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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

SIMON MAJDIPOUR, PAMELA AUSTIN,
BRIAN FUCHS, CHARLES MANIS,
JASON MANOWITZ, and MARVINA
ROBINSON, individually, and on behalf of a
class of similarly situated individuals,

Plaintiffs,

v.

JAGUAR LAND ROVER NORTH
AMERICA, LLC,

Defendant.

Civil Action No.: 2:12-cv-07849- MCA-LDW

**CERTIFICATION OF MATTHEW R.
MENDELSON IN SUPPORT OF
PLAINTIFFS' MOTION FOR FINAL
APPROVAL OF PROPOSED CLASS
ACTION SETTLEMENT**

MATTHEW R. MENDELSON, of full age, certifies as follows:

1. I am a partner at Mazie Slater Katz & Freeman, LLC ("Mazie Slater") in Roseland, New Jersey. I respectfully submit this certification in support of Plaintiffs' Motion for Final Approval the Proposed Class Action Settlement ("Motion"). My certification is based on my personal knowledge of the facts set forth herein, and, if called to so, could and would testify competently thereto.

CASE BACKGROUND

1. The Amended Settlement is the product of years of thorough investigation and research into the alleged Suspension Defect. Prior to the filing of this action, Class Counsel devoted significant time to investigating the alleged Suspension Defect. To learn about the alleged defect and its consequences, Class Counsel, among other things, created a webpage notifying potential class members of the alleged defect, fielded inquiries from prospective class

members during the course of this litigation, reviewed various forms of consumer reports and the National Highway Traffic Safety Administration (“NHTSA”) website where consumers had complained about the alleged defect, reviewed JLRNA manuals and technical service bulletins discussing the alleged defect, reviewed federal motor vehicle regulations regarding safety standards, identified potential defendants, and conducted research into potential causes of action and other cases where the same or similar defects were alleged.

2. These initial investigations permitted counsel to conclude that, in counsel’s view, the filing of the action against JLRNA was justified. On December 26, 2012, Plaintiff Simon Majdipour filed this lawsuit against JLRNA alleging violations of the New Jersey Consumer Fraud Act, breach of express warranty, common law fraud, breach of the duty of good faith and fair dealing, unjust enrichment, breach of implied warranty of merchantability, violations of the California Consumers Legal Remedies Act, and violations of California’s Unfair Competition Law. (Dkt. No. 1 [Complaint].) Plaintiff brought the action on behalf of himself and all other individuals who owned or leased a Class Vehicle for the purpose of requiring JLRNA to (1) notify all members of the proposed class of the nature and impact of the alleged Suspension Defect, (2) reimburse proposed class members who have paid to fix the alleged Suspension Defect, and (3) repair the alleged Suspension Defect free of charge for those proposed class members who have yet to experience the alleged defect, and for compensatory, statutory, and punitive damages. (*Id.*) On March 15, 2013, JLRNA filed its motion to dismiss the Complaint. (Dkt. No. 7.)

3. On April 17, 2013, Plaintiff Majdipour filed a First Amended Complaint to (1) add

Pamela Austin as a Plaintiff; and (2) add Jaguar Land Rover Automotive, PLC¹ as a Defendant. (Dkt. No. 14 [FAC].) On May 8, 2013, JLRNA filed a motion to dismiss Plaintiffs' First Amended Complaint (Docket No. 17), which was granted in part and denied in part. (Dkt. No. 27.) On November 27, 2013, JLRNA filed an Answer to the First Amended Complaint. (Dkt. No. 32.)

4. On August 11, 2014, Plaintiffs filed a Second Amended Complaint, to (1) add Brian Fuchs, Charles Manis, Jason Manowitz and Marvinina Robinson as Plaintiffs; and (2) add causes of action for violations of the consumer protection statutes of New York and Florida and a claim for failure to Retrofit/Recall under California law. (Dkt. No. 44.) On September 19, 2014, JLRNA filed a motion to dismiss (i) the claim for failure to retrofit/recall and (ii) all causes of action asserted on behalf of the newly added plaintiffs (Dkt. No. 49), which was granted in part and denied in part on March 18, 2015. (Dkt No. 62.)

