IN THE U.S. DISTRICT COURT
FOR THE MIDDLE DISTIRCT OF TENNESSEE
NASHVILLE DIVISION

ANTHONY LADD and NICHOLAS BRINDLE, on behalf of themselves and all others similarly situated,	)	
Plaintiffs,	)	**No. 3:20-CV-00626**
v.	)	**CLASS ACTION COMPLAINT JURY TRIAL DEMANDED**
NASHVILE BOOTING, LLC	)	
Defendant.	)	**Judge Eli J. Richardson Magistrate Judge Alistair E. Newbern**

PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

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INTRODUCTION

This putative class action arises from Defendant Nashville Booting's systemic and ongoing failure to unboot vehicles within one hour of unbooting requests, as is required by Nashville Ordinance § 6.81.170(E). Nashville Booting has wronged thousands of local vehicle owners in the same exact way, in deliberate indifference to its obligations under Nashville Ordinance § 6.81.170(E) – and it continues to do so – *even after* receiving constant direct complaints about this issue, being publicly flagged by the Better Business Bureau for this pattern of illegal conduct, and despite the pendency of this putative class action.

Plaintiffs' three remaining causes of action are all based on the same factual theory of wrongdoing by Nashville Booting: that it failed to unboot their cars within one hour. This Court has already determined that Plaintiffs' claims are legally cognizable based on that core factual premise. *See* Mem. Order on Defs.' Mot. to Dismiss ("MTD Order") (Dkt. 37).

Here, Plaintiffs seek to represent a class of persons who have identical claims against Nashville Booting – and who experienced the same type of harm as Plaintiffs – by virtue of Nashville Booting also having failed to unboot those persons vehicles within one hour of their requests.

This Court should certify the proposed class because it meets each of the requirements of Rule 23, but even more importantly, class certification is the only conceivable way that Nashville Booting will ever be held accountable for, or forced to stop, its pattern of wrongdoing at issue in this case. *See Deposit Guaranty Nat'l Bank of Jackson, Miss. v. Roper*, 445 U.S. 326, 339 (1980) ("Where it is not economically feasible to obtain relief within the traditional framework of a multiplicity of small individual suits for damages, aggrieved persons may be without any effective redress unless they may employ the class-action device.").

Plaintiffs seek to certify and to be appointed as representatives of the following class:

> All persons who had a vehicle in their possession immobilized by Nashville Booting LLC in Nashville for longer than one hour after requesting removal of the immobilization device, from July 20, 2017[1] until June 17, 2022, but excluding the claims of non-named parties arising before December 1, 2018 (for whom Nashville Booting does not have any records).[2]

Plaintiffs also request that Kotchen & Low LLP be appointed as counsel for the class.

Plaintiffs primarily seek certification pursuant to Rule 23(b)(3) and propose that the Nashville Booting's classwide liability for its negligence, conversion, and trespass to chattels claims be adjudicated in a single trial. If the jury finds liability, it should also be asked to: (1) assess an aggregate compensatory damages award, and (2) determine the appropriateness and amount of punitive damages. This Court may thereafter determine whether Plaintiffs' request for an injunction should be granted.

In the alternative, Plaintiffs request that the Court certify the class pursuant to Rule 23(b)(2) and Rule 23(c)(4), and defer certification of a compensatory damages class. This would still allow the common issues of Defendant's liability, the availability and amount of punitive damages, and the appropriateness of equitable relief to be adjudicated all at once in a single trial, along with the named Plaintiffs' individual damages. If Defendant prevails in that trial, it will prevail against the entire class. But if Plaintiffs prevail, the Parties will likely agree upon a classwide settlement, or a streamlined process for adjudicating class members' damages.

[1] The applicable statute of limitations for injury to personal property is three years. Tenn. Code Ann. § 28-3-105. This case was filed on July 20, 2020, so the class period has been defined to begin on July 20, 2017 to cover all timely claims.

[2] Plaintiffs have added this exclusion because Nashville Booting has not preserved any records before December 1, 2018. This exclusion solves for the issue of a class-wide adjudication binding non-parties who cannot be identified from records that no longer exist, without excluding Plaintiff Nicholas Brindle (booted June 21, 2018). The class definition could also allow vehicle owners who had to wait longer than one hour from June 20, 2020 to November 30, 2018 to seek to join the class if they obtain leave of Court to intervene and can demonstrate their class membership through their own records or other evidence.

STATEMENT OF FACTS

A. Overview of Nashville Boot's Illegal Practices

Nashville Booting is a for-profit booting company based in Georgia, but operates exclusively in Nashville, Tennessee. Am. Compl., Dkt. 14, ¶¶ 1, 13; ¶¶; Answer to Am. Compl., Dkt. 39, ¶¶ 1, 13. It immobilizes vehicles by placing "boots" on the vehicle's tires that only Nashville Booting technicians can remove. Def.'s Resp. to RFA, Ex. 1, ¶¶ 4-5.

All of Nashville Booting's revenue comes from charging vehicle owners to remove the boots it has placed on their vehicle. Dep. Tr. of Brian Miller, Ex. 2, 30:15-20; Am. Compl., Dkt. 14, ¶ 26; ¶¶; Answer to Am. Compl., Dkt. 39, ¶ 26. Nashville Booting charges vehicle owners the *maximum* fee allowed by law to remove their boots. Ex. 2 30:12-14. Historically, this was $50, but it was recently increased to $75. *Id.* 29:23-30:3.

While most businesses strive to maintain a good reputation, and to please those who pay for their services, Nashville Booting is not subject to such pressures. It extracts fees from vehicle owners who want nothing to do with it,[3] but who may have mistakenly purchased a parking pass but lost track of time or overslept, parked in the wrong lot, or misread posted parking rules. Once Nashville Booting boots a vehicle, the vehicle owner is *compelled* to pay Nashville Booting's fee so they can once again use and enjoy their vehicle, even if they believe that Nashville Booting is operating in a discourteous, bad faith, or even unlawful manner. *See Am. Compl.,* Dkt. 14, ¶ 98.

Nashville Booting's profitability is directly tied to the number of vehicles it boots (given that it is paid per boot removal), and accordingly, it has developed a business model that prioritizes placing as many boots as possible. Ex. 1 ¶¶ 6-7; Ex. 2 34:21-35:8.

