IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Southern Division)

SHARNESE HALL On Her Own Behalf and on Behalf of All Others Similarly Situated, Plaintiff, v. HWS, LLC t/a HENRY'S WRECKER SERVICE, *et al.* Defendants.	Civil Action No. 8:22-cv-00996-BAH

Plaintiff's Memorandum in Support of Motion for Final Approval of Class Action Settlement

Richard S. Gordon (Fed. Bar No. 06882)
Benjamin H. Carney (Fed. Bar No. 27984)
GORDON, WOLF & CARNEY, CHTD.
11350 McCormick Rd.
Executive Plaza 1, Suite 1000
Hunt Valley, MD 21031
Tel. (410) 825-2300
Fax. (410) 825-0066
rgordon@GWCfirm.com
bcarney@GWCfirm.com

Attorneys for Representative Plaintiff and the Settlement Class

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Plaintiff Sharnese Hall, acting individually and on behalf of the Class defined below ("Representative Plaintiff" or "Ms. Hall"), respectfully submits this Memorandum in Support of the Motion for Final Approval of Class Action Settlement (the "Final Approval Motion").

I. INTRODUCTION

This lawsuit concerns Representative Plaintiff's allegation that Defendants HWS, LLC and Henry's Wrecker Service Company of Fairfax County, Inc. (collectively "Henry's Towing"), after trespass, or involuntarily towing her vehicle, unlawfully and uniformly asserted a Possessory Lien (also known as a towing or storage lien) which required Ms. Hall to pay all towing fees and charges as a pre-condition to retaking possession of her vehicle. Ms. Hall also alleges that the Possessory Lien, while unlawful – *see T.R. v. Lee*, 55 Md. App. 629 (1983); 73 Md. Op. Atty. Gen. 349 (Md.A.G.), 1988 WL 482024 (Dec. 19, 1988) – was neither unique nor isolated; rather, it was part of Henry's Towing's standard operating procedure. Indeed, between March 23, 2019 and December 31, 2023 (the "Class Period"), Henry's Towing asserted 38,000 or so Possessory Liens against consumers.

Defendants have vigorously defended this lawsuit, including filing and briefing multiple motions to dismiss and vigorously resisting discovery.

Following the filing of Plaintiffs' comprehensive Motion for Certification of the Plaintiff Class (ECF No. 46), full briefing of the motions to dismiss, multiple days of in-person mediation supervised and facilitated by the Hon. James R. Eyler (Ret.) and many months of follow-up negotiations supervised by Judge Eyler, the parties have reached a proposed settlement. All Defendants – HWS, LLC, Henry's Wrecker Service Company of Fairfax County, Inc. ("Henry's Towing"), Fred Scheler ("Scheler"), Richard Barakat ("Barakat"), Joshua Welk ("Welk"), Wheaton Metro Residential Holdings, LLC and Foulger-Pratt Residential, LLC (all collectively referred to as "Henry's" or "Defendants") – have agreed to pay **$3 million** into a Common Fund plus an incentive payment to the Representative Plaintiff, separate from and in addition to the Common

Fund, subject to Court approval. *See* ECF No. 106-2 ("Settlement Agreement"), also attached hereto as **Exhibit 1**.

The proposed settlement – including the guaranteed, non-reversionary common fund of $3 million – is a remarkable recovery for Settlement Class Members, especially considering that the typical towing fee recoverable in this case, was $150^{00}. ECF No. 45, Second Amended Complaint ("SAC") at ¶ 49. If every one of the 33,443 potential Settlement Class Members file claims, assuming one tow per claimant, each would be entitled to receive an average of roughly $59.80 from the common fund – or approximately 40% of the entire fee paid to Henry's Towing to clear the possessory lien – even ***after*** deducting out an allocation for attorney's fees and expenses.

In light of the standard towing fee at issue here, and the fact that class action settlements typically only recover less than 10% of potential damages, that is an excellent result. *See In re Ravisent Techs., Inc. Sec. Litig.,* No. Civ. A. 00–CV–1014, 2005 WL 906361, at *9 (E.D.Pa. Apr. 18, 2005) (approving settlement, which amounted to 12.2% of damages, and citing study by Columbia University Law School, which determined that "since 1995, class action settlements have typically recovered between 5.5% and 6.2% of the class members' estimated losses") (internal citations omitted); *see also City of Pontiac Gen. Employees' Ret. Sys. v. Lockheed Martin Corp.*, 954 F. Supp. 2d 276, 280 (S.D.N.Y. 2013) ("while the recovery represents only approximately 10% of the plaintiff's best-case damages model, it is unlikely that, if the case were to go to trial, plaintiff would recover its best-case model."); *Mars Steel Corp. v. Cont'l Ill. Na"l Bank & Trust*, 834 F.2d 677, 682 (7th Cir. 1987) (finding settlement of 10% of the total amount sought is adequate due to risks and costs of trial); *Viceral v. Mistras Group, Inc.*, Case No. 15-cv-02198-EMC, 2016 WL 5907869 *7 (N.D. Cal. Oct. 11, 2016) (payment equal to 11.6% and 5.2% of estimated value of state and federal claims is fair and reasonable in light of strength and variability of claims and risks on merits).

But the payment here is likely to be substantially higher. Claims rates in consumer class actions, traditionally, are exceedingly low and rarely exceed 7%. *See*,

e.g., *Sullivan v. DB Investments, Inc.*, 667 F.3d 273, 329 n.60 (3d Cir. 2011) (en banc) (noting that the claims rates do not normally exceed 7% "even with the most extensive notice campaigns.").[1] If the claims rate is in line with the 7% identified in *Sullivan*, each claiming Settlement Class Member will receive more than **$850**, or **560%** of the average fee paid to Henry's Towing, even after deducting out the attorney's fees and expenses from this case. The Settlement Class in this case is well on its way to a claims rate of at least 7%.[2] Either way, the settlement represents meaningful cash relief and an excellent recovery for Settlement Class members.[3]

On January 10, 2025, the Parties submitted the Settlement Agreement to the Court and jointly moved for the Court preliminarily approve it pursuant to *Fed.R.Civ.P.* 23. *See* ECF No. 106, Joint Motion for Preliminary Approval of Class Action Settlement, and for Approval of the Form, Manner and Administration of Notice (the "Preliminary Approval Motion"). The Settlement Agreement included Henry's Defendants' specific representations regarding the expected number of potential Class Members:

> The Henry's Defendants have reviewed their records and represent that the above defined Class includes no more than 38,000 Settlement Class Members to the best of the Henry's Defendants' knowledge. Plaintiff specifically relies upon this representation in entering into this Settlement Agreement.

Settlement Agreement at ¶17. The Settlement Agreement also required the Henry's Defendants to compile and produce specific and detailed data and information regarding the potential Class. *Id.* at ¶26.

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[1] If the settlement is approved, no portion of the $3 million Settlement Fund returns to Defendants under any circumstances. Instead, the per-claimant payment will vary depending upon how many total claims are filed.

[2] A 7% claims rate in this case would result in approximately 2,341 claims.

[3] *See Pollard v. Remington Arms Co., LLC,* 320 F.R.D. 198, 214-15 (W.D. Mo. 2017) (explaining that a claims rate of even 1% or less, is typically sufficient to approve settlement, and adding that, in any event, a low claims rate should not affect the analysis of whether a settlement is fair, adequate and reasonable); *In Re: Samsung Top-Load Washing Machine Marketing, Sales Practices and Products Liability Litigation*, MDL Case No. 17-ml-2792-D, 2020 WL 2616711 at *11 (W.D.Okl. May 22, 2020) (approving claims rate of 3.1%, noting that "a low claims rate is neither indicative of poor notice nor a reason to necessarily deny settlement approval").

