IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA

RICKEY ROYAL, SANDRA EPPERSON, and GREG HULCY, Individually on behalf of all putative class members,	§	
Plaintiffs,	§	
v.	§	Civil Action No. 5:14-cv-01410-F
STONERIDGE, INC.; STONERIDGE CONTROL DEVICES, INC. f/k/a JOSEPH POLLAK CORP.,	§	
Defendants.	§	

PLAINTIFFS' CONSENTED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT, APPOINTMENT OF CLASS COUNSEL, AND SET DATE FOR FINAL APPROVAL HEARING

Plaintiffs Rickey Royal, Sandra Epperson, and Greg Hulcy, individually and on behalf of all others similarly situated, file this Motion for Preliminary Approval of Class Action Settlement, Appointment of Class Counsel, and Set Date for Final Approval Hearing (the "Motion"), and would respectfully show the Court as follows:

I.
INTRODUCTION

This litigation arises from allegations that Stoneridge, Inc. and Stoneridge Control Devices, Inc., f/k/a Joseph Pollack Corp. (collectively referred to herein as "Stoneridge") designed, manufactured, and supplied defective clutch safety interlock devices ("CSIDs") for use in certain manual transmission motor vehicles. The CSID is a single function switch designed to prevent a vehicle engine from starting unless the driver fully depresses

the clutch pedal. When a driver depresses the clutch pedal, a push-rod connected to the pedal mechanism compresses the springs in the CSID, a copper contact is moved into position so that the ignition electrical circuit is closed, and engine start-up can occur. When a driver releases the clutch pedal, the compression springs are designed to rebound and thereby move the copper contact out of position, opening the ignition circuit and preventing engine start up. Plaintiffs allege the subject CSIDs were defectively designed which can cause the springs to break. This can result in a vehicle's untended startup or a vehicle's inability to start.

Plaintiffs own vehicles originally equipped with the CSIDs and brought claims against Stoneridge alleging (1) breach of express warranty; (2) breach of contractual right of indemnity; (3) breach of implied warranty; (4) products liability—breach of implied warranty in tort; and (5) indemnitor liability. Plaintiffs also brought similar claims against other entities allegedly involved in the vertical chain of manufacture, distribution, and sale of the CSIDs. The claims against all defendants other than Stoneridge have been dismissed, and Plaintiffs' claims against Stoneridge have also been dismissed except for a single claim for breach of contractual right of indemnity.

Plaintiffs' sole remaining claim alleges that all putative class members are third-party beneficiaries of a contract signed by Stoneridge which provided that users of the subject CSIDs would be indemnified for all damages arising from same. The alleged contract at issue is the "Purchase Order Terms and Conditions" between FTE and Stoneridge. Plaintiffs allege that the Purchase Order Terms and Conditions obligates Stoneridge to indemnify ". . . users of its products . . ." from "all damages" "in any

manner arising out of or alleged to have resulted directly or indirectly from the [CSIDs]." Plaintiffs allege Stoneridge specifically agreed that this indemnity obligation would run to end users and for their benefit. Plaintiffs allege this provision was triggered because the CSIDs are defective and unfit for their intended purpose, causing damage to the end users and triggering Stoneridge's duty to indemnify. Specifically, Plaintiffs allege the springs used in the CSIDs were inadequate and did not meet the specifications required by the Purchase Order Terms and Conditions, and therefore, that Plaintiffs were damaged and are entitled to indemnification for such damages.

Stoneridge has denied all of Plaintiffs' claims and raised numerous defenses to the claims. Stoneridge has vigorously defended itself throughout the litigation and indicated it will continue to do so through the class certification, trial, and the appellate process.

During July and August 2017, counsel for the parties conferred and discussed a possible resolution of the disputes that are the subject of this action. The parties have exchanged voluminous discovery documents and information and engaged in protracted litigation, and, through their respective counsel experienced in these types of cases, engaged in extensive arms-length negotiations. Following such negotiations, Stoneridge and Plaintiffs reached the conditional agreement reflected herein. Given the substantial defenses that Stoneridge has raised and the uncertainty inherent in moving forward with the litigation, the parties believe the compromise set forth herein is a fair, reasonable, and adequate settlement that reflects the risk that Plaintiffs might recover nothing if the case were to proceed.