Nashville Booting contracts with private property owners for the right to boot vehicles on

[3] *See* Ex. 2 32:8-10 (Nashville Booting does not consider vehicle owners clients).

their property. Ex. 2 31:14-24. Nashville Booting markets itself to private property owners as a "cost free solution" for private parking enforcement. Am. Compl., Dkt. 14, ¶ 28; Answer to Am. Compl., Dkt. 39, ¶ 28. At *no cost* to the private property owner, Nashville Booting will monitor the property for parking infractions, boot any infracting vehicle, and recover unpaid fees owed by the vehicle owner or operator to the property owner. Answer to Am. Compl., Dkt. 39, ¶ 28; *see* Ex. 2 32:11-13 (Nashville Booting does not collect any revenue from its clients). For property owners that do not have any have parking restrictions/management, Nashville Booting offers "turnkey parking solutions and enforcement . . . at no cost." Am. Compl., Dkt. 14, ¶ 39; Answer, Dkt. 39, ¶ 30. Nashville Booting will suggest parking rules, Ex. 2 48:5-9, and "guide property managers through implementation of a permit parking system and tracking plan." Am. Compl., Dkt. 14, ¶ 39; Answer, Dkt. 39, ¶ 30. Nashville Booting has been wildly successful in expanding the number of properties where it can find and aggressively boot infracting vehicles. It now has approximately 230 locations where it can boot vehicles and has booted well over 37,000 vehicles since December 1, 2018. Ex. 2 34:2-4; Decl. of Mark Hammervold, Ex. 3, ¶ 5.

The Nashville Metro Government has imposed strict rules on booting companies like Nashville Booting. These rules were expressly established "for the protection and welfare of the public." Nashville Ordinance 6.81.010.[4] Those rules require that Nashville Booting *must remove* its boots *within one hour* of receiving a request from a vehicle owner to do so. Nashville Ordinance § 6.81.170(E). It is unlawful for Nashville Booting to keep a vehicle immobilized for longer than one hour after the vehicle owner contacts Nashville Booting to have the boot removed. *Id.*

Nashville Booting's business model and staffing policies reflect a deliberate indifference to its legal obligation to timely respond to unbooting requests under Nashville Ordinance §

[4] A copy of the Nashville Booting Ordinance was previously filed as Ex. 1 to the Amended Complaint (Dkt. 14-1).

6.81.170(E). Nashville Booting pushes and financially incentivizes its technicians to boot as many vehicles as possible, even though if often will not have the capacity to timely respond to unbooting requests. Ex. 2 25:4-26:26 (compensating technicians on a commission basis).

Nashville Booting needs to have technicians working 24/7. *Id.* 16:15-17. Every day, there are three shifts that need to be staffed: (1) 12:00 a.m. to 8:00 a.m., (2) 8:00 a.m. to 4:00 p.m., and (3) 4:00 p.m. to 12:00 am. *Id.* 16:25-4, 147:17-148:1. But Nashville Booting has been chronically understaffed throughout the class period. *Id.* 17:5-9, 18:17-24.[5] While Nashville Booting needs three to four technicians to cover every shift, 90% of its shifts are only staffed by only *one* technician. *Id.* 16-18-24, 19:17-21. For these shifts with only one technician (90% of all shifts), Nashville Booting has *no backup* technician on call, *id.* 24:15-18, for example, if the primary technician gets sick, has car trouble, or has to attend to a family emergency. The technician position at Nashville Booting has very high turnover. *Id.* 22:6-8. The longest tenured technician employed by Nashville Booting has only worked with the company for one year. *Id.* 17-12-18:5.

While Nashville Booting is well-aware of its extremely limited technician capacity, it nonetheless directs – and financially incentivizes – technicians to boot as many vehicles as possible when they are working. *Id.* 16:18-24, 17:5-9, 18:17-21, 54:1-12. Nashville Booting's Operational Handbook conspicuously instructs technicians in bolded text: **"More rotations = more boots = more money."** Ex. 4 at 3. Technicians are compensated entirely on commission. Ex. 2 25:4-11.[6] Nashville Booting pays technicians $12.50 for every boot they place. *Id.* 25:22-26:7.

While technicians can also receive the same $12.50 commission for removing boots, they have full discretion as to how to maximize their commissions during their shift. *Id.* 25:22-26:7,

[5] Mr. Miller made this admission as Nashville Booting's corporate representative and as the person in charge of staffing. *Id.* 8:19-23, 18:25-19:2.
[6] Technicians receive a $7.00 an hour "draw," only if this exceeds their commissions. *Id.* 25:12-21.

45:15-46:22. Nashville Booting does not require technicians to prioritize responding to unbooting requests over placing new boots. *Id.* 51:25-52:9 (its only "policy" is its commission structure); *see generally* Ex. 4 (containing no such policy or directive). If a technician does not unboot a vehicle within one hour, they generally will not be paid a commission for it, and the boot removal effectively becomes unpaid work. Ex. 2 38:10-18. But Nashville Booting will still pay a technician commission for placing a new boot, even if another technician later fails to timely respond to the vehicle owner's booting request. *Id.* 38:10-18, 42:18-43:9.

B. Plaintiffs' Experiences with Nashville Booting.

The events of October 26, 2019 – when Plaintiff Ladd had to wait all day for Nashville Booting to unboot his car – illustrates the recklessness of Nashville Booting's practice of booting as many vehicles as possible, when it knows it will not have the resources to timely unboot them. On the evening of October 25, Plaintiff Ladd and his wife were going to a wedding and met up with a friend beforehand at the Element Music Row Building. Decl. of Anthony Ladd, Ex. 5, ¶ 3. They received a twelve-hour parking pass from the building concierge and properly displayed that pass on the dash of the car, so that they could leave the car in the parking lot overnight. *Id.*

The same day, Nashville Booting technician Mathew Grutzius (Technician #201) covered at least *three* consecutive shifts – for a total of twenty-four straight hours – *by himself* for Nashville Booting. *Id.* 150:8-20, 147:12-16.[7] Ex. 3 at ¶ 28. He covered the 8:00 a.m. to 4:00 p.m. shift on October 25, the 4:00 p.m. to 12:00 a.m. shift on October 25, and then 12:00 a.m. to 8:00 a.m. shift on October 26. *Id.* During those shifts, Mr. Grutzius booted *twenty-eight* vehicles in at least ten different locations. Ex. 3 at ¶ 29. Mr. Grutzius placed many of those boots toward the end of his final shift, including a boot on the Ladd's car, a Scion FRS. *Id.* At the time Mr. Grutzius was

[7] Nashville Booting admits this is very unreasonable. Ex. 2 148:10-14.

placing those boots, he had no way of knowing if Nashville Booting would have technician available during the next shift to respond to requests for boot removal. Ex. 2 154:14-155:15.

After Mr. Grutzius finished three straight shifts (from 8:00 a.m. on October 25 to 8:00 a.m. on October 26), sixteen vehicles remained immobilized. Ex. 3, ¶ 28. But, no technician was working the October 26 8:00 a.m. to 4:00 p.m. shift for Nashville Booting. Ex. 2 153:23-154:12.