On February 4, 2025, the Court entered the parties' proposed order and preliminarily approved the proposed settlement pursuant to *Fed.R.Civ.P.* 23(e)(1), which permits notice to a class where the proposed settlement class is "likely" to meet the class certification requirements of Rule 23 and the proposed settlement is "likely" to meet the "fair, reasonable and adequate" requirements of *Fed.R.Civ.P.* 23(e)(2). *See* ECF No. 108, Preliminary Approval Order.[4]

Consistent with the requirements of the Preliminary Approval Order (¶ 8) and the Settlement Agreement (¶ 26), on February 19, 2025, Defendants produced to the Settlement Administrator and Class Counsel data indicating that there may be as many as 56,600 Class members. *See* ECF No. 109 at ¶ 5. On March 19, 2025, as a result of the larger than expected data set, the Court granted the Parties request to extend the date for disseminating the Court-approved notice to Settlement Class members. ECF No. 110.

After cleaning up Defendants' February 19, 2025 data dump – including eliminating duplicates, commercial vehicles and other data that appeared unconnected to the Settlement – the Settlement Administrator, Strategic Claims Services (SCS), determined that the original estimate of 38,000 potential Settlement Class Members was likely correct. **Exhibit 2**, Declaration of Richard S. Gordon ("Gordon Decl.") at ¶ 41. And after running the data through various information services such as TransUnion and Lexis-Nexis, as set forth in the Settlement Agreement (¶ 26(C)), SCS determined that notice could be disseminated to 33,443 individuals. *Id.* Thus, information for roughly 88 % of the potential Settlement Class Members – including their last known address – was obtained through the notice process. *Id.*

Accordingly, on April 9, 2025, SCS mailed the Court approved Postcard Notice to these individuals consistent with the Preliminary Approval Order at ¶ 8. Gordon Decl.

[4] After the Joint Motion for Preliminary Approval, on January 22, 2025, the case was reassigned following the unexpected death of the Honorable Peter J. Messitte.

at ¶ 42. Among other things, that notice directs Settlement Class members to the website www.HenrysTowingSettlement.com, where the Settlement Agreement, a long-form notice, this memorandum, and other documents concerning the settlement may be viewed and downloaded. The final notices provided by the Settlement Administrator were approved by the Court in connection with Preliminary Approval. ECF No. 108, Preliminary Approval Order at ¶ 8.

Now, pursuant to *Fed.R.Civ.P.* 23(e)(2), Representative Plaintiff submits this memorandum in support of final approval of the proposed class settlement. As notice is currently underway, Settlement Class members will have the remainder of the notice period – which runs until May 24, 2025 – to review this memorandum and the terms of the settlement while making their determination whether to opt-out or object.

Although this memorandum covers much of the same ground as the memorandum in support of the Preliminary Approval Motion, that is appropriate because "the standard, and the factors to be considered, at the final approval stage are exactly the same" and "the court is guided by exactly the same analysis" as at the preliminary approval stage. *Erny on behalf of India Globalization Cap., Inc. v. MuKunda*, No. CV DKC 18-3698, 2020 WL 3639978, at *2 (D. Md. July 6, 2020) (*citing In re Mid-Atl. Toyota Antitrust Litig.*, 605 F.Supp. 440, 442 (D. Md. 1984)); *see also Robinson v. Nationstar Mortg. LLC*, No. 8:14-CV-03667-TJS, 2020 WL 8256177, at *3 (D. Md. Dec. 11, 2020), *aff'd sub nom. McAdams v. Robinson*, 26 F.4th 149 (4th Cir. 2022) ("[n]othing has changed since the Court granted preliminary approval, and thus the Court maintains its approval.")

The Settlement Agreement should be granted final approval, so that the Settlement Class may take advantage of the substantial benefits it offers to them.

II. Allegations of the Second Amended Complaint

The facts of this case are straightforward. The Complaint in this case alleges that Henry's Towing is the largest towing company currently operating in Montgomery County, Maryland. It has been in business for more than 40 years and operates out of

six offices in Maryland and Northern Virginia. A significant percentage of Henry's Towing's towing business in Maryland takes place in Montgomery County. ECF No. 45, Second Amended Complaint, ("SAC"), ¶20. Henry's Towing receive a substantial portion of their "trespass" towing business through contracts that they enter into with businesses, apartment complexes and Homeowners Associations (HOAs) that have private Parking Lots consisting of at least 3 spaces for vehicle parking (a "Parking Lot"). These Parking Lots are: (a) accessible to the general public; and (b) intended by the owner of the business to be used primarily by the business' customers, clientele, residents, lessees and guests. SAC at ¶¶ 4, 22.

As part of its standard towing protocol, following the tow, Henry's Towing uniformly and consistently: (a) asserts a Possessory Lien over each vehicle that results in Henry's Towing refusing to allow the owners of towed vehicles to retake possession of their property; and (b) requires the owners of the towed vehicles to pay all towing and related charges as a pre-condition to "retaking possession" of their vehicles. *Id.*, ¶4. Henry's Towing's standard policy ("Henry's Possessory Lien Policy") is so pervasive and ingrained in their business model that Henry's Towing embodied the unlawful Possessory Lien as a required provision of Henry's standard "Tow Contract" with each of the Parking Lot Owners. Indeed, each contract, during the Class Period mandated that:

> They [i.e., the towed vehicles] will be released to the registered owner only upon full payment of all charges.

SAC at ¶41.

Plaintiff also alleges that the decision to impose, implement and continue Henry's Possessory Lien Policy – even after learning that the policy was unlawful and violative of Maryland law – was made by its President (Scheler), and by at least two Members of Henry's Board of Managers (Defendants Barakat and Welk). ECF No. 45, SAC at ¶¶12-14, 57, 64, 66. The reason Henry's Towing and the Management Defendants imposed and continued an unlawful Possessory Lien Policy is because the asserted lien is a key and necessary part of the Defendants' business model. *Id.*, ¶65. Moreover, the

"Management Defendants knew and understood that the natural consequence of their actions would allow Henry's to tow vehicles in violation of Maryland law" (*see e.g.*, SAC at ¶¶ 65, 123, 129, 141, 154, 163, 164).

The lawsuit also asserts that the exercise of Henry's Possessory Lien in this circumstance – an act which was repeated approximately **38,000** times during the Class Period – is at odds with Maryland law and the mandates of the Fourth Circuit. *See T.R. v. Lee*, 55 Md. App. 629 (1983) (holding that Maryland law does not permit towing companies to exercise a possessory lien); *Huemmer v. Mayor and City Council of Ocean City*, 632 F.2d 371 (4th Cir.1980) (holding that basic principles of due process require that a possessory lien, if possible in the connection with trespass towing, mandates prior notice and a meaningful opportunity to challenge the tow in an expedited basis).

As a result, the SAC alleges that all Defendants violated, among other laws, Maryland's Towing or Removal of Vehicles from Parking Lots Law, Md. Code Ann., Transp. §21-10A-01, *et seq*. ("Md. Towing Act") and Montgomery County's Tow Ordinances, Montgomery County Code, § 30C-1, *et seq*. (the "MC Tow Law"). Neither law creates a "possessory lien" in favor of towing companies and both laws permit the recovery of treble damages for violations. *See* Md. Code Ann., Transp. §21-10A-06(2) and Montgomery County Code, § 30C-10.

Due to these alleged facts, Representative Plaintiff asks in the lawsuit that Defendants return the tow fees paid by her and other Class members – which typically were $150/tow – and treble damages as permitted by both the Md. Towing Act and MC Tow Law. *See* Complaint, *e.g.*, *ad damnum* clause.

