UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

TOWNSEND VANCE, et al.,

Plaintiffs,

v.

MAZDA MOTOR OF AMERICA, INC., et al.,

Defendants.

CASE NO. 8:21-cv-01890-JLS-KES

ORDER GRANTING IN PART PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT (Docs. 133 & 138)

Before the Court is an unopposed Motion for Preliminary Approval of a Class Action Settlement filed by Plaintiffs Townsend Vance and Zachary Haines. (Mot., Doc. 133; Mem., 133-1.) Plaintiffs also filed an Amended Notice of Motion and Motion for Preliminary Approval, rescheduling the hearing date from June 10, 2024, to July 12, 2024, after the action was transferred to this Court. (Amended Mot., Doc. 138.) After the Court held a hearing on the matter and requested additional information in support of the proposed settlement, Plaintiffs submitted a Supplemental Memorandum in support of the Motion. (Supp. Mem., Doc. 143.)

The Motion asks the Court to (1) preliminarily approve a proposed settlement of this class action; (2) preliminarily certify the proposed Class; (3) approve the form and manner of giving notice to the Class; (4) authorize JND Legal Administration to serve as the Settlement Administrator; (5) appoint W. Daniel Miles III of Beasley, Allen, Crow, Methvin, Portis & Miles, P.C. and Timothy G. Blood of Blood Hurst & O'Reardon, LLP as Class Counsel; (6) appoint Vance and Haines as Class Representatives; (7) schedule the final fairness hearing; and (8) issue an anti-suit preliminary injunction. (Mot. at 2.)

Having considered the briefs and held oral argument, the Court now GRANTS IN PART Plaintiffs' Motion for the reasons stated below. The Court SETS a Final Fairness Hearing for January 17, 2025, at 10:30 a.m.

I. BACKGROUND

On November 17, 2021, Vance and Haines initiated this putative class action complaint against Defendants Mazda Motor of America, Inc and Denso International America, Inc.[1] (*See* Compl., Doc. 1.) The action, which was originally assigned to the Honorable Cormac Carney, arises from alleged defects in fuel pumps manufactured by Denso and installed in vehicles manufactured and sold by Mazda. (*See* Second Amended Compl. ("SAC") ¶ 1, Doc. 39.)

[1] The Complaint also named Mazda Motor Corp. and Denso Corp., the parent companies of the Defendants, but Plaintiffs since dismissed the action as to those two entities pursuant to tolling agreements. (Supp. Joint Decl. ¶¶ 15, 17, Doc. 143-1.)

A. Factual Background

On April 27, 2020, Denso issued a recall for 2,020,000 defective low-pressure fuel pumps manufactured between September 1, 2017, and October 6, 2018. (*Id.* ¶ 3.) The recalled fuel pumps contained an impeller that could deform and interfere with the body of the fuel pump, rendering the fuel pump inoperative. (*Id.* ¶ 5.) The fuel pump is critically important to the overall operation of a vehicle and is expected to last for the life of an automobile or a minimum of 200,000 miles. (*Id.* ¶ 4.) An inoperative fuel pump can result in engine stalls and other similar safety risks. (*Id.* ¶ 5.) Denso twice expanded its recall, which in total included over 3.6 million fuel pumps used by various vehicle manufacturers, including Mazda. (*Id.* ¶¶ 7, 8, 10.)

Mazda responded with a foreign recall on July 17, 2020, for vehicles in China, Japan, Thailand, Malaysia, Vietnam, and Mexico that were equipped with a Denso fuel pump. (*Id.* ¶ 12.) Then, over a year after its foreign recall, Mazda initiated a U.S. recall on November 12, 2021, for 121,038 vehicles with Denso fuel pumps. (*Id.* ¶ 16.) Plaintiffs allege that Mazda's U.S. recall failed to include several Mazda models known to contain the defective fuel pump. (*Id.* ¶ 22.) Plaintiffs also allege that the recall repair—replacing the fuel pump motor rather than the entire fuel pump module—was inadequate to remedy the defect. (*Id.* ¶ 27.)

As a result, Plaintiffs fault Defendants for the failure "to identify and include the full scope of Mazda manufactured vehicles equipped with defective fuel pumps," failure "to offer a timely or effective repair," failure "to warn consumers about the serious safety hazards posed by" the defective fuel pumps, and failure "to offer free loaner vehicles" while consumers awaited repair. (*Id.* ¶ 32.) Further, Plaintiffs allege that Mazda marketed the vehicles affected by the defective fuel pumps as safe and dependable, despite knowledge of the defect. (*Id.* ¶ 34.) Plaintiffs have identified seven Mazda models that were included in the recall, but subject to inadequate recall repairs, and eight Mazda

models that were never recalled at all ("Covered Vehicles" or "Class Vehicles"). (*See* Exs. 1 & 2 to Settlement Agreement, Lists of Additional and Recalled Vehicles, Doc. 142.)

B. Procedural History

Plaintiffs filed their SAC on January 19, 2022, refining their allegations and their proposed Class definitions and claims. (*See* SAC.) The SAC proposed a nationwide Class defined as: "All current and former owners or lessees of a Class Vehicle (as defined herein) that was purchased or leased in the fifty States, the District of Columbia, Puerto Rico, and all other United States territories and/or possessions." (*Id.* ¶ 233.) The SAC further proposed two statewide Classes for Alabama and California. (*Id.* ¶¶ 235, 236.) On behalf of the Alabama Class, the SAC asserted claims for violations of Alabama's Deceptive Trade Practices Act, strict product liability, breach of express and implied warranty, negligent recall, and fraudulent omission. (*See id.* ¶¶ 245–307.) On behalf of the California Class, the SAC asserted claims for violations of California's Consumer Legal Remedies Act, Song-Beverly Consumer Warranty Act, False Advertising Law, and Unfair Competition Law, as well as strict product liability, negligent recall, and fraudulent omission. (*See id.* ¶¶ 308–404.) On behalf of the nationwide Class, the SAC asserted claims for breach of express and implied warranty, fraudulent omission, and violations of the Magnuson-Moss Warranty Act. (*See id.* ¶¶ 405–451.)

On March 16, 2022, Defendants each moved separately to dismiss the SAC, or in the alternative to strike class action allegations. (*See* Denso's MTD, Doc. 66; Mazda's MTD, Doc. 69; Mazda's Mot. to Strike Class Allegations, Doc. 71.) While the Motions were pending, the parties stipulated to, and Judge Carney granted, several continuances of the hearing on the Motions to Dismiss to accommodate early settlement discussions. (*See* Supp. Joint Decl. ¶¶ 18, 20, Doc. 143-1.) Ultimately, Judge Carney denied the Motions without prejudice to refiling if settlement was not reached. (*See* Order Denying Motions, Doc. 114.) From July 2022 onwards, the parties engaged in informal discovery to facilitate their settlement negotiations, and Plaintiffs' independent automotive expert

sourced and inspected over 350 original and countermeasure Denso fuel pumps. The parties finally represented that they had reached a settlement agreement on January 18, 2024. (Notice of Settlement, Doc. 122.)

