motion for Attorneys' Fees, Expenses, and Service Awards ("Fee Motion") (ECF No. 46-1, at 2-3).

III. OVERVIEW OF THE SETTLEMENT

A. The Settlement Class and Settlement Class Vehicles

The proposed Settlement Class is defined as follows:

> All residents of the continental United States, Hawaii, Alaska, and all United States territories who currently own or lease, or previously owned or leased, a Settlement Class Vehicle originally purchased or leased in the continental United States, Hawaii, Alaska, or any United States territory.

SA ¶ III.A.

The Settlement Class Vehicles include: Mazda2 model years 2016-2022; Mazda3 model years 2014-2018; Mazda6 model years 2016-2021; Mazda CX-3 model years 2016-2021; Mazda CX-5 model years 2016-2020; Mazda CX-9 model years 2016-2020; and Mazda MX-5 model years 2016-2023 *Id.* ¶ II.NN. Confirmatory discovery has established that all Settlement Class Vehicles are equipped with certain iterations of the Mazda Connect infotainment system, and that there are nearly 1.7 million Settlement Class Vehicles. *See* previously submitted Declaration of Benjamin F. Johns in Support of Plaintiffs' Unopposed Motion for Preliminary Approval ("Johns MPA Decl."), ECF No. 18-2 at ¶ 15; previously submitted Declaration of Andrew W. Ferich in Support of Plaintiffs' Unopposed Motion for Preliminary Approval ("Ferich MPA Decl."), ECF No. 18-3 at ¶ 14.

B. The Settlement Benefits

The two primary components of the Settlement are 1) the LWE and 2) a reimbursement program through which Settlement Class Members can seek reimbursement of out-of-pocket expenses related to the alleged defect incurred up until the date of the Preliminary Approval Order. The Settlement benefits are discussed in more detail below.

1. The Limited Warranty Extension

All the Settlement Class Vehicles initially come with a three-year/36,000-mile New Vehicle

Limited Warranty ("NVLW") that provides coverage for the Mazda Connect system. The proposed Settlement essentially extends that warranty by two years (and creates a new two-year warranty for Vehicles with a NVLW that has already expired) (i.e., the LWE). The LWE covers Mazda Connect Software Updates (if recommended by the authorized Mazda Dealership that performs the Update) and repair or replacement of the CMU for the Settlement Class Vehicles.[2] SA ¶ IV.B.3; II.Q. The LWE will cover these issues for a period of 24 months beginning on the date the Court entered the Preliminary Approval Order, i.e., February 17, 2025.[3] *Id*. ¶ IV.B.2. Unlike the NVLW, the LWE is not subject to a mileage limitation (*id*.), which is significant because Mazda estimates that most of the Class Vehicles are outside of the NVLW based on either age or mileage (or both). Johns MPA Decl. ¶ 16; Ferich MPA Decl. ¶ 15. In other words, the LWE essentially creates new Mazda Connect warranty coverage for the majority of Settlement Class Vehicles that are (or soon will be) outside of the NVLW's durational limitation.

The LWE's coverage is limited to software updates and CMU repair/replacement because confirmatory discovery has established that most complaints and warranty claims made about the issues alleged with Mazda Connect are resolved with software updates and CMU replacements. Johns MPA Decl. ¶ 17; Ferich MPA Decl. ¶ 16.

All Settlement Class Members will get the benefit of the LWE under the Settlement, and a Settlement Class Member is not required to submit a Claim Form to receive this automatic benefit. SA ¶ IV.B.1. The LWE is fully transferrable to subsequent Vehicle owners. *Id.* ¶ IV.B.4. Plaintiffs'

[2] CMU means Connectivity Master Unit. In the Settlement Class Vehicles, the CMU is the hardware component of Mazda Connect.

[3] For the small number of Settlement Class Vehicles that are still within the NVLW at that time, the LWE would be added to and run from the expiration of the still-existing NVLW. In other words, these Settlement Class Members would receive the full benefit of both their NVLW from the manufacturer and the LWE under the Settlement.

actuarial expert estimates that the fair market value of this benefit to be at least $32 million. *See* Fee Motion, ECF No. 46-1 at 1 and Declaration of Lee Bowron, ACAS, MAAA, ECF No. 48. at ¶ 4. This estimated value does not include, and is in addition to, the value of the reimbursement program (*id.*), nor does it include the estimated $2.1 million Mazda is paying for Settlement administration expenses and Class Notice.

2. Reimbursement Program to Compensate Out-of-Pocket Expenses

In addition to the forward-looking relief provided by the LWE, the Settlement allows Settlement Class Members to submit Claims for reimbursement of out-of-pocket expenses incurred for eligible software updates for Mazda Connect, repair and/or replacement of a CMU, or a SD Card, or Display, or Rear-view Camera in a Settlement Class Vehicle. SA ¶ IV.C. Settlement Class Members can be reimbursed for these out-of-pocket expenses whether they were incurred at an authorized Mazda dealer or at a third-party repair facility. *Id*. ¶ IV.C.-D. However, reimbursements for repairs performed by a non-Mazda facility will be limited to verified Mazda OEM parts, labor costs will be capped at Mazda's current national warranty labor rate of $167 per hour, and total reimbursement will be subject to a per-vehicle limit of $1,750. *Id*. ¶ IV.D. Eligible repairs must have occurred prior to the date on which the Court entered the Preliminary Approval Order (i.e., prior to February 17, 2025). *Id*. ¶ IV.C. Settlement Class Members seeking a reimbursement must submit reasonable documentary evidence (e.g., a receipt, credit card statement, or service record) with their Claim. *Id*. ¶ V.D.3. Those Settlement Class Members who previously paid for an eligible repair but no longer have their Vehicle will be eligible under this category provided all the other requirements are satisfied.

B. The Release; Dismissal with Prejudice

In exchange for the benefits and consideration provided under the Settlement Agreement

(ECF No. 18-1)—and subject to the Court's final approval—Plaintiffs and Settlement Class Members (excluding those who timely and validly opted out) will release any claims against Mazda that were or could have been asserted related to defects alleged in the Mazda Connect system equipped in the Settlement Class Vehicles. SA ¶¶ VII.A-F. The Litigation will also be dismissed with prejudice. SA ¶ VII.A.

C. Notice and Settlement Administration; Objections and Opt-Outs

The Class Notice plan was comprehensive. It was administered by JND Legal Administration ("JND") in accordance with the Settlement and the Preliminary Approval Order. *See generally* Intrepido-Bowden Decl.

Following entry of the Preliminary Approval Order, Mazda utilized its records to identify Settlement Class Members, verify and update Settlement Class Members' information via a third party that maintains and collects the names and addresses of automobile owners, and Class Notice was sent to identified Settlement Class Members by first-class mail. SA ¶ V.D.1; Intrepido-Bowden Decl. ¶¶ 12-13. Settlement Class Members received direct notice of the Class Notice via mail. SA ¶ V.D.1; Intrepido-Bowden Decl. ¶ 14. Prior to mailing the Class Notice, an address search through the United States Postal Service's National Change of Address database was conducted to update the address information for Settlement Class Vehicle owners and lessees. SA ¶ V.D.1; Intrepido-Bowden Decl. ¶ 13. For each individual Notice that was returned as undeliverable, JND has re-mailed the Class Notice where a forwarding address was provided. SA ¶ V.D.1; Intrepido-Bowden Decl. ¶ 15. For the remaining undeliverable Notice mailings where no forwarding address is provided, the Settlement Administrator performed an advanced address search (e.g., a skip trace) and re-mailed any undeliverable Notices to the extent any new and current addresses were located. SA ¶ V.D.1; Intrepido-Bowden Decl. ¶ 15.