III. Defendants' Defenses

Defendants vigorously deny liability. Among other things, Defendants' motions to dismiss asserted that Maryland does indeed permit towing companies to assert a "possessory lien" and hold vehicles until all towing fees and charges are paid. *See* ECF Nos. 75 and 76. Defendants also asserted that the Class members here were not consumers subject to protection under Maryland law.

As this case proceeded, Defendants also, most certainly, would have vigorously contest certification under Rule 23. *See* ECF No. 46 (class certification motion, filed on July 21, 2023). They also would have raised similar and additional dispositive arguments at the summary judgment stage and at trial. Any of those defenses could conceivably have been resolved in Defendants' favor and undermined Representative Plaintiff's claims.

IV. THE SETTLEMENT

A. Settlement Negotiations

The Parties began discussing the potential for a negotiated resolution in early 2023 (*see* ECF No. 35) and agreed to engage the Hon. James R. Eyler (Ret.) as mediator. *See* ECF No. 37; *see also* Gordon Decl. at ¶ 21. Judge Eyler conducted an in-person mediation session on February 7, 2023, and additional sessions – either in person or by Zoom – on April 25, 2023, December 6, 2023, August 19, 2024, September 20, 2024, September 30, 2024 and October 11, 2024. *See* ECF Nos. 55, 57 and 97; *see also* Gordon Decl. ¶¶ 22. All totaled, seven (7) formal mediation sessions, over twenty-one (21) months, were required to resolve this case. *Id.*

In addition to these in-person mediations, the parties continued their intensive negotiations through November 2024. Gordon Decl. ¶ 23. It is safe to say that the Parties' efforts to resolve this case were lengthy, intensive, and arms-length. *See also Id.* ¶¶ 26-27. The negotiations between the parties were characterized by substantial compromise on both sides, mutual give-and-take, and the absence of collusion. *Id.* at ¶ 26. These extended arms-length efforts to reach compromise resulted in the Settlement Agreement. *Id.*

Prior to mediation, the Parties each conducted extensive discovery in addition to research into the applicable facts and law relating to the practices challenged by Representative Plaintiff in this case. For example, Representative Plaintiff's counsel ("Class Counsel") engaged in extensive research of the facts and applicable statutory and

case law in the course of drafting the Complaint and litigating the case. *See id*. at ¶ 14. Class Counsel also met with regulators and interviewed scores of absent Class members, to confirm that the uniformity and consistency of the allegations on the SAC.[5] *Id.* at 16. For their part, Defendants also conducted extensive research into the applicable facts and law and provided substantial information and documents concerning the allegations in the Complaint both during litigation and in connection with mediation. *See* Settlement Agreement ¶ 10.

B. The Settlement Class

The Settlement Agreement, a copy of which is attached hereto as **Exhibit 1**, contemplates certification of the following settlement Class:

> All consumers on the class list compiled in this case whose vehicles, between March 23, 2019 and December 31, 2023, were non-consensually/trespass towed by Henry's Wrecker Service from a private Parking Lot in Montgomery County, Maryland, where Henry's charged or was paid a fee.

Settlement Agreement ¶ 17 (the "Settlement Class").[6]

Defendants have represented that the Settlement Class includes no more than 38,000. *Id*. And Defendants will provide extensive and detailed data and other information to enable their identification and to facilitate notice. *Id*. ¶ 26.

C. The Proposed Settlement Benefits

Defendants have agreed to pay $3 million into a Common Fund for the benefit of Settlement Class Members. *See* Settlement Agreement ¶ 18. The Common Fund will be used to make payments to Settlement Class Members who file valid claims. *Id*. ¶ 19. Each person who meets the Class definition should expect to receive between $300^{00} and $850^{00} – which has been revised upward from $150^{00} to $300^{00} since the filing of the Preliminary Approval Motion – depending upon the total number of claims

[5] Declarations from seven (7) of the absent Class members were included with the Motion for Certification of the Class, ECF Nos. 46-13 through 46-20.

[6] This proposed settlement class definition is similar, though not identical, to the Plaintiff Class set forth in the SAC. *See* ECF No. 45 ¶ 105.

submitted. And while we do not know the exact number of claims that will be filed in this case, the goal and intent of the Settlement Agreement is that the *entire* Common Fund – minus the costs of administration and Plaintiffs' Counsels' attorney's fees (as awarded by the Court) are deducted from the Common Fund – be distributed to the Settlement Class Members. *See* Part IV(D) (addressing claims process).

In order to ensure that the maximum amount of the Settlement is distributed to the Class, the Settlement Agreement provides the Settlement Administrator flexibility to increase or decrease the ultimate payment, depending upon the number of claims submitted. Settlement Agreement at ¶ 18(d). However, whatever, the ultimate Settlement payment results, Class Counsel are confident that it will be fair, adequate and reasonable.[7]

Furthermore, Defendants have agreed to pay the Representative Plaintiff an incentive fee of $15,000, separate from the Common Fund, subject to Court approval – an award that will not affect or diminish relief to other Settlement Class members. *Id.* ¶ 21.

In exchange for the benefits to Settlement Class members, the proposed settlement will result in a release of claims of Settlement Class members which is limited to claims which share the "factual predicate" of this litigation. Settlement Agreement, ¶ 16(k).[8] In addition to the Defendants, the Settlement also provides a similar release to

[7] If *all* 33,443 potential Settlement Class Members satisfy the Class definition and file a valid claim form, each would be allocated a payment of approximately 59\underline{80}$ from the Common Fund This settlement payment – which represents the absolute minimum settlement payment possible in this case – is still approximately 40% of the typical and standard 150\underline{00}$ per tow fee collected by Henry's Towing's during the Class Period. Plaintiff, however, at this point – and well into the notice period – estimates that the more likely payment range to Settlement Class Members is 300\underline{00}$ to 850\underline{00}$ *or higher*, because it is unlikely that 100% of the potential Class Members on the initial list for notice purposes qualify as "consumers" (as that term is used in the Settlement Agreement, ¶19(a)); and, it is also unlikely that more than 50% of those receiving notice will file a claim. *See Pollard v. Remington Arms Co., LLC,* 320 F.R.D. 198, 213-15 (W.D. Mo. 2017) (explaining that while there are many reasons why claims rates are typically low in class action, even lower than 1%, a low claims rate does not affect the analysis of whether a settlement is fair, adequate and reasonable).

[8] A release in a class settlement limited to claims sharing the "factual predicate" of the complaint is consistent with Fourth Circuit authority. *See In re MI Windows & Doors,*

any owner of a Parking Lot in Montgomery County that contracted with Henry's Towing for the provision of trespass towing services. *Id.*, ¶ 16(i).

D. Administration of Settlement Benefits

Under the Agreement, Settlement Class Members must file a simple claim form to obtain a settlement payment. Settlement Agreement, ¶ 19 and Exhibit A to Settlement. A claims process is necessary in this case because the Parties have no effective way to identify the "consumers" within the group receiving notice. **Exhibit 2**, Gordon Decl. ¶ 28. And the reality is that many of the cars that were towed during the Class Period were owned by businesses; others were being driven for commercial purposes at the time of the tow.

Thus, in order to separate out consumers from non-consumers, and identify the consumers entitled to relief under the Settlement Agreement, the Agreement includes a claims process that merely requires that each person, in addition to providing their names and contact information, to affirm that they are a "consumer" – that is, state that the vehicle was purchased, acquired or driven for personal, family, household or agricultural purposes and not for a commercial or business purpose.

