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11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**

13 TOWNSEND VANCE and
14 ZACHARY HAINES, individually
and on behalf of all others similarly
situated,

15 Plaintiffs,

16 v.

17 MAZDA MOTOR OF AMERICA,
18 INC. D/B/A MAZDA NORTH
19 AMERICAN OPERATIONS,
20 MAZDA MOTOR CORPORATION,
FCA US LLC. DENSO
CORPORATION, and DENSO
INTERNATIONAL AMERICA, INC.,

21 Defendants.

Case No. 8:21-cv-01890-JLS-KES

CLASS ACTION

**SUPPLEMENTAL
MEMORANDUM IN SUPPORT OF
PLAINTIFFS' UNOPPOSED
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Hearing Date: August 9, 2024
Time: 10:30 a.m.

District Judge Josephine L. Staton
Courtroom 8A, First Street
Magistrate Judge Karen E. Scott
Courtroom 6D, Santa Ana

Complaint Filed: November 16, 2021
Trial Date: Not Set

JURY TRIAL DEMANDED

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1 Plaintiffs respectfully submit this supplemental memorandum in further
2 support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action
3 Settlement ("Motion for Preliminary Approval" or "Motion") (ECF 133).¹
4 Plaintiffs respectfully request that the Court grant preliminary approval of the
5 proposed settlement ("Settlement"), find the Settlement is fair, reasonable and
6 adequate under Federal Rule of Civil Procedure 23(e), preliminarily certify the
7 Settlement Class for settlement purposes only, approve the Notice Program and
8 direct dissemination of notice to the Class, and schedule a Final Fairness Hearing.
9 The Settlement provides substantial concrete benefits to the Class and resolves all
10 economic loss Class claims against Defendants Mazda Motor of America, Inc.,
11 operating as Mazda North American Operations ("Mazda"), and Denso
12 International America, Inc. ("Denso") (collectively, "Defendants", and together
13 with Plaintiffs, the "Parties").

14 **I. PRELIMINARY STATEMENT**

15 On May 3, 2024, after nearly 18-months of good-faith, arm's-length
16 negotiations, the Parties executed and filed with the Court, this proposed
17 Settlement (ECF 131), which provides substantial monetary and non-monetary
18 benefits to the current and former owners and lessees of over 603,000 Covered
19 Vehicles.

20 On July 12, 2024, the Court held a hearing on Plaintiffs' Motion for
21 Preliminary Approval. ECF 139. After discussion with the Parties, the Court
22 continued the hearing and requested that Plaintiffs revise the Settlement
23 Agreement and supplement their Motion to address specific issues raised by the
24 Court.² See Ex. B of the Supplemental Joint Declaration, Transcript of Motion for
25

26 ¹ Plaintiffs adopt and incorporate by reference all facts and arguments from their
27 Memorandum in Support of Plaintiffs' Unopposed Motion for Preliminary
28 Approval (ECF 133-1).

² The Revised Settlement Agreement, and all revised exhibits thereto, are attached

1 Settlement Approval Hearing (“Transcript”), dated July 12, 2024, at 20:3-21:17.
2 First, the Court requested that Plaintiffs submit their valuation expert’s report that
3 assigned a dollar value to the non-monetary relief in the Settlement – namely, the
4 Customer Service Program, Extended New Parts Warranty, and Loaner/Towing
5 Program – and to address how the value of the relief compares to the potential
6 maximum recovery in the case, assuming Plaintiffs prevailed at every stage of the
7 litigation. *Id.* at 6:11-7:17. Second, the Court asked for additional information
8 concerning the Parties’ negotiation of the Settlement Agreement as well as
9 Plaintiffs’ request for Attorneys’ Fees and Expenses, and Class Representative
10 Service Awards, which Defendants have reserved their right to oppose. *Id.* at 15:3-
11 16:23. Finally, the Court pointed out two provisions in the Settlement Agreement
12 (ECF 131) that it concluded may be inconvenient or confusing for Class Members:
13 (1) the requirement that Class Members file Opt-Out requests in hard copy; (2) the
14 process for the reconsideration and appeal of denial Settlement benefits, including
15 the Special Settlement Master’s role in Settlement implementation and making
16 final determinations on Class Members’ eligibility for Settlement relief, which
17 may be unclear. *Id.* at 10:4-15:9. The Court and the Parties determined that these
18 issues could be resolved by the Parties entering into a revised Settlement
19 Agreement that permits Class Members to file Opt-Out requests online on the
20 Settlement Website, and makes clear that the ultimate decisionmaker when
21 Counsel reconsider denials of Settlement Benefits and any appeals is the
22 Settlement Special Master. *Id.* at 15:11-16:3.