In addition, JND established (and continues to maintain and update) a dedicated Settlement Website (https://www.mazdainfotainmentsettlement.com) that includes the Postcard Notice, Long Form Notice, Claim Form, Settlement Agreement, operative complaint, motions for preliminary approval and attorneys' fees, the Preliminary Approval Order, and all other relevant documents. SA ¶ V.D.1; Intrepido-Bowden Decl. ¶¶ 27-31. Mazda has paid and will continue to pay all costs of notice and other settlement administration costs. SA ¶ V.B. Mazda also provided notice of the Settlement to the appropriate authorities, as required by the Class Action Fairness Act, 28 U.S.C. § 1715. SA ¶ V.C; Intrepido-Bowden Decl. ¶ 11.

The Court-approved Class Notice plan informed each Settlement Class Member in plain, easy-to-read English of their right to participate in, request exclusion from, or object to the Settlement. Intrepido-Bowden Decl. ¶ 42. JND estimates that the mailed Class Notice program, alone, reached approximately 96.38%[4] of Settlement Class Members. *Id*. at ¶ 43. As noted above, a total of 31 requests for exclusion were received and there were four objections. *Id.* at ¶¶ 36, 39. As of July 11, 2025, JND has received 9,234 Claim Forms. *Id.* at ¶ 41. Claims will continue to be received and processed through the August 1, 2025 Claims Period deadline.

D. Attorneys' Fees, Costs and Expenses, and Service Awards

Class Counsel filed Plaintiffs' Fee Motion (ECF Nos. 46, 46-1) requesting an award of attorneys' fees, reimbursement of litigation costs and expenses, and Service Awards. As is reflected in that submission, the requested fee award and expenses are reasonable and consistent

[4] A notice plan that achieves a 96.38% reach is an outstanding result by any measure. *See* Federal Judicial Center, *Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide*, at 3 (2010), www.fjc.gov/sites/default/files/2012/NotCheck.pdf. ("A high percentage [of the class] (e.g., between 70-95%) can often reasonably be reached by a notice campaign."); *see also In re Restasis (Cyclosporine Ophthalmic Emulsion) Antitrust Litig.*, 527 F. Supp. 3d 269, 273 (E.D.N.Y. 2021) (citation omitted) (observing that "a notice plan that reaches between 70 and 95 percent of the class is reasonable," and endorsing a notice plan with 80% expected reach).

with awards approved by courts in similar cases, including in this District. The attorneys' fee request is particularly justified given the extraordinary result obtained in this case measured against the risks Class Counsel took in pursuing this litigation.

Finally, each Plaintiff has been a dedicated and active participant on behalf of the Settlement Class, putting their name and reputation on the line for the sake of their fellow Settlement Class Members. This Settlement would not have been possible without their efforts. Declaration of Benjamin F. Johns in Support of Fee Motion ("Johns Fee Decl."), ECF No. 46-2 at ¶¶ 27-29; Declaration of Andrew W. Ferich in Support of Fee Motion ("Ferich Fee Decl."), ECF No. 46-3 at ¶¶ 26-28. Plaintiffs submit that the requested Service Awards are well-supported by Plaintiffs' contributions in this case and the case law offered in the Fee Motion and should be granted.

IV. ARGUMENT

A. Fed. R. Civ. P. 23(e) and Sixth Circuit Standards for Final Approval

"Federal Rule of Civil Procedure 23(e) provides that the claims of 'a class proposed to be certified for purposes of settlement' can be settled 'only with [a] court's approval.'" *Thompson v. Seagle Pizza, Inc.*, No. 20-cv-0016, 2022 WL 1431084, at *3 (W.D. Ky. May 5, 2022) (quoting Fed. R. Civ. P. 23(e)). "Approval of a class action settlement involves two-stages: (1) 'The judge reviews the proposal preliminarily to determine whether it is sufficient to warrant public notice and a hearing'; and (2) 'If so, the final decision on approval is made after the hearing.'" *Green v. Platinum Restaurants Mid-Am. LLC*, No. 14-cv-0439, 2022 WL 1240432, at *2 (W.D. Ky. Apr. 27, 2022) (quoting *Ann. Manual Complex Lit.* (Fourth) § 13.14 (2019)).

At the preliminary approval stage, the Court considered the factors set forth in Rule 23(e)(2) and the traditional factors for class action settlement approval in the Sixth Circuit, and

concluded that it "will likely be able to approve" the Settlement under Rule 23(e)(2). ECF No. 39 at 5. Final approval requires analysis of the same factors the Court previously considered at the preliminary approval stage. The Court should confirm and make final its finding that the Settlement is fair, reasonable, and adequate.

Rule 23(e)(2) sets forth the following factors to assist the Court in making this determination: (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; (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)(A)-(D).

"[I]n considering whether to approve the parties' proposed settlement, [courts] in the Sixth Circuit should look to both the factors found in Rule 23 as well as the Sixth Circuit's traditional factors." *Doe v. Ohio,* No. 91-cv-00464, 2020 WL 728276, at *3 (S.D. Ohio Feb. 12, 2020), *report and recommendation adopted,* No. 91-cv-0464 (S.D. Ohio Mar. 2, 2020) (citations omitted). In the Sixth Circuit, courts also analyze the following "traditional factors":

> (1) the risk of fraud or collusion; (2) the complexity, expense and likely duration of the litigation; (3) the amount of discovery engaged in by the parties; (4) the likelihood of success on the merits; (5) the opinions of class counsel and class representatives; (6) the reaction of absent class members; and (7) the public interest.

Green, 2022 WL 1240432, at *4 (citation omitted).

B. The Settlement Is Fair, Reasonable, and Adequate Under the Rule 23 and Sixth Circuit Factors

Application of the Rule 23(e)(2) and the Sixth Circuit considerations demonstrates that the

Settlement is fair, reasonable, and adequate, and is in the best interests of the class.

1. The Rule 23 Factors Support Final Settlement Approval

a. Rule 23(e)(2)(A): The Class Representatives and Class Counsel Have Adequately Represented the Class

Under Fed. R. Civ. P. 23(e)(2)(A), the Court considers whether the class representatives and class counsel "adequately represented the class." Plaintiffs and their counsel have done so here. Class Counsel have handled this matter on a contingency basis for over two years, including four mediation sessions with a respected mediator. Class Counsel are highly experienced attorneys who expended significant time and resources investigating, litigating, and securing the Settlement in this case, and they are well versed in the facts of the case and applicable law. *See* Johns MPA Decl. at ¶¶ 6-17, 20-23; Ferich MPA Decl. at ¶¶ 2-19, 22-39.

Their adequacy is further demonstrated by the extraordinary results achieved here. Class Counsel placed the interests of Class Members first and acted commendably in securing a relatively early, excellent settlement, without unnecessary expenditure of time or placing undue burden on the court system.

Further, Class Counsel's work will not end when the Settlement is finally approved; they will continue to oversee implementation of the Settlement, supervise the claims administration, and communicate with Settlement Class Members. Class Counsel pride themselves on ensuring that claims administration is properly handled.