Accordingly, and for the reasons set forth below, Plaintiffs request that this Court enter an order preliminarily approving the settlement, conditionally certify the Settlement Class (as defined below), appoint the undersigned counsel as Class Counsel, and set a date for a final settlement approval hearing.

II.
HISTORY OF THE LITIGATION

On December 19, 2014, Rickey Royal filed the Original Complaint in this Action alleging causes of action on behalf of himself and others similarly situated for (1) breach of express warranty; (2) breach of implied warranty; (3) implied warranty in tort; and (4) contractual indemnification, and alleging tolling of the statutes of limitations under the doctrine of fraudulent concealment. And on March 12, 2015, Plaintiffs filed their Second Amended Complaint alleging causes of action on behalf of themselves and others similarly situated for (1) breach of express warranty; (2) contractual indemnification; (3) breach of implied warranty; (4) implied warranty in tort; and (5) indemnitor liability.

On April 21, 2015, Stoneridge moved to dismiss Plaintiffs' Second Amended Complaint pursuant to Rules 12(b)(1) and 12(b)(6).[1] Plaintiffs filed a response arguing Stoneridge's motion should be denied, and alternatively sought leave to amend their complaint. The Court dismissed all of Plaintiffs claims except for breach of contractual right of indemnity, and denied Plaintiffs' request for leave to amend. On February 12, 2016, Plaintiffs filed a motion to reconsider the dismissal of their claims without leave to

[1] In the interest of brevity, the history of the litigation as it relates to the other defendants that were dismissed before the class certification phase of the litigation has been omitted.

amend. The Court denied Plaintiffs' motion. On January 4, 2017, Plaintiffs Robert Demmy and Chester Judkins dismissed all of their individual claims.

On January 9, 2017, Plaintiffs filed their Motion for Class Certification and Brief in Support along with numerous exhibits (the "Certification Motion"). On February 13, 2017, Stoneridge filed their Response to the Certification Motion and supporting exhibits. On March 3, 2017, Stoneridge filed a Motion for Judgment on the Pleadings, claiming Plaintiffs' remaining claim for contractual indemnification was time barred. On March 24, 2017, Plaintiffs filed a response to Stoneridge's motion, asserting their claims were timely filed. On March 24, 2017, the parties filed a Joint Motion to Continue Class Certification Deadlines. The Court granted the parties' joint motion, extending Plaintiffs' deadline to file their reply in support of the Certification Motion until June 27, 2017, Stoneridge's deadline to file a sur-reply to Plaintiffs' Certification Motion until July 11, 2017, and re-setting the class certification hearing for August 7, 2017.

On June 28, 2017, the Court denied Stoneridge's Motion for Judgment on the Pleadings, finding Plaintiffs' claims were not barred by the statute of limitations. On July 20, 2017, Stoneridge filed a Motion for Reconsideration for Judgment on the Pleadings, which the Court denied on July 21, 2017.

On July 7, 2017, Plaintiffs filed their Reply in Support of the Certification Motion, and on July 21, 2017, Stoneridge filed their Sur-Reply to same. On August 4, 2017, three days before the scheduled Class Certification hearing, the parties notified the Court of their agreement in principle to settle the case. The parties have now memorialized their

agreement in the Stipulation and Agreement of Settlement (the "Settlement Agreement"), a copy of which is attached hereto as **Addendum A**.

III.
TERMS OF THE SETTLEMENT

The Settlement Agreement provides relief to a settlement class defined as follows (the "Settlement Class"):

> All United States residents who currently own vehicles incorporating "Covered CSIDs," defined as all clutch safety interlock devices containing model 16813 compression springs that (1) were built between February 24, 2005 and January 1, 2007; and (2) are not subject to any recall campaign (included but not limited to Chrysler campaigns 14V-795 and 15V-222).

