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10 *Co-Lead Counsel for Plaintiffs*

11  
12 UNITED STATES DISTRICT COURT  
13 CENTRAL DISTRICT OF CALIFORNIA  
14

15 *In re ZF-TRW Airbag Control Units*  
*Products Liability Litigation*

16 ALL CASES AGAINST TOYOTA  
17

MDL No. 2905

Judge: John A. Kronstadt

18 **MOTION FOR FINAL APPROVAL**  
**OF CLASS SETTLEMENT, AND**  
**AWARD OF ATTORNEYS' FEES,**  
**EXPENSES, AND SERVICE**  
**AWARDS TO SETTLEMENT CLASS**  
**REPRESENTATIVES**  
19  
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21 Date: November 16, 2023

22 Time: 11:00 a.m.

23 Dept.: Courtroom 10B  
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**NOTICE OF MOTION AND MOTION**

**TO ALL THE PARTIES AND COUNSEL OF RECORD:**

PLEASE TAKE NOTICE that on November 16, 2023 at 11:00 a.m. or at such other date and time as the Court may set, in Courtroom 10B of the United States District Court for the Central District of California, Settlement Class Counsel, on behalf of a proposed Settlement Class of owners and lessees of certain Toyota vehicles, will and hereby do move the Court for an order and judgment granting final approval of the Class Action Settlement and the motion for attorneys’ fees, costs, and service awards, and appointing Settlement Class Counsel and Settlement Class Representatives under Fed. R. Civ. P. 23(g)(1).

This Motion is based on:

- (1) this Notice of Motion and Motion;
- (2) the Memorandum of Points and Authorities below;
- (3) the Joint Declaration of Co-Lead Counsel and exhibits thereto, filed concurrently herewith;
- (4) the Declaration of Jeanne Finegan, filed concurrently herewith;
- (5) the Declaration of Court-Appointed Settlement Special Master Patrick Juneau, previously filed in connection with Plaintiffs’ Motion for Preliminary Approval (ECF 747-4);
- (6) the Declaration of Kirk D. Kleckner, filed concurrently herewith;
- (7) the Declaration of Professor Brian T. Fitzpatrick, filed concurrently herewith;
- (8) the records, pleadings, and papers filed, and documents produced in, this litigation; and
- (9) such other documentary and oral evidence or argument as Settlement Class Counsel may present to the Court at the hearing of this Motion.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Four years of hard-fought litigation have paid off for the Toyota Class  
4 Members: in exchange for a release of their claims, they will receive settlement  
5 benefits worth more than \$147,800,000. The Settlement is non-reversionary. It  
6 includes a \$65 million cash payment by Toyota, a \$3.5 million outreach program,  
7 and a \$10 commitment from Toyota to provide future loaner vehicles and  
8 reimbursements (*see* ECF 770 (“Prelim. Order”) at 25-26); and an Extended New  
9 Parts Warranty valued at \$69,300,000, with still additional prospective value in the  
10 event of a future recall for additional Toyota Class Vehicles. *See* Declaration of  
11 Kirk Kleckner (“Kleckner Decl.”), § 2(a)-(b).

12 The Settlement is an outstanding result for the Toyota Class Members.<sup>1</sup> It  
13 compensates them for economic losses and ensures that the Recalled Vehicles  
14 receive the available Recall Remedy without delay or inconvenience. Specifically,  
15 the Settlement provides payments to Toyota Class Members through: (a)  
16 reimbursement of reasonable out-of-pocket expenses related to obtaining the Recall  
17 Remedy for a Recalled Vehicle, and (b) potential residual distribution payments of  
18 up to \$250 for each Class Member, regardless of whether or not they incurred any  
19 out-of-pocket expenses. *See* Settlement Agreement (“SA”), ECF 756-3, § III.B-C.

20 The Settlement provides significant, valuable benefits to Toyota Class  
21 Members above and beyond cash payments, including:

- 22 • An Extended New Parts Warranty, SA § III.F, valued by a leading  
23 warranty expert at \$69,300,000 in economic value for Toyota Class  
24 Members with Recalled Vehicles. *See* Kleckner Decl. § 2(a)-(b).
- 25 • A comprehensive Outreach Program designed to significantly increase  
26 Recall Remedy completion rates for the Recalled Vehicles. SA § III.G.

27 \_\_\_\_\_  
28 <sup>1</sup> Capitalized terms not defined herein have the same definitions and meanings used  
in the Settlement Agreement.

1 The Court found that this program provides a \$3.5 million benefit to  
2 the Class. Prelim. Order at 26.

- 3 • A Future Rental Car Reimbursement, Loaner Vehicle, and Outreach  
4 Program to require that: (a) if a Settlement Class Member with a  
5 recalled Toyota Subject Vehicle seeks a Recall Remedy, he or she will  
6 receive a loaner vehicle (or reimbursement for reasonable rental car  
7 costs), and (b) if the unrecalled Toyota Subject Vehicles are recalled in  
8 the future, Toyota will implement the recall and ease any  
9 inconvenience for Toyota Class Members in obtaining the ACU recall  
10 repair. SA § III.H. The Court previously found that this benefit  
11 provides \$10 million of value to the Toyota Class Members. Prelim.  
12 Order at 26.
- 13 • An innovative, ten-year-long Settlement Inspection Program, which  
14 will benefit all Toyota Class Members by mandating procedures for the  
15 active investigation and documentation of airbag non-deployments in  
16 Subject Vehicles that may be caused by electrical overstress. SA  
17 § III.E.

