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

PETER VELASCO, *et al.*,

Plaintiffs,

v.

CHRYSLER GROUP LLC,

Defendant.

Case No. 2:13-cv-08080-DDP (VBKx)

**FILED UNDER SEAL**

**PURSUANT TO PROTECTIVE ORDER DATED MARCH 26, 2014**

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

Date: July 20, 2015
Time: 10:00 a.m.
Judge: Hon. Dean D. Pregerson
Courtroom: 3

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## I. INTRODUCTION

Last November, Plaintiffs came before the Court asking it to issue extraordinary relief to deal with a potentially serious safety issue. Plaintiffs had alleged that the Totally Integrated Power Modules (or TIPMs) in certain Chrysler-made vehicles were defective, sometimes causing vehicle to stall in traffic, and [redacted]. After Chrysler announced that it would voluntarily recall the 2011 model years, the Court denied Plaintiffs' request to send out a pre-certification warning to putative class members, but expressed concern that the recall may not be broad enough—particularly as to the 2012 model year, which did not appear to differ markedly from the 2011 model year that Chrysler was voluntarily recalling.

Plaintiffs are pleased to report that they have reached a class-wide settlement with Chrysler (now known as FCA US) that will address the potential safety issue at the heart of the case. Finalization of the settlement terms were contingent on FCA US initiating a voluntary recall of the 2012 and 2013 Jeep Grand Cherokee and Dodge Durango, which it has done; this recall will proceed in parallel with the previously-announced recall of the 2011 model year. In addition, FCA US will reimburse vehicle owners and lessees for any related repair and rental car expenses, and will extend its standard warranty from 3 years/36,000 miles to 7 years/70,000 miles for TIPM repairs conducted through the recall.

Plaintiffs and their counsel believe that the settlement provides needed relief to class members in a timely manner and therefore seek to begin the approval process. They respectfully request that the Court review the parties' Settlement Agreement, attached to the accompanying declaration of Eric H. Gibbs as Exhibit 1 (and cited herein simply as the "Settlement"), and enter an order:

1. Granting preliminary approval of the proposed settlement;
2. Certifying the proposed settleme2nt class;

3. Appointing Plaintiffs as Class Representatives, their attorneys as Class Counsel, and Dahl Administration as the Notice Administrator.

4. Directing notice be mailed to class members as proposed by the parties; and

5. Setting a hearing date and briefing schedule for final settlement approval and Plaintiffs' fee and expense application.

## II. OVERVIEW OF THE LITIGATION AND PROPOSED SETTLEMENT

### A. The Litigation

Plaintiffs filed this case in November 2013, alleging that FCA US had equipped many of its vehicles with defective Totally Integrated Power Modules (or TIPMs). (Compl. [Doc. 1], ¶¶ 1-3.) After two rounds of briefing, the Court found that Plaintiffs had stated claims for relief under various state consumer protection laws, and FCA US began producing documents concerning the allegedly defective TIPM. (8/22/14 Order [Doc. 46].) The litigation revealed a lengthy internal investigation that had come to focus on the TIPM's fuel pump relay—a fuse-like component that is supposed to energize the vehicle's fuel pump. (10/3/14 Opp. [Doc. 61] at 2; Bielenda Decl. [Doc. 61-1], ¶ 10.) The combination of certain heat factors (including contact power, ambient temperature, and battery voltage) were conspiring to gradually deform the fuel pump relay in certain FCA US vehicles. (10/3/14 Opp. [Doc. 61] at 2.) This deformation could result in premature fuel pump relay failure—leading to problems starting the engine and vehicles stalling in traffic. (*Id.*)

TIPM failures were already widespread when Plaintiffs filed suit and had continued to accumulate over the first year of litigation. [redacted] Plaintiffs moved for a preliminary injunction. They

asked the Court to order FCA US to either notify its customers of the TIPM defect and attendant safety risks, or turn over its customer data so that Plaintiffs could notify them. (9/18/14 Mot. [Doc. 49].)