Members of the Settlement Class will be eligible to receive from Stoneridge a shipped replacement CSID containing redesigned 16813-01 springs (the "Replacement CSIDs"), together with instructions describing the appropriate procedure for replacing the CSIDs. Each Replacement CSID has a retail value of approximately $80. In order to receive Replacement CSIDs, members of the Settlement Class must (1) elect to participate; (2) properly complete and submit a claim form with evidence of eligibility (including the date code their CSID); and (3) do so within the time period set forth in the Settlement Agreement. Additionally, Plaintiffs Rickey Royal, Sandra Epperson, and Greg Hulcy will apply to this Court for, and Stoneridge has agreed not to oppose, incentive awards in the amount of five thousand dollars ($5,000) each.

Stoneridge will provide notice of the settlement to all reasonably identifiable members of the Settlement Class by first class mail (based on data obtained from the industry-leading vendor for motor vehicle data, as discussed below), and will supplement

the mailed notice with a class settlement website containing more detailed notice and claims information. The detailed notice will explain the function of the CSIDs, how to obtain date code evidence, and the potential ramifications of CSID failure. The parties will utilize a mutually agreeable, independent claims administrator to process claims, and Stoneridge will bear the costs of claims administration. The process will include creation of a website and toll-free telephone line for the benefit of members of the Settlement Class so that information and forms concerning the settlement are readily available.

IV.
ATTORNEYS' FEES AND EXPENSE REIMBURSEMENT

Stoneridge has agreed not to oppose a fee application by the undersigned counsel that requests fees and expenses up to the amount of three hundred and seventy-five thousand dollars ($375,000). Plaintiffs have agreed not to seek an award of fees and expenses in excess of $375,000.

V.
ARGUMENT AND AUTHORITIES

A. The Court Should Certify the Settlement Class for Settlement Purposes

One of the Court's functions in reviewing a proposed class settlement before the putative class has been certified is to determine whether the action may be maintained as a class action under Federal Rule of Civil Procedure 23 ("Rule 23").[2] *See, e.g.*, *In re Motor Fuel Temperature Sales Practices Litig.*, 271 F.R.D. 263, 278 (D. Kan. 2010);

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[2] Rule 23(a) sets out four prerequisites to class certification, namely (i) numerosity; (ii) commonality; (iii) typicality; and (iv) adequacy of representation. Additionally, Rule 23(b) requires a showing that common questions predominate the dispute and that the class action, as a tool of dispute resolution, is superior to other methods.

Lucas v. Kmart Corp., No. 99-cv-01923-JLK, 2006 U.S. Dist. LEXIS 21521, at *5 (D. Colo. Mar. 22, 2006). Trial courts have "considerable discretion" in making class certification decisions. *DG v. Devaughn*, 594 F.3d 1188, 1194 (10th Cir. 2010). The Tenth Circuit defers to a trial court's certification ruling "if it applies the proper Rule 23 standard and its 'decision falls within the bounds of rationally available choices given the facts and law involved in the matter at hand.'" *Id.* (citation omitted). However, in the settlement context, courts need not inquire into trial manageability under Rule 23(b)(3)(D). *Motor Fuel*, 271 F.R.D. at 269.

Here, the parties have agreed to: (i) the certification, for settlement purposes only, of the Settlement Class (as defined below), pursuant to Rules 23(a) and (b)(3); (ii) the appointment of Lead Plaintiffs as class representatives; and (iii) the appointment of Lead Counsel as class counsel.

Certification of the Settlement Class for settlement purposes will further the interests of members of the Settlement Class and the settling defendants by allowing this litigation to be fairly and reasonably settled on a class-wide basis. Moreover, as demonstrated below, the relevant requirements of Rule 23 are satisfied. Therefore, the Court should certify the Settlement Class for settlement purposes.

1. Numerosity

Rule 23(a)(1) requires that "the class [be] so numerous that joinder of all members is impracticable." *See Horn v. Associated Wholesale Grocers, Inc.*, 555 F.2d 270, 275 (10th Cir. 1977). The Tenth Circuit has refused to establish a set formula to determine whether the numerosity requirement is met. *See Trevizo v. Adams*, 455 F.3d 1155, 1162

(10th Cir. 2006) (quoting *Rex v. Owens ex rel. State of Okla.*, 585 F.2d 432, 436 (10th Cir. 1978)). The exact number of putative class members need not be known and the Court "may make 'common sense assumptions' to support a finding that joinder would be impracticable." *Neiberger v. Hawkins*, 208 F.R.D. 301, 313 (D. Colo. 2002) (citations omitted). Here, more than 90,000 Chrysler vehicles containing the subject CSIDs were sold in the United States from February 24, 2005 to January 1, 2007, according to documents Chrysler submitted to the National Highway Traffic Safety Administration.