Following the Notice of Settlement, the parties jointly moved to have Patrick A. Juneau appointed as Settlement Special Master to "assist the parties with settlement-related issues, including settlement negotiations and settlement implementations." (Mot. to Appoint Special Master, Doc. 127.) On March 11, 2024, Judge Carney granted that Motion. (Order Appointing Juneau, Doc. 128.) Juneau has also been selected to serve as Settlement Special Master to continue administering, coordinating, and presiding over settlement-related issues and implementation. (Settlement Agreement ¶ II.A.44, Doc. 142.)

On May 3, 2024, the parties presented their finalized Settlement Agreement and Plaintiffs moved for preliminary approval of settlement and class certification. (*See* Mot.) Defendants do not oppose the relief sought in the Motion but dispute the factual underpinning of Plaintiffs' claims and expressly deny all liability. (*See* Mem. at 11 n.3; Settlement Agreement ¶ XI.A.)

After that Motion was filed, the case was transferred to this Court. (*See* Order of the Chief Judge, Doc. 136.) The Court held a hearing regarding this Motion on July 12, 2024, and requested that the parties provide the Court with supplemental information and make certain amendments to the proposed Settlement Agreement. Plaintiffs submitted their Supplemental Memorandum in support of the Motion and the amended Settlement Agreement on July 26, 2024. (*See* Supp. Mem.; Settlement Agreement.)

C. Settlement Agreement

The proposed "Settlement Class" is defined as "all individuals or legal entities who, at any time as of the entry of the Preliminary Approval Order, own or owned, purchase(d) or lease(d) Covered Vehicles in any of the fifty States, the District of Columbia, Puerto Rico, and all other United States territories and/or possessions." (Settlement Agreement

¶ II.A.10.) Covered Vehicles include several Mazda Models designated as "Additional Vehicles," those that were not included in Mazda's U.S. recall, and several Mazda Models that were recalled but inadequately repaired, designated as the "Recalled Vehicles."[2] (*Id.* ¶¶ II.A.2, II.A.16, II.A.43.)

The Settlement Agreement allots different remedies to the two categories of Covered Vehicles to account for the fact that Additional Vehicles have not already received replacement fuel pump kits under Mazda's prior recalls. (*See id.* ¶¶ III.A, III.B.) The key terms are as follows. First, Mazda will offer a Customer Support Program to all Class Members who, as of the date of Final Judgment, own or lease Additional Vehicles. (*Id.* ¶ III.A.1.) The Program will provide coverage for repairs (including parts and labor) to correct defects in the Denso fuel pumps. (*Id.*) Coverage for the original parts under the Program will continue for fifteen years, measured from the date of first use, which is the date the Covered Vehicle was sold or leased by a Mazda dealer. (*Id.*)

Second, the Settlement provides a Loaner/Towing Program. (*Id.* ¶ III.A.2.) Class Members whose fuel pumps are being replaced pursuant under the Customer Support Program are entitled to receive a complimentary loaner vehicle by Mazda dealers upon reasonable notice. (*Id.*) In the event the Additional Vehicle is inoperable or is in a dangerous condition, the Class Members are entitled to a complimentary tow to a Mazda dealer upon reasonable notice. (*Id.*)

As to Recalled Vehicles, the Settlement provides Class Members with an extended warranty for the replacement fuel pumps. (*Id.* ¶ III.B.1.) The extended warranty will last for fifteen years, measured from the fuel pump's date of replacement, or up to 150,000

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[2] Additional Vehicles include: 2017–2019 MX-5, 2017–2019 CX-9, 2018–2021 Mazda3, 2017–2019 Mazda6, 2018–2019 CX-3, 2017–2019 CX-5, 2018–2020 Mazda2, and the 2020 CX-30. (*See* Ex. 1 to Settlement Agreement, List of Additional Vehicles.) Recalled Vehicles include: 2018 Mazda6, 2019 CX-3, 2018–2019 MX-5, 2018–2019 CX-5, 2018–2019 CX-9, 2018 Mazda 3, and 2019–2020 Mazda2. (*See* Ex. 2 to Settlement Agreement, List of Recalled Vehicles.) Overlap in Model Year occurs because certain Additional Vehicles have distinct production periods from Recalled Vehicles. (*See id.*)

miles, whichever comes first. (*Id.*) Class Members who own or lease a Recalled Vehicle are also entitled to the Loaner/Towing Program. (*Id.* ¶ III.B.2.)

For both Additional and Recalled Vehicles, if a Class Member or subsequent purchaser/lessee of a Covered Vehicle is denied coverage for repairs (including parts or labor), he or she may take the Covered Vehicle to a second Mazda dealer for an independent determination regarding coverage. (*Id.* ¶¶ III.A.4, III.B.3.) If the second Mazda dealer determines that the Covered Vehicle qualifies for repair or replacement, then repairs will be covered under the Settlement Agreement. (*Id.* ¶¶ III.A.5, III.B.4.) If the second dealer denies coverage, Class Members may notify the Settlement Administrator and challenge the denial of coverage. (*Id.* ¶¶ III.A.6, III.B.5.) Mazda dealers have received technical training on how to determine repair eligibility and conduct fuel pump repairs under both the Customer Service Program and extended warranty. (*Id.* ¶ III.E.)

Lastly, the Settlement provides a claims process for out-of-pocket expenses for all Covered Vehicles. (*Id.* ¶ III.C.1.) The submission period for these claims runs from the Court's preliminary approval of the Settlement Agreement until ninety days after the entry of Final Judgment. (*Id.* ¶ II.8.) During that time, Class Members may submit claims for previously paid out-of-pocket expenses incurred to repair or replace a fuel pump in a Covered Vehicle that were otherwise not reimbursed and that were either (a) incurred prior to the entry of the Preliminary Approval Order or (b) incurred after the entry of the Preliminary Approval Order and before the date of Final Judgment. (*Id.* ¶ III.C.1.) If incurred after the entry of the Preliminary Approval Order, the Class Member must show that they were denied coverage by a Mazda dealer before incurring the expense. (*Id.*) Class Members who provide Supporting Documentation may be reimbursed for rental vehicles, towing, and unreimbursed repairs or part replacements. (*Id.* ¶ III.C.2.) Class Members must complete and timely submit the claim form with supporting documentation, must have an eligible claim, and must not opt out of the settlement. (*Id.* ¶ III.C.3.) Claim

deficiencies must be corrected and the claim must be resubmitted within sixty days of notification of the deficiency by the Settlement Administrator. (*Id.* ¶ III.C.7.)

