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

PLAINTIFFS' BRIEF IN SUPPORT OF MOTION
FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

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I. INTRODUCTION

Plaintiffs Simon Majdipour, Pamela Austin, Brian Fuchs, Charles Manis, Jason Manowitz and Marvina Robinson ("Plaintiffs") request this Court grant final approval of a class action Settlement involving a putative class of certain persons or entities in the United States, who currently own or lease, or previously owned or leased, a model-year 2003 to 2006 Land Rover Range Rover vehicle (the "Class Vehicles"). The Settlement involves over 57,000 Class Vehicles and over 160,359 Class Members. Plaintiffs allege that the Class Vehicles contain one or more defects affecting the front air springs installed on the Class Vehicles, which can crack or leak, causing a loss of air pressure in the suspension system and affecting vehicle ride height ("Suspension Defect"). Defendant Jaguar Land Rover North America, LLC ("JLRNA") disputes this claim and maintains that the Class Vehicles function properly and are not defective, and that no warranties or statutes have been breached.

After extensive discovery, investigation, and arm's length negotiations, Plaintiffs and JLRNA reached a Settlement, which this Court preliminarily approved on May 14, 2019. (Dkt. No. 82.) The Settlement[1] provides substantial benefits to the Class, including (a) reimbursements to Class Members for front air spring replacements, (b) a speedy and consumer-friendly claims process, (c) direct mail and online notification of the Settlement to Class Members paid for by JLRNA, and (d) JLRNA's agreement to pay reasonable attorneys' fees, costs and incentive awards separate and apart from the relief to the Settlement Class.

Plaintiffs and their counsel believe the Settlement is fair and reasonable, and provides Settlement Class Members with relief similar, if not superior, to what they could have expected to obtain if the case had been successfully tried, but without the delays, uncertainties, and risks

[1] Unless indicated otherwise, all capitalized terms used herein have the same meaning as those referenced in the Settlement Agreement (Dkt. No. 78-2, Ex. 1).

of trial.

Accordingly, Plaintiffs respectfully request that this Court, (1) grant final approval of the Settlement and enter final judgment in accordance with the Settlement; (2) certify a class for settlement purposes only and appoint Plaintiffs as Class Representatives and Mazie Slater Katz & Freeman, LLC and Strategic Legal Practices, LLC as Class Counsel; and (3) award attorneys' fees and expenses to Plaintiffs' Counsel, and incentive awards to Plaintiffs.[2]

II. FACTS AND PROCEDURAL HISTORY

A. Plaintiffs' Pre-Suit Investigation

The 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. (Mendelsohn Cert. ¶ 2.)

These initial investigations permitted counsel to conclude that, in counsel's view, the filing of the action against JLRNA was justified. (Mendelsohn Cert. ¶ 3.)

[2] The attorneys' fees, costs, and incentive awards are subject to a separate motion, filed on December 9, 2019. (Dkt. No. 89.)

B. The Litigation

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.) 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, PLC as a Defendant. (Dkt. No. 14 [FAC].) On May 8, 2013, JLRNA filed a motion to dismiss Plaintiffs' First Amended Complaint (Dkt. 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.)

On August 11, 2014, Plaintiffs filed a Second Amended Complaint, to (1) add Brian Fuchs, Charles Manis, Jason Manowitz and Marvina 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.)

C. The Parties' Discovery

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 associated issues. Plaintiffs' counsel also propounded and obtained discovery from third-party, authorized Land Rover dealers, retained and consulted with an expert witness, and Defendant inspected one of Plaintiffs' vehicles. (Mendelsohn Cert. ¶ 5.)

D. Settlement Efforts and Mediation

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, while discovery continued 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, 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. Over the ensuing months, the parties negotiated a comprehensive Settlement Agreement. (Mendelsohn Cert. ¶ 6.)

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. (Mendelsohn Cert. ¶ 7.) On December 31, 2018 an amended Settlement Agreement was executed.