2. Commonality

Rule 23(a)(2) requires the existence of "questions of law or fact common to the class." Of course, "'[f]actual differences in the claims of the class members should not result in a denial of class certification where common questions of law exist.'" *Beer v. XTO Energy, Inc.*, No. CIV-07-798-L, 2009 U.S. Dist. LEXIS 23096, at *10 (W.D. Okla. Mar. 20, 2009) (citation omitted); *Heartland Commc'ns, Inc. v. Sprint Corp.*, 161 F.R.D. 111, 116 (D. Kan. 1995). Plaintiffs need only show a *single* issue common to all members of the class. *See DG*, 594 F.3d at 1195; 1 Herbert B. Newberg et al., NEWBERG ON CLASS ACTIONS § 3:10, at 272–73 (5th ed. 2011).

Here, there is a well-defined community of interest in the questions of law and fact involved in this case. Plaintiffs' sole remaining claim alleges that Stoneridge agreed to certain terms and conditions, which contained the following clause:

<u>Indemnification</u>

a) Seller agrees to indemnify and hold harmless, Buyer, its successors, assigns, customers, and users of its products against all claims, suits at law or in equity, recall campaigns or other corrective service actions and from

> all damages, claims, and demands in any other manner arising out of or alleged to have resulted directly or indirectly from the Goods . . .

All of the Settlement Class members' claims are based on the same clause of the same alleged contract regarding the same model of CSID. As a result, questions of law and fact common to the members of the Settlement Class include:

(1) Whether the CSIDs are defectively designed;

(2) Whether the CSIDs met Chrysler's applicable performance standards;

(3) Whether Stoneridge breached the Purchase Order Terms and Conditions;

(4) Whether class members are third party beneficiaries of the alleged contract entitled to indemnification;

(5) The extent of damages sustained by class members and the appropriate measure of damages.

If this case were to proceed to trial, these questions of law and fact could be determined in "one stroke." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). Clearly, there are questions of law and fact common to the class members. Moreover, the parties have stipulated to certification of the Settlement Class for settlement purposes. As such, the commonality requirement is satisfied.

3. Typicality

Rule 23(a)(3) requires that "the claims or defenses of the representative parties are typical of the claims or defenses of the class." However, "'[e]very member of the class need not be in a situation identical to that of the named plaintiff'" to meet the typicality requirement. *DG*, 594 F.3d at 1195 (citation omitted). Rather, "[p]rovided the claims of Named Plaintiffs and class members are based on the same legal or remedial theory, differing fact situations of the class members do not defeat typicality." *Id.* at 1198–99.

The claims of Rickey Royal and of members of the Settlement Class "are based on the same legal and remedial theories and arise from the same pattern of conduct by defendant." *Arkalon Grazing Ass'n v. Chesapeake Operating, Inc.*, 275 F.R.D. 325, 329 (D. Kan. 2011). Moreover, the parties have stipulated to certification of the Settlement Class for settlement purposes. Thus, Rickey Royal's claims are typical of claims of the members of the Settlement Class.

4. Adequacy of Representation

Rule 23(a)(4) requires plaintiffs to show they "will fairly and adequately protect the interests of the class." In the Tenth Circuit, the adequacy requirement is satisfied when (i) neither plaintiff nor its counsel has interests that conflict awith the interests of other class members and (ii) plaintiff will prosecute the action vigorously through qualified counsel. *Chesapeake,* 275 F.R.D. at 328. Both prongs of the adequacy requirement are met here with respect to Rickey Royal.

First, to defeat certification, a conflict must be fundamental and go to specific issues in controversy; minor conflicts will not suffice. *Fankhouser v. XTO Energy, Inc.*, No. CIV-07-798-L, 2010 U.S. Dist. LEXIS 133345, at *14–15 (W.D. Okla. Dec. 16, 2010). Here there are no conflicts, minor or otherwise, between Rickey Royal and other members of the Settlement Class. To the contrary, Rickey Royal, who suffered the same injury as other members of the Settlement Class, has had every incentive to vigorously prosecute his claims on behalf of the Settlement Class.