23 Plaintiffs believe they have sufficiently answered the Court’s questions,
24 including the monetary value of the Settlement, and its negotiations concerning
25 and request for Attorneys’ Fees and Expenses, and Class Representative Service
26

27 _____
28 to the Supplemental Joint Declaration of W. Daniel “Dee” Miles, III and Timothy
G. Blood (“Supplemental Joint Declaration”) as Exhibit A.

1 Awards. If the Court requires more information, Plaintiffs of course will be happy
2 to provide it.

3 Plaintiffs submit the additional information set forth in this Supplement
4 Memorandum should dispel any notion that this Settlement, which provides
5 valuable tangible benefits to the purchasers and lessees of over 603,000 Covered
6 Vehicles, is anything other than a Settlement that is the result of good-faith, arm's-
7 length negotiations among the Parties, and is in the best interest of the Settlement
8 Class. Moreover, while Defendants agreed to pay Plaintiffs' reasonable Attorneys'
9 Fees and Expenses and Class Representative Service Awards after the Parties
10 reached agreement on the substantive material terms of the Settlement, they
11 participated in a mediation under the auspices of the Special Settlement Master
12 concerning Attorneys' Fees and Expenses, which was unsuccessful, and,
13 Defendants may now oppose Plaintiffs' Fee Request and Expenses "with
14 accompanying expert reports and Rule 702(a) motions." ECF 133-3, at ¶ 24. There
15 is no clear sailing provision and no other indicia of collusion.

16 The Parties, however, have cooperated since the Court's July 12, 2024
17 hearing to revise the Settlement Agreement, and the accompanying exhibits, to
18 address the Court's concerns about potential Class Member inconvenience and
19 confusion. Plaintiffs submit the proposed Settlement, as revised, is fair,
20 reasonable, and adequate and merits preliminary approval.

21 **II. LEGAL STANDARD**

22 To preliminarily approve a proposed class action settlement, the Court must
23 determine whether the proposed settlement is fair, reasonable, and adequate. Fed.
24 R. Civ. P. 23(e)(2). Courts in the Ninth Circuit are not required "to specifically
25 weigh the merits of the class's case against the settlement amount and quantify the
26 expected value of fully litigating the matter." *Spann v. J.C. Penney Corp.*, 314
27 F.R.D. 312, 323-24 (quoting *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 965 (9th
28 Cir. 2009)). Instead, courts in this circuit examine "whether the settlement is the

1 product of an arms-length, non-collusive, negotiated resolution.” *Id.* at 324
2 (quotation marks and citation omitted). Put simply, “[i]t is the settlement taken as
3 a whole, rather than the individual component parts, that must be examined for
4 overall fairness . . . and the settlement must stand or fall in its entirety.” *In re Vizio,*
5 *Inc., Consumer Priv. Litig.*, No. 816ML02693JLSKES, 2019 WL 12966639, at *7
6 (C.D. Cal. Jan. 4, 2019) (citations omitted).

7 Indeed, “[b]ecause Class Members will receive an opportunity to be heard
8 on the Settlement at the Final Fairness Hearing, “a full fairness analysis is
9 unnecessary.” *Id.*, at *8. Rather, preliminary approval of a settlement is appropriate
10 where: “[1] the proposed settlement appears to be the product of serious, informed,
11 non-collusive negotiations, [2] has no obvious deficiencies, [3] does not
12 improperly grant preferential treatment to class representatives or segments of the
13 class, and [4] falls with the range of possible approval....” *Id.* (quoting *In re*
14 *Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007).

15 **III. THIS SETTLEMENT IS FAIR, REASONABLE, AND IN THE BEST** 16 **INTERESTS OF THE CLASS.**

17 This Settlement,³ which provides \$172,236,000 in concrete benefits to Class
18 Members.⁴ It is the product of 18 months of arm’s-length, non-collusive
19 negotiations between the Parties. The proposed settlement falls well within the
20 range of a fair, reasonable, and adequate settlement that merits preliminary
21 approval.