E. Terms of the Proposed Amended Settlement

The Settlement features the following relief:

Reimbursement for Front Air Spring Replacements: For *each* front air spring replacement, JLRNA shall pay to reimburse up to the lesser of (i) the amount a Settlement Class Member paid in out-of-pocket costs for the front air spring replacement or (ii) the amount listed below within the applicable time and mileage bands for that front air spring replacement:

Year (up to)	Mileage Range	Maximum Reimbursement
5	50,001 to 62,500	$500.00
6	62,501 to 75,000	$250.00
8	75,001 to 100,000	$125.00

A Speedy and Consumer-Friendly Claims Process: To be eligible for reimbursement, a Settlement Class Member need only submit a claim form and provide repair order(s), invoices, or other service records ("Service Records") showing: (i) the date on which the Settlement Class Member replaced a front air spring and the mileage on the Class Vehicle on such date; (ii) the amount of the out-of-pocket costs the Settlement Class Member incurred due to a front air spring replacement; (iii) proof of payment of the claimed out-of-pocket costs; and (iv) proof that the Settlement Class Member claiming reimbursement was the owner or lessee of the Class Vehicle at the time of the replacement. For each approved claim, the Settlement Administrator will mail a check to the Settlement Class Member for the applicable reimbursement amount.

Class Member Notification: JLRNA will pay the entire cost of notifying Class Members of the Amended Settlement by first class mail, processing the Claim Forms, and maintaining a website that will provide Class Members with information concerning the Settlement and the claims process.

Narrow Release: The Settlement provides that owners and lessees of a Class Vehicle who first replaced a front air spring after eight (8) years or 100,000 miles do not release any claims against JLRNA (as they are not eligible for reimbursement).

Incentive Payments: Subject to Court approval, JLRNA agrees to pay Class Representatives a one-time payment in the aggregate amount of $16,000, to be distributed as follows: $5,000 to Plaintiff Simon Majdipour; $3,000 to Plaintiff Pamela Austin; and $2,000 each to Plaintiffs Brian Fuchs, Charles Manis, Jason Manowitz, and Marvina Robinson. These amounts will be paid separate from the benefits to the Settlement Class.

Attorneys' Fees & Costs: Subject to Court approval, JLRNA agrees to pay Class Counsel up to $1,300,000 in attorneys' fees and an amount up to, but not exceeding, $75,000

for reasonable costs and expenses. These amounts will be paid separate from the benefits to the Settlement Class.

F. The Court Preliminarily Approved the Settlement and Settlement Notice

On April 9, 2019, Plaintiffs filed a renewed motion for preliminary approval of the Settlement. (Dkt. No. 78.) On May 14, 2019 the Court entered an Order preliminarily approving the Settlement and directing notice to be provided to the Class. (Dkt. No. 82.)

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. (Mendelsohn Cert. ¶ 10.)

III. LEGAL ARGUMENT

In this Circuit, settlement of class actions and other complex litigation is strongly favored. *In re Warfarin Sodium Anitrust Litig.*, 391 F.3d 516, 535 (3d Cir. 2004) ("There is an overriding public interest in settling class action litigation, and it should therefore be encouraged."); *see also In re General Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig. ("GM Trucks")*, 55 F.3d 768, 785 (3d Cir. 1995) ("[T]he law favors settlement, particularly in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation."); *In re School Asbestos Litigation*, 921 F.2d 1330, 1333 (3d Cir. 1986) (noting Third Circuit's policy of "encouraging settlement of complex litigation that otherwise could linger for years"); *In re Community Bank of N. Virginia*, 418 F.3d 277, 299 (3d

Cir. 2005) ("[A]ll Federal Circuits recognize the utility of . . . 'settlement classes' as a means to facilitate the settlement of complex nationwide class actions.").