FCA US responded to Plaintiffs' motion by announcing that it had already decided to voluntarily recall the 2011 Dodge Durango and 2011 Jeep Grand Cherokee, and so further notice to the class would not be necessary. As to other potential class vehicles, FCA US argued that although they all shared the same TIPM-7, they did not share the same high amperages, voltages, and under-hood temperatures that led to TIPM failures in the 2011 Jeep Grand Cherokee and Dodge Durango. (10/3/14 Opp. [Doc. 61].) In their reply, Plaintiffs challenged that assertion as to the 2012 Durango and Grand Cherokee, [redacted] (10/13/14 Reply [Doc. 73] at 5.) [redacted]

At the hearing on Plaintiffs' motion, the Court questioned FCA US's counsel on the differences between the vehicles—in particular, why the 2012 Durango and Grand Cherokee should be treated differently than the 2011 model year. The Court ultimately denied Plaintiffs' motion, but told the parties it would be willing to expedite class certification proceedings. The parties negotiated an accelerated schedule, with FCA US producing additional documents and a corporate deponent in expedited fashion. Prior to the filing of Plaintiffs' class certification motion, the parties agreed to mediate the dispute with Hon. Edward A. Infante (Ret.). After a full-day session before Judge Infante and follow-on telephonic sessions, the parties agreed to the terms of the Settlement now before the Court. (*See* Gibbs Decl., ¶ 3.)

**B. Overview of the Proposed Settlement**

**1. The Settlement Class**

The parties' settlement provides relief for members of the following proposed class:

*All persons who purchased or leased a model-year 2011, 2012, and/or 2013 Dodge Durango or Jeep Grand Cherokee vehicle in the United States.*

(Settlement, II.A.) Excluded from the class are: FCA US and all of its affiliates, parents, subsidiaries, successors, and assigns; the officers, directors, and employees of FCA US; all entities which purchased a vehicle solely for purposes of resale; and any judge to whom this case is assigned and his or her spouse. (*Id*.)

**2. Recall of Class Vehicles**

One of the primary benefits of resolving this litigation sooner rather than later—the immediate recall of Class Vehicles—is already under way. As a contingency of finalizing the Settlement and presenting it to the Court for approval, FCA US was required to notify the NHTSA of its intent to conduct a voluntary safety recall of the 2012-2013 Durango and Grand Cherokee—just as it had previously notified the NHTSA of its intent to recall the 2011 Durango and Grand Cherokee. (*See* Settlement II.B.) FCA US is now obligated to follow federally mandated procedures for notifying owners, purchasers, dealers, and distributors of the TIPM defect in Class Vehicles, and remedying that defect without charge. *See* 49 U.S.C. §§ 30118-20; 49 C.F.R. §§ 573.1-573.14. FCA US is in the midst of complying with these procedures. It has sent recall notices to owners of the 2011 model year and interim recall notices to owners of the 2012-13 model year. (*See* Gibbs Decl., ¶ 4, Ex. 2.) Under the Settlement, the Class Notice and accompanying web site will remind Class Members of the safety recall and that they should bring in their Class Vehicles for a TIPM repair. (*See* Settlement, III.B.; Exs. A-1, A-2 (proposed postcard and long-form notices).) As owners bring their vehicles to Jeep, Chrysler, or Dodge dealerships in response to the notices, FCA US is fixing (or will fix) the TIPM defect by installing a new, more robust fuel pump relay in Class Vehicles free of charge. (Settlement, II.B.3.)