Second, Rickey Royal has prosecuted this case vigorously through his qualified counsel, and demonstrated his dedication to this matter through his participation in all

aspects of the case. Such dedicated conduct demonstrates that Rickey Royal understands his duties and obligations to the Settlement Class and accepts them willingly.

Further, there is no dispute that counsel for the Plaintiffs is adequate and has successfully prosecuted other cases related to the subject CSIDs which lead to the national recall, other class actions, and other complicated litigation in federal courts throughout the country. The Court can take judicial notice that counsel is qualified and experienced to conduct this action. Moreover, the parties have stipulated to certification of the Settlement Class for settlement purposes.

5. Predominance

Rule 23(b)(3) requires "questions of law or fact common to class members predominate over any questions affecting only individual members." Predominance "'tests whether the proposed class is sufficiently cohesive to warrant adjudication by representation.'" *In re Farmers Ins. Co.*, No. CIV-03-158-F, 2006 U.S. Dist. LEXIS 27290, at *34 (W.D. Okla. Apr. 13, 2006) (citation omitted). Where, as here, the claims of members of the Settlement Class claims stem a "'common nucleus of operative facts,'" common issues predominate and certification is appropriate. *Chesapeake,* 275 F.R.D. at 331 (citation omitted). The parties have also stipulated to certification of the Settlement Class for settlement purposes.

6. Superiority

Rule 23(b)(3) ensures that "a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." The matters pertinent to a finding of superiority include:

> (A) the class members' interests in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already begun by or against class members; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the likely difficulties in managing a class action.

Fed. R. Civ. P. 23(b)(3). However, "[i]n deciding whether to certify a settlement class, the Court need not inquire whether the case, if tried, would present difficult management problems under Rule 23(b)(3)(D)." *Motor Fuel*, 271 F.R.D. at 269; *see also Lucas*, 2006 U.S. Dist. LEXIS 21521, at *15.

The superiority requirement is easily met here. None of the Plaintiffs or members of the Settlement Class have filed an individual action. Further, because this case has been litigated in this Court, concentrating the case in this forum is desirable. There are no anticipated difficulties in managing this case as a class action for settlement purposes only. Moreover, parties have also stipulated to certification of the Settlement Class for settlement purposes. Therefore, a class action is superior to other available methods for the fair and efficient adjudication of this controversy.

B. The Court Should Grant Preliminary Approval of the Proposed Settlement

Courts strongly favor settlement as a method for resolving disputes. *See Sears v. Atchison, Topeka & Santa Fe Ry., Co.*, 749 F.2d 1451, 1455 (10th Cir. 1984); *see also Trujillo v. Colo.*, 649 F.2d 823, 826 (10th Cir. 1981) (emphasizing the "important public policy concerns that support voluntary settlements"); *Amoco Prod. Co. v. Fed. Power Comm'n,* 465 F.2d 1350, 1354 (10th Cir. 1972). This is particularly true in large,

complex class actions such as this one. *See Big O Tires, Inc. v. Bigfoot 4x4, Inc.*, 167 F. Supp. 2d 1216, 1229 (D. Colo. 2001).

Under Federal Rule of Civil Procedure 23(e), the trial court must approve a class action settlement. Fed. R Civ. P. 23(e). The procedure for review of a proposed class action settlement is a well-established two-step process. *In re Motor Fuel Temperature Sales Practices Litig.*, 258 F.R.D. 671, 675 (D. Kan. 2009); *see* MANUAL FOR COMPLEX LITIGATION § 13.14 (4th ed. 2004). First, the court conducts a preliminary approval analysis to determine if there is any reason not to notify the class or proceed with the proposed settlement. *Lucas v. Kmart Corp.*, 234 F.R.D. 688, 693 (D. Colo. 2006). Second, after the court preliminarily approves the settlement, the settlement class is notified and provided an opportunity to be heard at a final fairness hearing where the court considers the merits of the settlement to determine if it should be finally approved. *See In re Motor Fuel*, 258 F.R.D. at 675; *accord*, 4 Herbert B. Newberg et al., NEWBERG ON CLASS ACTIONS § 11:25, at 38 (4th ed. 2002).