A. The Settlement Is Fair, Reasonable, and Adequate and Should be Granted Final Approval

Before granting final approval of a class action settlement the Court should determine whether to certify the class for settlement purposes, and then assess whether the terms of the settlement are fair, reasonable and adequate. *See* Fed. R. Civ. P. 23(e)(2); *In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 316 (3d Cir. 1998). "Acting as a fiduciary responsible for protecting the rights of absent class members, the Court is required to 'independently and objectively analyze the evidence and circumstances before it in order to determine whether the settlement is in the best interests of those whose claims will be extinguished.'" *In re Philips/Magnavox TV Litig.*, 2012 WL 1677244, at *8 (D.N.J. May 14, 2012) (quoting *In re Cendant Corp. Litig.*, 264 F.3d 201, 231 (3d Cir. 2001)). The Court must also "direct notice in a reasonable manner to all class members who would be bound by the [settlement]." *See* Fed. R. Civ. P. 23(e)(1). The ultimate approval of a class action settlement depends on "whether the settlement is fair, adequate, and reasonable." *Walsh v. Great Atl. & Pac. Tea Co.*, 726 F.2d 956, 965 (3d Cir. 1983).

The Third Circuit has said that in deciding whether to approve a proposed class action settlement, the district courts should consider the following non-exhaustive list of factors:

> (1) The complexity, expense, and likely duration of the litigation …; (2) the reaction of the class to the settlement …; (3) the stage of the proceedings and the amount of the discovery completed …; (4) the risks of establishing liability …; (5) the risks of establishing damages …; (6) the risks of maintaining the class action through trial…; (7) the ability of the defendants to withstand a greater judgment …; (8) the range of reasonableness of the settlement fund in light of the best possible recovery …; (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

In re Prudential Ins. Co. Am. Sales Practices Litig.,148 F.3d 283, 317 (3d Cir. 1998) *(quoting Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975)). Based on these factors, the Settlement now before the Court is fair, reasonable and adequate, and should therefore be finally approved.

1. The Complexity, Expense, and Likely Duration of the Litigation Favor Approval

The first *Girsh* factor considers "the probable costs, in both time and money, of continued litigation." *In re Cendant Corp. Litig.*, 264 F.3d 201, 233 (3d Cir. 2001). Courts have consistently held that "[t]he expense and possible duration of the litigation [should] be considered in evaluating the reasonableness of [a] settlement." *Milstein v. Huck*, 600 F. Supp. 254, 267 (E.D.N.Y. 1984); *Bullock v. Administrator of Kircher's Estate*, 84 F.R.D. 1, 10-11 (D.N.J. 1979) ("[T]he Court should consider the vagaries of litigation and compare the significance of immediate recovery by way of compromise to the mere possibility of relief in the future after protracted and expensive litigation.").

Here, the complexity, expense, and expected duration of the litigation weigh heavily in favor of approval. The parties have spent considerable time, money, and effort in litigating this case over the last seven (7) years. This class action involves alleged defects in more than 57,000 vehicles, over 4 model years, and Class Members from every state. *See generally In re GM Trucks*, 55 F.3d at 812 (finding complexity arising from a "web of state and federal warranty, tort, and consumer protection claims"). Class Counsel have reviewed thousands of pages of documents produced by JLRNA. (Mendelsohn Cert., ¶5.) Class Counsel have also responded to, and largely survived, JLRNA's motions to dismiss the claims asserted. (*Id.*, ¶¶3-4.) Significantly, JLRNA continues to strenuously deny the merits of Plaintiffs' claims. Because of this case's complexity, it took two full-day mediation sessions with Judge Sundvold, and countless additional negotiations over more than a year, to attain this Settlement. (Mendelsohn

Cert., ¶6.) The claims in this case raise difficult questions of law and fact, as evidenced by Defendant's motions to dismiss.

Although the Parties reached agreement on the Class relief, absent that agreement, JLRNA would undoubtedly have vigorously opposed class certification, and moved for summary judgment on the merits. The Settlement Agreement here resolves claims on a nationwide basis. Courts, including those of this Circuit, have not always permitted nationwide class actions to proceed. *Maniscolo v. Brother Intern. (USA) Corp.*, 709 F. 3d 202, 203-04 (3d Cir. March 8, 2013) (affirming district court's granting of motion for summary judgment and dismissal of plaintiffs' putative multi-state class action claim under the New Jersey Consumer Fraud Act). And even if Plaintiffs *had* secured class certification of their claims, there is no guarantee that certification would have withstood appellate review. *Marcus v. BMW of N. Am., LLC*, 687 F.3d 583 (3d Cir. 2012) (Third Circuit reversing certification of consumer class action case involving BMW vehicles equipped with allegedly defective run flat tires).