22 **A. The Settlement Provides Valuable Relief**

23
24
25 ³ Unless specifically defined herein, capitalized terms have the same meanings
ascribed to them in the Settlement Agreement, cited as “SA.” SA, § II.

26 ⁴ Defendants agree that the Settlement provides significant value and benefits to
27 the Class Members and agree the value is more than sufficient to support
28 preliminary approval of this Settlement and the proposed notice plan, but do not
expressly agree with or endorse Plaintiffs’ expert’s specific monetary valuation.

1 The relief provided by the CSP, Extended Warranty, and Loaner/Towing
2 Program are extremely valuable real-world benefits to the Class. Indeed, each of
3 these programs are needed to ensure that all Covered Vehicles receive: (i) the same
4 effective remedy (*i.e.*, the countermeasure fuel pump) for the Additional Vehicles
5 that were not included in the Recall; (ii) coverage for additional repairs, if required,
6 due any technician errors for the Recalled Vehicles; and (iii) certainty that Class
7 Members will not incur additional out-of-pocket expenses related to this defect.
8 *See* Ex. C, Declaration of Murat Okçuoğlu, ¶¶ 21-30.⁵ All of these benefits “travel
9 with” the Covered Vehicles such that future owners and lessees for the same relief.

10 **B. Settlement Valuation**

11 On February 20, 2024, Class Counsel engaged Mr. Lee M. Bowron, ACAS,
12 MAAA, of Kerper Bowron, LLC to provide an expert opinion of the economic
13 value of the Customer Support Program, Extended New Parts Warranty, and
14 Loaner/Towing Program. *See* Supplemental Joint Declaration, at ¶ 24. The same
15 day, Mr. Bowron signed and returned a copy of the Parties’ Confidentiality
16 Agreement. On February 21, 2024, Class Counsel provided Mr. Bowron with
17 complete copies of: (1) the Second Amended Complaint (ECF 39) and other
18 relevant pleadings filed in this litigation; (2) Mazda’s warranty, sales, VIN, and
19 vehicle production data; (3) Defendants’ Part 573 Safety Recall Reports and
20 supporting documents; and (4) documents related to Defendants’ investigation,
21 testing, and root cause analysis of the Fuel Pump Defect, and their proposed
22 countermeasures. *Id.*, ¶ 24.

23 On April 5, 2024, Mr. Bowron provided Class Counsel with his report,
24 which values the proposed Settlement at One Hundred Seventy-Two Million Two
25 Hundred Thirty-Six Thousand Dollars (\$172,236,000), exclusive of the total
26

27 _____
28 ⁵ The Declaration of Murat Okçuoğlu (“Murat Decl.”), dated July 24, 2024, is
attached to the Supplemental Joint Declaration as Exhibit C.

1 amount of any Class Members' approved Claims under the Out-of-Pocket Claims
2 Process (Section III.C) of the Settlement Agreement. *See* Lee M. Bowron Report
3 ("Bowron Report"), attached as Exhibit D to the Supplemental Joint Declaration,
4 at p. 3.⁶

5 In forming his opinions, Mr. Bowron calculated the retail value of the
6 warranty programs offered. He used reliable industry-standard methods and
7 assumptions to calculate the average cost of repair, estimated out-of-pocket costs
8 of the Settlement, and the expected retail price of a service contract providing the
9 same coverage. Mr. Bowron considered an array of data, provided by Defendants
10 and other sources, as well as the specific terms and benefits of the Customer
11 Support Program, Extended New Parts Warranty, and Loaner/Towing Program:

- 12 • Extended New Parts Warranty – Provides extended warranty coverage for
13 the replacement fuel pump kit in the Recalled Vehicles. Coverage lasts for
14 15 years, measured from the replacement date, up to 150,000 miles,
15 whichever occurs first.
- 16 • Customer Support Program – Provides prospective coverage for repairs
17 (including parts and labor) needed to correct defects, if any, in materials or
18 workmanship in the Fuel Pumps for the Additional Vehicles. Coverage lasts
19 for 15 years from the In-Service Date. Additional Vehicles that become the
20 subject of a future or expanded recall for the same or similar impeller issues
21 in a low-pressure fuel pump, will be entitled to the same relief provided to
22 Recalled Vehicles.
- 23 • Loaner/Towing Program – Complimentary Loaner Vehicles provided to
24 Class Members whose Covered Vehicle is undergoing repair pursuant to the
25

26 ⁶ The \$172,236,000 represents the estimated out-of-pocket costs (including the
27 estimated retail price of a service contract) that Class Members would incur absent
28 the relief in the CSP (\$162,140,000) and the Extended Warranty (\$10,096,000).
See Ex. D, Bowron Report, at pgs. 7-8, Ex. 1.