**3. Refunds for Past Repairs**

FCA US's safety recall notice provides, "If you have already experienced this condition and have paid to have it repaired, please send your original receipts and/or

other adequate proof of payment to the following address for reimbursement: . . . . Once we receive and verify the required documents, reimbursement will be send to you within 60 days." (*See* Gibbs Decl., ¶ 4, Ex. 2.) Under the Settlement, the parties agree that the "offer made by FCA US in the recall notice to reimburse out-of-pocket costs for prior repairs includes an offer to reimburse part and labor costs for not only the fuel pump relay condition, but also related parts and labor and rental car costs that were reasonably incurred as a result of the condition, so long as such expenses are supported by appropriate documentation." (*See* Settlement, II.C.) In other words, FCA US will reimburse class members for any repair costs related to the TIPM defect—including rental car expenses. For example, many class members paid $1,000 or more to have the entire TIPM replaced. Some also paid hundreds of dollars for new starters, new batteries, or new fuel pumps, as their dealers struggled to correctly diagnose the problem. And because the demand for replacement TIPMs was so high, class members often incurred significant rental expenses. (*See* SAC, ¶ 3.) Under the proposed settlement, all of these out-of-pocket expenses will be fully reimbursable. (Settlement, II.C.2.b.) Class members need only provide their repair orders or receipts to receive a full refund. (*Id.*, II.C.2.a) And if class members no longer have the repair order or receipt, FCA US will attempt to locate it for them (so long as the repair was conducted at a Jeep, Dodge, or Chrysler dealership). (*Id.*) In the event a class member has a properly-supported reimbursement request denied, he/she can contact Class Counsel identified in the class notice, who will attempt to resolve the dispute with counsel for FCA US. (*Id.*, II.C.2.c.)

**4. Warranty Extension**

Lastly, FCA US will provide class members with a warranty extension under the settlement to cover the recall fix. (Settlement, II.D.) FCA US's Basic Limited Warranty ends 3 years or 36,000 miles after the vehicle is put in service, whichever comes first. This standard warranty will be extended to 7 years or 70,000 miles and cover the external fuel pump relay installed as part of the recall.

**5. Release**

In exchange for the relief FCA US is providing, Plaintiffs and the Settlement Class agree to release all claims asserted in the Second Amended Complaint, as well as all claims that could have been brought based on the facts alleged in the Second Amended Complaint. (Settlement, VI.1.) The Settlement will not, however, release any claims for personal injury or property damage that class members may have. (*Id.*, VI.2.)

**6. Class Notice**

If the Court preliminarily approves the proposed settlement, FCA US will pay to notify class members of the proposed settlement and give them an opportunity to opt out or submit an objection. (*See* Settlement, III.B.; Exs. A-1, A-2 (proposed postcard and long-form notices).) FCA US will have 30 days from entry of a preliminary approval order to determine the name and most recent mailing address of all class members who can be reasonably identified from its records, and to provide that information to Dahl Administration. (Settlement, III.B.2.) Dahl Administration will in turn mail each identified class member a copy of the class notice within the next 30 days. (*Id.*, III.B.3.) It will also set up and maintain a settlement website where class members can obtain additional information. (*Id.*, III.B.1.)

**7. Attorney Fees, Costs, and Service Awards**

After reaching agreement on the essential terms of the Settlement, the parties separately negotiated Class Counsel's claims for attorney fees and reimbursement of litigation expenses, as well as the Class Representatives' right to service awards. (Gibbs Decl., ¶ 6.) With Judge Infante's assistance, the parties agreed that FCA US would not oppose an award to Class Counsel of $3.55 million in attorney fees and up to $120,000 in costs, or service awards of $4,000 to each of the six Class Representatives. (Settlement, VII.2.) Class Counsel will separately petition the Court for awards in these amounts.

## III. ARGUMENT

### A. Settlement Should Be Preliminarily Approved

Before the Settlement can be approved, class members who will be bound by its terms must be notified and given an opportunity to object. Fed. R. Civ. P. 23(e). This notification process takes time and can be expensive—in this case, it will take several months and over 500,000 vehicle owners will need to be identified and mailed a notice by first-class mail. It has therefore become customary for courts to conduct a preliminary fairness review before the parties embark on the lengthy and expensive process of notifying class members of the settlement. *See* Newberg on Class Actions § 13:10 (5th ed). If the Court has any concerns about the proposed settlement that may lead it not to grant final approval, the preliminary approval process provides the Court with an opportunity to raise those concerns immediately. The parties can then either address those concerns before notice is disseminated or return to litigation without further delay.