To complete the claim form, potential claimants need only provide their name, address, and email address (if any) and affirm that the individual is a "consumer" – that is, that the vehicle that was towed by Henry's Towing, was purchased, acquired or driven for personal, family, household or agricultural purposes, rather than for commercial or business purposes. Settlement Agreement, ¶ 19(a).

And, as noted above, each claimant who files a timely and valid claim ("Settlement Class Member") will be entitled to the same payment from the Settlement Fund (a "Settlement Payment"), in accordance with a formula established by the Settlement Administrator which will result in the complete distribution of the Settlement Fund. *Id.*, ¶ 19(d). Since the information provided during discovery in this

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Inc., Prod. Liab. Litig., 860 F.3d 218, 225 (4th Cir. 2017).

case indicates that the overwhelming majority of "consumers" towed by Henry's Towing were charged and paid the same amount – $150 per tow – it is appropriate to provide the same payment to each Settlement Class Member for each tow. Gordon Decl. at ¶ 15; Settlement Agreement at ¶ 19(e)-(f). Potential claimants who are not "consumers" as that term is defined in the Settlement Agreement, will not receive a payment under the Settlement. Gordon Decl. at ¶ 29.

As of May 2, 2025, 1699 Class members have submitted claims, via the internet or by mail – approximately 5% of those receiving notice. More than three (3) months still remain, though, for Settlement Class Members to submit claims. Gordon Decl. at ¶ 51.

Moreover, the proposed settlement does not include any reverter – so none of the money paid by the Defendants into the Common Fund will be returned to them. Instead, in the event that amounts remain in the Common Fund after distribution to Settlement Class Members, the Settlement Agreement mandates that those funds, subject to Court approval, be disbursed to a *cy pres* recipient, the University of Maryland, Francis King Carey School of Law for the endowment of the Michael Millemann Professorship in Consumer Protection Law. *See* Settlement Agreement ¶ 20.

Considering that the settlement recovers a non-reversionary $3 million Common Fund from the Henry's Defendants for a settlement class of consumers who were subjected to the Henry's Towing's possessory lien, this settlement represents a remarkable recovery for the Class.

E. The Notice Plan

The plan for disseminating notice of the settlement to Settlement Class members was designed to accord with *Fed.R.Civ.P.* 23(e). *See* Settlement Agreement ¶ VI. The Court approved the parties' proposed notice plan in the Preliminary Approval Order. Notice were mailed to 33,443 individuals on April 9, 2025 by first-class mail. Gordon Decl. at ¶ 42.

The notice process is successful. At this point, Class Counsel have spoken with

hundreds of Settlement Class Members; no Class Member has opted out of the Class and none have objected to any aspect of the Settlement.

V. Legal Standard

Fed.R.Civ.P. 23(e) sets forth the protocol for the Court's consideration of class action settlements. Final approval of a class-action settlement is appropriate on a finding that the settlement "is fair, reasonable, and adequate after considering whether":

> (A) the class representatives and class counsel have adequately represented the class;
> (B) the proposal was negotiated at arm's length;
> (C) the relief provided for the class is adequate, taking into account:
> (i) the costs, risks, and delay of trial and appeal;
> (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
>
> (iii) the terms of any proposed award of attorney's fees, including timing of payment; and
> (iv) any agreement required to be identified under Rule 23(e)(3); and
> (D) the proposal treats class members equitably relative to each other.

Fed.R.Civ.P. 23(e)(2).

The same factors guiding preliminary approval of class action settlements apply to final approval. *See Erny on behalf of India Globalization Cap., Inc.*, 2020 WL 3639978, at *2; *Robinson*, 2020 WL 8256177, at *3.

VI. FINAL SETTLEMENT APPROVAL IS APPROPRIATE

In the Fourth Circuit, the inquiry into whether a class settlement satisfies Fed. R. Civ. P. 23(e)(2) and should be approved is guided by the fairness and adequacy factors enumerated in *In re: Lumber Liquidators Chinese-Manufactured Flooring Prod. Mktg., Sales Pracs. & Prod. Liab. Litig.*, 952 F.3d 471, 484 (4th Cir. 2020) ("*Lumber Liquidators*"). As discussed in parts A and B, below, consideration of these fairness and adequacy factors demonstrates that settlement here should be approved and shows that Settlement Class members are treated equitably.

In addition, a proposed settlement class must meet the class certification requirements of *Fed.R.Civ.P.* 23 "for purposes of judgment on the proposal." *See*

Fed.R.Civ.P. 23(e)(1)(B)(ii). As discussed in part C, below, each of the class certification requirements is also met.

A. The Settlement Is Fair and Adequate

1. Fairness

The four "fairness" factors are "(1) the posture of the case at the time settlement was proposed; (2) the extent of discovery that had been conducted; (3) the circumstances surrounding the negotiations; and (4) the experience of counsel in the area of [the] class action litigation." *Lumber Liquidators*, 952 F.3d at 484. Each factor supports the fairness of this settlement.

a. The Posture of the Case at the Time Settlement Was Proposed and the Extent of Discovery Conducted

This case was filed in the Circuit Court for Montgomery County in March 2022. Soon thereafter, in April 2022, Defendants removed the case to this Court. ECF No. 1. Thereafter, the parties engaged in discovery, Plaintiffs filed their Motion for Certification of the Plaintiff Class (ECF No. 46) (asking the Court to certify a class of consumers, pursuant to *Fed.R.Civ.P.* 23(b)(3), whose vehicles had been trespass towed by the Henry's Towing in Montgomery County), and the Defendants filed, and the Parties fully briefed, two Motions to Dismiss. ECF Nos. 75, 76, 79, 80, 85. Along the way, Plaintiffs amended the Complaint twice to reflect and include information, and new Defendants, gleaned from the discovery. Gordon Decl. at ¶¶ 17-19.

In addition, Class Counsel have also had to fight two attempts by the Henry's Defendants to convince Maryland's General Assembly to create a "possessory lien" in favor of trespass towers. Both attempts – in the 2024 and 2025 sessions of the Legislature – not only failed, but also resulted in the Maryland Attorney General issuing a new opinion reiterating that towing companies in Maryland do not have a "possessory lien." **Exhibit 2-C**, April 5, 2024 Letter from OAG (citing *Huemmer v. Mayor and City Council of Ocean City*, 632 F.2d 371 (4th Cir. 1980)); *see also* Gordon Decl. at ¶¶ 32-36.

The posture of the case at the time settlement was proposed thus supports

settlement approval. *See, e.g.*, *Boger v. Citrix Sys., Inc.*, No. 19-CV-01234-LKG, 2023 WL 3763974, at *9 (D. Md. June 1, 2023) ("the parties … litigated this matter for three years before they reached the proposed Settlement… the parties have had sufficient opportunity to understand the issues and the evidence in this case, and to reach a well-informed settlement.") The parties here have had ample opportunity to understand and ventilate the issues presented by this case; the settlement is a product of both adversarial litigation and well-informed negotiations.

Moreover, given the scope of the discovery undertaken in this case, Plaintiff is also confident that we have identified and provided notice to a significant percentage of potential Settlement Class members. As noted above, the Settlement Administrator identified specific addresses and other contact information for 33,443 individuals who potentially meet the class definition set forth in ¶ 17 of the Settlement Agreement.