The Class Representatives also served a vital role in achieving these results. Among other things, they: (i) provided important information and assisted in Class Counsel's investigation of the factual basis for the claims; (ii) were involved in the drafting of the complaints; (iii) regularly consulted with Class Counsel during the course of the mediations; (iv) provided guidance and approved all of the negotiated relief; and (v) reviewed and approved the Settlement. Ferich MPA

Decl. ¶¶ 18-19; Johns Fee Decl. ¶¶ 27-29; Ferich Fee Decl. ¶¶ 26-28. They have cooperated with their counsel and stayed abreast of all litigation activity. This factor supports final approval.

b. Rule 23(e)(2)(B): The Proposed Settlement Is the Product of Arm's-Length Negotiations Among Experienced Counsel[5]

Fed. R. Civ. P. 23(e)(2)(B) addresses whether the proposal was negotiated at arm's length. The Settlement Agreement is the product of four mediation sessions with Judge Tevrizian over many months. These negotiations were conducted at arm's length, in good faith, by experienced counsel. Johns MPA Decl. ¶¶ 2, 14; Ferich MPA Decl. ¶¶ 2, 13. The Parties did not discuss or negotiate the issue of attorneys' fees or plaintiff Service Awards until after there was agreement on all material terms of the settlement. Johns MPA Decl. ¶ 13; Ferich MPA Decl. ¶ 12. This factor supports the fairness of the Settlement. *See, e.g., Bert v. AK Steel Corp*., No. 02-cv-0467, 2008 WL 4693747, at *2 (S.D. Ohio Oct. 23, 2008) ("participation of an independent mediator in settlement negotiations virtually insures that the negotiations were conducted at arm's length and without collusion between the parties").

c. Rule 23(e)(2)(C)(i): The Relief Under the Proposed Settlement Is Adequate, Taking Into Account the Costs, Risks, and Delay of Trial and Appeal[6]

In determining whether the class-wide relief is adequate under Fed. R. Civ. P. 23(e)(2)(C), the Court considers "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 under Rule 23(e)(3)." Each of these

[5] This factor overlaps with the first traditional factor ("the risk of fraud or collusion").
[6] This subsection subsumes several traditional factors, including the second ("complexity, expense and likely duration of the litigation") and the fourth ("likelihood of success on the merits").

supports final settlement approval.

While this case was settled before it was fully litigated, the Parties had a detailed understanding of their respective arguments and defenses during this process. Mazda has vigorously denied liability from the outset and would have continued to take this position had litigation continued. To prevail, Plaintiffs would have had to withstand Mazda's motion to dismiss, obtain and maintain class certification, likely defend a certification order on appeal under Rule 23(f), survive likely motions for decertification and for summary judgment, and prevail at trial and any subsequent appeal. Plaintiffs and their counsel recognize there was an indisputable risk associated with each successive stage of this process. *See, e.g., Sonneveldt v. Mazda Motor of Am., Inc.*, No. 19-cv-1298, 2023 WL 2292600, at *17 (C.D. Cal. Feb. 23, 2023) (decertifying previously certified classes of consumers and entering summary judgment for the defendant). These risks are not theoretical; just last month, an *en banc* panel of the Sixth Circuit issued an opinion that vacated and remanded a district court's order which had granted class certification in an automobile defect case. *See Speerly v. Gen. Motors, LLC*, No. 23-1940, 2025 WL 1775640 (6th Cir. June 27, 2025).

In contrast to the uncertainty and delays attendant to protracted litigation, the Settlement "provides a significant, easy-to-obtain benefit to class members" as well as a two-year warranty extension to all Settlement Class Members. *In re Haier Freezer Consumer Litig.*, No. 11-cv-02911, 2013 WL 2237890, at *5 (N.D. Cal. May 21, 2013); *see also Ebarle v. Lifelock, Inc.*, No. 15-cv-00258, 2016 WL 234364, at *8 (N.D. Cal. Jan. 20, 2016) (settlement that provides immediate benefits to class members has value compared to the risk and uncertainty of continued litigation). The fair market value of the LWE, alone, is estimated to be at least $32 million, and that value does not include any amounts paid to Settlement Class Members under the Settlement's reimbursement program. *See* Fee Motion, ECF No. 46-1 at 1 and Declaration of Lee Bowron,

ACAS, MAAA, ECF No. 48. at ¶ 4. This is a substantial recovery and benefit for the Class.

d. Rule 23(e)(2)(C)(ii): The Relief Provided for the Class Is Adequate, Taking Into Account the Effectiveness of Any Proposed Method of Distributing Relief to the Class, Including the Method of Processing Class Member Claims

The method of distributing relief and the claims process is also fair, reasonable, and adequate, and "facilitates filing legitimate claims;" it is not "unduly demanding" in any respect. Rule 23(e)(2)(C)(ii); 2018 Adv. Comm. Notes.

No Claim is required to receive the benefit of the LWE—it is automatic, and fully transferable. *See* SA ¶ IV.B. While a Claim is required for reimbursement of out-of-pocket costs, the form is simple and straightforward, and Settlement Class Members need only submit sufficient documentary evidence (i.e., Proof of Expenses) to substantiate their out-of-pocket cost(s) that pre-dated the Preliminary Approval Order in accordance with the Settlement. *See id.* ¶ IV.C. Requiring claim forms and documentations to receive reimbursement of out-of-pockets costs is standard and regularly approved. *See, e.g., In re Whirlpool Corp. Front-Loading Washer Prods. Liab. Litig.,* No. 08-WP-65000, 2016 WL 5338012, at *14 (N.D. Ohio Sept. 23, 2016) (approving the use of claim forms to pursue a claim for reimbursement of out-of-pocket expenses, reasoning "a minimal proof requirement 'strike[s] a proper balance between, on the one hand, avoiding fraudulent claims and keeping administrative costs low, and on the other hand, allowing as many class members as possible to claim benefits'"); *Simerlein v. Toyota Motor Corp.*, No. 17-cv-1091, 2019 WL 1435055, at *9 (D. Conn. Jan. 14, 2019) (approving settlement that included a claim form for class members seeking reimbursement of past out-of-pocket repairs to Toyota vehicles).

The Settlement also merits approval by reference to other approved automotive settlements, including in this Circuit. *See e.g.*, *Gann v. Nissan North America Inc.*, No. 18-cv-00966 (M.D. Tenn.) (approved settlement providing a two-year/24,000-mile warranty extension

with a 24,000-mileage limit, and reimbursement of out-of-pocket costs); *Weckwerth, et. al. v. Nissan North America Inc.*, No. 18-cv-00588 (M.D. Tenn.) (same); *Steinhardt et al. v. Volkswagen Group of America, Inc. et al.*, No. 23-cv-02291 (D.N.J.), ECF No. 59-2 (approved settlement valued at over $30 million, in a class action lawsuit alleging a defective belt start generator in certain Audi automobiles; settlement provided for warranty extension and reimbursement of certain past paid, unreimbursed out-of-pocket expenses).

Here, there is a two-year warranty extension without mileage restriction. Covered expenses prior to the date of the Preliminary Approval Order are reimbursable, subject to the parameters of the Settlement. This relief is excellent and merits final approval.

e. Rule 23(e)(2)(C)(iii): The Relief Provided for the Class Is Adequate, Taking Into Account the Terms of Any Proposed Award of Attorneys' Fees, Including Timing of Payment

Finally, the amount of attorneys' fees and litigation expenses and costs being sought are reasonable, justified, and should be awarded for the reasons discussed in the Fee Motion. *See generally*, Fee Motion; *see* Fed. R. Civ. P. 23(e)(2)(C)(iii). The amounts and timing of these payments are fair, reasonable, and adequate. The Parties discussed fees and expenses only after all material terms of the Settlement were agreed upon. Johns Fee Decl. ¶ 9; Ferich Fee Decl. ¶ 9. Even then, because the Parties could not arrive at an agreement on the amount of fees and expenses, they required an additional mediation session with Judge Tevrizian to finalize those terms. *Id*.