Assessing whether the parties' Settlement is "fundamentally fair, adequate and reasonable," requires the Court to balance a number of factors, including:

(1) the strength of the plaintiff's 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;
(8) the reaction of the class members to the proposed settlement; and
(9) whether the settlement is a product of collusion among the parties.

*Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004). The reaction of the class cannot be fully evaluated until class notice has been disseminated, but in

Plaintiffs' view, the remaining factors confirm this Settlement to be advantageous to the class and worthy of judicial approval.

**1. The Strength of Plaintiffs' Case**

Plaintiffs each own a 2011 Jeep Grand Cherokee or a 2011 Dodge Durango, and with respect to those vehicles, believe they can mount a very strong case that FCA US violated state consumer protection laws by failing to disclose a known defect. As set forth in Plaintiffs' motion for a preliminary injunction, FCA US's internal records show that [redacted] (*See* 9/18/14 Mem. [Doc. 54] at 4-6; 10/14/14 Reply [Doc. 73] at 6.) [redacted] (*See* 9/18/14 Mem. at 2-3.) [redacted], so proving the existence of a known and systemic defect in the 2012 and 2013 Dodge Durango and Grand Cherokee would prove more challenging. [redacted] Plaintiffs believe they can counter this argument by showing that, [redacted]. (*See* 10/13/14 Reply [Doc. 73] at 5.) Different vehicle geometry may account for small differences in temperature, but Plaintiffs are confident they can show through expert testimony that the major heat factors are very similar and that, as more time passes, the 2012 and 2013 model years will track the high failure rates experienced by the 2011 model year.

**2. The Risk, Expense, Complexity, and Likely Duration of Further Litigation**

Almost all class actions involve a high level of risk, expense, and complexity, which is one reason that judicial policy so strongly favors resolving class actions through settlement. *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1238 (9th Cir. 1998). In this case, however, it is the passage of time that poses the greatest risk to class members—and the most compelling reason to settle now. The remedies Plaintiffs sought through litigation—and have obtained through settlement—would benefit class members far less if they took years to achieve. Informing class members of the TIPM defect today may save them from untold amounts of trouble and inconvenience, but it will mean far less in a few years, after many class members' TIPMs will have already failed. Likewise, a free TIPM repair is not very helpful if it is offered only after a class member has already paid out-of-pocket for a TIPM repair. And while repair costs can theoretically be reimbursed at any time in the future, as a practical matter that money will be far more useful to class members the sooner it is received.

**3. The Risk of Maintaining Class Action Status Through Trial**

Were litigation to continue, Plaintiffs would face significant risk at the class certification stage. In resisting Plaintiffs' motion for a preliminary injunction, FCA US detailed [redacted] Plaintiffs believed they could overcome [redacted] and show that class certification was nonetheless warranted, but FCA US may well have persuaded the Court [redacted]

The presence of multiple state laws would also pose a problem at the certification stage, likely requiring certification of several statewide classes rather than a single

nationwide class. *See Mazza v. Am. Honda Motor Co.*, 666 F.3d 581, 596 (9th Cir. 2012). Aside from further complicating the litigation, the Court may well have decided that some state consumer protection statutes—such as those that do not allow for evidentiary presumptions of reliance—could not be effectively managed and excluded residents of those states from the case.

**4. The Amount Offered In Settlement**

While continued litigation offers the uncertainty of class certification and the diminishing returns associated with the passage of time, the proposed settlement would provide class members with virtually everything they asked for in their complaint. FCA US is disclosing the TIPM defect and providing a free repair through government-supervised recalls. (Settlement, II.B.) It is also reimbursing class members for past repair expenses in full—including those incurred for rental cars—and is not requiring documentation if the repair was performed at an authorized dealer. (*Id.*, II.C.) And FCA US is extending its standard 3-year/36,000-mile warranty to cover its free TIPM repair for 7 years or 70,000 miles, whichever comes first. (*Id.*, II.D.)