Counsel for both Plaintiffs and Defendants shall receive regular status reports regarding claim payments and rejections and will be notified of all claim rejections. (*Id.* ¶ III.D.1.) Counsel may then review the rejection and, if Counsel jointly recommend payment of a rejected claim or payment of a reduced amount, they shall inform the Settlement Administrator and payment will be made; if Counsel cannot agree on a joint recommendation, they will notify the Settlement Administrator and the Settlement Special Master, and the Special Master will make the final determination as to whether the claim shall be paid. (*Id.*) For Class Members who continue to dispute entitlement to, or denial of, any benefit provided by the Settlement and have exhausted all other means of resolution, the Settlement Administrator will forward notice of the dispute and the supporting documentation to Counsel and the Settlement Special Master. (*Id.* ¶ III.D.3.) If Counsel agree on the resolution, they will make a recommendation to the Settlement Administrator; otherwise, the final determination will be left to the Special Master. (*Id.*)

Plaintiffs have submitted an expert report, authored by Lee M. Bowron, that values the Settlement at $172,236,000.00, based on the Customer Support Program and extended warranties and exclusive of any payment for out-of-pocket claims. (Supp. Mem. at 8–9.) Bowron calculated the retail value of the warranty programs, taking into account the average cost of repair and the expected retail price of a service contract providing comparable coverage. (*Id.* at 9.)

The Settlement provides for a release of Class Members' claims against Defendants "arising from, related to, connected with, and/or in any way involving the Action, the Covered Vehicles' Fuel Pumps, and/or associated parts." (Settlement Agreement ¶ VII.B.) This release does not extend to claims for personal injury, wrongful death, or physical property damage to property other than the Covered Vehicles. (*Id.*)

The Settlement also addresses fees, costs, expenses and service awards. The parties have not yet come to an agreement on fees and costs; therefore, Class Counsel will apply for an award of fees not to exceed $15 million and litigation costs not to exceed $200,000, and Defendants have reserved the right to oppose the amounts sought. (*Id.* ¶¶ VIII.A, VIII.B.) Service Awards for Class Representatives are not to exceed $5,000 per Representative. (*Id.* ¶ VIII.C.) The costs incurred in connection with the Settlement Agreement, including the cost of notice and claims administration will be covered by Defendants. (*Id.* ¶ X.D.8.)

D. Class Notice and Response

Class Notice will occur through a combination of notice through direct mail, through the settlement website, and through social media. (*Id.* ¶ IV.A.) Notice by U.S. mail shall be provided to the current and former registered owners of Covered Vehicles. (*Id.* ¶ IV.B.1.) Returned mail will be re-sent, either to a forwarding address if provided or to an updated address located via skip trace. (*Id.*) The Long Form Notice shall be available on the settlement website and will advise Class Members of the general terms of the Settlement Agreement and explain the opt-out and objection procedures. (*Id.* ¶¶ IV.C.1, IV.D.1.)

Class Members who wish to opt out from the Class must send a request for exclusion, either via U.S. mail or electronically on the settlement website, to the Settlement Administrator on or before the date specified in this Order. (*Id.* ¶ V.A.) The request must include: the case name and number of the Action, the Class Member's full name, current residential address, mailing address (if different), telephone number, and e-mail address, an explanation of the basis upon which the Class Member claims to be a Class member, including the make, model year, and VIN(s) of the Covered Vehicle(s), a request that the Class Member wants to be excluded from the Class, and the excluding Class Member's dated signature, handwritten if submitted by mail or electronic if submitted via the website. (*Id.*) Class Members who wish to object to the Settlement's

term must file their objection electronically on or before the date specified in this Order or mail the objection to the Clerk of Court and Counsel. (*Id.* ¶ VI.A.)

II. CONDITIONAL CERTIFICATION OF THE CLASS

A. Legal Standard

"A party seeking class certification must satisfy the requirements of Federal Rule of Civil Procedure 23(a) and the requirements of at least one of the categories under Rule 23(b)." *Wang v. Chinese Daily News, Inc.*, 737 F.3d 538, 542 (9th Cir. 2013). Rule 23(a) "requires a party seeking class certification to satisfy four requirements: numerosity, commonality, typicality, and adequacy of representation." *Id.* (citing *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 349 (2011)). Rule 23(a) provides:

> One or more members of a class may sue or be sued as representative parties on behalf of all members only if:
> (1) the class is so numerous that joinder of all members is impracticable;
> (2) there are questions of law or fact common to the class;
> (3) the claims or defense of the representative parties are typical of the claims or defenses of the class; and
> (4) the representative parties will fairly and adequately protect the interest of the class.

Fed. R. Civ. P. 23(a). "Rule 23 does not set forth a mere pleading standard. A party seeking class certification must affirmatively demonstrate his compliance with the Rule—that is, he must be prepared to prove that there are *in fact* sufficiently numerous parties, common questions of law or fact, etc." *Dukes*, 564 U.S. at 350. This requires a district court to conduct a "rigorous analysis" that frequently "will entail some overlap with the merits of the plaintiff's underlying claim." *Id.* at 350-51.

"Second, the proposed class must satisfy at least one of the three requirements listed in Rule 23(b)." *Id.* at 345. Here, the parties seek a conditional certification of the class under Rule 23(b)(3). Rule 23(b)(3) permits maintenance of a class action if "the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other

available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3).

B. The Proposed Class Satisfies Rule 23(a) Requirements

1. Numerosity

Rule 23(a)(1) requires that the class be "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). This Court has repeatedly held that "[a]s a general rule, classes of forty or more are considered sufficiently numerous." *Crews v. Rivian Auto., Inc.*, 2024 WL 3447988, at *3 (C.D. Cal. July 17, 2024) (Staton, J.) (quoting *Mazza v. Am. Honda Motor Co.*, 254 F.R.D. 610, 617 (C.D. Cal. 2008), *vacated on other grounds*, 555 F.3d 581 (9th Cir. 2012)). Here, Plaintiffs contend that there are over 600,000 Covered Vehicles represented in the proposed Class. (Mem at 26.) Accordingly, Rule 23(a)(1)'s numerosity requirement is satisfied.

2. Common Questions of Law and Fact

Rule 23(a)(2) requires that "there are questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). "Commonality requires the plaintiff to demonstrate that the class members have suffered the same injury." *Dukes*, 564 U.S. at 349–50. The Plaintiff must allege that the class's injuries "depend upon a common contention" that is "capable of classwide resolution." *Id.* at 350. In other words, the "determination of [the common contention's] truth or falsity will resolve an issue that is central to the validity of each of the claims in one stroke." *Id.* "What matters to class certification . . . is not the raising of common questions—even in droves—but, rather, whether the capacity of a classwide proceeding to generate common *answers* apt to drive the resolution of the litigation." *Id.* (cleaned up).

Plaintiffs state that the questions common to the entire class include:

> whether the Covered Vehicles have a safety-related defect; whether and when Defendants knew of the defect; whether Defendants misrepresented the safety and quality of the Covered Vehicles and Fuel Pumps; whether Defendants' alleged misrepresentations and omissions were misleading to reasonable consumers, and, if misleading, whether they were material; the

> presence and quantum of Class Members' damages, and whether equitable relief is warranted, among others.