Plaintiffs request that the Court take the first step in this process—preliminary approval. The Court will ordinarily grant preliminary approval where the proposed settlement 'appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class and falls within the range of possible approval.'" *In re Motor Fuel*, 258 F.R.D. at 675 (quoting *Am. Med. Ass'n v. United Healthcare Corp.*, No. Civ. 2800 (LMM), 2009 U.S. Dist. LEXIS 45610, at *17 (S.D.N.Y. May 19, 2009)). While "[t]he standards for preliminary approval are not as stringent as those

applied for final approval," courts frequently refer to the final approval factors to decide whether a settlement should be *preliminarily* approved. *In re Motor Fuel*, 258 F.R.D. at 675–76, 680 ("While the Court will consider these factors in depth at the final approval hearing, they are a useful guide at the preliminary approval stage as well.").

The Tenth Circuit has identified four factors to consider when deciding whether to finally approve a class action settlement:

(1) whether the proposed settlement was fairly and honestly negotiated;

(2) whether serious questions of law and fact exist, placing the ultimate outcome of the litigation in doubt;

(3) whether the value of an immediate recovery outweighs the mere possibility of future relief after protracted and expensive litigation; and

(4) the judgment of the parties that the settlement is fair and reasonable.

Rutter, 314 F.3d at 1188; *Lucas*, 234 F.R.D. at 693. As demonstrated below, each of these factors supports preliminary approval of the settlement.

1. The Proposed Settlement Is the Product of Extensive Arm's-Length Negotiations Between Experienced Counsel

The first prong weighs in favor of preliminary approval because the proposed settlement was fairly and honestly negotiated. *See Reed v. Gen. Motors Corp.*, 703 F.2d 170, 175 (5th Cir. 1983) ("[T]he value of the assessment of able counsel negotiating at arm's length cannot be gainsaid.").

Here, prior to reaching the settlement, Plaintiffs, through counsel, conducted extensive investigation and research into the claims asserted, reviewed extensive data and testimony, and retained and consulted with numerous experts. The parties' class certification experts produced their respective reports and were deposed. Further, the

settlement is the product of arm's-length negotiations between the parties and their experienced counsel at a point when the parties possessed more than sufficient evidence and knowledge to allow them to make informed decisions about the strengths and weaknesses of their respective cases. As a result, the parties and their lawyers were well prepared for the serious and intelligent negotiations that led to the settlement. *See In re Motor Fuel*, 258 F.R.D. at 675–76.

The settlement is the product of serious, informed, and well-mediated negotiations among experienced counsel with the assistance of an experienced and highly respected mediator. Therefore, the first factor—that the settlement be fairly and honestly negotiated—supports preliminary approval.

2. Serious Questions of Law and Fact Exist

Additionally, serious questions of law and fact exist, placing the ultimate outcome of this action in doubt. "Although it is not the role of the Court at this stage of the litigation to evaluate the merits . . . it is clear that the parties could reasonably conclude that there are serious questions of law and fact that exist such that they could significantly impact the case if it were litigated." *Lucas*, 234 F.D.R. at 693–94 (citing *Wilkerson*, 171 F.R.D. at 284). The presence of such questions "tips the balance in favor of settlement because settlement, creates a certainty of some recovery, and eliminates doubt, meaning the possibility of no recovery after long and expensive litigation." *McNeely v. Nat'l Mobile Health Care, LLC*, 2008 U.S. Dist. LEXIS 86741, at *31–41 (W.D. Okla. 2008).

Here, there are numerous factual and legal issues on which the parties firmly disagree. Had the Parties not settled this litigation, the Court or a jury would ultimately

be required to decide these issues, placing the ultimate outcome of this action in doubt. To this day, Stoneridge denies that they committed any acts or omissions giving rise to any liability or violation of law. Indeed, Stoneridge vigorously contends the CSIDs are properly designed to perform reliably and have performed for hundreds of thousands of miles without issue. Stoneridge contends this is supported by a variety of testing and real-world performance data. Stoneridge further contends there is no valid and enforceable contractual obligation to indemnify Plaintiffs or any class members for any damages relating to the CSIDs, and that Plaintiffs and the class members have not suffered any "damages" as that term is used in the alleged contract. While Plaintiffs are optimistic about their chances of success at trial, there are a number of significant obstacles they would still have to overcome to achieve success on behalf of the class. Plaintiffs' sole remaining claim is for contractual indemnity and Stoneridge contends that only two documents purportedly provide any support for Plaintiffs' claims. Additionally, Stoneridge has pled twelve affirmative defenses. Many serious questions of fact and mixed questions of law and fact remain in dispute.