The only possible downside of the settlement, as far as Plaintiffs are concerned, is that the class could be broader in scope. Plaintiffs would have preferred that FCA US expand the settlement beyond the 2011-2013 Jeep Grand Cherokees and Dodge Durangos. But FCA US refuses to do so, and while the settlement will not help owners of other FCA US models, it will not hurt them either. They will not be releasing any claims and remain free to pursue relief individually or through a separate class action, which some are already doing in *Garcia et al., v. Chrysler Group LLC*, No. 1:14-cv-08926-KBF-DCF (S.D.N.Y.).

**5. The Extent of Discovery Completed and the Stage of Proceedings**

Before mediating and ultimately settling the case, Plaintiffs had reviewed nearly 100,000 pages of documents produced by FCA US. Those records included detailed TIPM specifications and testing data, warranty and customer complaint data, FCA US's internal failure analysis and root cause assessments, statistical projections, and summary

reports about the TIPM defect prepared for FCA US executives. (Gibbs Decl., ¶ 5.) Plaintiffs worked with an automotive expert throughout the case, who helped them better understand FCA US's documents as well as the nature of the underlying defect and FCA US's TIPM fix. (*Id.*) Plaintiffs also had the benefit of two rounds of briefing on the pleadings and a preliminary injunction motion, where both sides set forth their evidentiary and legal positions. By the time the case was resolved, Plaintiffs thus had a very good sense of the strength and weakness of their case and were well-situated to make an informed decision about settlement.

**6. The Experience and Views of Counsel**

Class Counsel have successfully litigated a number of consumer class actions against automotive companies, including:

- *Parkinson v. Hyundai Motor Am.*, No. 06-CV-345-AHS (C.D. Cal.)
- *In re Mercedes-Benz Tele Aid Contract Litigation*, MDL No. 1914 (D.N.J.)
- *In re GM Dex-Cool Cases*, JCCP No. 4495 (Cal. Super. Ct., Alameda Cty.)
- *Browne v. Am. Honda Motor Co., Inc.*, No. CV 09-06750-MMM (C.D. Cal.)
- *Bacca v. BMW of North America, LLC.*, No. CV 06-06753-DDP (C.D. Cal.)
- *Sugarman v. Ducati North America, Inc.*, No. CV 10-05246-JF (N.D. Cal.)

(*See* 11/12/14 Gibbs Decl. [Doc. 97-1], ¶ 7, Ex. A.)

Based on their experience in similar cases, and thorough familiarity with the strengths and weaknesses of this particular case, Class Counsel believe the proposed settlement to be in the best interests of the class and respectfully request that the Court approve it.

**7. The Presence of a Governmental Participant**

In September 2014, the National Highway Traffic Safety Administration (NHTSA) opened a file in response to a petition filed by the Center for Auto Safety seeking a governmental investigation of the TIPM defect. (*See* 10/3/14 Bielenda Decl., Ex. D [Doc. 61-2].) Although petitions are supposed to be granted or denied within 120 days, the NHTSA has yet to issue a decision. The agency is empowered to order

manufacturers like FCA US to recall their vehicles to address a safety defect, but as its response to the Center for Auto Safety's petition illustrates, that process is exceedingly slow. Even when the NHTSA does grant a petition, it then must conduct a Preliminary Evaluation (which the NHTSA endeavors to complete within 4 months, but can take over a year), and an Engineering Analysis (which the NHTSA endeavors to complete within a year after the Preliminary Evaluation, but can take significantly longer) before sending a recall request letter to the manufacturer—who then has an opportunity to contest the NHTSA's findings through a public forum and, that failing, through the federal courts. (*See* 10/13/14 Hughes Decl., Ex. D [Doc. 68-2]); *In re Gen. Motors Corp. Pickup Truck Fuel Tank Products Liab. Litig.*, MDL 961,1993 WL 204116, at *3 (E.D. Pa. June 10, 1993) ("[I]f the NHTSA proceedings were to continue, it could take several years for the process to conclude.") One of the great benefits of the parties' settlement is that it avoids such a protracted process and ensures that class vehicles are recalled immediately.