Accordingly, this factor supports settlement approval.

b. Circumstances Surrounding the Negotiations and the Experience of Class Counsel

Lumber Liquidators and *Fed.R.Civ.P.* 23(e)(2)(B) require consideration of whether the proposed settlement is a product of arms-length negotiations. *Id*. The settlement in this case is the product of more than a year and a half of arms-length negotiations including seven (7) intensive mediation sessions, all supervised by a neutral retired Judge – the Hon. James R. Eyler (Ret.). Settlement Agreement at ¶ 11; **Exhibit 2**, Gordon Decl. at ¶¶ 21-27. *See also Decohen v. Abbassi, LLC,* 299 F.R.D. 469, 475 (D.Md. 2014) (the parties engaged in "nine months of arms-length negotiations and mediation overseen by Magistrate Judge Susan K. Gauvey.") As in *Decohen*, "[t]here is no indication in the record of bad faith or collusion in the settlement negotiations" and the parties "represent that the settlement negotiations were at arms-length." *Decohen*, 299 F.R.D. at 480; *see also* Settlement Agreement ¶ 11 (representing that the parties' negotiations were at "arms-length").

Class Counsel are also "experience[d]… in the area of [the] class action litigation."

Lumber Liquidators, 952 F.3d at 484. After all, *Decohen* held that class counsel in that case – the same Class Counsel here – were adequate in part due to "significant litigation and appellate experience" and "recogni[tion] in various national publications for excellence in their field." *Decohen*, 299 F.R.D. at 480. Class Counsel's experience has only increased in the years since *Decohen* was decided. Class Counsel have been certified as adequate class counsel in dozens of other class action settlements in state and federal courts. *See* Gordon Decl. ¶¶ 6, 10. And in this case, Class Counsel pursued this case from the Circuit Court for Montgomery County, where it was filed, to this Court; obtained significant supporting information in discovery; and, as a result of those efforts, obtained a substantial settlement for the Settlement Class.

Class Counsel are adequate.

2. Adequacy

Whether the relief provided for the Class is adequate under Fed. R. Civ. P. 23 is guided by five factors in the Fourth Circuit: "(1) the relative strength of the plaintiffs' case on the merits; (2) the existence of any difficulties of proof or strong defenses the plaintiffs are likely to encounter if the case goes to trial; (3) the anticipated duration and expense of additional litigation; (4) the solvency of the defendant[ ] and the likelihood of recovery on a litigated judgment; and (5) the degree of opposition to the settlement." *Lumber Liquidators*, 952 F.3d at 484 (citation omitted). Each of these factors supports the settlement's adequacy.

a. The Relative Strength of Plaintiff's Case on the Merits and the Existence of Any Difficulties of Proof or Strong Defenses the Plaintiffs are Likely to Encounter if the Case Goes to Trial

Class Counsel believe that, at trial, Representative Plaintiff and the Class would prevail on their claims against Defendants and, through evidence, be able to prove that Defendants violated the law and damaged Representative Plaintiff and Class Members.

Despite Class Counsel's belief as to the strength of the case on the merits, many significant hurdles and a long passage of time would need to be overcome before the

Representative Plaintiff and the Class could establish their entitlement to relief on a class-wide basis. Defendants contested liability and moved to dismiss Representative Plaintiff's claims. Although Representative Plaintiff believe that they would have prevailed on the pending motions, Defendants would have opposed Representative Plaintiff's motion for class certification (ECF no. 46), would have likely filed additional dispositive motions, and would have vigorously defended themselves at trial.

Moreover, to the extent Defendants were not successful at trial, they would almost certainly appeal any unfavorable judgment. Accordingly, as a practical matter, Representative Plaintiff and the Class faced substantial challenges to obtain a litigated judgment in their favor. Achieving a litigated resolution would have taken additional years. The Settlement Agreement in this case avoids these issues, provides a real monetary recovery now, and accomplishes an exemplary result without the need for further litigation or a full trial.

Representative Plaintiff has no guarantee of winning either in the trial or appellate courts. There is no certainty in litigation and any success in this case depends almost entirely upon the Court's interpretation of the controlling statutory language and the jury's determination of fact. "It is known from past experience that no matter how confident one may be of the outcome of litigation, such confidence is often misplaced." *West Virginia v. Chas. Pfizer & Co.*, 314 F. Supp. 710 (S.D.N.Y. 1970), *aff'd*, 440 F.2d 1079 (2d Cir.), *cert. denied*, 404 U.S. 871 (1971) ("*Pfizer*"). In *Pfizer*, another consumer class action, Judge Wyatt offered the following example:

> In *Upson v. Otis*, 155 F.2d 606, 612 (2d Cir. 1946), approval of a settlement was reversed, the Court saying (at 612): "on the facts presented to the district judge, the liability of the individual defendants was indubitable and the amount of recovery beyond doubt greater than that offered in the settlement. Accordingly, it was an abuse of discretion to approve the settlement." The action was then tried and plaintiffs obtained a judgment, twice considered by the Court of Appeals (168 F.2d 649, 169 F.2d 148 (1948)). We are told, however, that "the ultimate recovery . . . turned out to be substantially less than the amount of the rejected compromise."

Id. at 743-44.

In another example demonstrating the enormous risks of litigation, a class action against the manufacturer of the drug Bendectin was originally settled. The Sixth Circuit reversed approval of that settlement. *In re Bendectin Productions Liability Litigation*, 749 F.2d 300 (6th Cir. 1984). Thereupon, as reported in *The Wall Street Journal* (March 13, 1985), the plaintiffs tried the case and, by jury verdict, lost the millions of dollars for which they had originally bargained.

Litigation risk, moreover, does not end with the trial. In this case, post-trial motions and appeals would be almost a certainty. History records numerous instances where favorable jury verdicts have been overturned by the trial court, a court of appeals, or even the Supreme Court. As Judge Friendly noted of the vagaries of appellate review: "Platus warned long ago 'what a ticklish thing it is to go to law,' and the ticklishness does not diminish as the pinnacle is reached." *Newman v. Stein*, 464 F.2d 689, 695 (2d Cir. 1972).

Experienced counsel in this case, who negotiated at arm's length and possess all relevant information, strongly recommend the settlement to the Court. *See* **Exhibit 2**, Gordon Decl. ¶¶ 30-31. Class Counsel believe that Representative Plaintiff and the Class have a strong case against Defendants. As evident from the above discussion, however, it is by no means certain that Representative Plaintiff and the Settlement Class Members would have obtained a result better than that achieved through this settlement – a settlement which recovers $3 million for consumers who were towed by Henry's Towing and then subjected to an unlawful lien in order to retake possession of their vehicle.

Indeed, the benefits provided in the proposed settlement are adequate even if the Representative Plaintiff's case on the merits is strong. Considering that the main Defendant in this case is a towing company, and not a Fortune 500 company, it is perhaps possible but certainly not clear that Plaintiff and the Settlement Class could have obtained and recovered more after a trial. Or, judgment could have been entered in favor of Defendants after dispositive motions or a trial, leaving Representative Plaintiff and the Class with nothing.

Accordingly, the strength of Plaintiff's case relative to the challenges presented by further litigation supports the adequacy of the settlement.

b. The Anticipated Duration and Expense of Litigation

The anticipated duration and expense of additional litigation factor also supports the adequacy of the settlement. *See Lumber Liquidators,* 952 F.3d at 484. Although Class Counsel believes the trial of this case would be manageable and superior to other means of adjudicating the controversy, the issue here is the extent to which the anticipated complexity and costs of proceeding to trial favor settlement.

Before any trial, the parties would have engaged in substantial litigation – including litigating dispositive motions, discovery matters, and motions concerning class certification. Had this matter proceeded to trial, Defendants would have attempted to present evidence to demonstrate that their actions complied with the law and did not damage Representative Plaintiff or Class members. Although Class Counsel is confident Representative Plaintiff's position on the applicable law is correct, there is no guarantee the Court or jury would agree.