1 Customer Support Program or Extended New Parts Warranty. Class
2 Members may return the Loaner Vehicle up to 24 hours after the vehicle is
3 presented for repair, or 24 hours after the repair is completed, whichever is
4 later. Complimentary towing for Covered Vehicles that are inoperable or
5 exhibit a dangerous condition is available.

6 Mr. Bowron calculated the expected out-of-pocket costs for the Covered
7 Vehicles using the following formula:

8 **Expected Out-of-Pocket Costs** = (1) Vehicles x (2)
9 Adjustment for Scrapped Vehicles x (3) Recalled
10 Vehicle/Additional Vehicle Exposures⁷ x (4) Frequency
11 of Claims x (5) Severity.

12 Mr. Bowron calculated the average cost of repair (“Severity”) to be \$1,053,
13 including towing and rental costs. The Adjustment for Scrapped Vehicles is a
14 judgmental rate based on data from NHTSA. The Frequency of Claims is 2.2%,
15 which is a judgmental assumption that considers the historical reliability of the
16 vehicles and the margin for replacement. This resulted in estimated out-of-pocket
17 costs of \$3.6 million and \$58.3 million for the Recalled Vehicles and Additional
18 Vehicles, respectively. Ex. D, Bowron Report, p. 7.

19 Mr. Bowron then adjusted these estimated out-of-pocket costs using a cost-
20 plus method to derive the expected retail price of a service contract with the same
21 benefits. *Id.*, pgs. 7-8. The purpose of this cost-plus adjustment is to account for
22 what it would cost each Class Member to get the same benefits in the open market.
23 *Id.* To make this calculation, Mr. Bowron used the below formula and selected:

24 _____

25 ⁷ “Exposure” is an adjustment factor to account for the time in which Covered
26 Vehicles are eligible for Settlement relief. For Additional Vehicles, this factor
27 considers the number of Additional Vehicles under the manufacturer warranty or
28 older than 15 years. For Recalled Vehicles this factor considers the number of
Recalled Vehicles under the manufacturer warranty or above 150,000 miles. *Id.*,
p. 6.

1 (1) a 2.5% premium for taxes and 4% for profit, for a 6.5% margin; (2) estimated
2 administrative cost of \$9.63 for claims settlement and expenses;⁸ and (3) a 100%
3 markup for marketing, loss cost, and administrator cost. *Id.*

4 **Retail Price** = (Expected Claim Costs/[1 – Insurance
5 Expenses] + Administrative Costs + Marketing Costs)

6 This resulted in a selected retail price of \$162,140,000 and \$10,096,000 for the
7 Customer Support Program and Extended New Parts Warranty, respectively, for a
8 total value of \$172,236,000 million. *Id.*, Ex. 1.

9 Plaintiffs submit Mr. Bowron’s valuation of the Settlement is reflective of
10 Class Counsels’ vigorous pursuit of the Class interests, the substantial benefits
11 provided to the Class and, as explained below, reasonable when compared to the
12 maximum potential recovery in this case.

13 **C. The Settlement Compared to Maximum Possible Recovery**

14 At the July 12, 2024, hearing, the Court deferred ruling on Plaintiffs’ Motion
15 for Preliminary Approval until Class Counsel further explained how the Settlement
16 compares to “what the optimum or maximum set of recovery could be in a case
17 like this.” Ex. A, at 6:11-14. The maximum possible recovery is \$368 million.⁹
18 This represents the cost to replace each fuel pump multiplied by the number of
19 Additional Vehicles. This figure is calculated by multiplying the average cost of
20 repair, including parts and labor (\$765)¹⁰ by the number of Additional Vehicles
21 (482,066). This calculation does not include the Recalled Vehicles, as it is likely
22 they would not be included in any formally certified class on account of having
23

24
25 ⁸ Calculated by [Expected Costs / Covered Vehicles] x 30%.