5. The Parties engaged in substantial discovery, including written discovery and reviewing thousands of pages of documents produced by JLRNA (*e.g.*, technical specifications for the repair of the air suspension system; owners' manuals; service and repair manuals; maintenance and warranty manuals; technical service bulletins; warranty claims; warranty reimbursements; service records; vehicle population numbers for Class Vehicles; failure rate information; and consumer complaint reports). Additionally, Plaintiffs took a deposition pursuant to Fed. R. Civ. Pro. 30(b)(6) of a witness from Jaguar Land Rover Automotive, PLC (the UK designer and manufacturer of the Class Vehicles) regarding the alleged Suspension Defect and

¹ Although JLRNA is the warrantor and distributor of the Class Vehicles, Jaguar Land Rover Automotive, PLC designed and manufactured them. The parties ultimately reached an agreement to dismiss Jaguar Land Rover Automotive, PLC in exchange for its cooperation in discovery.

associated issues. Plaintiffs' counsel also propounded and obtained discovery from third-party, authorized Land Rover dealers and retained and consulted with an expert witness, and Defendant inspected one of Plaintiffs' vehicles.

6. Throughout the litigation, the Parties exhaustively explored the relevant factual and legal issues. On December 19, 2014, the Parties engaged in a full-day mediation before Hon. Stephen A. Sundvold (Ret.) of JAMS, prior to which both Parties submitted mediation briefs. Although the Parties did not reach a settlement at the mediation, over the following year the Parties continued to confer with Judge Sundvold to reach a potential settlement. After further vigorous discussion, arm's-length negotiations, and numerous exchanges of information and settlement proposals, the Parties finally agreed on the material terms of the proposed relief. Throughout this process, the Parties confined their discussions to the proposed relief to the Settlement Class and did not discuss the issues of attorneys' fees, expenses, costs, or incentive awards. Subsequently, on December 18, 2015, the parties participated in another full-day mediation session with Judge Sundvold to address the issues of attorneys' fees, costs and incentive awards, and an agreement was reached in principle during that mediation. Over the ensuing months, the parties negotiated a comprehensive Settlement Agreement that addressed all aspects of the Original Settlement, including a proposed class notice.

7. On June 19, 2017, Plaintiffs filed their motion for preliminary approval of the Original settlement. (Dkt. No. 72.) After oral argument on April 3, 2018 the Court denied the motion for preliminary approval due to two primary concerns: (1) that individuals beyond the extended coverage period would have to release their claims, even though they were not eligible for reimbursement and (2) that Class Members would only be entitled to minimal reimbursement compared to the replacement costs of as much as \$2,500. (Dkt. No. 76.) The Parties then worked

toward a revised settlement that would address the Court's concerns and would be acceptable to the parties. On December 31, 2018 the Amended Settlement Agreement was executed. See Dkt. No. 78-2, Ex. 1 ("ASA").

8. Under the Amended Settlement, Class Members are eligible for reimbursement of out-of-pocket costs that were incurred for front air spring replacements up to 8 years and 100,000 miles after the Class Vehicle first entered service. See ASA, § 3.1.1. In other words, when compared to JLRNA's 4-year/50,000-mile Limited Warranty, the Amended Settlement doubles the period within which JLRNA will cover some or all of the replacement cost of a worn-out spring. See Dkt. 14 (Ex. B to First Am. Compl.) at 2. In short, the Amended Settlement dramatically extends the period of availability for partial reimbursement of air springs replacements.

9. On May 14, 2019 the Court entered an Order preliminarily approving the Amended Settlement and directing notice to be provided to the Class. (Dkt. No. 82.) Notice of the Amended Settlement was then sent by mail to 160,359 class members.

10. Since the granting of preliminary approval, Class Counsel has continued to protect the interests of the Class. Among other things, Class Counsel has ensured that notice was disseminated to Class Members in the form approved by the Court, confirmed the Administrator's website has the necessary information to assist consumers with their claims, fielded calls and emails from Class Members inquiring about the Settlement, and continued to monitor the claims, exclusion and objection procedures, as well as the performance of the Claim Administrator.

FAIRNESS, REASONABLENESS, AND ADEQUACY OF THE SETTLEMENT

11. I believe that under the circumstances, the proposed Amended Settlement is fair, reasonable, and adequate and in the best interest of the Class Members. Although I strongly

believe in the merits of Plaintiffs' case, I also believe that continuing this Action poses significant risks.

12. Under the Amended Settlement, Class Members are eligible for reimbursement of out-of-pocket costs that were incurred for front air spring replacements up to 8 years and 100,000 miles after the Class Vehicle first entered service. *See* ASA, § 3.1.1. In other words, when compared to JLRNA's 4-year/50,000-mile Limited Warranty, the Amended Settlement doubles the period within which JLRNA will cover some or all of the replacement cost of a worn-out spring. *See* Dkt. 14 (Ex. B to First Am. Compl.) at 2. In short, the Amended Settlement dramatically extends the period of availability for partial reimbursement of air springs replacements.