Continued litigation would therefore have been complex, time consuming, and expensive with no certainty as to outcome. The Settlement secures significant benefits for the Class without further delay, risk, or uncertainty. Thus, this first factor strongly favors approval of the settlement. *In re Philips/Magnavox TV Litig.*, 2012 WL 1677244, at **8-9.

2. The Reaction of the Class to the Settlement Favors Approval

The second *Girsh* factor seeks to "gauge whether members of the class support the settlement." *In re Prudential*, 148 F.3d at 318. The Class's support "creates a strong presumption … in favor of the settlement," *In re Cendant Corp. Litig.*, 264 F.3d at 235, and a "small number of objections … weighs in favor of approval." *In re Ins. Brokerage Antitrust Litig.*, 282 F.R.D. 92, 103 (D.N.J. 2012).

The deadline for class members to mail opt-outs and objections to the Settlement was

December 23, 2019. As of January 10, 2019 a mere two Class Members opted out and **zero** class members filed objections. The miniscule number of opt-outs represent a vanishingly small fraction of the 160,359 Class Members to whom notice was mailed. Specifically, the number of opt-outs represent approximately .00125% of the Class. Case law holds that a small number of objections is strong evidence that the settlement is fair and reasonable. For example, in *Varacallo v. Mass. Mutual Life Ins. Co.*, 226 F.R.D. 207, 251 (D.N.J. 2005) the court held that where .06% of the class members opted out of the settlement and .003% raised objections, these results were "extremely low" and favored approval of the settlement. *See also Bell Atl. Corp. v. Bolger*, 2 F.3d 1304, 1313 (3d Cir. 1993); *Stoetzner v. U.S. Steel Corp.*, 897 F2d 115, 118-119 (3d Cir. 1990); *National Rural Tele. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 529 (C.D. Cal. 2004) ("It is established that the absence of a large number of objections to a proposed class action settlement raises a strong presumption that the terms of a proposed class settlement action are favorable to the class members."); *Garner v. State Farm Mut. Auto. Ins. Co.*, 2010 WL 1687832, at *14 (N.D. Cal. Apr. 22, 2010) ("[T]he Court may appropriately infer that a class action settlement is fair, adequate, and reasonable when few class members object to it.") (internal quotation marks omitted); *Sugarman v. Ducati*, 2012 WL 113361, at *3 (N.D. Cal. 2012) (42 objections where 38,774 notices were sent out constituted a "positive response" to the settlement and "weigh[ed] strongly" in favor of its approval).

3. The Stage of the Proceedings and Extent of the Discovery Completed Favors Approval

The third factor "captures the degree of case development that class counsel have accomplished prior to settlement. Through this lens, courts can determine whether counsel had adequate appreciation for the merits of the case before negotiating." *Cendant*, 264 F.3d at 235. Not surprisingly, "post-discovery settlements are more likely to reflect the true value of the claim

and be fair." *Bell Atlantic Corp. v. Bolger*, 2 F.3d 1304, 1314 (3d Cir. 1993).

Here, as explained above, the proposed Settlement is the result of serious, lengthy, and arm's-length negotiations between counsel for Plaintiffs and counsel for JLRNA. The Parties engaged in extensive negotiation over the merits and value of Plaintiffs' claims and JLRNA's defenses, weighing carefully the strengths and weaknesses of their positions, risks of success and failure, the many vagaries of litigation, and the time, expense, and burdens to all Parties in litigating this matter to conclusion. Class Counsel reviewed voluminous evidence that Defendant produced during the course of discovery and settlement discussions, as well as evidence obtained through other sources such as third-parties, directly from Class Members and Plaintiffs' expert.

4. The Risk of Failing to Establish Liability Favors Approval

If the Parties had been unable to resolve this case through settlement, the litigation could have been even more expensive and lengthy. The reality is that any case against a major automotive manufacturer or distributor alleging a defect in tens of thousands of vehicles has the potential to take up significant amounts of the Court's and the Parties' resources. Moreover, the issues in this matter were hotly contested, with obvious risks to Plaintiffs if litigated to its conclusion.