On the morning of October 26, Plaintiff Ladd and his wife went to retrieve their car between 8:00 a.m. and 8:45 am. Ex. 5 ¶ 5. Mr. Ladd had planned to spend that Saturday enjoying the day with his wife and going house shopping for his father-in-law. *Id.* ¶ 4. When he approached the car, he saw that it had been booted and a notice affixed to the car indicating that Nashville Booting had booted the car at 6:28 a.m., within thirty minutes of their parking pass expiring. *Id.*

Plaintiff Ladd called the number on the notice at 8:51 a.m., which connected him to a recording that said to call another number. *Id.* ¶ 6. He then called that number at 8:52 a.m. and then again, at 8:59 a.m. to request Nashville Booting remove the boot. *Id.* ¶ 7. The operator told Plaintiff Ladd that he needed to wait by his car for a technician to come. *Id.*

Over an hour later, Mr. Ladd's wife called Nashville Booting again to check on the status of their request and to see when the technician would be coming. *Id.* ¶ 8. The operator could not give an estimated time of arrival. *Id.* ¶ 9. After continuing to wait, Mr. Ladd began to question how it could possibly be legal for Nashville Booting to keep their car booted all day long. *Id.* ¶ 13. Mr. Ladd then called the police's non-emergency number, and the police told him that they had already received a few other similar calls that morning. *Id.* ¶ 10. By 3:45 p.m., Mr. Ladd and his wife had been waiting *over seven hours* and Ms. Ladd called Nashville Booting again. *Id.* ¶ 8. The operator was still unable to give an estimate for when a technician would be arriving. *Id.* ¶ 9. Nashville Booting did not unboot Mr. Ladd's car until 5:39 p.m. that day. *Id.* ¶ 11.

Many others whose vehicles were booted on the evening of October 25, 2019 or the early morning of October 26 had the same experience as Mr. Ladd. Ex. 3 at ¶ 31.

For example, the owner of a Toyota 4Runner began calling Nashville Booting's call center at 7:57 a.m. on October 26 to request boot removal. *Id.* He ultimately called *ten* more times to determine when Nashville Booting would remove the boots from his vehicle. *Id.*. Nashville Booting did not remove the boots from his vehicle until 5:35 p.m. that day. *Id.*

The owner of an Infinity Q50 called Nashville Booting at 9:26 a.m. on October 26 to request boot removal. *Id.*. He called again at 10:23 a.m. to ask for the technician's arrival time, and again every half hour or so for updates, at least *nine* times total. *Id.* The call center records reflect that he was urgently trying to get his car unbooted because his *wife and baby were in the hospital*. *Id.* Nashville Booting did not remove the boots from his car until 6:21 p.m.. *Id.*

As Nashville Booting's call service was getting bombarded with calls from vehicle owners asking for boot removal, and requests for updates about when a technician would arrive, the call center's records reflected that Mr. Grutzius (who had just worked 24 straight hours) was the technician "on after 8 am." *See e.g.*, Ex. 3, Ex. C at 4419. The call center operator repeatedly tried to call Mr. Grutzius, but those calls were "going straight to voicemail for 201." *Id.* at 4417. The call center repeatedly documented that Mr. Grutzius was contacted to perform boot removals – after just having finishing working 24 hours straight – but that he was unavailable. *Id.* While the call center also "tried every single contact # in the account. . .no one answered." *Id.* at 4419.

Incredibly, when Nashville Booting finally started unbooting cars on October 26, at around 4:50 p.m., Mr. Grutzius was back covering another shift for Nashville Booting by himself. *See* Ex. ¶ 33. By the end of that shift on the evening of October 26, Mr. Grutzius would have worked 32 of the previous 40 hours. *Id.*; Ex. 2 150:8-20, 147:12-16.

Plaintiff Nicholas Brindle is the Senior Associate General Counsel for the Tennessee Department of Human Services. Decl. of Nicholas Brindle, Ex. 6, ¶ 2. On June 21, 2018, Mr. Brindle was unable to park in his normal parking lot because it was blocked by construction, and accidentally parked in the wrong alternate lot. *Id.* ¶¶ 3-4. Around 4:15 p.m. that day, Mr. Brindle returned to his car and found that it had been booted by Nashville Booting. *Id.* ¶ 5. Mr. Brindle called Nashville Booting at 4:42 p.m. to request removal of the boots. *Id.* ¶¶ 7-8. The operator told him to wait by his car. *Id.* ¶ 8. Mr. Brindle informed his pregnant wife that he would be delayed coming home and waited outside by his car in approximately 90-degree heat. *Id.* ¶¶ 10-11. After over an hour, Mr. Brindle called Nashville Booting again, but when the service operator could not give him any assurance as to when Nashville Booting would be able to remove the boots, Mr. Brindle informed the operator that he could not wait by his car all night and that he was going to ask his wife to pick him up. *Id.* ¶ 13. Mr. Brindle called again at 6:05 p.m., after Nashville Booting still had not arrived to unboot his car, to inform the call service that he could no longer wait by his vehicle. *Id.* ¶ 14. He pressed the operator for an explanation as to why no technician had come, and the response was that they were "just an answering service," so they could not say when a technician would actually arrive. *Id.* A technician eventually called Mr. Brindle at 6:27 p.m., but Mr. Brindle was no longer by his car at that point. *Id.* ¶ 15. The technician stated that he had "just clocked in" at 6:00 p.m. and was not sure what happened to the technician that should have removed the boot earlier. *Id.* The technician was at Mr. Brindle's car, and could have removed the boots without Mr. Brindle being present, but did not do so because Nashville Booting wanted Mr. Brindle to pay its unbooting fee. *Id.* ¶ 15. Mr. Brindle had to follow up with Nashville Booting again the next morning and Nashville Booting charged him $85 to unboot his car. *Id.* ¶ 18.

Nashville Booting admits it failed to remove its boots from Plaintiffs' vehicles within one hour of when they contacted Nashville Booting to for such removal. Ex. 1 ¶¶ 14, 18.