(Mem. at 27.) In automotive class actions involving common defects across all class vehicles, these are the kinds of questions that courts in this Circuit have found capable of classwide resolution. *See, e.g.*, *Keegan v. Am. Honda Motor Co., Inc.*, 284 F.R.D. 504, 523–24 (C.D. Cal. 2012); *Asghari v. Volkswagen Grp. of Am., Inc.*, 2015 WL 12732462, at *12 (C.D. Cal. May 29, 2015). The commonality requirement is satisfied.

3. Typicality

Rule 23(a)(3) requires that "the claims or defenses of the representative parties are typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). "Under the rule's permissive standards, representative claims are 'typical' if they are reasonably coextensive with those of absent class members; they need not be substantially identical." *Dukes v. Wal-Mart Stores, Inc.*, 603 F.3d 571, 613 (9th Cir. 2010) (en banc) *rev'd on other grounds*, 564 U.S. 338 (2011) (quotations omitted). As to the representative, "[t]ypicality requires that the named plaintiffs be members of the class they represent." *Id.*

Here, Plaintiffs each purchased one of the Mazda models containing a purportedly defective Denso fuel pump and suffered the same harm as all Class Members who were sold a vehicle with that defect. (*See* SAC ¶¶ 42, 52.) Typicality is met.

4. Adequacy

Rule 23(a)(4) permits certification of a class action only if "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). "Resolution of two questions determines legal adequacy: (1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?" *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998), *overruled on other grounds by Dukes*, 564 U.S. 338 (2011).

As to Plaintiffs, there are no apparent conflicts of interests between them and the rest of the Class. Courts recognize a potential conflict of interest between a named plaintiff and the class where "there is a large difference between the enhancement award and individual class member recovery." *Mansfield v. Southwest Airlines Co.*, 2015 WL 13651284, at *7 (S.D. Cal. Apr. 21, 2015). Here, the proposed service awards of $5,000 for each Plaintiff are not so large as to create a potential conflict of interest. *See Carlin v. DairyAmerica, Inc.*, 380 F. Supp. 3d 998, 1024 (E.D. Cal. 2019) ("In the Ninth Circuit, courts have found that $5,000 is a presumptively reasonable service award"). The Court find that Plaintiffs' interests are aligned with the rest of the class and that they will continue to vigorously prosecute the action on the Class's behalf.

As to the adequacy of Class Counsel, the Court must consider "(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).

Here, proposed Class Counsel engaged in a substantial investigation to identify and litigate these claims. They participated in extensive settlement negotiations over a period of eighteen months and analyzed over 6,600 pages of discovery from Defendants. (Supp. Joint Decl. ¶¶ 21, 31.) They also retained at least two experts: an automotive expert who sourced and inspected over 350 Denso fuel pumps, including original and countermeasure fuel pumps; and an economic impact expert who estimated the value of the settlement relief achieved. (*Id.* ¶¶ 21, 24.) Further, Class Counsel represent that they have extensive experience in handling these kinds of class actions and sufficient knowledge of the applicable law. Dee Miles of Beasley Allen has more than thirty years of experience litigating complex consumer protection class actions, including several actions involving automotive products. (*Id.* at 14–15.) Timothy Blood of Blood Hurst & O'Reardon, LLP also has years of similarly relevant litigation experience in consumer protection class

actions and has handled several vehicle defect cases. (*Id.* at 16–17.) Based on this experience, and the quality of work to date, the Court concludes that Miles and Blood satisfy the adequacy requirement.

C. The Proposed Class Satisfies Rule 23(b)(3) Requirements

Plaintiffs seek to certify the class pursuant to Rule 23(b)(3), which considers whether common questions of law or fact predominate over individual questions and whether a class action is superior to other available methods of adjudication. Fed. R. Civ. P. 23(b)(3).

1. Predominance

"The Rule 23(b)(3) predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Hanlon*, 150 F.3d at 1022. "Rule 23(b)(3) focuses on the relationship between the common and individual issues." *Id.* "When common issues present a significant aspect of the case and they can be resolved for all members of the class in a single adjudication, there is clear justification for handling the dispute on a representative rather than on an individual basis." *Id.* (quotations omitted).

Here, as discussed above, Class Members' claims allege a common fuel pump defect in various Class Vehicles; those claims also allege that Defendants had knowledge of and concealed the defect. Questions which are common to the entire class include "whether the Covered Vehicles were manufactured with Denso Fuel Pumps, [and] whether Defendants knew, but failed to disclose that the fuel pumps where defective, and instead represented that the fuel pumps and the Mazda vehicles were safe and reliable." (Mem. at 31.) Plaintiffs add that these questions are all susceptible to classwide proof, based on evidence of Defendants' marketing, Class Vehicle warranties, and the common defect. (*Id.*) It is "readily apparent" that these classwide questions predominate over individual issues in the case. *See Chamberlan v. Ford Motor Co.*, 402 F.3d 952, 962 (9th Cir. 2005); *see also Alger v. FCA US LLC*, 334 F.R.D. 415, 427–28 (E.D. Cal. 2020).

2. Superiority

"The superiority inquiry under Rule 23(b)(3) requires determination of whether the objectives of the particular class action procedure will be achieved in the particular case." *Hanlon*, 150 F.3d at 1023. "This determination necessarily involves a comparative evaluation of alternative mechanisms of dispute resolution." *Id.* "The overarching focus [of the superiority inquiry] remains whether trial by class representation would further the goals of efficiency and judicial economy." *Vinole v. Countrywide Home Loans, Inc.*, 571 F.3d 935, 946 (9th Cir. 2009)). Additionally, "[w]here recovery on an individual basis would be dwarfed by the cost of litigating on an individual basis, this factor weighs in favor of class certification." *Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1175 (9th Cir. 2010).

Here, each member of the proposed Class pursuing a claim individually would burden the judicial system and run afoul of Rule 23's focus on efficiency and judicial economy, especially because discovery would necessarily be duplicative of the extensive discovery and investigation that has already been conducted. And as Plaintiffs argue, the cost of litigation for Class Members pursing their claims individually would far exceed the loss to each Class Member. (Mem. at 32.) The superiority requirement is met.

D. Conclusion as to Class Certification

In sum, having considered requirements of Rule 23(a) and the non-exclusive factors set forth under Rule 23(b)(3), the Court finds that the proposed Class may be certified under Rule 23(b)(3). The Court conditionally certifies the Class for settlement purposes only. The court also appoints Townsend Vance and Zachary Haines to serve as Class Representatives, and W. Daniel Miles III and Timothy G. Blood to serve as Class Counsel.

III. PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

A. Legal Standard

To preliminarily approve a proposed class action settlement, Federal Rule of Civil Procedure 23(e)(2) requires the Court to determine whether the proposed settlement is fair,

reasonable, and adequate. Fed. R. Civ. P. 23(e)(2). Review of a proposed settlement typically proceeds in two stages, with preliminary approval followed by a final fairness hearing. Manual for Complex Litigation, § 21.632 (4th ed. 2004). "The decision to [grant preliminary approval and] give notice of a proposed settlement to the class is an important event. It should be based on a solid record supporting the conclusion that the proposed settlement will likely earn final approval after notice and an opportunity to object." Fed. R. Civ. P. 23 advisory committee's note to 2018 Amendment.

Although there is a "strong judicial policy that favors settlements, particularly where complex class action litigation is concerned," *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1238 (9th Cir. 1998), "[t]he purpose of Rule 23(e) is to protect the unnamed members of the class from unjust or unfair settlements affecting their rights," *In re Syncor ERISA Litig.*, 516 F.3d 1095, 1100 (9th Cir. 2008). Rule 23(e) provides that a "court may approve" a class action settlement proposal "after considering whether:"

> (A) the class representatives and class counsel have adequately represented the class;
> (B) the proposal was negotiated at arm's length;
> (C) the relief provided for the class is adequate, taking into account:
> (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)[3]; and
> (D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2).

These factors were codified in the Federal Rules of Civil Procedure in 2018 in recognition of the fact that "[c]ourts have generated lists of factors to shed light on" the fairness, reasonableness, and adequacy of the proposed settlement. Fed. R. Civ. P. 23

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[3] Under Rule 23(e)(3), "[t]he parties seeking approval must file a statement identifying any agreement made in connection with the proposal."

advisory committee's note to 2018 Amendment. Indeed, the Ninth Circuit's articulated list of factors has governed settlement approvals in the Circuit for over forty years. *See Officers for Justice v. Civil Service Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982). Those factors overlap in many ways with the Rule 23(e)(2) factors, and include: "[1] the strength of plaintiffs' case; [2] the risk, expense, complexity, and likely duration of further litigation; [3] the risk of maintaining class action status throughout the trial; [4] the amount offered in settlement; [5] the extent of discovery completed, and the stage of the proceedings; [6] the experience and views of counsel; [7] the presence of a governmental participant; and [8] the reaction of the class members to the proposed settlement." *Staton v. Boeing Co.*, 327 F.3d 938, 959 (9th Cir. 2003) (cleaned up). "The relative degree of importance to be attached to any particular factor will depend upon and be dictated by the nature of the claim(s) advanced, the type(s) of relief sought, and the unique facts and circumstances presented by each individual case." *Officers for Justice*, 688 F.2d at 625. Here, the Court relies on the Rule 23(e)(2) factors but uses some of the developed guidance regarding the application of the Ninth Circuit's factors where relevant.

In addition to these factors, the Court must also satisfy itself that "the settlement is not the product of collusion among the negotiating parties." *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 946–47 (9th Cir. 2011) (cleaned up). Though it is perhaps most important to look for signs of collusion in "settlements struck before class certification" because "counsel may collude … to strike a quick settlement without devoting substantial resources to the case," the Ninth Circuit has made clear that the "heightened inquiry [also] applies to *post-class certification* settlements." *Briseno v. Henderson*, 998 F.3d 1014, 1023–24 (9th Cir. 2021). Accordingly, in any class action settlement, the Court must look for explicit collusion and "more subtle signs that class counsel have allowed pursuit of their own self-interests and that of certain class members to infect the negotiations." *In re Bluetooth*, 654 F.3d at 947. Such signs include (1) "when counsel receive a disproportionate distribution of the settlement"; (2) "when the parties

negotiate a 'clear sailing' arrangement providing for the payment of attorneys' fees separate and apart from class funds"; and (3) "when the parties arrange for fees not awarded to revert to defendants rather than be added to the class fund." *Id.* (cleaned up).

B. Adequate Representation

"Under Rule 23(e)(2)(A), the first factor to be considered is whether the class representative and class counsel have adequately represented the class." *Hang v. Old Dominion Freight Line, Inc.*, 2024 WL 2191930, at *4 (C.D. Cal. May 14, 2024). Part of this analysis overlaps with the adequacy considerations discussed above when the Court conditionally certified the Class—whether there is a conflict of interest and whether representation has been competent and vigorous. *See Hanlon*, 150 F.3d at 1020. But the analysis also involves "'procedural' concerns" and requires "looking to the conduct of the litigation and of the negotiations leading up to the proposed settlement." Fed. R. Civ. P. 23 advisory committee's note to 2018 Amendment. Therefore, the Court must consider "the nature and amount of discovery in this or other cases, or the actual outcomes of other cases, [which] may indicate whether counsel negotiating on behalf of the class had an adequate information base." *Id.*

The need for an adequate information base is important: A plaintiff will not be able to broker a fair settlement without having been "armed with sufficient information about the case to have been able to reasonably assess its strengths and value." *Acosta v. Trans Union, LLC*, 243 F.R.D. 377, 396 (C.D. Cal. 2007). And for a court to be able to approve a settlement, "the parties must have engaged in sufficient investigation of the facts to enable the court to intelligently make an appraisal of the settlement." *Id.* (cleaned up). A court considering a proposed settlement has a duty "to evaluate the scope and effectiveness of the investigation plaintiffs' counsel conducted prior to reaching an agreement." *Id.* (citing *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000)).

As the Court already discussed above, in Section II.B.4, the Class Representatives and Class Counsel have been adequately representing the Class. Further, the Court finds

that this Settlement Agreement was reached after Class Counsel obtained an adequate information base. As mentioned, Class Counsel analyzed extensive discovery. In addition to the expert analyses and discovery that Class Counsel reviewed, the parties also exchanged correspondence about "complex warranty data and failure analysis, which helped to inform the scope of settlement." (Supp. Joint Decl. ¶ 22.)

Class Counsel also considered the settlements that have been approved in similar automotive class actions, which supports the outcome here of providing Class Members with recall repairs, extended warranties, and reimbursement of out-of-pocket costs. (*See* Mem. at 40–41 (identifying cases with similar relief).) These kinds of settlements are approved for a range of defect types, including serious engineering defects like the fuel pump defect alleged here. For example, courts have approved a settlement providing extended warranties and reimbursement for out-of-pocket costs incurred due to a console defect that exposed car components to liquid damage, *see Brightk Consulting Inc. v. BMW of N. Am. LLC.*, 2023 WL 2347446 (C.D. Cal. Jan. 3, 2023); a settlement providing repairs, extended warranties, and reimbursement for out-of-pocket costs incurred due to a defect in the anti-lock brake system that could cause spontaneous car fires, *see Zakikhani v. Hyundai Motor Co*., 2022 WL 17224701 (C.D. Cal. Oct. 20, 2022); a settlement providing reimbursement for out-of-pocket repair costs and reimbursement for class members who sold their class vehicle due to a defect in the continuously variable automatic transmission that could cause a total loss of power to the vehicle's drive wheels, *see Aarons v. BMW of N. Am. LLC.*, 2014 WL 4090564 (C.D. Cal. Apr. 29, 2014); and a settlement providing free inspections, future repairs, and reimbursement for out-of-pocket expenses incurred due to a defect in the power sliding rear passenger door of a minivan, *see Simerlein v. Toyota Motor Corp*., 2019 WL 2417404 (D. Conn. June 10, 2019).