The fees will not diminish the benefits to the Settlement Class in any respect. The Settlement provides that fees approved by the Court will be paid after the Effective Date of the Settlement. SA ¶ VI.C. Consistent with best practices, Class Counsel filed the Fee Motion prior to the deadline for objections, which afforded Settlement Class Members the opportunity to object to the fee request. Although four objections (discussed *infra*) were submitted, none of them takes

issue with the amount of requested fees and expenses.

All these terms are routinely found reasonable and adequate by courts in class action settlements. *See, e.g., Macy v. GC Servs. Ltd. P'ship*, No. 15-cv-819, 2020 WL 3053469, at *3 (W.D. Ky. May 28, 2020) (granting approval of settlement that provided for payment of attorneys' fees separate and apart from the settlement fund); *Manners v. Am. Gen. Life Ins. Co.*, No. CIV.A. 3-98-0266, 1999 WL 33581944, at *28 (M.D. Tenn. Aug. 11, 1999) ("The Court finds that the fee and expense negotiations were conducted at arm's length, only after the parties had reached agreement on all terms of the Settlement. There is no evidence in this case that the Settlement, or the fee and expense agreement, was in any way collusive. Under these circumstances, the Court gives great weight to the negotiated fee in considering the fee and expense request.").

Moreover, as explained in the Fee Motion, the agreed fee amount represents a small fraction of the estimated value of the Settlement and, at the time the Fee Motion was filed, represented a 1.27 multiple of counsel's lodestar (and is lower at this stage). As discussed in the Fee Motion, the requested fee and expenses, as well as the multiplier, are within the range typically held to be reasonable in this Court and other courts in the Sixth Circuit. *See* Fee Motion at 7-18.

f. Rule 23(e)(2)(C)(iv): There Are No Side Agreements Required to Be Identified Under Rule 23(e)(3)

Fed. R. Civ. P. 23(e)(3) requires settling parties to "file a statement identifying any agreement made in connection with the proposal." Here, there are no "side agreements" concerning this settlement.

g. Rule 23(e)(2)(D): The Settlement Treats Class Members Equitably Relative to Each Other

The proposed Settlement also treats Settlement Class Members equitably relative to each other, as required by Rule 23(e)(2)(D). All current owners and lessees benefit from the warranty

extension (as will future owners), and all current and former owners and lessees are entitled to claim reimbursement of the several categories of out-of-pocket costs incurred up until the date of the Preliminary Approval Order. The Settlement also treats owners who purchased new and used vehicles equally, and although individuals who incur expenses covered under the Settlement after the date of the Preliminary Approval Order are foreclosed from reimbursement, they nonetheless are able to receive the benefit of the two-year LWE.

These common-sense distinctions among Settlement Class Members are reasonable and appropriate, and courts routinely approve such relief. *See e.g., Fulton-Green v. Accolade, Inc.,* No. 18-cv-0274, 2019 WL 4677954, at *8 (E.D. Pa. Sept. 24, 2019) (approving settlement where "the settlement treats each class member individually" because "[e]ach and every class member can receive a reimbursement specific to their losses"); *In re Nexus 6P Prods. Liab. Litig.*, No. 17-cv-02185, 2019 WL 6622842, at *9 (N.D. Cal. Nov. 12, 2019) (approving settlement plan that "divides claimants into different groups based on the relative size of their potential claims and distributes funds based on these groups"); *Burrow v. Forjas Taurus S.A.*, No. 16-21606-CIV, 2019 WL 4247284, at *10 (S.D. Fla. Sept. 6, 2019) (the court found that the settlement treated class members equitably where settlement class members received the benefit of an enhanced warranty service automatically). This factor supports final Settlement approval.

2. The Sixth Circuit Factors Support Final Approval

a. The Risk of Fraud or Collusion

"Courts presume the absence of fraud or collusion in class action settlements unless there is evidence to the contrary." *Green*, 2022 WL 1240432, at *4 (quoting *Thacker v. Chesapeake Appalachia*, L.L.C., 695 F. Supp. 2d 521 (E.D. Ky. 2010)). Furthermore, "the participation of an independent mediator in the settlement negotiations virtually assures that the negotiations were

conducted at arm's length and without collusion between the parties." *Ditsworth v. P & Z Carolina Pizza*, No. 20-cv-00084, 2021 WL 2941985, at *3 (W.D. Ky. July 13, 2021). There is no fraud or collusion here. The Parties reached the Settlement through nearly two years of negotiations and with the assistance of a respected mediator. No discussion of attorneys' fees, litigation expenses and costs, and service awards occurred until after the Parties reached agreement on all material terms of the Settlement, and these amounts were reached through separate (third and fourth) mediation sessions with the mediator. Johns MPA Decl. ¶ 13; Ferich MPA Decl. ¶ 12.

b. The Complexity, Expense and Likely Duration of Litigation

As discussed above, the Parties have evaluated the risks, delay, and complexity of this litigation. This Court has recognized that "most class actions are inherently complex and settlement avoids the costs, delays, and multitude of other problems associated with them." *Ditsworth*, 2021 WL 2941985, at *3 (quoting *In re Telectronics Pacing Sys., Inc.*, 137 F. Supp. 2d 985, 1013 (S.D. Ohio 2001)). Had the Parties not efficiently resolved the matter, it may have been years before trial and there was a risk of non-recovery. This factor supports approval. *See Wilson,* 2019 WL 6898662, at *5.

c. The Amount of Discovery Engaged in by the Parties

"In considering whether there has been sufficient discovery to permit the plaintiffs to make an informed evaluation of the merits of a possible settlement, the court should take account not only of court-refereed discovery but also informal discovery in which parties engaged both before and after litigation commenced." *Ditsworth*, 2021 WL 2941985, at *3 (citation omitted). "[T]he absence of formal discovery is not unusual or problematic, so long as the parties and the court have adequate information in order to evaluate the relative positions of the parties." *Id.* As discussed above, Mazda produced, and proposed Class Counsel reviewed, hundreds of pages of documents

that were responsive to Plaintiffs' requests for information relevant to the Settlement. Johns MPA Decl. ¶ 15; Ferich MPA Decl. ¶ 14. This point supports approval of the Settlement.

d. The Likelihood of Success on the Merits

"In evaluating settlements, courts are not required to reach any ultimate conclusions on the contested issues of fact and law which underlie the merits of the dispute, for it is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements." *Ditsworth*, 2021 WL 2941985, at *2 (internal quotations and citation omitted). As discussed *supra*, Plaintiffs faced significant risks on the merits of their claims, including with respect to class certification, due in part to the availability of years-old evidence.

e. The Opinions of Class Counsel and Class Representatives

"'The endorsement of the parties' counsel is entitled to significant weight, and supports the fairness of the class settlement.'" *Green*, 2022 WL 1240432, at *5 (quoting *UAW v. Ford Motor Co.*, No. 07-cv-14845, 2008 WL 4104329, at *26 (E.D. Mich. Aug. 29, 2008)). Here, "the experienced attorneys on each side, after assessing the relative risks and benefits of litigation, believe that the settlement is fair and reasonable." *Wilson,* 2019 WL 6898662, at *6. All Plaintiffs and Class Counsel support the Settlement. Johns MPA Decl. ¶ 5; Ferich MPA Decl. ¶¶ 5, 18.

f. The Reaction of Absent Class Members

As discussed *supra*, the reaction of the Settlement Class has been outstanding. In a class comprised of 1,668,244 Settlement Class Vehicle VINS (for which 2,977,378 notices were mailed), only 31 requests for exclusion were received and there were only four objections. This represents a miniscule 0.001% of the Settlement Class. *See Dick v. Sprint Commc'ns Co. L.P.,* 297 F.R.D. 283, 297 (W.D. Ky. 2014) ("'A certain number of ... objections are to be expected in a class action.... If only a small number of objections are received, that fact can be viewed as indicative

of the adequacy of the settlement.'") (quoting *In re Cardizem CD Antitrust Litigation,* 218 F.R.D. 508, 527 (E.D. Mich. 2003).