**8. The Reaction of Class Members**

The class has yet to be notified of the settlement and given an opportunity to object, so the Court cannot yet assess this factor. Prior to the final approval hearing, the parties and the Notice Administrator will provide the Court with any objections or comments they receive after notice is disseminated.

**9. Lack of Collusion Among the Parties**

In addition to assessing the preceding eight factors, the Court should assure itself the settlement was not the product of collusion among the negotiating parties. *Churchill Vill.*, 361 F.3d at 575; *In re Bluetooth Headset Products Liab. Litig.*, 654 F.3d 935, 947 (9th Cir. 2011). Here, neither the procedure used by the parties to arrive at the settlement nor the settlement's terms indicate a collusive deal. The settlement was negotiated by experienced class counsel only after extensive discovery and with the assistance of a well-respected mediator. (Gibbs Decl., ¶¶ 3, 5); *see Ahdoot v. Babolat VS N. Am., Inc.*, No. CV 13-02823-VAP VBKX, 2015 WL 1540784, at *6 (C.D. Cal. Apr.

6, 2015) ("Settlements reached with the help of a mediator are likely non-collusive."). The settlement's terms are favorable to the class and very close to what Plaintiffs sought for the class in their original complaint—strongly suggesting that class benefits were not traded for individual benefits. And the awards that the Class Representatives and Class Counsel will receive for their services (if approved by the Court) are not atypical—further indicating further that class members were not betrayed for the benefit of the individuals charged with representing class interests.

The fees that Class Counsel propose that they be awarded amount to a multiplier of 1.3 on a current lodestar of approximately $2.66 million (Gibbs Decl., ¶ 6.) Since Class Counsel have ongoing duties and obligations to the Class, the current multiplier will decrease over time. Had the amount of this fee been litigated rather than agreed upon through further mediation, the multiplier awarded could have been substantially higher. *Sadowska v. Volkswagen Grp. of Am., Inc., No.* CV 11-00665-BRO AGRX, 2013 WL 9600948, at *9 (C.D. Cal. Sept. 25, 2013) (approving negotiated fee award 1.37 times the lodestar and noting that "[m]ultipliers can range from 2 to 4 or even higher."). The parties' fee negotiation thus represents a legitimate compromise and not a collusive agreement to pay Class Counsel more in exchange for paying the class less. Likewise, the $4,000 service awards that FCA US has agreed to pay the Class Representatives are reasonable and bear no sign of collusion. *See Kirchner v. Shred-It USA Inc.*, No. CIV. 2:14-1437 WBS, 2015 WL 1499115, at *5 (E.D. Cal. Mar. 31, 2015) ("In general, courts have found that $5,000 incentive payments are reasonable.").

**B. <u>The Proposed Settlement Class Should Be Certified.</u>**

**1. The Settlement Class Meets The Requirements of Rule 23(a).**

In connection with granting preliminary approval, the Court should confirm that the proposed settlement class meets the requirements of Rule 23. *See Amchem Prods. v. Windsor*, 521 U.S. 591, 620 (1997); Manual for Complex Litigation, § 21.632. The prerequisites for class certification under Rule 23(a) are (1) numerosity, (2) commonality,

(3) typicality, and (4) adequacy of representation, each of which is satisfied here. Fed. R. Civ. P. 23(a); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998)

The parties' proposed settlement class, set forth above in Section II.B.1, encompasses roughly 525,000 class vehicles and so readily satisfies the numerosity requirement. *See id.* ("The prerequisite of numerosity is discharged if 'the class is so numerous that joinder is impracticable.'").