Given these facts, the Court concludes that the parties possess enough information to make an informed settlement decision. Accordingly, this factor weighs in favor of granting preliminary approval.

C. Arm's Length Negotiation

Rule 23(e)(2)(B) asks whether "the proposal was negotiated at arm's length." As with the adequacy of representation, this is a "'procedural' concern[]" and "the involvement of a neutral or court-affiliated mediator or facilitator in those negotiations may bear on whether they were conducted in a manner that would protect and further the class interests." Fed. R. Civ. P. 23 advisory committee's note to 2018 Amendment. "The Ninth Circuit, as well as courts in this District, 'put a good deal of stock in the product of an arms-length, non-collusive, negotiated resolution' in approving a class action settlement." *In re Stable Rd. Acquisition Corp.*, 2024 WL 3643393, at *6 (C.D. Cal. Apr. 23, 2024) (quoting *Rodriguez v. West Publ'g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009)).

Settlement was reached in this matter after extended, arms-length negotiations between the parties. (Supp. Joint Decl. ¶ 31.) The parties also engaged in a full-day mediation with a Court-appointed Special Master to address attorneys' fees and other outstanding settlement issues. (*Id.* ¶ 43.) The Special Master has agreed to be appointed as the Settlement Special Master and retain oversight of the implementation of the Settlement Agreement. (Settlement Agreement ¶ II.A.44.) This factor weighs in favor of granting preliminary approval.

D. Adequacy of Relief

Having addressed possible procedural concerns, the Court next turns to a "'substantive' review of the terms of the proposed settlement." Fed. R. Civ. P. 23 advisory committee's note to 2018 Amendment. Rule 23(e)(2)(C) requires that "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 …; and (iv) any agreement required to be identified under Rule 23(e)(3)." The final factor is not relevant here, as the entirety of the agreement between the parties is contained in the Settlement Agreement. (*See* Mem. at 49.)

Here, the Settlement Agreement offers a Customer Support Program that will provide coverage for repairs to correct defects in the Denso fuel pumps, an extended warranty that will cover fuel pump failures for up to fifteen years or 150,000 miles, a vehicle loaner and towing benefit to assist Class Members while their cars are being repaired, and reimbursement for out-of-pocket expenses previously incurred by Class Members due to the fuel pump defect. (*See* Settlement Agreement ¶¶ III.A, III.B, III.C.) As explained more fully below, the relief is adequate.

1. Costs, Risks, and Delay of Trial and Appeal

Courts are instructed to "balance the risks of continued litigation, including the strengths and weaknesses of plaintiff's case, against the benefits afforded to class members, including the immediacy and certainty of recovery." *Knapp v. Art.com, Inc.*, 283 F. Supp. 3d 823, 831 (N.D. Cal. 2017). To conduct this analysis, "courts may need to forecast the likely range of possible classwide recoveries and the likelihood of success in obtaining such results." Fed. R. Civ. P. 23 advisory committee's note to 2018 Amendment. Indeed, many district courts—including this Court—require that motions for preliminary approval of class settlements include estimates of the defendant's maximum potential liability. *See, e.g.*, *Chen v. Western Digit. Corp.*, 2020 WL 13587954, at *3 (C.D. Cal. Apr. 3, 2020) (Staton, J.).

Here, the Court evaluates the value of the Settlement, measured against Plaintiffs' estimated maximum trial recovery and the risk of continued litigation. Plaintiffs estimate that the Customer Support Program and extended warranty have a retail value of $172,236,000. (Supp. Mem. at 11.) Plaintiffs' expert, Lee Bowron, calculated the average cost of repair for the Class Vehicles to be $1,053 and, assuming a repair frequency of 2.2%, multiplied the cost and frequency across all vehicles. (*Id.* at 10.) The total cost of repairs under this formula is $61.9 million. (*Id.*) Bowron then adjusted that total "to account for what it would cost each Class Member to get the same benefits in the open market." (*Id.*) Bowron added expected taxes and insurance premiums, costs for

administering claims, and a "100% markup for marketing, loss cost, and administrator cost." (*Id.* at 11.) Bowron opines that markups on service contracts are typically around 100%. (*See* Ex. D to Supp. Joint Decl. at 269, Bowron Report, Doc. 143-1.)

Plaintiffs argue that this amount compares favorably to the maximum potential trial recovery. Plaintiffs estimate that recovery to be $368 million. (Supp. Mem. at 11.) This amount derives from multiplying an average cost of repair of $765 by the 482,066 Additional Vehicles owned by Class Members. (*Id.*) Plaintiffs excluded the Recalled Vehicles from the recovery estimates, reasoning that those vehicles would likely be excluded from any formally certified class because of the partial remedy they received under Mazda's recalls. (*Id.* at 11–12.) Based on that calculation, Plaintiffs assert that the Settlement is worth 47% of the maximum possible recovery. (*Id.* at 12.)

The Court finds these estimates to be inflated as to the Settlement's value and deflated as to the maximum potential trial recovery. The maximum potential trial recovery calculation is particularly problematic. Plaintiffs do not explain why they use different average repair costs in their two formulas—inputting a value of $1,053 for the calculations of the Settlement's value and inputting a value of $765 for the calculations of the potential trial recovery. (*See* Supp. Mem. at 11.) The larger number is derived from including the cost of renting a loaner car and the cost of a tow, while the lower number is derived from just the parts and labor to repair the defective fuel pump. (*See* Ex. D to Supp. Joint Decl. at 276, Bowron Report.) Considering that the provision of loaner vehicles was part of Plaintiffs' demand for relief in the SAC, it follows that, at the very least, rental costs should be included in the calculations for trial recovery. (*See* SAC, Prayer for Relief.) Adding rental costs, as calculated by Bowron, means that the average trial recovery for cost of repairs is $1,008 and the maximum potential trial recovery should, at the very least, be $485,922,528 for the Additional Vehicles alone. Nor does the Court credit Plaintiffs' casual dismissal of the possibility of any trial recovery for the 121,000 Recalled Vehicles, particularly in light of Plaintiffs' claim that the recall provided inadequate relief.

Furthermore, Plaintiffs' claims include statutory damages (*see id.*), and Plaintiffs have not calculated any trial recovery under those damages provisions (*see* Supp. Mem. at 11).