Therefore, because serious issues of law and fact remain in dispute, this second factor supports preliminary approval of the proposed settlement.

3. The Value of the Immediate Recovery Outweighs the Mere Possibility of Future Relief After Long and Expensive Litigation

The complexity, uncertainty, expense, and likely duration of further litigation and appeals also support approval of the proposed settlement. This third factor is based on the premise that the class "is better off receiving compensation now as opposed to being

compensated, if at all, several years down the line, after the matter is certified, tried, and all appeals are exhausted." *See McNeely*, 2008 U.S. Dist. LEXIS 86741, at *37. Here, the settlement provides all Settlement Class members with the opportunity to receive replacement CSIDs. This removes the danger of the allegedly defective CSIDs without any cost to the Settlement Class. As such, the settlement represents a significant and meaningful recovery that eliminates the risk and additional expense of further litigation. Moreover, the immediate benefits of the settlement must be compared to the risk that the putative class may recover nothing after a class certification hearing, trial, and inevitable appeals likely extending years into the future.

While Plaintiffs are confident they could prove their claims at trial, liability is hotly contested and there are many obstacles to obtaining a final and favorable verdict. When these uncertainties are compared to the immediate benefits of the settlement, it is clear that the settlement is in the best interest of the class members. Therefore, this third factor supports preliminary approval of the settlement.

4. Plaintiffs, Defendants, and their Counsel Believe the Proposed Settlement is Fair, Reasonable, and Adequate

Finally, each of the parties and their respective counsel agree the settlement is fair, adequate, and reasonable. "Counsels' judgment as to the fairness of the agreement is entitled to considerable weight." *Lucas*, 234 F.R.D. at 295 (quoting *Marcus v. Kan. Dept. of Revenue*, 209 F. Supp. 2d 1179, 1183 (D. Kan. 2002)). "[T]he Court should . . . 'defer to the judgment of experienced counsel who has competently evaluated the strength of his proof.'" *Johnson v. City of Tulsa*, Case No. 94-CV-39-H(M), 2003 U.S.

Dist. LEXIS 26379, *39 (N.D. Okla. May 13, 2003) (quoting *Williams v. Vukovich*, 720 F.2d 909, 922–23 (6th Cir. 1983)). In fact, "[w]hen a settlement is reached by experienced counsel after negotiations in an adversarial setting, there is an initial presumption that the settlement is fair and reasonable." *Marcus*, 209 F. Supp. 2d at 1182 (citing *Trief v. Dun & Bradstreet Corp.*, 840 F. Supp. 277, 281 (S.D.N.Y. 1993)) ("[A]bsent evidence of fraud or overreaching, courts consistently have refused to act as Monday morning quarterbacks in evaluating the judgment of counsel.").

Here, Plaintiff's counsel agreed to settle this action after extensive investigation, discovery, data analyses, numerous depositions including experts, motion practice, and rigorous arm's-length negotiations. The vehicles included in the Settlement Class range in age from ten to twelve years old. Members of the Settlement Class will receive brand new CSIDs containing the redesigned compression springs, and based on the information available, there have been zero reported failures of the redesigned CSIDs. If acquired through a certified Chrysler dealership, the cost of the part alone can be over $140. The benefit of a redesigned CSID at no cost is a considerable and substantial benefit.

Additionally, as noted above, Plaintiffs and their counsel have compared the substantial recovery the class members will receive from the resolution of this action against the risks, delays, and uncertainties of continued litigation and appeals. Rickey Royal was involved in and stayed apprised of the litigation and will fairly adequately represent the Settlement Class. Lead Plaintiffs and their counsel believe the settlement is fair, adequate, and reasonable and should be approved. Stoneridge and their counsel likewise believe the settlement should be approved. As such, the fourth factor—that the

settling parties believe the settlement is fair, adequate, and reasonable—supports preliminary approval of the proposed settlement by this Court.