For instance, repairs for defects that first manifest themselves outside of warranty—in this case JLRNA's 4-year, 50,000 mile standard warranty—are ordinarily the consumer's responsibility. *See Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 525 (1992) ("A manufacturer's liability for breach of an express warranty derives from, and is measured by, the terms of that warranty."). To overcome this general rule, Plaintiffs would need to demonstrate at trial that JLRNA's failure to disclose the alleged Suspension Defect was nonetheless wrongful

because the defect constituted material information that consumers have a right to know about *before* buying a car. *See Falk v. General Motors Corp,*, 496 F. Supp. 2d 1088, 1095 (N.D. Cal. 2007). Whether or not a given defect is material in turn depends on consumers' reasonable expectations about the part in question. *See id.* at 1096.

And even if Plaintiffs had ultimately obtained a judgment against JLRNA following trial, there is no guarantee that the judgment would be superior to the settlement obtained here. That plaintiffs in other cases have obtained judgments with terms similar to those embodied in the proposed settlement here—but only after many years of protracted litigation—is a testament to the strength of the Settlement here. *See, e.g., Samuel-Bassett v. Kia Motors America, Inc.*, 34 A.3d 1 (Penn. Dec. 2, 2011) (nearly 12 years after the commencement of the action—following, among other things, a contested motion for class certification, trial, post-trial motions, and appeal to the Superior Court—the Supreme Court of Pennsylvania ultimately affirmed an award of $600 to each class member which was based on the class vehicle having a useful life of 100,000 miles); *In Re General Motors Dex-Cool Cases*, Case No. HG03093843 (Cal. Super. Ct. Alameda County 2008) (in case against General Motors alleging defect in intake manifold gasket, plaintiffs' counsel devoted more than 58,000 hours over five years before resolving cases for cash reimbursements through claims-made process). Moreover, by settling now rather than proceeding to trial, Class Members will not have to wait (possibly years) for their relief and will not have to bear the risk of class certification being denied or of JLRNA prevailing at trial.

In short, the risk of establishing liability here favors approval.

5. The Risk of Establishing Damages Favors Approval

Even if Plaintiffs succeeded in establishing JLRNA's liability, Plaintiffs would still have likely met significant challenges in proving damages. The presentation of damages evidence can

be complex, and though Class Counsel believe convincing evidence of damages could be provided and a judgment for all recoverable damages could be obtained, it is also possible that the presentation of damages evidence could lead to a battle of experts and that a jury might disagree with Plaintiffs' presentation. *See Cendant*, 264 F.3d at 239 ("establishing damages at trial would lead to a 'battle of experts' … with no guarantee whom the jury would believe.") Accordingly, this factor too weighs in favor of approval.

6. The Risk of Maintaining Certification Through Trial and the Ability of Defendants to Withstand a Greater Judgment Favor Approval

The next two factors also favor approval of the Settlement. First, "[t]he value of a class action depends largely on the certification of the class because, not only does the aggregation of the claims enlarge the value of the suit, but often the combination of the individual cases also pools litigation resources and may facilitate proof on the merits. Thus, the prospects for obtaining certification have a great impact on the range of recovery one can expect to reap from the action." *GM Trucks*, 55 F.3d at 817.

Although Class Counsel believe the claims are appropriate for class certification, there is always a risk that a Court would not find this action suitable for certification as a nationwide class or a multi-state class, or, even if class certification were granted in the litigation context, class certification can always be reviewed or modified before trial, and a class may be decertified at any time. *See, e.g., Marcus v. BMW of N. Am.*, 687 F.3d 583, 611 (3d Cir. 2012) (reversing certification of consumer class action case involving BMW vehicles equipped with allegedly defective run flat tires); *Mazza v. Am. Honda Motor Co.*, 666 F.3d 581 (9th Cir. 2012) (reversing certification of a nationwide class composed of consumers seeking relief under California's consumer protection laws); *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541 (2011); *Maniscolo v. Brother Intern. (USA) Corp.*, 709 F. 3d 202, 203-04 (3d Cir. 2013) (affirming district court's