13. Moreover, whether considered on its own or in comparison to the likely cost of replacing a front air spring, the amount of reimbursement available is substantial. Depending on when the front air spring was replaced, eligible Class Members can receive between \$125 and \$500 as reimbursement for each front air spring replacement. *See* ASA, § 3.1.1. Significantly, the Amended Settlement increases the "floor" of the reimbursement range from \$100 to \$125 per air spring replacement, effectively merging it with the next highest tier. Now, all Class Members who first replaced a front air spring after more than 6 years and 75,000 miles of use are eligible for the same amount of reimbursement. The parties increased this amount to address the Court's specific concern regarding the 8 year/100,000 mile tier.

14. According to JLRNA's data for paid warranty claims, the total cost, including parts and labor, of replacing either of the front air spring (part numbers RNB000740 and RNB000750) was on average approximately \$991.38. In other words, the average air spring replacement costs less than half of the \$2,500 upper limit cited in Plaintiffs' Second Amended Complaint.

15. Nor is this a situation where the average hides the existence of numerous, much more costly repairs: less than one percent of the covered warranty repairs associated with part numbers RNB000740 and RNB000750 cost \$2,500 or more. For those few repairs, it is likely that both front air springs on a single vehicle had to be replaced. (SAC at ¶ 88 (alleging that Plaintiff Robinson replaced both front shocks for a total cost of \$2,368)). And, where two replacements are required, the Class Member may submit claims for each, thereby doubling the amount of reimbursement available under the Amended Settlement. *See* ASA, § 3.1.1 (offering reimbursement for “each front air spring replacement”).

16. When compared to this average cost, it is clear that the Amended Settlement offers reimbursement of a significant percentage of the total cost of a front air spring repair. For example, a qualifying owner or lessee who replaced an air spring after the expiration of the Limited Warranty but within the first 5 years and 62,500 miles of use would be entitled to a more than 50% reimbursement. *See id.* Class Members who received even more use out of their air springs would also receive substantial sums, as set forth below:

Year (up to)	Mileage Range	Maximum Reimbursement	Reimbursement as a Percentage of the Average Cost of Replacing an Air Spring under Warranty
5	50,001 to 62,500	\$500.00	50.4%
6	62,501 to 75,000	\$250.00	25.2%
8	75,001 to 100,000	\$125.00	12.6%

17. However, this chart *still* significantly understates the value of the available Amended Settlement benefits because the \$991.38 figure used for comparison is too high. First, this figure only includes warranty replacements performed by authorized dealerships. Once the warranty period has expired, many Class Members will choose to go to independent repair shops where the total costs of replacing a front air spring may be lower. For example, Plaintiff Manowitz

repaired “the front shocks and struts” at “a third party repair center” for \$1,115—confirming that, on each wheel, the shock and the strut cost \$557.50 to repair. (SAC ¶ 82.) When compared to this amount, the value of the reimbursement offered by the Settlement is higher still, as set forth below:

Year (up to)	Mileage Range	Maximum Reimbursement	Reimbursement as a Percentage of the Potential Cost of an Independent Repair Shop Replacing an Air Spring
5	50,001 to 62,500	\$500	89.7%
6	62,501 to 75,000	\$250	44.8%
8	75,001 to 100,000	\$125	22.4%

18. Second, the cost of replacing a front air spring at even authorized dealerships has declined in recent years. In 2013, JLRNA released a new repair kit which allowed an air spring to be replaced without replacing the entire McPherson strut assembly. Since then, approximately 5,500 repair kits have been sold to dealerships. JLRNA has represented that the initial average total cost, including parts and labor, of using a repair kit to replace a front air spring on a 2005 model year Range Rover vehicle at an authorized dealer in California was approximately \$484.

19. Based on my own personal experience and my review of other settlements, the percent reimbursement offered by the Amended Settlement is similar to that made available by other class action settlements involving automotive companies.

20. I believe that under the circumstances, the proposed Settlement is fair, reasonable, and adequate and in the best interest of the Class Members. Although I strongly believe in the merits of Plaintiffs’ case, I also believe that continuing this Action poses significant risks.

I certify under penalty of perjury under the laws of the United States that the foregoing is true and correct.



MATTHEW R. MENDELSON

Dated: January 10, 2020