Because all four factors weigh in favor of the Settlement here, Plaintiffs respectfully requests the Court grant preliminary approval of the Settlement.

C. The Court Should Preliminarily Approve the Proposed Notice of the Settlement to the Settlement Class

Rule 23(c)(2)(B) requires that notice of a settlement be "the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Additionally, Rule 23(e)(1) instructs courts to "direct notice in a reasonable manner to all class members who would be bound by the proposal." In terms of content, a settlement notice need only be "reasonably calculated, under all of the circumstances, to apprise [the] interested parties of the pendency of the [settlement proposed] and [to] afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). "'The hallmark of the notice inquiry . . . is reasonableness.'" *Lucas*, 234 F.R.D. at 696 (quoting *Sollenbarger v. Mountain States Tel. & Tel. Co*., 121 F.R.D. 417, 436 (D.N.M. 1988)).

Plaintiffs have submitted the proposed Postcard Notice and Longform Notice attached as Exhibits B and C to the Settlement Agreement. The parties have agreed that no later than ninety (90) calendar days after entry of the Preliminary Approval Order, the Claims Administrator shall cause a copy of the Postcard Notice, substantially in the form attached as Exhibit B to the Settlement Agreement, to be mailed by first-class mail, postage prepaid, to members of the Settlement Class who may be identified through

reasonable and diligent effort, including the cooperation of Stoneridge. Such efforts will include obtaining current address information for motor vehicle owners (based on vehicle identification number) from R. L. Polk & Co., a reputable and leading automotive industry research firm.[3] R. L. Polk & Co. collects and analyzes data related to vehicle registration and title information and specializes in obtaining information on vehicle owners from, among other sources, state departments of motor vehicles.

Also no later than ninety (90) calendar days after entry of the Preliminary Approval Order, the Claims Administrator will also post a copy of the Longform Notice on a website created for the Settlement Class, along with the Claim Form and other documents and information related to the settlement. Stoneridge will also issue notice as contemplated by the Class Action Fairness Act, 28 U.S.C. § 1715.

In accordance with Rule 23(c)(2)(B), the proposed Postcard Notice, supplemented by the Class Website and Longform Notice, will fully inform Settlement Class members about the proposed settlement and the facts they need to make informed decisions about their rights and options in connection with the settlement. Specifically, they will clearly describe: (i) the terms and operations of the Settlement; (ii) the nature and extent of the release of claims; (iii) class counsel's intent to request attorneys' fees, reimbursement of expenses, and case contribution awards; (iv) the procedure and timing for objecting to the settlement; (v) the procedure and timing for requesting exclusion from the Settlement Class; (vi) the date, time, and place of the final settlement hearing; and (vii) ways to

[3] R. L. Polk & Co. data is often used in connection with the settlement of motor vehicle class actions, including in the ongoing Volkswagen diesel cases. More information about R. L. Polk & Co. is available at https://www.ihs.com/industry/automotive.html.

receive additional information about this litigation and the proposed settlement. Both the Postcard Notice and Longform Notice will also provide members of the Settlement Class with a toll-free number where they may obtain additional information. Thus, the notices are reasonably calculated to apprise the interested parties of the pendency of the settlement and afford them an opportunity to opt out or to object. As such, the form and manner of the proposed notices meets the requirements of both Rule 23 and due process. The Court should approve the notices and the manner through which it will be delivered and communicated to members of the Settlement Class.

D. Hearing Date for Final Approval of Settlement

In connection with preliminary approval of the settlement, the Court must schedule a date for the final hearing to approve the settlement. Plaintiffs respectfully propose that the Court Schedule the final settlement hearing approximately ninety (90) days after the entry of the proposed Preliminary Approval Order.

VI. CONCLUSION

For the reasons outlined herein, Plaintiffs request that the Court preliminarily approve the proposed class action settlement, set a hearing and briefing schedule for purposes of final approval of same, certify the settlement class, appoint the undersigned as class counsel, order that notice be issued as required by law.

Respectfully submitted by:

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