But even assuming that the potential trial recovery is somewhere north of $500 million, the Court still finds that relief provided by the Settlement warrants preliminary approval in light of the risks of continued litigation. First, the Settlement, valued at $172,236,000 is still a significant percentage of any maximum potential trial recovery. District courts in the Ninth Circuit have approved class action settlements that provide around 20–30% of the maximum trial award. *Hurtado v. Rainbow Disposal Co., Inc.*, 2021 WL 2327858, at *4 (C.D. Cal. May 21, 2021) (approving class settlement that offered approximately 23.4–34% of the maximum amount recoverable at trial); *Winans v. Emeritus Corp.*, 2016 WL 107574, at *5 (N.D. Cal. Jan. 11, 2016) (approving class settlement that offered about 33.2% of "maximum projected 'hard damages' at trial"). The Ninth Circuit has even affirmed a district judge's approval of a class action settlement where the settlement fund was one-sixth of the estimated potential recovery. *In re Mego*, 213 F.3d at 459. Therefore, the Court is confident that the recovery percentage here is within the range of those approved by other courts.

Second, early resolution provides a benefit to Class Members that might outweigh any potential trial recovery, assuming Plaintiffs manage to succeed at every stage of trial and post-trial litigation. *See Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 526 (C.D. Cal. 2004) ("In most situations, unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results."). Defendants were prepared to litigate motions to dismiss and, as Plaintiffs point out, the arguments raised in those motions convinced another court to dismiss claims in a putative class action involving the same fuel pump defect against a different auto manufacturer. (*See* Mem. at 42 (citing *Cohen v. Subaru of Am., Inc.*, 2022 WL 721307 (D.N.J. Mar. 10, 2022); *Cohen v. Subaru of Am., Inc.*, 2022 WL 714795 (D.N.J. Mar. 10, 2022)).) Further, to achieve recovery at trial, Plaintiffs would had to have

won at class certification, maintained class certification even in the face of a possible appeal, and then defeated summary judgment. (*See id.* at 44–45.) Finally, as Plaintiffs point out, this Settlement provides nationwide relief, and it is not clear that such vast relief would be possible if the case proceeded to trial. (*Id.* at 43–44.) The Settlement eliminates these risks, and this factor weighs in favor of granting preliminary approval.

2. Effectiveness of Proposed Distribution Method and Claims Processing

Next, the adequacy of the relief depends on "the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims." Fed. R. Civ. P. 23(e)(2)(C)(ii). "Often it will be important for the court to scrutinize the method of claims processing to ensure that it facilitates filing legitimate claims." Fed. R. Civ. P. 23 advisory committee's note to 2018 Amendment. "A claims processing method should deter or defeat unjustified claims, but the court should be alert to whether the claims process is unduly demanding." *Id.*

Here, Class Members will be able easily to access the relief afforded by the extended warranties and Customer Support Program, which will provide fuel pump repairs to Covered Vehicles. (*See* Settlement Agreement ¶¶ III.A., III.B.) The Settlement Agreement provides that Mazda dealers will be adequately trained in providing this relief and ensuring that eligible vehicles receive covered repairs. (*Id.* ¶ III.E.) Additionally, the Court finds the claims process for out-of-pocket expenses to be appropriate. Class Members can easily submit claims through the mail or online at the settlement website. (*Id.* ¶ III.C.4.) And the required documentation will ensure that claims are legitimate without imposing an overly burdensome process on Class Members. (*Id.* ¶ III.C.3.) Further, the appeals process for denied claims, including the option for final review by the Settlement Special Master, is adequate and provides Class Members with ample opportunity to resolve rejected claims and receive relief where warranted. (*Id.* ¶ III.D.)

The effective distribution and claims processing methods weigh in favor of preliminary approval.

3. Proposed Attorneys' Fees

The "terms of any proposed award of attorney's fees" also affects the adequacy of the relief. Fed. R. Civ. P. 23(e)(2)(C)(iii). The Ninth Circuit explained that, when considering this factor, "district courts must apply the *Bluetooth* factors to scrutinize fee arrangements," meaning the Court should look for a disproportionate distribution of attorneys' fees, clear sailing provisions, and "reverter" or "kicker" clauses that return undistributed funds to the defendant. *Briseno*, 998 F.3d at 1026–27. "[C]ourts typically calculate 25% of the fund as the 'benchmark' for a reasonable fee award." *In re Bluetooth*, 654 F.3d at 942.

Here, Plaintiffs will move for an award of attorneys' fees at the time they seek final approval. (*See* Mem. at 48.) They will move for an award not to exceed $15,000,000, and Defendants have reserved the right to oppose that amount. (*Id.*) Therefore, beginning with the markers of collusion identified in *In re Bluetooth*, the Court notes that the proposed distribution of fees is not clearly disproportionate. Assuming for now that the Settlement's valuation of $172,236,000 is accurate, Plaintiffs' proposed fee award is less than 10% of that amount. But the Court has some concerns about the accuracy of that valuation. Therefore, at final approval, Plaintiffs should consider providing further legal support for their valuation of the Settlement, including evidence that other courts have accepted the method of applying a steep, "retail value" markup when calculating the Settlement's benefit to Class Members.

The Court must also consider the amount of money paid out for claimed out-of-pocket expenses. *See Lowery v. Rhapsody Int'l Inc.*, 75 F.4th 985, 992 (9th Cir. 2023). ("[C]ourts must consider the actual or realistically anticipated benefit to the class—not the maximum or hypothetical amount—in assessing the value of a class action settlement.") As a result, the Court reserves full consideration of the fee proportionality until final

approval, when it will have more information about the number of claims made and any payments for reimbursement of out-of-pocket expenses. The Court will also benefit at that time from Plaintiffs' Counsel's briefing about the fees sought. Plaintiffs should plan to submit detailed billing records, so that the Court may conduct a proper lodestar crosscheck of any requested fee.

As to other collusive red flags identified in *In re Bluetooth*, there is no clear sailing provision here, as Defendants have reserved the right to oppose Plaintiffs' fee application. Even though attorneys' fees will be paid "separate and apart from" Class relief, *see In re Bluetooth*, 654 F.3d at 947, it is not an arrangement in which Defendants are consenting to excessive fees. Finally, there is no reverter clause; because the Settlement Agreement does not provide for the creation of a single fund, there is no chance that a portion of that fund will revert to Defendants. That said, other courts have noted that a claims-made settlement operates in some ways like a reverter clause; Defendants receive the benefit of any claims not made or any reduction in awarded attorneys' fees because the money simply stays in their pocket. *See Brightk Consulting*, 2023 WL 2347446, at *8. This is yet another reason that the Court will proceed with caution at the final approval stage.

In sum, the Court concludes that there are not sufficient indicia of collusion to deny preliminary approval but reserves its full consideration of this factor until final approval.

E. Equitable Treatment of Class Members Relative to Each Other

The last factor to consider under Rule 23(e)(2) is whether "the proposal treats class members equitably relative to each other." Fed. R. Civ. P. 23(e)(2)(D). "Matters of concern could include whether the apportionment of relief among class members takes appropriate account of differences among their claims, and whether the scope of the release may affect class members in different ways that bear on the apportionment of relief." Fed. R. Civ. P. 23 advisory committee's note to 2018 Amendment.