26 ⁹ Defendants agree that the Settlement presents a reasonable result as compared to
27 the range of possible recoveries, but do not expressly agree with or endorse
28 Plaintiffs’ valuation nor their stated maximum possible recovery.

¹⁰ Ex. D, Bowron Report, Ex. V.

1 already received the effective Recall Repair. The Settlement represents a recovery
2 worth approximately 47% of the best possible recovery.

3 As explained in Plaintiffs' Motion for Preliminary Approval, in addition to
4 the costs and time of continued litigation, Plaintiffs faced significant risks on the
5 merits of their claims. ECF Doc. 133-2, at 29-36. Assuming, *arguendo*, that
6 Plaintiffs were able to: (1) overcome Defendants' motions to dismiss; (2)
7 successfully certify a nationwide class of all Covered Vehicles; (3) overcome
8 summary judgment, and (4) receive a full jury verdict at trial with no appeal.

9 Courts in this circuit routinely approve class settlements with recoveries
10 below this figure. *In re Vizio*, 2019 WL 12966639, at *9 (granting preliminary
11 approval of settlement that amounted to a 22% recovery of maximum liability);
12 *Weeks v. Kellogg Co.*, No. CV 09-08102 (MMM) (RZx), 2013 WL 6531177, at
13 *15 n. 85 (C.D. Cal. Nov. 23, 2013) (approving settlement amount of 10% of
14 consumers' maximum recovery); *Retta v. Millennium Prod., Inc.*, No. CV15-1801
15 PSG AJWx, 2017 WL 5479637, at *5 (C.D. Cal. Aug. 22, 2017) (finding 21%
16 recovery of estimated damages to be reasonable and beneficial to the class); *In re*
17 *LinkedIn User Privacy Litig.*, 309 F.R.D. 573, 588 (N.D. Cal. 2015) (approving a
18 settlement valued at approximately 30% of consumers' maximum recovery).

19 Given the significant value of the benefits and the relief provided, the Court
20 should find the Settlement is fair, reasonable, and adequate.

21 **D. Negotiation of the Settlement and Plaintiffs' Request for**
22 **Attorneys' Fees, Expenses, and Class Representative Service**
23 **Awards**

24 **1. Settlement Negotiations**

25 As detailed in the Settlement Agreement, Plaintiffs' Motion for Preliminary
26 Approval, and Joint Declaration, the negotiations culminating in this Settlement
27 were complex, conducted in good faith and at arm's length over a period of one-
28

1 and-a-half years by informed and experienced counsel ECF. 133-1, at 6-7; 133-2,
2 ¶¶ 18-29.

3 Between July 2022 and January 18, 2024, the Parties met numerous times
4 (in-person and virtually) and engaged in extensive negotiations concerning the
5 scope and substantive terms of Settlement. *See, e.g.*, ECF. 115, ¶ 10; ECF.118,
6 ¶ 10; ECF. 120, ¶ 12; ECF. 122; Supplemental Joint Declaration, ¶¶ 18-28. During
7 this time, Mazda produced, and Class Counsel processed and reviewed, 6,609
8 pages of documents relating to the design and operation of the Denso Fuel Pumps,
9 warranty data, sales data, failure modes effect and analysis attributed to the Fuel
10 Pumps, Defendants’ investigation into the defect, the Recall, and the defect
11 countermeasure development and implementation. The Parties exchanged
12 multiple rounds of correspondence regarding this complex data and failure
13 analysis which helped inform the scope of Settlement. Additionally, Plaintiffs’
14 independent automotive engineering expert sourced and inspected over 350 Denso
15 Fuel Pumps, and analyzed, among other things, the pumps’ operation,
16 specifications, and the density of the impeller. Supplemental Joint Declaration, ¶¶
17 7, 31-33, 38-40. Class Counsels’ automotive expert also thoroughly tested and
18 analyzed the Countermeasure Fuel Pumps and concluded they remedy the defect
19 asserted in the Recalls. *Id.*; *see also* Murat Decl., at ¶¶ 18-21.

20 After the Parties reached agreement on the substantive terms of the
21 Settlement, the Parties exchanged numerous drafts of the Settlement Agreement
22 and related exhibits, which Class Counsel carefully negotiated and refined before
23 a final agreement could be reached. Supplemental Joint Declaration, ¶¶ 23-33. As
24 a result of Counsel’s efforts, the Parties were successful in reaching a Settlement
25 that provides concrete substantial benefits to the current and former owners and
26 lessees of over 603,000 Class Vehicles.