On the other hand, the rest of Settlement Class Members will receive the automatic LWE benefit, and 9,234 Claim Forms requesting expense reimbursement have been submitted to date. *Id.* at ¶ 41. Claims will continue to be received and processed through the August 1, 2025 Claims Period deadline, so that number will increase. This factor supports approval.

g. The Public Interest

"[T]here is a strong public interest in encouraging settlement of complex litigation and class action suits because they are 'notoriously difficult and unpredictable' and settlement conserves judicial resources." *Wilson,* 2019 WL 6898662, at *5 (internal quotation marks and citation omitted). Here, it is virtually certain that no other case would be brought to pursue these claims because, but for the Parties' tolling agreement, the claims of most class members would be beyond the statute of limitations. Further, no other action has been brought during the two years the Parties have litigated and negotiated this Settlement.

Further, the public interest here is particularly strong because malfunctioning infotainment systems pose a potential safety hazard. The Settlement aims to address the core issues causing the alleged defect in the Settlement Class Vehicles at no expense to Settlement Class Members on a forward-looking basis under the LWE, while also compensating Settlement Class Members who experienced and paid to rectify a wider gamut of manifestations of the alleged defect in the past. *See Smith v. Ohio Dep't of Rehab. & Corr.*, 2012 U.S. Dist. LEXIS 58634, at *71 (S.D. Ohio Apr. 26, 2012) (noting that "creating a safer environment . . . serves the public interest"). Thus, all applicable fairness factors weigh in favor of approval.

C. The Court Should Confirm Certification of the Settlement Class[7]

Since the Court granted preliminary approval of the Settlement, nothing has changed that should or would affect the Court's determination on certification of the Settlement Class at the final approval stage. *See* Fed. R. Civ. P. 23(e)(1)(B)(i)-(ii) (notice to the settlement class at the preliminary approval phase should be based on a finding that doing so "is justified by the parties' showing *that the court will likely be able to* . . . approve the proposal under Rule 23(e)(2); and certify the class for purposes of judgment on the proposal") (emphasis added).

1. The Class Members Are Too Numerous to Be Joined

Class certification requires the class to be so numerous that their joinder would be "impracticable." Fed. R. Civ. P. 23(a)(1). There are 1,668,244 Settlement Class Vehicles and 2,997,378 Settlement Class Members in the United States, including Puerto Rico and other territories. Numerosity is readily satisfied. *See, e.g.*, *Marcus v. BMW of N. Am., LLC*, 687 F.3d 583, 595 (3d Cir. 2012) (noting that classes exceeding 40 are sufficiently numerous); *Curry v. SBC Commc'ns, Inc.*, 250 F.R.D. 301, 310 (E.D. Mich. 2008) ("In most cases, a class in excess of forty members will do.").

2. There Are Common Questions of Law and Fact

Rule 23 next requires the presence of common questions of law or fact. Fed. R. Civ. P. 23(a)(2). Commonality may be shown when the claims all "depend upon a common contention," with a single common question sufficing. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). The common questions in this case include, *inter alia*, whether express or implied contracts were breached, whether the Mazda Connect system is defective, whether Mazda had knowledge of the

[7] Mazda does not oppose certification of the Class and a finding that the Rule 23 factors are met for purposes of settlement only.

alleged defect (and if so, when), and whether Mazda had a legal duty to disclose the alleged defect. These questions are common to the class, capable of class-wide resolution, and "will resolve an issue that is central to the validity of each one of the claims in one stroke." *Id*. The commonality requirement is met. *See Henderson v. Volvo Cars of N. Am., LLC*, No. 09-cv-4146, 2013 WL 1192479, at *4 (D.N.J. Mar. 22, 2013) ("Several common questions of law and fact exist in this case, including whether the transmissions in the Class Vehicles suffered from a design defect, whether Volvo had a duty to disclose the alleged defect, whether the warranty limitations on Class Vehicles are unconscionable or otherwise unenforceable, and whether Plaintiffs have actionable claims.").

3. Plaintiffs' Claims Are Typical of the Class's Claims

A class representative's claims must be typical of those of other class members. Fed. R. Civ. P. 23(a)(3). Typicality assesses "whether a sufficient relationship exists between the injury to the named plaintiff and the conduct affecting the class, so that the court may properly attribute a collective nature to the challenged conduct." *Sprague v. Gen. Motors Corp.*, 133 F.3d 388, 399 (6th Cir. 1998). Plaintiffs satisfy the typicality requirement where their claim "arises from the same event or practice or course of conduct that gives rise to the claims of other class members, and if his or her claims are based on the same legal theory." *Beattie v. CenturyTel, Inc*., 511 F.3d 554, 561 (6th Cir. 2007) (internal quotation marks and citation omitted). The claims need not be identical; rather, they need only "arise[] from the same course of conduct." *Bittinger v. Tecumseh Prods. Co.*, 123 F.3d 877, 884 (6th Cir. 1997).

Plaintiffs and class members have the same types of claims against the same defendant stemming from the same alleged violations related to the same allegedly defective product. Typicality is established. *See In re NFL Players Concussion Injury Litig.*, 821 F.3d 410, 428 (3d

Cir. 2016), *as amended* (May 2, 2016) (holding typicality met where plaintiffs "seek recovery under the same legal theories for the same wrongful conduct as the [classes] they represent").

4. Plaintiffs and Class Counsel Will Continue to Fairly and Adequately Protect the Interests of the Class

The Class representatives must fairly and adequately protect the interests of the class. Fed. R. Civ. P. 23(a)(4). "Class representatives are adequate when it appears that they will vigorously prosecute the interest of the class through qualified counsel . . . which usually will be the case if the representatives are part of the class and possess the same interest and suffer the same injury as the class members." *UAW v. Gen. Motors Corp.*, 497 F.3d 615, 626 (6th Cir. 2007) (internal quotation marks and citations omitted). This criterion is satisfied with respect to both Class Counsel and the named Plaintiffs.

a. Class Counsel Are Well Qualified

Rule 23(g) sets forth the criteria for evaluating the adequacy of Plaintiffs' counsel: (i) the work counsel has done in identifying or investigating potential claims in the action; (ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (iii) counsel's knowledge of the applicable law; and (iv) the resources that counsel will commit to representing the class. Fed. R. Civ. P. 23(g)(1)(A).