Moreover, the expense of taking this case through trial would have been considerable. A substantial amount of additional formal discovery (including many important depositions) and extensive motion practice would have to be completed. Trial preparation would require great effort and expense. Both the Class and Defendants would have incurred substantial expenses, which would have detracted from any eventual recovery. Class Counsel anticipates that a class trial of this case would take approximately two weeks and would have involved considerable expense. *See* **Exhibit 2**, Gordon Decl. ¶ 31.

Avoiding the delay, risk and expense of protracted litigation is a primary reason for counsel to recommend and the court to approve a settlement. *Protective Committee for Indep. Stockholders of TMT Trailer Ferry v. Anderson*, 390 U.S. 414, 424 (1968) (court must consider "the complexity, expense, and likely duration" of the litigation).

Here, that delay, risk and expense would be substantial. Accordingly, this factor weighs in favor of settlement approval.

c. The Solvency of the Defendant

The next *Lumber Liquidators* "adequacy" factor, the "solvency of the defendant and the likelihood of recovery on a litigated judgment," also supports settlement approval. *See* 952 F.3d at 484. Even though Class Counsel believes that Representative Plaintiff would prevail at trial, such a litigated judgment would not be available to the Class until this complex case was fully litigated and all appeals exhausted. The availability of a real monetary recovery now, as opposed to at some point in the far-off future, supports settlement approval.

While Class Counsel have no reason to believe that this settlement substantially taxes Defendants' net worth, there is no question that the settlement payment is considerable. The fact that the amount that Defendants are paying is not an insubstantial amount weighs in favor of settlement approval.

Thus, for purposes of this settlement, the inquiry does not turn solely on whether Defendants could withstand a greater judgment. *See also Decohen*, 299 F.R.D. at 480 ("Although Capital One could likely afford to pay a much larger judgment, because the other factors favor adequacy, this factor [solvency of the defendant] may be given less weight. Accordingly, the Court will find that the settlement is adequate.") (citations omitted).

d. The Degree of Opposition to the Settlement

The final *Lumber Liquidators* "adequacy" factor, the "degree of opposition to the settlement," also counsels in favor of approving the Settlement. *See* 952 F.3d at 484. The Class has reacted in an overwhelmingly favorable manner to the Settlement in this case. Here, over 33,400 potential Settlement Class Members received notice, and, at this point, there are ***no*** objections to the Settlement and ***no*** opt-outs. Moreover, of the hundreds of individuals who have contacted Class Counsel, there is universal support for the Settlement. The reason for this support of, and desire to be included in, the

Settlement is clear and apparent – the Settlement provides a substantial cash recovery for the Class members and is a superior result for the Class.

Where, as here, there is **unanimous** support of a proposed settlement by the beneficiaries (*i.e.*, the Class), it is persuasive evidence that the proposal is fair and reasonable. As Judge Quarles noted in *Decohen*, "the lack of objections and opt-outs from the class weighs heavily in favor of adequacy." *Decohen*, 299 F.R.D. at 480. *See also In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 962 F. Supp. 450, 459 (D. N.J. 1997) (and cases cited therein); *In re Surgical Laser Technologies Sec. Litig.*, 1992 U.S. Dist. Lexis 16724 4-5 (E.D. Pa 1992) (and cases cited therein)

e. The Effectiveness of Any Proposed Method of Distributing Relief to the Class

A further "adequacy" factor specified by Fed. R. Civ. P. 23(e)(2)(C)(ii) requires consideration of "the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims." That factor supports settlement approval here.

The Settlement Agreement contemplates a straightforward *pro rata* method of distributing relief to the Class. Each Settlement Class Member who submits a claim will receive the same payment, originally projected to be in $150^{\underline{00}}$ to $300^{\underline{00}}$ range – now believed to be between $300 and $850 – per Class member. *See* Settlement Agreement ¶ 19(d).

This payment, which may be adjusted depending upon the number of valid claimants, will not only equal what each Settlement Class Member paid to retake possession of their vehicle, but likely surpass it, in multiples. Indeed, the goal of the distribution process is to pay out ***all*** of the money in the Common Fund, to the extent possible. *See* Settlement Agreement ¶ 19(d). To facilitate the identification of potential Class members, Defendants provided both SCS and Class Counsel the: (a) name; (b) last known address; (c) E-mail address, if known, and other substantive information about each vehicle, owner of the vehicle and each tow. *See id.* ¶ 26.

Under the Agreement, Settlement Class Members are required to file a straightforward claim form that only requires them to provide some basic contact information and to affirm that they are a "consumer." Claim forms can be filed electronically, or by mail. *Id.* ¶ 19. A sample claim form is attached as Exhibit A to the Agreement. Settlement Class Members have until sixty (60) days after the Settlement is approved and becomes final to file a claim. *Id.* ¶ 19(b).

The Claim Forms in this settlement ensure that class members who take the trouble to participate are compensated, potentially in multiples of what they actually paid to take possession of their vehicle from Henry's Towing. *See* 4 Newberg and Rubenstein on Class Actions § 13:7 (6th ed.) (claim forms in a common fund settlement are "often necessary to verify claims.")[9] *See Cisneros v. EP Wrap-It Insulation, LLC*, No. CV 19-500 GBW/GJF, 2021 WL 2953117, at *8 (D.N.M. July 14, 2021) (Because the settlement is "distributed *pro rata* to all Participating Class Members, a low participation rate would not affect the size of the reversionary fund, and it is less likely that any individual who takes the trouble to submit a claim would thereafter fail to cash any check he receives.") (*citing* Fed. Trade Comm'n, Consumer and Class Actions: A Retrospective and Analysis of Settlement Campaigns 23 (2019)). That maximizes money that gets to actual Settlement Class members and minimizes funds that are left unused and get distributed to a *cy pres* recipient instead of Settlement Class members.

Moreover, a requirement that potential claimants "fill out a form in order to collect from the settlement fund" seldom raises settlement approval concerns. *T.K. Through Leshore v. Bytedance Tech. Co.*, No. 19-CV-7915, 2022 WL 888943, at *14 (N.D. Ill. Mar. 25, 2022), *appeal dismissed*, No. 22-1686, 2022 WL 19575674 (7th Cir.

[9] The filing of claim forms at the distribution stage does not transform this common fund settlement into a disfavored "claims made" settlement. Newberg and Rubenstein on Class Actions § 13:7 (6th ed.). Here, the "defendant's money is in a fixed, nonreversionary, common fund." *Id.* In a claims-made settlement, by contrast, the total aggregate recovery would depend upon how many claims are filed. *See id.*

Aug. 22, 2022) (*citing* 4 Newberg § 13:53; *Kolinek v. Walgreen Co.*, 311 F.R.D. 483, 499 (N.D. Ill. 2015) (it was "neither unfair nor reasonable" to ask claimants to submit a "short and direct" claim form that required claimants to provide their names, address, and signature, and to check a box if they wished to make a claim)).