27 On April 12, 2024, the Parties mediated the issues of Class Counsels’
28 reasonable Attorneys’ Fees, Expenses, and Class Representative Service Awards

1 under the auspices of Settlement Special Master Juneau.¹¹ *Id.*, ¶ 43. After a full
2 day mediation, the Parties were unable to come to an agreement. *Id.* Instead,
3 Defendants have now reserved the right to oppose Plaintiffs’ intended request for
4 Attorneys’ Fees, Expenses, and Class Representative Service Awards and the issue
5 may be litigated before the Court. *Id.*, ¶ 45. These facts make clear that in no way
6 did Class Counsel trade off the recovery the Class should obtain in exchange for
7 attorneys’ fees, as agreement still has not been reached on an amount of fees.

8 **2. Attorneys’ Fees, Expenses, and Class Representative**
9 **Service Awards**

10 The Settlement was the result of good-faith, arm’s length negotiations. *See*
11 *e.g.*, Ex. B, Transcript, at 8:3-17. This Settlement is not the result of any collusion,
12 as the Parties have not agreed upon, nor began to negotiate or mediate, the issue
13 of Class Counsels’ reasonable attorneys’ fees, expenses, and Class Representative
14 service awards until after all material and substantive settlement terms were agreed
15 upon. Supplemental Joint Decl., ¶ 43-45.

16 Although Defendants have agreed to pay Class Counsels’ reasonable
17 attorneys’ fees and expenses, Defendants dispute that an award of \$15,000,000 in
18 attorneys’ fees is reasonable, and Defendants reserve their right to oppose the
19 amounts sought in Class Counsels’ application. SA, § VIII.; Supplemental Joint
20 Decl., ¶ 43. There is no “clear sailing” provision at issue; rather, the amount of
21 attorneys’ fees, expenses and service awards is *disputed. Id.*

22 Plaintiffs included \$15,000,000 as a potential maximum fee request so the
23 Class will be on notice of the amount Class Counsel can and may seek, Class
24 Counsel may choose to seek less. But to ensure the Class receives meaningful
25 notice, the Parties agreed that the Settlement and proposed notices should include
26

27 _____
28 ¹¹ On March 11, 2024, the Court appointed Mr. Juneau as Settlement Special
Master. ECF Doc. 128.

1 the amount of fees, expenses, and service awards that Class Counsel may submit
2 in its application to the Court. *Id.*, ¶ 44; *see* Fed. R. Civ. P. 23(h).

3 Class Counsel submit that Rule 23(e)(2)(A) will be satisfied as evident by
4 the superb result of this Settlement valued at \$172 million.¹²

5 **E. Revised Provisions of Settlement Agreement**

6 **1. Opt-Out Procedure**

7 Under the Settlement, as revised, any Class Member may exclude
8 himself/herself from the Class by submitting a timely request for exclusion to the
9 Settlement Administrator through U.S. mail, at the address clearly provided in the
10 Long Form Notice, or electronically on the Settlement Website. SA, § V; SA, Ex.
11 5. The Long Form Notice, which is available on the Settlement Website and via
12 U.S. mail upon request, provides Class Members with the applicable deadlines,
13 methods, and required information to submit a timely, valid opt-out request. *Id.*,
14 §§ IV.C-D, V.C. Additionally, Class Members, who submit their opt-out request
15 on the Settlement Website, may electronically sign the request, if they so choose.
16 *Id.*

17 Courts in this circuit routinely approve class settlements that provide Class
18 Members with electronic methods for submitting requests for exclusion (i.e., email
19 requests, online opt-out request forms, dedicated opt-out page on the Settlement
20 Website, etc.). *See Moreno v. JCT Logistics, Inc.*, No. EDCV172489JGBKKX,
21 2023 WL 9319048, at *3 (C.D. Cal. Apr. 28, 2023) (approving settlement that
22 permitted electronic opt-out requests); *In re Vizio*, 2019 WL 12966639, at *14
23 (preliminarily approving class action settlement provided that the settlement
24 website include a method and instructions for electronically submitting opt-out
25 requests); *In re Sony PS3 "Other OS" Litig.*, No. 10-CV-01811-YGR, 2017 WL
26

27 _____
28 ¹² ECF 133-1, Plaintiffs' Memorandum in Support of Plaintiffs' Motion for Preliminary Approval, at §§ V.A-B.