C. The Impact of Nashville Booting's Illegal Practices on Others.

Nashville Booting's failure to timely respond to vehicle owners' unbooting requests is a systemic, longstanding, and ongoing issue that has adversely affected thousands of others. Ex. 3 at ¶ 26. In 2019, Samantha McConeghey moved to Nashville to work as a ninth-grade English teacher, and she purchased a townhome, which came with two parking spots. Decl. of Samantha McConeghey, Ex. 7, ¶¶ 2-3. From December 2019 to January 2020, Nashville Booting booted her car *three* times after she had parked in her *own* parking spot. *Id.* ¶¶ 4-17. Each time, Nashville Booting took *over two hours* to come remove its boots from her car, but nonetheless charged her a $50 booting (totaling $150). *Id.*

Madeleine Salisbury is a nursing student at Belmont, and she works at Vanderbilt University Medical Center as a Certified Nursing Assistant. Decl. of Madeleine Salisbury, Ex. 8, ¶ 2. At around 5:00 a.m. on February 24, 2022, Ms. Salisbury discovered that Nashville Booting had booted her car after she had woken up early to attend a mandatory clinical for her nursing program. *Id.* ¶ 5. She repeatedly attempted to request Nashville Booting remove its boots from her car through the website portal to which she was directed, then she repeatedly called Nashville Booting to communicate the urgency of her request, and for updates on when its boots would be removed. *Id.* ¶¶ 6-7. When Nashville Booting finally arrived *five* hours later, around 10:00 a.m., it still charged Ms. Salisbury $50 to unboot her car. *Id.* ¶ 8. It was an incredibly frustrating experience for her and it caused Ms. Salisbury significant personal hardship. *Id.* ¶¶ 9-10.

Nashville Booting agrees that it is "excessive" and "never appropriate" for vehicle owner having to wait over an hour for their vehicle to be unbooted. Ex. 2 115:13-116:11, 131:15-132:2. As such, Nashville Booting has a policy that vehicle owners should not be charged an unbooting

fee if they have to wait over an hour for this service. Def.'s Resp. to Pls. 1st Rogs, Ex 9, at 4 ("it is Nashville Booting's policy to pull a boot without collecting a fee in such a circumstance"); Ex. 2 137:7-138:4.[8] However, Nashville Booting frequently still charges vehicle owners for boot removal in violation of this policy. Ex. 3 at ¶¶ 17, 22-25; *see e.g.*, Ex. 6A; Ex. 7, ¶ 17; Ex. 8, ¶ 8.

LEGAL STANDARD

The central purpose of class actions is to achieve efficiency and economy of litigation, both with respect to the parties and the courts. *Norfolk Cty. Ret. Sys. v. Cmty. Health Sys.*, 332 F.R.D. 556, 566 (M.D. Tenn. 2019) (J. Richardson). "Class relief is peculiarly appropriate when the issues involved are common to the class as a whole and when they turn on questions of law applicable in the same manner to each member of the class.'" *Id.* (quoting *Gen. Tel. Co. of the S.W. v. Falcon*, 457 U.S. 147, 155 (1982)).

This Court has "broad discretion" in deciding whether to certify a class. *In re Whirlpool*, 722 F.3d at 850. "However, when in doubt as to whether to certify a class action, the district court should err in favor of allowing a class." *Norfolk Cty. Ret. Sys.*, 332 F.R.D. at 566.

"Merits questions may be considered to the extent — but only to the extent — that they are relevant to determining whether the Rule 23 prerequisites for class certification are satisfied." *Amgen v. Conn. Ret. Plans & Trusts Funds*, 133 S. Ct. 1184, 1194-95 (2013); *In re Whirlpool Corp. Front-Loading Washer Prods. Liability Litig.*, 722 F.3d 838, 851-52 (6th Cir. 2013). Persuasiveness of the evidence is, in general, a matter for a jury. *Tyson Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036, 1049 (2016).

[8] Citing this policy, Nashville Booting previously objected to producing any records of its booting and unbooting activities where it collected a fee. *See* Jt. Stmt. re: NB's Production, Dkt. 46, at 8-9.

ARGUMENT

To obtain class certification, Plaintiffs must satisfy the four express prerequisites of Rule 23(a): (1) numerosity, (2) commonality, (3) typicality, and (4) adequacy, as well as the implied threshold requirement that the proposed class be ascertainable. *See Romberio v. Unumprovident Corp.*, 385 Fed. Appx. 423, 431 (6th Cir. 2009). Then, Plaintiffs must satisfy one of the criteria of Rule 23(b). Here, Plaintiffs have satisfied all Rule 23(a) criteria and class certification is appropriate under Rule 23(b)(3), and alternatively, Rule 23(b)(2) and Rule 23(c)(4).

I. Plaintiffs Satisfy Rule 23(a)'s Prerequisites.

A. The Proposed Class is Clearly Defined and Ascertainable.

To satisfy the implied "ascertainability" requirement, the "class definition must be sufficiently definite so that it is administratively feasible for the Court to determine whether a particular individual is a member of a proposed class." *Young v. Nationwide Mut. Ins. Co.*, 693 F.3d 532, 537-538 (6th Cir. 2012). Similarly, "[f]or a class to be sufficiently defined, the court must be able to resolve the question of whether class members are included or excluded from the class by reference to objective criteria." *Id.* at 538 (quoting Moore's Federal Practice § 23.21[3]). The critical question is "whether the class has been defined such that it encompasses an identifiable group." *Stewart v. Cheek & Zeehandelar*, LLP, 252 F.R.D. 387, 391 (S.D. Ohio 2008).[9]

A proposed class is ascertainable if its members can be "discerned with reasonable accuracy" from the defendant's records, even "though the process may require additional, even substantial, review of files." *Young*, 693 F.3d at 539. A defendant should not be permitted to "escape class-wide review due solely to the size of their businesses or the manner in which their

[9] "[O]nly the *ability* to identify class members is necessary; the actual names and addresses of class members are not necessary at this time." *Johnson v. Midland Credit Mgmt.*, 2012 U.S. Dist. LEXIS 170420, at *32 (N.D. Ohio Nov. 29, 2012) (emphasis in original).

business records were maintained," as it "is often the case that class action litigation grows out of systemic failures of administration, policy application, or records management that result in small monetary losses to large numbers of people." *Id.* at 540. "To allow that same systemic failure to defeat class certification would undermine the very purpose of class action remedies." *Id.*

The class for which Plaintiffs seek certification is "ascertainable" because class membership is defined by reference to *objective* criteria: vehicle owners who waited more than one hour for Nashville Booting to remove boots from their vehicle. Whether a person is part of that class is readily determinable by calculating the amount of time between: (a) when the vehicle owner first requested Nashville Booting unboot their car; and (b) when Nashville Booting removed the boots from their vehicle. Nashville Booting has records of both data points, so putative class members can be easily identified and contacted (*e.g.*, for purpose of giving class notice). *See* Ex. 3 ¶¶ 3, 6, 8-14, 17, 27; *see e.g.*, Ex. 2 116:12-18, 117:1-119:25, 120:13- 121-17.