Plaintiffs' counsel are well qualified to serve as Class Counsel. Collectively, they have decades of experience successfully representing plaintiffs and classes in complex class action litigation, including in consumer product defect cases. *See, e.g., Udeen v. Subaru of Am., Inc.*, No. 18-cv-17334 (D.N.J.) (Mr. Johns and Mr. Ferich served as co-lead counsel in this consumer class action involving allegedly defective Starlink infotainment systems in certain Subaru automobiles, which resulted a settlement valued at $6.25 million. At the hearing granting final approval of the settlement, the district court commented that the plaintiffs' team "are very skilled and very efficient

lawyers … They've done a nice job."); *Steinhardt, supra* (Mr. Ferich is appointed co-lead counsel in a lawsuit alleging defective belt start generator in certain Audi automobiles; in granting final approval, the Court stated that Mr. Ferich and his team "are highly experienced and dedicated attorneys who secured what I view to be an excellent outcome for the class."); *see also In re CorrectCare Data Breach Litig.*, No. 22-cv-319, 2024 WL 1403075, at *4 (E.D. Ky. Apr. 1, 2024) (appointing Mr. Johns co-lead counsel in a class action settlement) (Reeves, C.J.). Adequacy of counsel is satisfied.[8]

b. Plaintiffs Have No Conflicts of Interest and Have Diligently Pursued the Action on Behalf of the Other Class Members

"A named plaintiff is 'adequate' if his interests do not conflict with those of the class." *Shapiro v. All. MMA, Inc.*, No. 17-cv-2583, 2018 WL 3158812, at *5 (D.N.J. June 28, 2018) (citation omitted). Plaintiffs have agreed to serve in a representative capacity, communicated diligently with their attorneys, gathered relevant documents and produced them to their attorneys, and helped prepare the allegations in the Complaint. Plaintiffs will continue to act in the best interests of the other class members; there are no conflicts between Plaintiffs and the class. *See, e.g.*, *id.* (adequacy requirement met where the plaintiff had no interests antagonistic to the class).

5. The Requirements of Rule 23(b)(3) Are Met

After satisfying Rule 23(a), a plaintiff must also satisfy one of the three requirements of Rule 23(b) for a court to certify a class. Fed. R. Civ. P. 23(b); *Merenda v. VHS of Michigan, Inc.*, 296 F.R.D. 528, 536 (E.D. Mich. 2013)*, opinion reinstated on reconsideration sub nom. Cason-Merenda v. VHS of Michigan, Inc.*, No. 06-cv-15601, 2014 WL 905828 (E.D. Mich. Mar. 7, 2014).

[8] For these reasons, and for the same reasons the Court previously appointed Class Counsel at the preliminary approval stage, Plaintiffs request that the Court reaffirm their appointment, as set forth in the Preliminary Approval Order, ECF No. 39 at 8.

Plaintiffs seek certification under Rule 23(b)(3), which requires that (i) common questions of law and fact predominate over individualized ones, and that (ii) a class action is superior to other available methods for the fair and efficient adjudication of the controversy. Fed. R. Civ. P. 23(b)(3). "[A] plaintiff must establish that the issues in the class action that are subject to generalized proof, and thus applicable to the class as a whole . . . predominate over those issues that are subject only to individualized proof." *Beattie*, 511 F.3d at 564 (internal quotation marks and citation omitted). This requirement considers "the difficulties likely to be encountered in the management of a class action" and issues with individual litigation. *Id.*; *see also Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 617 (1997) ("[t]he policy at the very core of the class action mechanism is to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action[.]") (internal quotation marks and citation omitted). As set forth below, the predominance and superiority requirements are met.

a. Common Issues of Law and Fact Predominate

The predominance inquiry tests the cohesion of the class, '"ask[ing] whether the common, aggregation-enabling, issues in the case are more prevalent or important than the non-common, aggregation-defeating, individual issues.'" *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 1045 (2016) (citation omitted). Predominance is met if a single factual or legal question is "at the heart of the litigation." *See Powers v. Hamilton Cty. Pub. Def. Comm'n*, 501 F.3d 592, 619 (6th Cir. 2007). Predominance is ordinarily satisfied, for settlement purposes, when the claims arise out of the defendant's common conduct. *See, e.g.*, *Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 299-300 (3d Cir. 2011) ("[T]he focus is on whether the defendant's conduct was common as to all of the class members."); *Yaeger v. Subaru of Am., Inc.*, No. 14-cv-4490, 2016 WL 4541861, at *6 (D.N.J. Aug. 31, 2016) (predominance satisfied for purposes of settlement where class vehicles had an allegedly

common, undisclosed design defect); *Mendez v. Avis Budget Grp., Inc.*, No. 11-cv-6537, 2017 WL 5513691, at *4 (D.N.J. Nov. 17, 2017) ("[I]n cases where it is alleged that the defendant made similar misrepresentations, non-disclosures, or engaged in a common course of conduct, courts have found that said conduct satisfies the commonality and predominance requirements.").

All class members purchased or leased Class Vehicles with the Mazda Connect system which suffers from an alleged defect that Mazda allegedly failed to disclose. Common questions of law therefore predominate for settlement purposes. For example, fraudulent concealment, a cause of action available to all class members, "includes a similar set of elements: (1) misrepresentation or omission of a material fact, (2) a duty to disclose, (3) intent to induce reliance and/or defraud, (4) some form of reliance, and (5) resulting damages." *See, e.g.*, *In re Lumber Liquidators Chinese-Manufactured Flooring Durability Mktg. & Sales Practice Litig.*, No. 16-md-2743, 2017 WL 2911681, at *7 (E.D. Va. July 7, 2017); *see also Sullivan*, 667 F.3d at 303 (internal citation and quotations omitted) (holding "state law variations are largely irrelevant to certification of a settlement class"); *In re NFL Players' Concussion Injury Litig.*, 307 F.R.D. 351, 380 (E.D. Pa. 2015), *aff'd* 821 F.3d 410 (3d Cir. 2016), (holding predominance met for fraudulent concealment claims as defendant's "knowledge and conduct" was "[c]entral to this case").

Further, common questions of fact abound with respect to Plaintiffs' warranty, unfair trade practices, and consumer protection claims: whether the vehicles are defective; whether Mazda should have disclosed the existence of the alleged defect, and if so, when and where; whether the allegedly concealed information was material to a reasonable consumer; and whether class members sustained harm as a result of Mazda's conduct. *See, e.g.*, *In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 314 (3d Cir. 1998) (noting that cases involving "a common scheme to defraud" readily meet predominance test); *Yaeger*, 2016 WL 4541861, at

*6 (noting that whether a defect exists, whether it is covered by warranty, and what compensation class members are due are common questions that predominate); *Alin v. Honda Motor Co.*, No. 08-cv-4825, 2012 WL 8751045, at *5 (D.N.J. Apr. 13, 2012) (superiority satisfied where "class vehicles allegedly suffer from defects that cause their air conditioning systems to break down, although there are differences as to how the breakdowns occur"). Common questions predominate for settlement purposes.

b. A Class Action Is a Superior Means of Resolving This Action

Rule 23(b)(3) superiority "requires a plaintiff to show 'that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.'" *In re Fam. Sols. of Ohio, Inc.,* No. 21-cv-0303, 2022 WL 13915151, at *3 (6th Cir. June 17, 2022) (quoting Fed. R. Civ. P. 23(b)(3)). Rule 23(b)(3) superiority "is met if the class action is a better way than individual litigation to adjudicate a claim." *Calloway v. Caraco Pharm. Labs., Ltd*., 287 F.R.D. 402, 407–08 (E.D. Mich. 2012). This is especially true in situations which "vindicat[e] the rights of groups of people who individually would be without effective strength to bring their opponents into court at all." *Amchem*, 521 U.S. at 617 (citation and internal quotation marks omitted).