1 5598726, at *4 (N.D. Cal. Nov. 21, 2017) (same); *Tadepalli v. Uber Techs., Inc.*,
2 No. 15-CV-04348-MEJ, 2015 WL 9196054, at *4 (N.D. Cal. Dec. 17, 2015)
3 (approving settlement where class members could electronically sign and submit
4 written opt-out requests on the settlement website). Here, as amended, the
5 Settlement provides Class Members with an electronic method for submitting
6 requests for exclusion via the Settlement Website.¹³

7 As revised, Plaintiffs submit that the proposed Settlement and Class Notice
8 meet all applicable requirements of Rule 23, the Due Process Clause of the United
9 States Constitution, and all other applicable statutes, laws, and rules.¹⁴ SA, §§
10 II.45, IV.C.1, V.A; SA, Exs. 4-7. Pursuant to Rule 23(e), Plaintiffs respectfully
11 request the Court preliminarily approve the proposed Settlement, approve the form
12 and content of the proposed Class Notice, and direct its distribution to the Class.

13 **2. Reconsideration and Appeals – Claim Denial and Other**
14 **Settlement Benefits**

15 The Settlement Agreement and Class Notice, as revised, provide Class
16 Members with a clear, concise, and simple explanation of their rights concerning,
17 and procedures of, the reconsideration and appeal of any denial of Settlement
18 benefits. SA, §§ III.A.4-6, III.B.3-5, III.D; SA, Exs. 5-7. The Long Form Notice
19 and Settlement Website contain fulsome explanations to any potential questions
20 Class Members may have regarding their entitlement to certain Settlement
21

22 ¹³ Rule 23(c)(2)(B) requires that notice to the class must “clearly and concisely
23 state in plain, easily understood language . . . the time and manner for requesting
24 exclusion” and “the binding effect of a class judgment on members.” Fed. R. Civ.
25 P. 23(b)(2)(B).

26 ¹⁴ The forms of notice detailed in the Settlement Agreement, § IV, are written in simple
27 terminology, are readily understandable, and comply with the Federal Judicial Center’s
28 illustrative class action notices. *See <https://www.fjc.gov/content/301253/illustrative-forms-class-action-notices-introduction>*

1 benefits, claim status, and appeals for any denial of benefits under the Settlement.
2 SA, § IV.C-D; SA, Ex. 5, Questions 1-22. Additionally, the Settlement provides
3 for a 24-hour, toll-free telephone line with information about the Settlement; a
4 dedicated email address to receive and respond to Class Member inquiries; and a
5 post office box to receive Class Member correspondence, including exclusion
6 requests. *Id.*

7 **a. CSP, Extended Warranty, Loaner/Towing Program**

8 Under the Settlement Agreement, if any Class Member is denied coverage
9 under the Customer Support Program, Extended New Parts Warranty, or
10 Loaner/Towing Program, the Class Member may take their Covered Vehicle to a
11 second Mazda Dealer for an independent determination. SA, §§ III.A.4-6, III.B.3-
12 5. If the second Mazda Dealer determines that the Covered Vehicle qualifies for a
13 repair and/or replacement of the fuel pump kit, the Class Member will receive that
14 benefit in accordance with Sections III.A-B of the Settlement Agreement. SA, §§
15 III.A.5, III.B.4. If the second Mazda Dealer denies the Class Member coverage,
16 the Class Member may notify the Settlement Administrator, who shall provide
17 written notice of the denial, with all necessary documentation, to the Settlement
18 Special Master, Class Counsel and Defendants within fifteen days. SA, §§ III.A.6,
19 III.B. 5. Class Counsel and Defendants will confer and, if the Parties agree, make
20 a joint recommendation to the Settlement Administrator with directions for
21 implementation. SA, § III.D.3.a. If the Parties are unable to agree, they shall,
22 within thirty days, separately relay their positions to the Settlement Special Master,
23 who will make a final determination and provide written notice to the Parties and
24 Settlement Administrator with directions for implementation. *Id.*