During the Class Period, Nashville Booting contracted with a third-party call center to handle incoming calls, most of which are requests for removal of booting devices. Joint Stmt. re: NB's Production, Dkt. 46, at 3; Ex. 2 55:25-56:7. The third-party call centers made records of each unbooting request, and in connection with same, documented identifying information about the caller and vehicle, including: (1) vehicle make, (2) vehicle model, (3) name of person requesting boot removal, (4) phone number of the person requesting boot removal, (5) time and date of call, and (6) location. *See* Nashville Booting Call Center Protocol, Ex. 10; Ex. 2 86:21-87:18; *see* Ex. 3 ¶ 6. The call center would regularly record the address/lot where the vehicle was parked, and sometimes the vehicle license plate. *See* Ex. 2 86:21-87:18; *see* Ex. 3 ¶ 6. The call center then sends that information by text and email to Nashville Booting. Ex. 10; *see* Ex. 3 at Ex. C. As a result, "the emails from the call center effectively function like a call-log receipt." Joint Stmt. re:

NB's Production, Dkt. 46, at 3; *see* Ex. 2 93:1-14. In 2021 or 2022, Nashville Booting added the option for vehicle owners to request boot removal and pay online, directly through Nashville Booting's EPS system. Ex. 2 73:6-13, 103:4-8[10] Nashville Booting has records of the exact date and time for all online boot removal requests. *Id.* 101:1-12.

For each booted vehicle, Nashville Booting has records of when its boots were removed. In its "EPS system," Nashville Booting records and maintains the date and time that each booting job was "closed." Ex. 3, ¶ 3. While this "closing" date and time is auto-populated in the EPS system when a technician submits the "payment collection" information for a booting job to the EPS system, this time and date also reflect when that the technician removed boots from a vehicle because Nashville Booting technicians are *required* to do the following – in sequence – when unbooting a vehicle: (1) collect payment; (2) submit payment collection information "IMMEDIATELY" into the EPS system, (3) remove the sticker from the vehicle's window, then (4) remove the boots from the vehicle. Ex. 4 at 11-12; Ex. 2 84:4-25, 94:2-10, 110:6-12.[11]

Nashville Booting previously argued that "close" date and time does not *necessarily* equate to time of boot removal,[12] but this is a non-substantive red herring does not undercut ascertainability. First, Nashville Booting concedes that its records of "close" date and time *should* equate to date and time of boot removal. Ex. 2 84:4-25, 94:2-10.[13] Second, Nashville Booting also agrees that the "close" date and time is the best data available about when a vehicle was unbooted. *Id.* 95:7-12. Third, Nashville Booting has previously relied on the same data to reject or validate complaints it has received from vehicle owners who claimed they waited over an hour for

[10] Now, as much as 80% of unbooting requests are made online. *Id.* 101:23-102:2.
[11] For credit card transactions, the technician's charging of the vehicle owner's credit card prior to boot removal is the event that marks the closing date and time, so this necessarily occurs proximate to, but just before the time that the technician actually removes the boot. *See* Ex. 2 109:14-110:20.
[12] *See* Joint Stmt. re: NB's Production, Dkt. 46, at 3.
[13] If anything, the "close" date and time represents the date and time just *before* Nashville Booting removes the boots from a vehicle, so this difference – if anything – benefits Nashville Booting. *See id.* 84:4-25, 109:14-110:20.

unbooting. *Id.* 108:16-109:1, 106:10-107:16, 112:24-113:4-114:15. Fourth, Nashville Booting is not aware of any actual instances where the "close" time did not match the boot removal time. *Id.* 111:8-112:2. Fifth, Nashville Booting has now automatically texts vehicle owners that their vehicle has been unbooted when the technician submits the "collection" information. *Id.* 98:20-99:13. Finally, Nashville Booting's challenge to the utility of this data is based only on the inherent potential for "human error" associated with all manual recordkeeping. *Id.* 111:8-112:10. The possibility of human error inherent to manual record keeping does not undermine ascertainability. *Johnson*, 2012 U.S. Dist. LEXIS 170420 at *36 ("The class does not need to be perfectly identified, otherwise no class which involved potential human error could ever be created.").

B. The Proposed Class is So Numerous that Joinder is Impracticable

Plaintiffs satisfy the "numerosity" requirement of Rule 23(a) because both Parties agree that the proposed class contains a sufficiently large number of plaintiffs. Rule 23(a)(1) requires that the class be "so numerous that joinder of all members is impracticable." "While there is no strict minimum number of plaintiffs (putative class members) defined by law, courts within the Sixth Circuit have recently stated that the numerosity requirement is fulfilled when the number of class members exceeds forty." *Elrod v. No Tax 4 Nash*, 2021 U.S. Dist. LEXIS 68418, at *3 (M.D. Tenn. Apr. 8, 2021) (J. Richardson) (citing *Busby v. Bonner*, 466 F. Supp. 3d 821, 831 (W.D. Tenn. 2020));; *see also In re UnumProvident Corp. ERISA Benefits Denial Actions*, 245 F.R.D. 317, 323 (E.D. Tenn. 2007) ("[A]s a practical matter, when class size reaches substantial proportions, the impracticability requirement is usually satisfied by the numbers alone.").; *Whiteamire Clinic, P.A., Inc. v. Cartridge World N. Am., LLC*, 2019 U.S. Dist. LEXIS 126875, *6 (N.D. Ohio Jul. 30, 2019) ("the Sixth Circuit has held that a class of forty or more members is sufficient to meet the numerosity requirement of 23(a)").

A plaintiff need not prove the "exact number" of class members for a class to be certified, so long as the class representatives can show that joinder would be impracticable. *Grae v. Corr. Corp. of Am.*, 330 F.R.D. 481, 501 (M.D. Tenn. Mar. 26, 2019). "A plaintiff must show some evidence of or reasonably estimate the number of class members, and, in assessing numerosity, the court may make common sense assumptions without the need for precise quantification of the class." *Id.* (certifying class despite not knowing the total number of class members when plaintiffs showed the putative class contained at least 783 members); *see also Thomas*, 303 F. Supp. 3d at 634 (numerosity met where class was sufficiently numerous based on defendant's own estimate).

Beyond the sheer number of putative class members, "concerns of judicial economy and the practicality with which class members could bring suit individually can inform [the] numerosity analysis." *See Malam v. Adducci*, 475 F. Supp. 3d 721, 734 (E.D. Mich. 2020).

Plaintiffs estimate that the class contains between 1,850 to 3,700 members, which is sufficient for numerosity. Ex. 3 ¶ 16, 18, 26 providing a list of 100 example putative class members which alone also satisfies this requirement). Nashville Booting has booted approximately 37,000 vehicles during the Class Period, and Plaintiffs estimate that it failed to unboot about 5-10% of those vehicles within 1 hour of being contacted to do so. *Id.* Even using Nashville Booting's *own* overly conservative[14] estimate of the number of putative class members, the proposed class is sufficiently numerous. Ex. 2 138:12-139:11 (estimating "200 plus" class members between December 1, 2018 and January 21, 2021); *see Elrod*, 2021 U.S. Dist. LEXIS 68418, at *3.