Here, given the relatively low value of the individual claims, Settlement Class Members are unlikely to bring (and have not brought) individual lawsuits against Mazda. *In re CorrectCare Data Breach Litig*., 2024 WL 1403075, at *5. Furthermore, because the class is so large, class-wide resolution of their claims in a single action is efficient. *See Atis v. Freedom Mortg. Corp.*, No. 15-cv-03424, 2018 WL 5801544, at *7 (D.N.J. Nov. 6, 2018) (finding superiority satisfied where "individual claims of class members are relatively small in monetary value," management issues were "less likely" given common questions that predominated, and there were no other litigations concerning the controversy); *In re NFL Players Concussion Injury Litig.*, 821 F.3d at

435 (citation omitted) (superiority satisfied where '"the [s]ettlement avoids thousands of duplicative lawsuits and enables fast processing of a multitude of claims"'). For these reasons, the Court may certify the Settlement Class.

D. The Best Practicable Notice Was Provided

Settlement Class Members have also been provided the best practicable notice. *See* Fed. R. Civ. P. 23(c)(2)(B). The best practicable notice is that which 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.

Foremost here, the mailed (postcard) Class Notice was sent via first-class mail directly to over 2.97 million Settlement Class Members. Intrepido-Bowden Decl. ¶ 13. Direct mail notice alone typically satisfies due process. *UAW v. Gen. Motors Corp.*, No. 05-cv-73991, 2006 WL 891151, at *34 (E.D. Mich. Mar. 31, 2006) ("Notice by direct mail satisfies due process, even when it is not combined with publication notice . . . ."). In addition, however, the Class Notice program here includes a PR Newswire press release, and notice is also provided on the Settlement Website and Class Counsel's websites. SA ¶ V.D.; Intrepido-Bowden Decl. ¶ 9.d.

Taken together, the notice satisfies Due Process and provides the "best notice that is practicable under the circumstances . . . ." Fed. R. Civ. P. 23(c)(2)(B); *see also, e.g.*, *Pelzer v. Vassale*, 655 F. App'x 352, 368 (6th Cir. 2016) ("Class notice [must] be reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections" and must "fairly apprise the prospective members of the class of the terms of the proposed settlement so that class members may come to their own

conclusions about whether the settlement serves their interests"). The notice plan provided the best notice practicable under the circumstances, and includes all content required by Rule 23 and comports with due process.

E. The Mass Opt-Out Request Submitted by Francis Farina Should Be Treated as an Individual Opt-Out, but Not as a Mass Opt-Out

One of the requests for exclusion was submitted by Francis J. Farina. ECF No. 52-2. Mr. Farina is an attorney who apparently seeks to exclude himself and thousands of other Mazda vehicle owners from the Settlement. *Id.* at 1. His mass opt-out attempt should be denied for the following reasons.

First, Mr. Farina's request for mass exclusion is explicitly forbidden under the terms of the Settlement. *See* SA ¶ VI.E.6 and Ex. C (Long Form Notice) ("Requests for exclusion will be permitted by individual Settlement Class Members only; proposed group or mass opt-outs will be deemed submitted on behalf of only the individual signing the form."). Further, Courts routinely recognize that "opting out is an individual right" that "must be exercised individually." *In re TikTok, Inc., Consumer Priv. Litig.*, 565 F. Supp. 3d 1076, 1092 (N.D. Ill. 2021) (collecting cases). The mass opt-out should be denied on this basis alone.

Mr. Farina does not confirm he represents the thousands of individuals he seeks to exclude from the Settlement. In fact, the action he identifies (in which he is the lead plaintiff), *Farina v. Mazda Motor of America, Inc.*, No. 23-cv-0050 (W.D.N.C.), has been dismissed and a judgment was entered in favor of Mazda. *Id.,* ECF Nos. 81, 82 (dismissing case and entering judgment). Mr. Farina has not confirmed he has authority, let alone obtained the thousands of other Settlement Class Members' consent (he offers no signature other than his own) to the mass exclusion, which, if granted, would detrimentally impact these Settlement Class Members' rights. *See, e.g.*, *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1024 (9th Cir. 1998) ("[T]o allow representatives in variously

asserted class actions to opt a class out without the permission of individual class members 'would lead to chaos in the management of class actions.'" (citations omitted)); *Sharp Farms v. Speaks*, 917 F.3d 276, 298 (4th Cir. 2019) (explaining that class representatives cannot opt out putative class members because due process "requires that class members be provided notice and an individual choice to proceed as a class member or to opt-out" (citation omitted)).

Mr. Farina has no standing or right to pursue a mass request for exclusion. JND has confirmed, however, that Mr. Farina is a Settlement Class Member (Intrepido-Bowden Decl. ¶ 37) in this Settlement, so his request for exclusion should be permitted, but only as to himself, individually.

F. The Four Objections Are Meritless and Should Be Overruled

1. The O'Leary Objection[9]

The crux of Lori O'Leary's objection ("O'Leary Objection") is that her claimed out-of-pocket expense should be covered under the Settlement, and that because "Mazda acknowledged an issue" in her direct discussions with Mazda, it "should have done a worldwide RECALL . . . ." O'Leary Objection, at 2. Setting aside that it is doubtful that the Court has jurisdiction to issue such an extraordinary remedy, the Settlement is clear that only covered expenses incurred prior to the Preliminary Approval Order date (Feb. 17, 2025) are eligible for reimbursement. SA ¶ IV.C ("Eligible repairs must have occurred prior to the date on which the Court enters the Preliminary Approval Order."). Ms. O'Leary's objection and supporting documents make clear that the cost

[9] It is apparent from the service list in the O'Leary Objection that it was never sent to the Court for filing, and there is no record of the objection being filed with the Court, which was required under the Settlement. *See* SA ¶ VI.E.1. Further, the objection fails to identify the date of acquisition of the affected Settlement Class Vehicle, as required under the Settlement. *See id.* ¶ VI.E.1.ii. The objection is improper and should be overruled for these reasons alone. The O'Leary Objection is attached at Exhibit K of the concurrently filed Intrepido-Bowden Decl. for the Court's reference.

she incurred was in May 2025. O'Leary Objection, at Ex. 3 (John Kennedy Mazda dealership invoice).

While Class Counsel have previously spoken with Ms. O'Leary and done their best to answer her questions, in essence her objection is that the Settlement should provide different relief. But the Settlement is a negotiated package of relief, and Ms. O'Leary's wish that the Settlement included different or additional terms of relief says nothing of the Settlement's fairness. *In re CenturyLink Sales Pracs. & Sec. Litig.*, No. CV-17-2832, 2020 WL 7133805, at *9 (D. Minn. Dec. 4, 2020) (denying objection to the relief provided under the settlement, noting that objector had the ability to "opt out and individually pursue more or different relief"); *In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 343 (S.D.N.Y. 2005). Ms. O'Leary could have opted out of the Settlement, but she chose not to do so. Her objection should be overruled.

2. The Jones Objection[10]

Patricia Jones's objection (ECF Nos. 51, 51-1) ("Jones Objection") is similar to the O'Leary objection in that she simply wishes the Settlement afforded different relief. Jones claims that the Settlement "divides the Settlement Class and provides unequal consideration," because the issues with Mazda Connect for which past-incurred expense reimbursement is available under the Settlement is not apples-to-apples with the issues that will be covered on a going-forward basis under the LWE. Jones Objection, ECF No. 51, at 1-2. Jones suggests that the presence of different relief components creates a "second" or separate class. *Id*. at 1. Further, Jones argues that she and other Settlement Class Members were cut off as of the Preliminary Approval Order date such that

[10] The Jones Objection is improper because it likewise fails to identify the date on which the Settlement Class Vehicle was acquired, as required by the Settlement. *See* SA ¶ VI.E.1.ii. The Court may overrule the objection for this reason.

they cannot submit Claims for reimbursement for items covered under the reimbursement component of the Settlement. *Id.* at 2.