Furthermore, the number of claims ultimately filed has ***no*** effect on the total amount of relief available to the Settlement Class – if the settlement is approved, no money in this settlement returns to the Defendants under any circumstance. That "maximizes" payments to Settlement Class members. *See, e.g., Cotter v. Lyft, Inc.*, No. 13-CV-04065-VC, 2017 WL 1033527, at *6 (N.D. Cal. Mar. 16, 2017), *aff'd sub nom. Cotter v. Page*, No. 17-15648, 2017 WL 4535961 (9th Cir. Sept. 15, 2017) ("there is no reversion of the Settlement Fund, maximizing the amount of payments to Class members."); *Keller v. Nat'l Collegiate Athletic Ass'n (NCAA)*, No. 4:09-CV-1967 CW, 2015 WL 5005901, at *5 (N.D. Cal. Aug. 19, 2015) (same)

Finally, the claims period provided by the Settlement Agreement supports adequacy. Settlement Class Members have until 60 days following final approval of the Settlement to file a claim – anticipated, at this point, to be August 4, 2025. Settlement Agreement ¶ 19(b). "[C]ourts often approve class action settlements …before the final claims deadline, as is the case here." *Pollard v. Remington Arms Co., LLC*, 320 F.R.D. 198, 215 (W.D. Mo. 2017), *aff'd*, 896 F.3d 900 (8th Cir. 2018) (*citing Carter v. Forjas Taurus, S.A.*, Case No. 13-CV-24583, 2016 WL 3982489, at *5–6 (S.D. Fla. July 22, 2016); *Lee v. Ocwen Loan Serving, LLC*, Case No. 14-60649, 2015 WL 5449813, at *23 (S.D. Fla. Sept. 14, 2015) (citations omitted); *Casey v. Citibank, N.A.*, Case No. 12-CV-820, 2014 WL 4120599, at *2 (N.D.N.Y. Aug. 21, 2014); *Perez v. Asurion Corp.*, 501 F.Supp.2d 1360, 1383 (S.D. Fla. 2007).

Extending the claims period slightly beyond the anticipated date of final approval of the settlement allows for maximum Settlement Class member participation, because it allows time for claims "from class members who are waiting to see if the settlement is finally approved." *Lee*, 2015 WL 5449813, at *23.

In sum, the Settlement Agreement's simple protocol for *pro rata* distribution of settlement payments supports adequacy.

f. The Terms of Any Proposed Award of Attorney's Fees

Another adequacy factor enumerated by *Fed.R.Civ.P.* 23(e)(2)(C)(iii) requires consideration of the "terms of any proposed award of attorney's fees, including timing of payment." *Id.* This factor also supports settlement approval.

Contemporaneous with the filing of this memorandum, Representative Plaintiff is filing a motion for an award of attorney's fees, discussing why that award should be approved. For all the reasons supporting that motion, the requested attorney's fee award is fair and reasonable and also supports settlement approval.

The timing of the payment of attorney's fees also supports settlement approval. Class Counsel only gets paid after the Settlement is finally approved, the time for appeal has passed, and Settlement Class members are guaranteed to be paid also. *See* Settlement Agreement ¶ 22(a) (attorney's fees to be paid within 10 days after the "Effective Date", which is after the time for any appeal has passed). Thus, the Settlement Agreement does not include a so-called "quick pay clause" which "allows class counsel to be paid in short order, even if an appeal is taken." *In re: Whirlpool Corp. Front-loading Washer Prod. Liab. Litig.*, No. 1:08-WP-65000, 2016 WL 5338012, at *20 (N.D. Ohio Sept. 23, 2016). Although most courts have held that "quick pay" clauses "serve the socially-useful purpose of deterring serial objectors," such terms have invited some judicial scrutiny. *Id.*

g. There Are No Side Agreements

The final adequacy factor enumerated by *Fed.R.Civ.P.* 23(e)(2)(C)(iv) requires consideration of "any agreement required to be identified under Rule 23(e)(3)." In turn, Rule 23(e)(3) requires "a statement identifying any agreement made in connection with the propos[ed settlement]."*Id.* The Settlement Agreement in this case is the only agreement made in connection with the proposed settlement. There are no side agreements in connection with the Settlement. *See* Gordon Decl. ¶ 52.

B. The Proposal Treats Class Members Equitably

The final *Fed.R.Civ.P.* 23(e)(2) factor is whether the settlement proposal "treats class members equitably relative to each other." *Fed.R.Civ.P.* 23(e)(2)(D).

Here, as described above, the amount of Settlement Class members' monetary recovery under the proposed settlement will be based upon the typical amounts they paid Henry's Towing to retake possession of their vehicles. It is also targeted to ensure that Settlement Class Members recover at least, ***if not more than*** they paid to Defendants. *See* Settlement Agreement ¶ 19(d). Such "distribution schemes are sufficiently equitable and satisfy the requirements of Rule 23(e)(2)(D)." *Cymbalista v. JPMorgan Chase Bank, N.A.*, No. 20 CV 456 (RPK)(LB), 2021 WL 7906584, at *9 (E.D.N.Y. May 25, 2021) (citations omitted). *See, also In re Zetia (Ezetimibe) Antitrust Litig.*, No. 2:18MD2836, 2023 WL 6871635, at *6 (E.D. Va. Oct. 18, 2023) (a "pro rata distribution of the Settlement Fund" treats settlement class members equitably relative to each other and satisfies Fed. R. Civ. P. 23(e)(2)(D)); *Broockmann v. Bank of Greene Cnty.,* No. 122CV00390AMNATB, 2023 WL 7019273, at *11 (N.D.N.Y. Oct. 25, 2023) (a *pro rata* allocation based on fees incurred satisfies Fed. R. Civ. P. 23(e)(2)(D));

Because Settlement Class members are treated equitably by the distribution protocol here, this final adequacy factor also weighs in favor of settlement approval.

C. The Proposed Settlement Class Is Certifiable

In addition to the considerations discussed above, *Fed.R.Civ.P.* 23(e)(1)(B) requires a showing that the Court will "likely be able to" certify the class. *Id.* In turn, *Fed.R.Civ.P.* 23(a) establishes four prerequisites for class certification. If all requirements of part (a) are met, the Court looks to section (b) of the Rule to determine whether one of three additional criteria is present. The proposed Settlement Class satisfies each requirement.

1. The Class Is Identifiable and Ascertainable

"A class cannot be certified unless a court can readily identify the class members in reference to objective criteria." *EQT Prod. Co. v. Adair*, 764 F.3d 347, 358 (4th Cir.

2014); *see also Career Counseling, Inc. v. AmeriFactors Fin. Grp., LLC*, 91 F.4th 202, 206 (4th Cir. 2024) (same). This "implicit" requirement of Rule 23 is that a proposed class be "definite," in other words, "ascertainable with reference to objective criteria." 1 Newberg on Class Actions § 3:1 (5th ed.)

Here, the proposed Settlement Class is not only ascertainable but has been ascertained. SCS has specifically identified 33,443 potential Settlement Class Members and sent each of them individual notice on April 9, 2025. *See* Gordon Decl. ¶ 41.

Furthermore, the elements of membership in the Settlement Class can be evaluated based entirely upon objective criteria. Each Settlement Class member is a person who paid Henry's Towing a fee to retake possession of the towed vehicle (a fee memorialized in a receipt issued by Henry's Towing when the vehicle was returned) from (and including) March 23, 2019 through and including December 31, 2023. *See* Settlement Agreement ¶¶ 17 & 26. The claims process described in the Settlement Agreement then identifies who on the Class List is also a "consumer."

As a result, the Settlement Class satisfies the implicit ascertainability requirement of *Fed.R.Civ.P.* 23.

2. The Criteria of *Fed.R.Civ.P.* 23(a) Are Satisfied

Each of the explicit *Fed.R.Civ.P.* 23(a) requirements are also met.

a. *Fed.R.Civ.P.* 23(a)(1) - Numerosity

The proposed Settlement Class meets the numerosity requirement of *Fed.R.Civ.P.* 23(a)(1), as it consists of tens of thousands of persons. *See* Settlement Agreement at ¶17.

A class of that size is so numerous that joinder of all members is presumptively impracticable. *See, e.g., Decohen*, 299 F.R.D. at 477 ("classes with as few as 25 to 30 members 'have been found to raise the presumption that joinder would be impracticable.'") (citation omitted); *see also* W. Rubenstein, *Newberg on Class Actions* § 3:12 (5th ed.) ("a class of 40 or more members raises a presumption of impracticability of joinder based on numbers alone") (citing numerous cases).