Joinder is also impracticable because class members' claims are not sufficiently valuable to pursue individually. *See* Ex. 2 133:7-135:14 (Nashville Booting receives "weekly" threats of

[14] Nashville Booting's estimate of the number of class members is significantly under-inclusive for two primary reasons. First, so it does not include any putative class members from January 28, 2021 to June 17, 2022. Ex. 2, 139:25-140:24. Second, it assumes – incorrectly – that it did not charge any no class members a boot removal fee. Ex. 2, 143:16-144:6; *see e.g.*, Ex. 3, ¶¶ 24-25 ; Ex. 6A; Ex. 7, ¶ 17; Ex. 8, ¶ 8.

litigation over such claims, but no one has filed an individual claims outside of this class action).

C. The Class's Claims Present Common Questions of Law or Fact.

Rule 23(a)(2) requires that there be questions of law or fact common to the class. To demonstrate commonality, plaintiffs "must show that class members have suffered the same injury." *Elrod*, 2021 U.S. Dist. LEXIS 68418, at *4 (citing *Wal-Mart Stores v. Dukes*, 564 U.S. 338, 350 (2011)); *see Glazer*, 722 F.3d at 852. The classes' claims "must depend upon a common contention of such a nature that it is capable of class-wide resolution, which means that determination of its truth or falsity will resolve an issue that is central to the validity of each claim in one stroke." *Elrod*, 2021 U.S. Dist. LEXIS 68418, at *4. A class-wide proceeding must be able to "generate common answers [to common questions of fact or law] apt to drive the resolution of the litigation." *Id.* However, there "need be only a single issue common to all members of the class." *Id.*; *see also Glazer*, 722 F.3d at 853.

The following questions of law and fact are common to the Plaintiffs and the class' claims: (i) whether Nashville Booting's failure to unboot their vehicles within one hour the booting request was negligent; (ii) whether Nashville Booting's failure to unboot their vehicles within one hour of the request constitutes trespass to chattels or conversion; (iii) whether Plaintiffs and class members suffered compensable damages, including loss of use and enjoyment of their vehicles and inconvenience damages, due Nashville Booting's failure to remove their booting devices; (iv) whether Plaintiffs and the proposed class are entitled to punitive damages and if so, in what amount; and (v) whether the Court enter an injunction requiring Nashville Booting to remove its booting devices within one hour of an unbooting request.

Plaintiffs and the class possess parallel claims based on an identical theory of factual wrongdoing by Nashville Booting (its failure to unboot the classes' vehicles within one hour of

being requested to do so). Plaintiffs and class members also experienced the same type of injury: being wrongfully deprived of the use and enjoyment of their vehicles and substantial inconvenience due to Nashville Booting's failure to timely remove boots from their vehicle. *See also infra* Section (B)(1). Accordingly, Plaintiffs have satisfied the commonality requirement. *See Elrod*, 2021 U.S. Dist. LEXIS 68418, at *3-4 (element satisfied where "questions concerning liability likely will not vary from individual to individual and are common to class members").

D. Plaintiffs' Claims are Typical of the Class.

The test for typicality is not demanding. *Gilkey v. Cent. Clearing*, 202 F.R.D. 515, 524 (E.D. Mich. 2001). A representative plaintiff's claim is typical "if it arises from the same practice or course of conduct that gives rise to the claims of other class members, and if his or her claims are based on the same legal theory." *Elrod*, 2021 U.S. Dist. LEXIS 68418 at *3; *see Senter v. Gen. Motors Corp.*, 532 F.2d 511, 524 (6th Cir. 1976) ("[t]o be typical, a representatives' claim need not always involve the same facts or law, provided there is a common element of fact or law").

Here, Plaintiff Ladd and Plaintiff Brindle's claims are typical of those of the class because their claims arise from the same conduct and material circumstances that also form the basis of each class member's claims: Nashville Booting's failure to unboot their cars within one hour of their request, and the claims are based the same legal theories. *See Elrod*, 2021 U.S. Dist. LEXIS 68418, at *3 (finding typicality where "Plaintiffs were subjected to the same call as the proposed class members, from the same Defendants, and suffered the same injury").

E. Plaintiffs and Plaintiffs' Counsel will Adequately Represent the Class.

"There are two criteria for determining whether the representation of the class will be adequate: 1) The representative must have common interests with unnamed members of the class, and 2) the representatives will vigorously prosecute the interests of the class through qualified

counsel." *Senter*, 532 F.2d at 524-525; Fed. R. Civ. P. 23(a)(4). These criteria ensure there are no conflicts of interest between the class representatives and the members of the class and that class counsel will be competent. *See In re Am. Med. Sys.*, 75 F.3d at 1083. These requirements are met here because no known conflicts of interest exist, and Plaintiffs have a common interest with the putative class (redress of Nashville Booting's illegal conduct) and will adequately protect the classes' interest. Ex. 5 ¶¶ 2, 7, 11-12, 16, 18-20; Ex. 6 ¶¶ 2, 7-15, 18, 20, 21-26. They have with putative class members.Plaintiffs are motivated in their pursuit of Plaintiffs and the putative class' goal: to establish liability, to obtain damages, and to enjoin future repeat conduct by Nashville Booting. Ex. 5 ¶¶ 16, 18, 20; Ex. 6 ¶¶ 20, 23-24, 26. Plaintiffs have actively participated in discovery and will continue to vigorously pursue the class claims throughout the remainder of the litigation process. Ex. 5 ¶¶ 15-18; Ex. 6 ¶¶ 21-24. Additionally, class counsel have considerable experience with class actions and is qualified to lead the class in litigation. Ex. 3 ¶ 34.

II. CLASS CERTIFICATION IS APPROPRIATE UNDER RULE 23(B)(3).

A. Common Questions of Liability Will Predominate, and a Class Action is Superior to Any Other Method of Adjudication.

Rule 23(b)(3) requires that common questions of law or fact predominate over questions affecting only individual class members. "'To meet the predominance requirement, a plaintiff must establish that issues subject to generalized proof and applicable to the class as a whole predominate over those issues that are subject to only individualized proof.'" *Hicks v. State Farm Fire & Cas. Co.*, 965 F.3d 452, 459-460 (6th Cir. 2020) (quoting *Young*, 693 F.3d at 544). "A class may be certified based on a predominant common issue 'even though other important matters will have to be tried separately, such as damages or some affirmative defenses peculiar to some individual class members.'" *Id.* (quoting 7AA Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure § 1778 (3d ed. 2005)). "Cases alleging a single course of

wrongful conduct are particularly well-suited to class certification." *Powers v. Hamilton Cnty Pub. Def, Comm'n*, 501 F.3d 592, 619 (6th Cir. 2007). Where "dispositive facts and law are the same as to each class member," this is "sufficient to satisfy both the commonality and predominance requirements." *Id.* Plaintiffs and class' claims are sufficiently cohesive, and appropriate for class-wide adjudication, because they involve the same dispositive factual and legal questions.