None of these challenges warrants sustaining the objection. There is no divided or separate class or subclasses in this Settlement. All Settlement Class Members are part of the same, single, cohesive class. What *is* separate are the two relief components provided for under the Settlement: one (the expense reimbursement program) looks backward, and the other (the LWE) is forward-looking. Each class member has the ability to avail themselves of both the LWE and, if applicable, the expense reimbursement program. That there are multiple components to the Settlement does not "divide" the Settlement Class. Class members with out-of-pocket expenses that are covered under the Settlement and occurred prior to the Preliminary Approval Order date of February 17, 2025, may file a Claim for reimbursement supported by Proof of Expenses. Expenses arising after that date are not covered under the Settlement. This cutoff was a negotiated term of the Settlement of which all Settlement Class Members were notified as part of Class Notice. Class Counsel landed on a cutoff date that was both agreeable to Mazda and based on confidential Settlement discovery, which bore out that the majority of the Settlement Class Members' Mazda Connect issues relate to the CMU or stem from issues that can be rectified with software updates.

As with Ms. O'Leary, Ms. Jones could have opted out, but she declined to do so. Her objection does not go to the fairness of the Settlement, and it should be overruled. *Saccoccio v. JP Morgan Chase Bank, N.A.*, 297 F.R.D. 683, 700 (S.D. Fla. 2014) ("[T]o the extent that these objectors believe that they are entitled to additional relief . . . they were entitled to opt out of the settlement. They chose not to do so.").

3. The Johnson Objection[11]

Lea Johnson's objection ("Johnson Objection") raises a similar argument as the Jones Objection and asks the Court to reject the Settlement unless the LWE is expanded to mirror and provide coverage for all the issues covered under the past expense reimbursement program. *Id.* at 2. But that is not what the Parties negotiated, and Ms. Johnson simply wishes for different relief. That is not an appropriate basis for an objection. *See In re CenturyLink Sales Pracs. & Sec. Litig.*, *Saccoccio, supra*. Nor is it the Court's role to wade into and make determinations about whether different relief would improve the Settlement. *See Hughes v. Microsoft Corp.,* No. C93-0178C, 2001 WL 34089697, at *10 (W.D. Wash. Mar. 26, 2001) ("An objection that the settlement could have been better ... does not mean the settlement presented [is] not fair, reasonable or adequate." (internal quotations omitted)); *Yaeger*, 2016 WL 4541861, at *17 (rejecting objections that asked the court to impose a better settlement because "[t]here is no middle ground of inserting or deleting terms at the request of an objector based on the judge's conception of what would be more fair, reasonable, or adequate"); *Edwards v. Nat'l Milk Producers Fed'n*, No. 11-CV-04766-JSW, 2017 WL 3616638, at *7 (N.D. Cal. June 26, 2017) (holding it is not the role of the court "to consider whether the settlement could be improved with different or better relief"). Ms. Johnson's objection should be overruled.

[11] Like the O'Leary Objection, the Johnson Objection does not appear to have ever been sent to or filed with the Court. *See* SA ¶ VI.E.1. Nor does the Johnson Objection identify the date the Settlement Class Vehicle was acquired. *See id.* ¶ VI.E.1.ii. The objection is improper and can be overruled for these reasons alone. The Johnson Objection also is attached at Exhibit K of the concurrently filed Intrepido-Bowden Decl. for the Court's reference.

4. The Lindemann Objection[12]

Finally, Mr. Lindemann's objection ("Lindemann Objection") raises that the LWE does not cover the "spider cracking" he experienced on his touchscreen or the digitizer replacement part that he purchased to repair it on his own. He claims that the LWE was agreed to by the Parties because it was "the most expedient solution," and further objects to the Settlement's requirement that objections be mailed.

Once again, this objection essentially amounts to one "that the settlement should have been better," which "has been frequently rejected by courts." *In re Onix Grp., LLC Data Breach Litig.*, No. CV 23-2288-KSM, 2024 WL 5107594, at *11 (E.D. Pa. Dec. 13, 2024) (collecting cases). Courts have also overruled objections on the grounds that a settlement unfairly requires them to be submitted via mail. *See In re Currency Conversion Fee Antitrust Litig.,* No. M 21-95, 2009 WL 10695357, at *10 (S.D.N.Y. Oct. 22, 2009) (overruling objection to the requirement that objections must be certified mail, overnight mail, or by hand); *In re Remicade Antitrust Litig*., No. 17-CV-04326, 2023 WL 2530418, at *22 (E.D. Pa. Mar. 15, 2023) ("Gomez objects to the requirement that class members filed objections by mail, arguing it is too burdensome…The Court does not find the mailing requirement burdensome and overrules this objection."); *McDermid v. Inovio Pharms., Inc.,* No. CV 20-01402, 2023 WL 227355, at *10 (E.D. Pa. Jan. 18, 2023) (finding an argument that requiring objections to be mailed was "overly burdensome" was "belied by [the objector's] ability to successfully lodge an objection… Using the postal system does not burden potential objectors."). Mr. Lindemann's suggestion that the Parties here sought "the most expedient solution" overlooks the fact that the Settlement was vigorously negotiated over the

[12] Like the O'Leary Objection and Johnson Objection, the Lindemann Objection does not appear to have been filed with the Court. It too is attached at Exhibit K of the concurrently filed Intrepido-Bowden Decl. for the Court's reference.

course of four mediation sessions spanning two years. Nor does it acknowledge the significant risks that Plaintiffs would have faced had the case been litigated.

V. CONCLUSION

Plaintiffs achieved an excellent Settlement that is fair, adequate, and reasonable, and assures Settlement Class Members of prompt and meaningful relief. The Settlement Agreement is well within the range of approval and complies with the dictates of Rule 23. For these reasons and the other reasons detailed herein, Plaintiffs request that the Court certify the Class for settlement purposes; grant this Motion for Final Approval; deny the mass opt-out request submitted by Francis Farina; overrule the objections submitted by Lori O'Leary, Patricia Jones, Lea Johnson and Karl Lindemann; grant the previously filed Fee Motion (ECF No. 46, 46-1); and enter the Final Order and Judgment submitted herewith.

Dated: July 16, 2025

Respectfully submitted:

/s/ Andrew W. Ferich

Andrew W. Ferich (admitted *pro hac vice*)
AHDOOT & WOLFSON, PC
201 King of Prussia Road, Suite 650
Radnor, PA 19087
Tel: (310) 474-9111
aferich@ahdootwolfson.com

Robert Ahdoot (admitted *pro hac vice*)
AHDOOT & WOLFSON, PC
2600 W. Olive Avenue, Suite 500
Burbank, CA 91505
Tel: (310) 474-9111
rahdoot@ahdootwolfson.com

Benjamin F. Johns (admitted *pro hac vice*)
Samantha E. Holbrook (admitted *pro hac vice*)
SHUB JOHNS & HOLBROOK LLP
Four Tower Bridge
200 Barr Harbor Drive, Suite 400
Conshohocken, PA 19428

Tel: (610) 477-8380
bjohns@shublawyers.com
sholbrook@shublawyers.com

Co-Lead Class Counsel

Randall S. Strause
STRAUSE LAW GROUP, PLLC
804 Stone Creek Parkway, Suite One
Louisville, KY 40223
Tel: (502) 426-1661
Fax: (502) 426-6772
rstrause@strauselawgroup.com

Local Counsel