Numerosity is satisfied.

b. *Fed.R.Civ.P.* 23(a)(2) - Commonality

The commonality, typicality, and adequacy inquiries "are similar and overlapping." *Decohen*, 299 F.R.D. at 477 (citation omitted). "To establish commonality, the class members must 'have suffered the same injury,' and 'their claims must depend upon a common contention.'" *Id.* (*quoting Wal–Mart Stores, Inc. v. Dukes*, 131 S.Ct. 2541, 2551 (2011) (internal quotations omitted)).

Here, Settlement Class Members all suffered the same alleged injury – they each had to pay Henry's Towing all towing fees and charges as a pre-condition to retaking possession of their vehicle. Those injuries resulted from the same allegedly unlawful practice – Henry's Towing's assertion of an allegedly unlawful possessory lien. This "common contention" binds all of the Settlement Class members' claims together. *See Wal-Mart*, 564 U.S. 338, 350 (2011); *Decohen*, 299 F.R.D. at 477.

Whether the Henry's Defendants' actions did, in fact, violate the law is subject to a common answer. *See EQT Prod. Co.*, 764 F.3d at 360 ("what matters to class certification ... [is] the capacity of a class-wide proceeding to generate common *answers* apt to drive the resolution of the litigation.") (*quoting Wal–Mart*, 564 U.S. at 350 (emphasis in original, internal quotation marks omitted)). Either Henry's violated the law and damaged Settlement Class Members as a result, or they did not.

The commonality requirement is, therefore, satisfied.

c. *Fed.R.Civ.P.* 23(a)(3) - Typicality

The same facts which support commonality support the "similar and overlapping" requirement of typicality. *Decohen*, 299 F.R.D. at 477 (citation omitted). Representative Plaintiff's claims are typical of Settlement Class member's claims because each claim arises from the same practice and course of conduct by the same defendant. *See Peoples v. Wendover Funding, Inc.*, 179 F.R.D. 492, 498 (D. Md. 1998) ("[t]he test for determining typicality is whether the claim or defense arises from the same course of conduct leading to the class claims, and whether the same legal theory

underlies the claims or defenses."). Typicality is satisfied if, by pursuing her claims, the Representative Plaintiff "simultaneously tend[s] to advance the interests of the absent class members." *Deiter v. Microsoft Corp.*, 436 F.3d 461, 466–67 (4th Cir. 2006).

Here, Representative Plaintiff faced the same allegedly unlawful practices which affected the entire Settlement Class – Henry's Towing asserting a possessory lien and refusing to release towed vehicles unless and until all towing fees and charges are paid. The same legal theory underlies every Settlement Class member's claims. As a result, the typicality requirement is satisfied.

d. *Fed.R.Civ.P.* 23(a)(4) - Adequacy

Once again, the same facts which support commonality and typicality support the "similar and overlapping" requirement of adequacy. *Decohen*, 299 F.R.D. at 477.

The requirement of adequate representation assures that absent class members, who will be bound by the result, are protected by a vigorous, competent prosecution of the case by someone sharing their interests. *See* 1 Newberg, *supra*, § 3.21; *see also George v. Baltimore City Public Schools*, 117 F.R.D. 368, 371 (D. Md. 1987). This ensures "that the relationship of the representative parties' interest to those of the class are such that there is not likely to be divergence in viewpoint or goals in the conduct of the suit." *Bogosian v. Gulf Oil Corp.*, 561 F.2d 434, 449 (3d Cir. 1977). Representative Plaintiff does not have any conflict with the proposed Settlement Class and exhibited a dedication to this case. *See* Gordon Decl. ¶ 15, 37-38.

Furthermore, Class Counsel are experienced in handling consumer class actions and complex consumer litigation and have served as certified class counsel in dozens of consumer class actions. *See* **Exhibit 2**, Gordon Decl. at ¶¶ 6, 10. And the contingent-fee nature of Class Counsel's representation aligns their interests with those of the Settlement Class. *See In re Abrams & Abrams, P.A.*, 605 F.3d 238, 246 (4th Cir. 2010) ("an attorney compensated on a contingency basis has a strong economic motivation to achieve results for his client, precisely because of the risk accepted. As the Seventh Circuit has explained, '[t]he contingent fee uses private incentives rather than careful

monitoring to align the interests of lawyer and client.'"). *See also* Gordon Decl. at ¶ 29.

The adequacy requirement is, therefore, satisfied.

3. The Criteria of *Fed.R.Civ.P.* 23(b)(3) Are Satisfied.

After finding that all four requirements of *Fed.R.Civ.P.* 23(a) are met, class certification is appropriate if any one of three criteria in part (b) of the Rule is satisfied. Certification here is appropriate under *Fed.R.Civ.P.* 23(b)(3), which permits class certification where "the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." *Id.*

The requirements of *Fed.R.Civ.P.* 23(b)(3) are "met where all class members' claims 'depend upon a common contention,' and establishing 'its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.'" *Baugh v. Fed. Sav. Bank*, 337 F.R.D. 100, 110 (D. Md. 2020) (*quoting Wal-Mart*, 564 U.S. at 350). Here, the contention common to all Settlement Class members is that Maryland law did not permit Henry's Towing to assert a possessory lien as a condition of the Plaintiff and Class members retaking possession of their vehicles.

Moreover, absent class certification and settlement, class members would be effectively foreclosed from relief. The towing fees and charges challenged by this case – typically $150, s*ee* ECF No. 45 at ¶¶ 49, 52 – were substantial to Ms. Hall, but absent a class action, it would be absurd to file or pursue an individual lawsuit (let alone a federal case) over those charges in light of the great expense and cost of litigation. Settlement Class members likewise have no reason to pursue their claims individually. These circumstances show that the "interest of members of the class in individually controlling the prosecution of separate actions," *Fed.R.Civ.P.* 23(b)(3)(A), is low, and class certification for the purposes of settlement would benefit Settlement Class members.

Furthermore, (b)(3) certification is supported because Class Counsel is unaware of any other "litigation concerning the controversy already commenced by members of

the class." *Fed.R.Civ.P.* 23(b)(3)(B); *see also* Gordon Decl. ¶ 52.

Finally, under *Fed.R.Civ.P.* 23(b)(3)(C) & (D), the fact that this case is the subject of a class action Settlement Agreement means that concentration of claims in this forum is particularly desirable for the purposes of settlement, and few difficulties are likely to be encountered in the management of the class action.

For these reasons, the class certification requirements of *Fed.R.Civ.P. 23* are met.

VII. The Notice to the Class Comports with *Fed.R.Civ.P.* 23

The Preliminary Approval Order approved the parties' proposed plan for distributing notice to Settlement Class members. Pursuant to the Settlement Agreement, the Settlement Administrator will be providing the Court with a declaration concerning its compliance with the Court-ordered notice plan no later than May 26, 2025 (10 days before the Final Approval Hearing). *See* Settlement Agreement at ¶ 31.

VIII. Conclusion

For the reasons set forth above, Representative Plaintiff respectfully requests that the Court grant final approval to the Settlement Agreement and enter the comprehensive attached Final Settlement Approval Order.

Respectfully submitted,

/s/ Richard S. Gordon
Richard S. Gordon (Fed. Bar No. 06882)
Benjamin H. Carney (Fed. Bar No. 27984)
Gordon, Wolf & Carney, Chtd.
11350 McCormick Rd.
Executive Plaza 1, Suite 1000
Hunt Valley, Maryland 21031
Tel. (410) 825-2300
Fax. (410) 825-0066
rgordon@GWCfirm.com
bcarney@GWCfirm.com

Attorneys for Representative Plaintiff and the Settlement Class