The Court concludes that the Settlement Agreement proposes equitable treatment of the Class Members. The Settlement reasonably distinguishes between Additional Vehicles

and Recalled Vehicles, tailoring the repair coverage to account for the fact that Recalled Vehicles already received the benefit of some repairs under Mazda's U.S. recall, notwithstanding Plaintiffs' allegations that the recall was inadequate. (Settlement Agreement ¶¶ III.A, III.B.) Within those two broad categories, individual vehicles will be provided the same repair coverage (*see id.*), and all Class Members are entitled to benefits under the Loaner/Towing Program while their vehicles are undergoing repair (*see id.* ¶¶ III.A.2, III.B.2). The Settlement also contemplates unequal cash distribution under the claims processing system, but any payments disbursed will be proportionate to the harm incurred in the form of out-of-pocket costs. (*See id.* ¶ III.C.)

Finally, the Court considers the proposed service awards and whether the awards result in an inequitable distribution to the Class Representatives. The Settlement requests a service award not to exceed $5,000 for each Class Representative. (*See* Mem. at 48.) The Court concludes that this does not result in an inequitable distribution to the Class Representatives. *See Carlin*, 380 F. Supp. at 1024. As a result, the treatment of Class Members relative to each other warrants preliminary approval.

F. Conclusion as to Preliminary Approval

Considering the factors established by Rule 23(e), the Court preliminarily concludes that the Settlement Agreement is fair, reasonable, and adequate, and appears to be the product of serious, informed, non-collusive negotiations. The Court will preliminarily approve the proposed Settlement.

IV. SETTLEMENT ADMINISTRATOR

The parties agree to appoint JND Legal Administration to serve as Settlement Administrator. (*See* Settlement Agreement ¶ II.A.42.) Plaintiffs represent that "JND has extensive experience in claims administration." (Mem. at 21; *see also* Ex. 9 to Settlement Agreement, Keogh Decl. ¶¶ 4–11, Doc. 142.) All the costs incurred by JND in the course of administering the Settlement will be the responsibility of Defendants. (*See* Settlement Agreement ¶ X.D.8.) The Court approves JND as the Settlement Administrator.

V. CLASS NOTICE FORM AND METHOD

For a class certified under Rule 23(b)(3), "the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B). Under Rule 23, the notice must include, in a manner that is understandable to potential class members: "(i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3)." Fed. R. Civ. P. 23(c)(2)(B).

The Court approves the method of form and notice. As to the method of notice, Plaintiffs propose a multi-part plan:

- Mailing notice by first class U.S. mail to the current and former registered owners of Class Vehicles, as identified from data provided by Experian; returned mail will be sent to a forwarding address, if provided, or the Settlement Administrator will use address research firms to locate current mailing addresses;
- Posting notice on the website maintained by the Settlement Administrator;
- Establishing banner notifications on the internet and social media.

(Settlement Agreement ¶¶ IV.B, IV.C, IV.F.)

Given the combination of individual notice and general publication, the Court concludes that this proposed method of notice is "reasonably calculated . . . to apprise interested parties of the pendency of the action." *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950). Beyond notice to Class Members, the Class Action Fairness Act of 2005 ("CAFA") requires that certain government authorities receive notice of any class action settled in federal court. *See* 28 U.S.C. § 1715(b). The Settlement

provides that the Settlement Administrator will provide the necessary materials to comply with this statutory obligation. (Settlement Agreement ¶¶ IV.G.)

As to the form of notice, both the proposed long-form and short-form notices contain all the information that Rule 23(c)(2)(B) requires, and the Court approves them. (*See* Ex. 5 to Settlement Agreement, Long-Form Notice, Doc. 142; Ex. 6 to Settlement Agreement, Postcard Notice, Doc. 142; Ex. 7 to Settlement Agreement, Short-Form Notice, Doc. 142.) The Court also approves the procedures for objecting to the Settlement or requesting exclusion, particularly since the Settlement provides Class Members the opportunity to opt out of the Settlement online via the settlement website. (*See* Settlement Agreement ¶¶ V, VI.)

VI. PRELIMINARY INJUNCTION

Finally, Plaintiffs request that the Court issue a preliminary injunction under the Anti-Injunction Act that will "stay all other actions, pending final approval" and enjoin Class Members "from challenging in any action or proceeding any matter covered by this Settlement Agreement," except for proceedings related to the Court's final approval decision. (Mem. at 58.) The leading treatise on class actions counsels against antisuit injunctions at the preliminary approval stage "[i]n all but very rare circumstances." Newberg on Class Actions § 13:19 (5th ed.). Besides the obvious legal hurdle of the Anti-Injunction Act's general prohibition on enjoining state proceedings, "at the preliminary stage of a class action settlement, the court has not given notice to the class, not heard objections to the settlement, not weighed the settlement's strengths and weaknesses in an adversarial setting, and likely not finally certified a class; in short, there is no final judgment." *Id.* In fact, a proposed antisuit injunction at the preliminary approval state "raises a red flag about whether the present settlement is a collusive suit aimed at foreclosing a stronger suit in the collateral forum." *Id.* The treatise also teaches that "*final* approval of a class action should rarely, if ever, trigger the need for an antisuit injunction" because "preclusion is that injunction." *Id.*

The request for a preliminary injunction is DENIED. Mentions of a preliminary injunction shall be removed from the Settlement Agreement. The Court will consider whether an antisuit injunction is necessary at final approval.

VII. SETTLEMENT DEADLINES

The Court sets the following deadlines in association with its preliminary approval of the Settlement.

EVENT	DEADLINE
Provision of VINs for Class Vehicles to Settlement Administrator	September 11, 2024
Commencement of Class Notice	September 11, 2024
Notice to be substantially completed	November 12, 2024
Plaintiffs' Motion, Memorandum of Law and other materials in support of their requested award of attorneys' fees, costs, and service awards	November 12, 2024
Plaintiffs' Motion for Final Approval of Class Action Settlement	November 12, 2024
Deadline for Class Member objections to Settlement	December 16, 2024
Deadline for filing Notice of Intent to Appear at Final Fairness Hearing	December 16, 2024
Deadline for Class Members to request exclusion from Settlement	December 16, 2024
Defendants' Opposition to requested award of attorneys' fees, costs, and service awards	December 16, 2024
Deadline for parties' responses to objections and request for exclusion	January 3, 2025
Plaintiffs' Reply in support of requested award of attorneys' fees, costs, and service awards	January 3, 2025
Filing of the results of notice dissemination and list of exclusions	January 10, 2025
Final Fairness Hearing	January 17, 2025
Claim submission period	September 11, 2024, until 90 days after entry of Final Approval Order

VIII. CONCLUSION

For the foregoing reasons, the Court GRANTS IN PART Plaintiffs' Motion for Preliminary Approval of a Class Action Settlement.

DATED: September 11, 2024

JOSEPHINE L. STATON

HON. JOSEPHINE L. STATON
UNITED STATES DISTRICT JUDGE