For their negligence claim, Plaintiffs allege that Defendant owed a duty of care "to have removed the boots on their vehicles within one hour of Plaintiffs calling and requesting it do so" and "Defendants breached that duty by failing to remove the boots from Plaintiffs' vehicles within one hour." MTD Order, Dkt. 37, at 6. This negligence theory is based on the "one hour" benchmark of Nashville Booting Ordinance, which created the same "constructive bailment of limited duration" as to the vehicles of Plaintiffs and all class members. *See id.* at 8-9 ("Plaintiff alleges, with apparent invocation of a straightforward common law negligence theory, that '[a]s a direct and proximate result of Nashville Booting's negligent failure to remove their booting devices by the conclusion of the involuntary/constructive bailment, Plaintiff and other members of the putative class were denied use and enjoyment of their vehicles and suffered other compensable damages.'").[15] Due to the factual and legal underpinning of Plaintiffs' theory of negligence, the class is entirely cohesive, and its claims will prevail, or fail, in unison.

Plaintiffs' negligence theory will be primarily supported by generalized proof. First, Nashville Booting's violation of Nashville Booting Ordinance is evidence of negligence, notwithstanding the Court's previous dismissal of Plaintiffs' negligence per se claim. *See Whaley*

[15] *See Aegis Investigative Grp. v. Metro. Gov't of Nashville & Davidson Cnty.*, 98 S.W.3d 159, 163 (Tenn. Ct. App. 2002) (a "constructive bailment" arises "where the [party] having possession of a chattel holds it under such circumstances . . . [imposed by] the law" and must "on principals of justice, keep it safely and restore it or deliver it to the owner" under certain conditions or within a set period of time); *Louisville & N. R. v. Conasauga River Lumber*, 25 Tenn. App. 157, 160 (Tenn. Ct. App. 1941) (when bailments are for a "definite term," the bailor has a duty to return the property "at the expiration of the [appointed] time").

v. Perkins, 2005 Tenn. App. LEXIS 431, at *24 (Tenn. Ct. App. July 21, 2005) ("'[Although] the violation of a statute or ordinance prescribing merely a rule of conduct is not negligence per se, [] it may [still] be evidence of negligence.'") (quoting 65 C.J.S. Negligence § 136 (2000)). Second, Nashville Booting's (inconsistently applied) policy of not charging unbooting fees to vehicle owners who have waited over one hour because such a wait is "excessive" and "never appropriate," further supports Plaintiffs' negligence theory. Ex. 2 116:4-11, 131:15-132:2; *see also* Ex. 4 at 7 (instructing technicians to always communicate: "I will be at your vehicle in 10-15 minutes").

The central factual and legal questions at issue for Plaintiffs' negligence claims are common for all class members. Since Plaintiffs claim that Nashville Booting breached its duty to them (and all class members) by failing to remove its boots *within one hour* (by the end of Nashville Booting's constructive bailment), the legal theory and material facts will be the same for all class members. *See* MTD Order, Dkt. 36, at 6 ("Plaintiffs allege that Defendant breached that duty by failing to remove the boots from Plaintiffs' vehicles within one hour.").

Plaintiffs and the class' conversion and trespass to chattels claims are premised on the same factual theory of wrongdoing – that Nashville Booting unlawfully failed to unboot their cars within one hour. *See* Am. Compl., Dkt. 14, ¶¶ 97, 107. As this Court previously recognized, the central dispositive question for the conversion claim is "whether. . .a reasonable jury could view Defendant's failure to remove the boots within one hour of the vehicle owners' demands as a refusal to return the vehicles." MTD Order, Dkt. 36, at 15. Since Nashville Booting failed to unboot each class members' vehicle within one hour, every class member's claim hinges on the jury's answer to that dispositive question. The Court also recognized that Plaintiffs' trespass to chattel claim is properly supported by the material fact – common to all class members – that Nashville Booting failed to remove its boots within the period of time required by Nashville Ordinance. *Id.*

at 18 ("Defendant's alleged failure to timely remove the boots as required by ordinance suffices to constitute the required alleged interference ('or intermeddlement') with Plaintiffs' vehicles and alleged deprivation of Plaintiffs' use of their vehicles for a substantial amount of time.").

Nashville Booting's recklessness – for both the conversion claim and punitive damages – is also based on generalized evidence. Plaintiffs will show that Nashville Booting's frequent and unreasonable delays in responding to unbooting requests are an expected function of its business and staffing model, and that the systemic and ongoing nature of Nashville Booting's same issues reflects indifference to its known legal obligation. *See e.g., Armalite, Inc. v. Lambert*, 544 F.3d 644, 649-650 (6th Cir. 2008) ("Although it knew that its employees were not fully and accurately completing the forms, Armalite chose not to take steps to ensure future compliance. At some point, repeated negligence becomes recklessness, and that point arrived for Armalite in 2005.").

While Nashville Booting has indicated it will oppose class certification because "any number of affirmative defenses exist as to the claims of the individual class members,"[16] "the mere mention of a defense is not enough to defeat the predominance requirement of Rule 23(b)(3)." *Bridging Cmtys v. Top Flite Fin. Inc.*, 843 F.3d 1119, 1126 (6th Cir. 2016). In discovery, Nashville Booting could not identify a *single* instance where it took longer than one hour to unboot a vehicle, but some factual circumstances nevertheless made that appropriate. Ex. 2 131:15-132:2). Nashville Booting does not even have any individualized information or any records bearing upon the reasons it failed to timely unboot class members' vehicles. *Id.* 122:18-22.

A class action is the "superior" mechanism to adjudicate the Plaintiffs and class' claims because "a threshold common issue predominates (i.e. [whether Nashville Booting wrongfully failed to unboot class members' cars within one hour]) and because Plaintiffs' ability to obtain

[16] Proposed Initial Case Mgmt. Order, Dkt. 18, at 3.

relief through individual damages suits is likely not economically feasible" given the costs of bringing individual actions. *Hicks*, 965 F.3d at 464. The economic infeasibility of class members pursuing their own individual claims belies any notion that absent class members might have a strong interest in individually controlling the prosecution of separate actions, and explains why no one else has commenced a similar lawsuit against Nashville Booting (even though many have seemingly wanted and threatened to do so). *See Davis v. Geico Cas. Co*., 2021 U.S. Dist. LEXIS 237288, at *23-25 (S.D. Ohio Dec. 13, 2021).