25 **b. Out-of-Pocket Claims Process**

26 Under the Settlement, as revised, the Settlement Administrator shall be
27 responsible for receiving and reviewing Class Members' Claims for out-of-pocket
28 reimbursement and shall have the authority to determine whether Claims Forms

1 submitted by Class Members are complete and timely.¹⁵ SA, § III.C.4. If any Class
2 Members' complete and timely Claim is denied for payment, in whole or in part,
3 the Settlement Administrator shall notify Class Counsel and Defendants of the
4 rejection. SA, § III.D.1. Class Counsel and Defendants may meet and confer and,
5 if the Parties agree, jointly recommend payment of a rejected Claim or reduced
6 claim amount to the Settlement Administrator. SA, § III.D.1.a. If the Parties are
7 unable to agree on the Settlement Administrators initial determination, they shall
8 notify the Settlement Administrator and Settlement Special Master, and the
9 Settlement Special Master will make a final determination as to whether the Claim
10 shall be paid, in full or in part, or rejected. *Id.* Claims, or portions thereof, that are
11 approved for payment by joint recommendation of the Parties or final
12 determination of the Settlement Special Master's, shall be paid by the Settlement
13 Administrator in the next distribution. *Id.*

14 3. Self-Identification

15 Under the Settlement's Self-Identification procedure, individuals who
16 believe that they are Class Members but did not previously receive Direct Mail
17 Notice, may utilize the VIN Lookup Tool and/or contact the Settlement
18 Administrator or Class Counsel and provide necessary documentation indicating
19 that they wish to be eligible for the relief provided in this Settlement Agreement.
20 SA, § IV.I. Class Counsel, Mazda's Counsel, and Denso's Counsel shall confer
21 and either make a joint recommendation to the Settlement Administrator or
22

23 ¹⁵ Class Members whose Claim is deemed deficient by the Settlement
24 Administrator shall receive notice of the same and have the opportunity to
25 complete and/or correct the deficiencies and resubmit the Claim Form within sixty
26 days. SA, § III.C.7. If a Class Member corrects the deficiencies, the Settlement
27 administrator will review the resubmitted Claim and, if accepted for payment, in
28 whole or in part, shall pay the approved portions of the Claim in the next
distribution. SA, § III.C.7.b.

1 separately relay their positions concerning the request to the Settlement Special
2 Master, who shall make a final determination concerning the request. *Id.* If the
3 request is granted, that Class Member shall be bound by the terms of the Settlement
4 Agreement and eligible to participate in the Settlement relief under Sections III.A-
5 D. *Id.*

6 **III. CONCLUSION**

7 For all the above-stated reasons, and those previously stated in the Motion
8 for Preliminary Approval, Plaintiffs respectfully request that the Motion be
9 granted and the Court enter an order, substantially in the form of Exhibit 3 to the
10 Settlement Agreement: (a) granting preliminary approval of the proposed
11 Settlement; (b) preliminarily certifying the proposed Class for settlement purposes
12 only; (c) approving the form and content of, and directing the distribution of, the
13 proposed Class Notice, annexed to the Settlement Agreement as Exhibits 4, 5, 6,
14 and 7; (d) authorizing and directing the Parties to retain JND Legal Administration
15 as the Settlement Administrator; (e) appointing W. Daniel Miles III of Beasley,
16 Allen, Crow, Methvin, Portis & Miles, P.C. and Timothy G. Blood of Blood Hurst
17 & O'Reardon, LLP as Class Counsel; (f) appointing the proposed Class
18 Representatives as Class Representatives; (g) setting a date and procedures for the
19 final Settlement Fairness Hearing and setting related deadlines; and (h) issuing
20 related relief as appropriate, including issuing a preliminary injunction staying all
21 other actions, pending final approval by the Court and enjoining potential Class
22 Members from challenging in any action or proceeding any matter covered by this
23 Settlement Agreement.

24 Respectfully submitted,

25 Dated: July 26, 2024

BLOOD HURST & O'REARDON, LLP
TIMOTHY G. BLOOD (149343)
PAULA R. BROWN (254142)
JENNIFER L. MACPHERSON (202021)

27 By: s/ Timothy G. Blood

28 TIMOTHY G. BLOOD

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Dated: July 26, 2024

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CERTIFICATE OF SERVICE

I hereby certify that on July 26, 2024, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the Electronic Mail Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on July 26, 2024.

s/ Timothy G. Blood

TIMOTHY G. BLOOD

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