The proposed class also satisfies the commonality requirement of Rule 23(a), which requires that class members' situations "share a common issue of law or fact, and [be] sufficiently parallel to insure a vigorous and full presentation of all claims for relief." *Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1172 (9th Cir. 2010). Each of the class members purchased or leased a 2011-2013 Jeep Grand Cherokee or Dodge Durango, and their legal claims involve the same alleged defect. *Id.* Among the issues their claims share in common are (i) whether the TIPM installed in their vehicles—specifically the TIPM's fuel pump relay—is defective under the heat conditions typically found in these vehicles; (ii) whether FCA US was aware of the defect; and (iii) whether FCA US concealed the nature of the defect.

The final requirements of Rule 23(a)—typicality and adequacy—are satisfied by the proposed representative plaintiffs. Like the other members of the class, Plaintiffs each purchased or leased a 2011-2013 Jeep Grand Cherokee or Dodge Durango, and thus suffered the same or similar alleged injury—namely, they were sold a defective vehicle that has required or will require a repair to make the vehicle safe. *See Wolin*, 617 F.3d at 1175 ("Typicality can be satisfied despite different factual circumstances surrounding the manifestation of the defect."). In addition, Plaintiffs are adequate class representatives with no conflicts of interest and are represented by qualified and competent counsel. *Hanlon*, 150 F.3d at 1020.

**2. The Settlement Class Meets The Requirements Of Rule 23(b)(3).**

"In addition to meeting the conditions imposed by Rule 23(a), the parties seeking class certification must also show that the action is maintainable under Fed. R. Civ. P.

23(b)(1), (2) or (3)." *Hanlon*, 150 F.3d at 1022. Here, the proposed class is maintainable under Rule 23(b)(3), as common questions predominate over any questions affecting only individual members and class resolution is superior to other available methods for a fair resolution of the controversy. *Id.* Class members' claims depend primarily on whether the fuel pump relay installed in their vehicles is defective under the heat conditions typically encountered in the Dodge Durango or Jeep Grand Cherokee, and thus raise just the sort of predominantly common questions that courts have found to justify class treatment. *See, e.g.*, *Wolin*, 617 F.3d at 1173 (allegedly defective alignment geometry); *Hanlon*, 150 F.3d at 1022-1023 (allegedly defective rear liftgate latches); *Chamberlan v. Ford Motor Co*., 223 F.R.D. 524, 526 (N.D. Cal. 2004) (allegedly defective engine intake manifolds).

Similarly, there can be little doubt that resolving all class members' claims through a single class action is superior to a series of individual lawsuits. "From either a judicial or litigant viewpoint, there is no advantage in individual members controlling the prosecution of separate actions. There would be less litigation or settlement leverage, significantly reduced resources and no greater prospect for recovery." *Hanlon*, 150 F.3d at 1023. Finally, there can be no objection here that class proceedings would present the sort of intractable management problems that sometimes override the collective benefits of class actions, "for the proposal is that there be no trial." *Amchem*, 521 U.S. at 620.

**C. The Court Should Order Dissemination of Class Notice As Proposed By the Parties.**

**1. The Settlement Provides for the Best Method of Notice Practicable Under the Circumstances.**

The federal rules require that before finally approving a class settlement, "[t]he court must direct notice in a reasonable manner to all class members who would be bound by the proposal." Fed. R. Civ. P. 23(e). Where the settlement class is certified pursuant to Rule 23(b)(3), the notice must also be the "best notice 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).

The parties have agreed on a notice plan that would provide class members with individual notice by first class mail. (*See* Settlement, III.B.1.) Dahl Administration would serve as the Notice Administrator, using the most current address data in FCA US's database to send notice, and an advanced address search to re-send those notices initially returned as undeliverable. (*Id.*, III.B.2-4.) Plaintiffs request that the Court approve this method of notice as the best practicable under the circumstances. *See, e.g., Rannis v. Recchia*, 380 F. App'x. 646, 650 (9th Cir. 2010) (finding mailed notice to be the best notice practicable where reasonable efforts were taken to ascertain class members addresses).