granting of motion for summary judgment and dismissal of plaintiffs' putative multi-state class action claim under the New Jersey Consumer Fraud Act); *Grodzitsky v. Am. Honda Motor Co.*, No. 2-01142-SVW, 2014 WL 718431, at *6 (C.D. Cal. Feb. 19, 2014) (denying certification due to lack of evidence that common materials were used for all defective "window regulators" in the class); *Cholakyan v. Mercedes-Benz USA, LLC*, 281 F.R.D. 534, 553 (C.D. Cal. 2012) ("There is also no evidence that a single design flaw that is common across all of the drains in question is responsible for the alleged water leak defect…"). The inherent causation and proof challenges that plaintiffs must confront in automotive defect cases may well spell doom for Plaintiffs here.

Although there is no current indication that JLRNA would not be able to withstand a more significant judgment, to withhold approval of a nationwide settlement would be to deny significant relief to the Class Members. The settlement here is well within the range of reasonableness, and provides substantial benefits to the class, and should be approved. *In re Auto Refinishing Paint Antitrust Litig.*, 617 F. Supp. 2d 336, 343-344 (E.D. Pa. 2007). Accordingly, both the sixth and seventh *Girsh* factors favor approval. *See also In re Philips/Magnavox TV Litig.*, 2012 WL 1677244, at *12 ("Plaintiffs acknowledge that there is currently no indication that Defendant here would be unable to withstand a more significant judgment. Nevertheless, the Court is satisfied that the Settlement is fair, reasonable, and adequate, despite the possibility that Phillips could pay a greater sum.") (Internal citations omitted.)

7. The Settlement Provides Benefits That Fall Within the Range of Reasonableness Given the Best Possible Recovery and Risks of Litigation

For the Class Members, the benefits provided by the Amended Settlement are significant, both in terms of availability and magnitude.

Under the 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* Settlement Agreement, § 3.1.1. In other words, when compared to JLRNA's 4-year/50,000-mile Limited Warranty, the 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 FAC) at 2. In short, the Settlement dramatically extends the period of availability for partial reimbursement of air springs replacements.

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* Settlement Agreement, § 3.1.1.

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. (Mendelsohn Cert. ¶ 14.) When compared to this average cost, it is clear that the 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. (*Id.* at ¶ 16.) 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%

(*Id.*)

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	50,0001 to 62,500	$500	89.7%
6	62,501 to 75,000	$250	44.8%
8	75,001 to 100,000	$125	22.4%

(Mendelsohn Cert. at ¶ 17.)

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. (Mendelsohn Cert. ¶ 18.)

Ultimately, the percent reimbursement offered by the Settlement is similar to that made

available by other class action settlements involving automotive companies. *See, e.g.*, *Henderson v. Volvo Cars of N. Am., LLC*, No. CIV.A. 09-4146 CCC, 2013 WL 1192479, at *2 (D.N.J. Mar. 22, 2013) (offering 50% reimbursement to original owners and 25% reimbursement to used owners for covered transmission repairs); *Aarons v. BMW of N. Am., LLC*, No. CV 11-7667 PSG CWX, 2014 WL 4090564, at *3 (C.D. Cal. Apr. 29, 2014) (reimbursing between 12.5% and 77.5% of certain transmission repairs that were incurred up to 8 years and 150,000 miles), *objections overruled*, No. CV 11-7667 PSG CWX, 2014 WL 4090512 (C.D. Cal. June 20, 2014); *Alin v. Honda Motor. Co., LTD*., 2012 WL 8751045 at *3 (D.N.J. Apr. 13, 2002) (offering a sub-class between 15% and 60% reimbursement of certain compressor repair costs that were incurred up to 8 years and 96,000 miles); *In re Nissan Radiator/Transmission Cooler Litig.*, No. 10 CV 7493 VB, 2013 WL 4080946 at *2-3 (S.D.N.Y. May 30, 2013) (requiring class members to pay a maximum of $3,000 for repairs, when total repair cost ranged from $4,000 to $8,000); *Keegan v. Am. Honda Motor Co, Inc.*, No. CV1009508MMMAJWX, 2014 WL 12551213, at *5 (C.D. Cal. Jan. 21, 2014) (replacing defective control arms and reimbursing between 25% and 100% the cost of replacement tires if the cars had less than 25,000 miles); *Zakskorn v. Am. Honda Motor Co.*, No. 2:11-CV-02610-KJM, 2015 WL 3622990, at *8 (E.D. Cal. June 9, 2015) (reimbursing between 25% and 100% the cost of replacement brakes if the cars had less than 20,000 miles); *Eisen v. Porsche Cars N. Am., Inc.*, No. 2:11-CV-09405-CAS, 2014 WL 439006, at *2 (C.D. Cal. Jan. 30, 2014) (offering between 25% and 100% reimbursement for covered repairs); *Castillo v. Gen. Motors Corp.*, No. CIV. 07-2142 WBS GGH, 2008 WL 8585691, at *9 (E.D. Cal. Sept. 8, 2008) (reimbursing costs at between 30% and 100% for vehicles under 8 years/125,000 miles).[3]