B. There are Multiple Manageable Ways to Determine the Classes' Damages.

Given the efficiency of litigating the common, overlapping questions of liability on a classwide basis, Plaintiffs have satisfied the predominance standard, and the proposed class should be certified regardless of how this Court prefers to handle the damages issues.[17] Regardless, the Plaintiffs propose two paths for determination of class members' damages.

This Court should permit a single jury to decide all issues, including the class' damages in aggregate. Since each class member experienced the same type of injury, and would be entitled to the same categories of damages, a single determination of classwide damages would be appropriate and a highly efficient. *See Lee v. City of Columbus*, 2009 U.S. Dist. LEXIS 132581, at *11-16 (S.D. Ohio Sept. 9, 2009) (allowing proof of aggregate damages would be beneficial to the Court and the parties in that it would conserve their resources and allow a more timely and efficient conclusion to this action"); *In re Cardizem CD Antitrust Litig.*, 200 F.R.D. 326, 350 (E.D. Mich. 2001) ("aggregate computation of class monetary relief is lawful and proper."). Plaintiffs and the

[17] *See In re Whirlpool*, 722 F.3d at 850 ("When adjudication of questions of liability common to the class will achieve economies of time and expense, the predominance standard is generally satisfied even if damages are not provable in the aggregate.") ("recognition that individual damages calculations do not preclude class certification under Rule 23(b)(3) is well nigh universal, . . . it remains the 'black letter rule' that a class may obtain certification under Rule 23(b)(3) when liability questions common to the class predominate over damages questions unique to class members.")

class seek to recover damages for lost use and enjoyment of their vehicles,[18] and for the substantial inconvenience of having to wait by their vehicles for Nashville Booting to come.[19] [20]

The economic aspect of class members' damages can be computed in aggregate fairly easily because the lost use and enjoyment of property "may be measured to a large extent by the rental value of the property." *Pate v. Martin*, 614 S.W.2d 46, 48 (Tenn. 1981).[21] The average total cost of a rental car in Nashville is approximately $115. *See* Ex. 11 ¶ 10. Since the relevant market universally charges a daily rate, the amount would be the same for all class members who waited twenty-four hours or fewer for boot removal. *See id.* at ¶ 6.

The jury may also award the class aggregate "inconvenience" damages based on representative testimony from Plaintiffs and class members.[22] *See Lee*, 2009 U.S. Dist. LEXIS 132581, at *11-16 (granting plaintiff's motion for class-wide damages to be assessed by the jury in based upon testimony from representative class members as to the impact of defendant's disclosure of their personal medical information). This approach is particularly appropriate here because the nature of the inconvenience to each class members was essentially the same: they all

[18] *See Parker v. Clayton*, 2019 Tenn. App. LEXIS 451, at *29 (Tenn. Ct. App. Sept. 10, 2019).
[19] *Richardson v. Stacey*, 2002 Tenn. App. LEXIS 588, at *17 (Tenn. Ct. App. Aug. 13, 2002) ("A party subjected to a nuisance may be entitled to several types of damages which include . . . personal damages, such as inconvenience and emotional distress, and injury to the use and enjoyment of the property."); *Nashville, C. & S. L. R. Co. v. Price*, 125 Tenn. 646, 652, 656 (Tenn. 1911) (affirming damages against railroad company who wrongfully ejected passenger from sleeper car based on testimony that plaintiff's removal from the car "caused her considerable inconvenience and suffering" and noting that a plaintiff should not be "inconvenienced, discommoded, and damaged without redress"); *Freeman v. Norfolk S. Corp*., 2007 U.S. Dist. LEXIS 53967, *6-7 (E.D. Tenn. 2007) ("inconvenience damages can be properly assessed against the defendants" where plaintiff was "forced to contend with complications directly from a disruption of his life; and unable to perform normal obligations" due to defendant's interference with his property).
[20] Although the Court "disregarded" Plaintiffs' claim for such damages "for purposes of [Defendant's] Motion [to Dismiss]," *see* MTD Order, Dkt 37, at 19, n. 15, the Court has not, and should not preclude the Plaintiffs from pursuing this category of damages at trial after Plaintiffs clearly identified these categories of damages in discovery. *See Clark v. McDonald's.*, 213 F.R.D. 198, 231 (D.N.J. Mar. 3, 2003) ("The disclosure of compensatory damages categories is an initial discovery requirement, . . .not a pleading requirement."); Ex. 12 at 1-2 and Ex. 13 at 1-2.
[21] This measure is valid regardless of whether class members rented a replacement vehicle. *See Tinker v. Wix Co.*, 1986 Tenn. App. LEXIS 2939, at *9 (Tenn. Ct. App. Apr. 22, 1986).
[22] The Parties could confer and agree on a process for selecting appropriate representative class members.

experienced an unexpected, and extended, disruption to their lives and had to put other obligations and activities on hold waiting for Nashville Booting to unboot their vehicle.

Rule 23(c)(4) permits certification "with respect to particular issues" and under Rule 23(b)(2) allows certification for injunctive relief. This Court could certify the class for an initial phase of trial to determine classwide liability, punitive damages, Plaintiffs' damages, and injunctive relief, pursuant to Rule 23(c)(4) and 23(b)(2) and defer as to the class' damages. *See Sterling v. Velsicol Chem. Corp.*, 855 F.2d 1188, 1197 (6th Cir. 1988) ("No matter how individualized the issue of damages may be, these issues may be reserved for individual treatment with the question of liability tried as a class action."); *Tipton v. CSX Transp., Inc.*, 2017 U.S. Dist. LEXIS 227318, at *60 (E.D. Tenn. 2017) (ordering similar bifurcated trial plan for class action); *Sterling v. Velsicol Chem. Corp.*, 647 F. Supp. 303, 347 (W.D. Tenn. 1986) (fashioning similar trial plan with punitive damages in phase one). If no liability is found, the class would be bound. If liability is found, this Court could consider injunctive relief, and the Plaintiffs' damages could serve as a bellweather for settlement. *See e.g., Suchanek v. Sturm Foods, Inc.*, 764 F.3d 750, 760 (7th Cir. 2014) (noting that if the class prevails on liability, "the case would probably be quickly settled."). Even without a settlement, the Court would have a number of case management tools to efficiently manage proceedings to determine class members' damages. *See* Ex. 14.

CONCLUSION

For the foregoing reasons, the Court should certify the proposed class, appoint Plaintiffs as class representatives, and appoint Kotchen & Low LLP as counsel.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on June 17, 2022, a true and correct copy of the foregoing filing was served upon all counsel of record through the ECF electronic filing system.

/s/ Mark Hammervold