**2. The Proposed Form of Notice Adequately Informs Class Members of Their Rights in Connection with the Settlement**

The notice provided to class members should "clearly and concisely state in plain, easily understood language" the nature of the action; the class definition; the class claims, issues, or defenses; that the class member may appear through counsel; that the court will exclude from the class any member who requests exclusion; the time and manner for requesting exclusion; and the binding effect of a class judgment on class members. Fed. R. Civ. P. 23(c)(2)(B). The form of notice proposed by the parties complies with those requirements. Class members will receive a postcard in the mail designed to catch their attention and alert them to the settlement and available remedies. (*See* Settlement, Ex. A-1.) It will also direct them to the Settlement Website, where more information—including a detailed long-form notice and other case documents—will be made available. (*See id.*, III.B.1, Ex. A-2.) Plaintiffs believe that this is the most effective way to alert class members to the existence of the settlement and convey detailed information about the settlement approval process, and accordingly ask that the Court approve the proposed forms of notice. *See Schaffer v. Litton Loan Servicing, LP*,

No. CV 05-07673-MMM, 2012 WL 10274679, at *8 (C.D. Cal. Nov. 13, 2012) (approving similar postcard notice plan).

**3. Notice of the Settlement Will Be Provided to Appropriate Federal and State Officials**

Notice of the proposed settlement will also be provided to the U.S. Attorney General and appropriate regulatory officials in all 50 states, as required by the Class Action Fairness Act, 28 U.S.C. § 1715. (Settlement, III.A.6.) FCA US will provide these government officials with copies of all required materials—including the Settlement Agreement, Class Notice, and the amended complaint—so that the states and federal government may make an independent evaluation of the settlement and bring any concerns to the Court's attention prior to final approval.

**D. The Court Should Set a Schedule for Final Approval**

The next steps in the settlement approval process are to schedule a final approval hearing, notify the class of the Settlement and hearing, allow Class Members an opportunity to file any objections or comments regarding the Settlement, and allow the parties to conduct appropriate objector discovery. *See, e.g.*, Final Order and Judgment, *Milano v. Interstate Battery Sys. of Am., Inc.*, No. 4:10-DV-02125 (N.D. Cal. July 5, 2012) (noting that objector repudiated his objection in deposition testimony); *In Re: MagSafe Apple Power Adapter Litig.*, No. 5:09-CV-01911-EJD, 2015 WL 428105, at *2 (N.D. Cal. May 29, 2012) (objector depositions authorized to inquire into objectors' membership in the class and ability to post an appellate bond).

Toward these ends, the parties have provided the Court with a proposed order that provides for the following schedule upon entry of a Preliminary Approval Order:

| | |
|---|---|
| FCA US to provide class member data to Dahl Administration: | 30 days after entry of order |
| Dahl Administration to complete mailing of class notice: | 60 days after entry of order |
| Parties to final approval papers and for Class Counsel to file a fee application: | 75 days after entry of order |
| Deadline for class members to opt-out or object to the Settlement | 105 days after entry of order |
| Replies in support of final approval and fee application: | 115 days after entry of order |
| FCA US to file affidavit attesting that notice was disseminated as ordered: | 115 days after entry of order |
| Final Approval hearing: | 130 days after entry of order |

## IV. CONCLUSION

For the foregoing reasons, the parties respectfully request that the Court enter the accompanying Proposed Order granting preliminary approval of the proposed settlement, certifying the settlement class, appointing Plaintiffs as Class Representatives and their attorneys as Class Counsel, directing dissemination of class notice, and setting a hearing for the purpose of deciding whether to grant final approval of the settlement.

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Respectfully submitted,

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