[3] To the extent some settlements offer reimbursements for repairs that occurred at higher mileages, those repairs typically involved vehicle components that were expected to last the life

As these examples demonstrate, automotive settlements commonly do not offer full reimbursement of out-of-warranty repair costs. Tiered settlements like this Settlement reflect a fundamental principle of fairness: an owner or lessee whose air spring lasts nearly 8 years and 100,000 miles should receive less reimbursement than one whose air spring required replacement sooner. *See Aarons*, 2014 WL 4090564 at *12 ("Age and mileage limitations are common in automotive defect cases, and reflect manufacturers' strong arguments that vehicles ordinarily fail after a number of years or miles due to wear and tear."); *Careccio v. BMW of N. Am. LLC*, No. CIV. A. 08-2619, 2010 WL 1752347, at *6 (D.N.J. Apr. 29, 2010) (approving a "tiered" settlement that offered less reimbursement to those class members who got longer use from their tires before replacement); *Alin*, 2012 WL 8751045, at *14 ("Tiered relief is common in class action settlements, and when fashioning relief this way, lines are inevitably drawn.") (internal quotations, citation, and modification omitted).

More fundamentally, settlements, by their nature, represent a compromise wherein a plaintiff receives part of the relief sought in exchange for earlier recovery and avoiding the expenses and risks associated with continued litigation. *See In re: Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prod. Liab. Litig.*, No. MDL 2672 CRB (JSC), 2016 WL 6248426, at *18 (N.D. Cal. Oct. 25, 2016) (explaining that "the very essence of a settlement is compromise, a yielding of absolutes and an abandoning of highest hopes.") (internal quotations and citation omitted), *appeal dismissed sub nom. In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prod. Liab. Litig.*, No. 16-16731, 2017 WL 5649270 (9th Cir. Mar. 23, 2017). In this case, the compromise represented by the Settlement is more than fair to Class Members.

As set forth more fully in Plaintiffs' motion for attorneys' fees, costs and incentive awards, a reasonable estimate of the Settlement's value is at least **$6,877,125**. (Dkt. No. 89-1 at

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of a vehicle and not considered "wear" parts by the manufacturer.

pp. 10-12.) By any measure, this is an outstanding result—particularly in light of the risks associated with this litigation, as described above.

B. As Part of Its Preliminary Approval Order, the Court Determined That Class Certification Was Appropriate

In its order granting preliminary approval of the Settlement, the Court held that the requirements of Rule 23 of the Federal Rules of Civil Procedure for conditional certification of the proposed Settlement had been satisfied. (Dkt. No. 82.) The relevant conditions that obtained at the time of that finding have not changed, and therefore the Court should certify the Settlement Class here as well.

IV. CONCLUSION

The Parties have negotiated a fair, reasonable and adequate settlement that warrants final approval.

Dated: January 10, 2020

By: 

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CERTIFICATE OF SERVICE

I, Matthew Mendelsohn, hereby certify that the foregoing **PLAINTIFFS' BRIEF IN SUPPORT OF MOTION FOR FINAL APPROVAL** was filed on January 10, 2020, using the Court's CM/ECF system, thereby electronically serving it on all counsel of record in this case.

By: 

MATTHEW MENDELSOHN