18 In sum, this proposed resolution—reached after four years of litigation and  
19 investigation, and a year of intensive settlement negotiations overseen by the Court-  
20 appointed Settlement Special Master—provides comprehensive, valuable benefits  
21 that address the Toyota Class Members’ interests in numerous, complementary  
22 ways. This is a remarkable result, particularly given that Plaintiffs have not yet  
23 sustained RICO or fraud claims against Toyota.

24 The responses so far indicate that the Class agrees. With several years left in  
25 the three-year claims period—designed to allow as many Toyota Class Members as  
26 possible to obtain a Recall Repair and submit claims—the Class is already showing  
27 its support for the Settlement. The Notice Administrator reports “encouraging”  
28 metrics that portend strong participation and no objections. *See* § III.A.5.b, *infra*.

1 Settlement Class Counsel worked thousands of hours (worth more than \$10  
2 million) on a purely contingent basis to achieve this result. To compensate them for  
3 their significant investment of time, money and risk, Class Counsel seek \$25  
4 million in fees—calculated using the capped, discounted hourly rates set forth in the  
5 Common Benefit Order entered by the Court—and \$472,730.40 in costs.

6 As described in detail below, the requested fees are approximately 16.9% of  
7 the Settlement’s guaranteed economic value to the class, the relevant metric for fee  
8 analysis in the Ninth Circuit.<sup>2</sup> *See In re Zoom Video Commc'ns, Inc. Privacy Litig.*,  
9 No. 20-CV-02155-LB, 2022 WL 1593389, at \*10 (N.D. Cal. Apr. 21, 2022) (both  
10 “monetary and non-monetary benefits” contribute to settlement value); *accord*  
11 Declaration of Brian Fitzpatrick T. Fitzpatrick (“Fitzpatrick Decl.”) ¶¶ 12-13, 27.  
12 Such a fee award is comfortably in line with awards in this Circuit. *See Hernandez*  
13 *v. Dutton Ranch Corp.*, No. 19-CV-00817-EMC, 2021 WL 5053476, at \*6 (N.D.  
14 Cal. Sept. 10, 2021) (collecting cases and finding that “[d]istrict courts within this  
15 circuit . . . routinely award attorneys’ fees that are one-third of the total settlement  
16 fund . . . [s]uch awards are routinely upheld by the Ninth Circuit”);<sup>3</sup> Fitzpatrick  
17 Decl. ¶¶ 17, 19-23.<sup>4</sup> The reasonableness of the requested fees is further confirmed

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18  
19 <sup>2</sup> This percentage is calculated by dividing \$25 million in attorneys’ fees into a  
20 denominator of \$147.8 million in settlement value. The denominator includes: the  
21 \$78.5 million in the Settlement Amount, plus \$69.3 million in economic value from  
22 the Extended Warranty. *See* Kleckner Decl. § 2(a)-(b). The \$147.8 million number  
is conservative — it does not include the potential value attributed to the extended  
warranty for the unrecalled Toyota Class Vehicles.

23 <sup>3</sup> Internal citations are omitted throughout unless otherwise indicated.

24 <sup>4</sup> Professor Fitzpatrick even more conservatively calculates the percentage recovery  
25 using a denominator of \$134.3 million, comprised of: \$69.3 million from the  
26 Extended Warranty, plus \$65 million, which is the cash compensation to the Class  
27 (exclusive of the commitments from Toyota for loaner vehicles and rental  
28 reimbursements). This yields a percentage of approximately 18.6% for the  
attorneys’ fees request. Professor Fitzpatrick’s calculations show that even when  
the settlement value is construed to be “as conservative as possible,” the percentage  
of the recovery is still well within a reasonable range. Fitzpatrick Decl. ¶ 18.

1 by a lodestar cross-check that yields a routine multiplier of 2.17. *See* § IV.A.5.d,  
2 *infra*; *see also* Fitzpatrick Decl. ¶ 29 (this requested multiplier is “*below* the  
3 lodestar multipliers that are typical in complex cases with large recoveries like the  
4 settlement here”).

5 Finally, the work performed by the Settlement Class Representatives made  
6 this Settlement possible. Settlement Class Counsel seek an award of \$2,500 each  
7 for Plaintiffs’ commendable service in this litigation.

8 Plaintiffs respectfully ask the Court to certify the Settlement Class, grant  
9 final approval to the Settlement, approve an aggregate award of \$25,472,730.40  
10 million in attorneys’ fees and costs to be allocated by Co-Lead Counsel among  
11 Participating Counsel<sup>5</sup> for their common benefit work devoted to obtaining this  
12 significant result, and award the Settlement Class Representatives \$2,500 each as  
13 service awards for their time and commitment to this important case.

14 **II. BACKGROUND**

15 The Court is familiar with the history of this litigation, much of which is  
16 detailed in Plaintiffs’ preliminary approval briefing and in the Court’s Preliminary  
17 Approval Order. *See* ECF 747 at 2-8; Prelim. Order at 1-2. In the interest of  
18 efficiency, Plaintiffs incorporate those briefs and the Order by reference and  
19 provide the following summary of key points.

20 **A. The Settlement provides substantial compensation to Toyota Class**  
21 **Members.**

22 As discussed above, the proposed Settlement provides substantial and  
23 valuable benefits to the Class. This includes \$78.5 million in cash and commitments  
24 from Toyota, comprised of a \$65 million cash payment to the settlement fund, plus  
25 a commitment from Toyota to spend \$3.5 million on a comprehensive Outreach  
26 Program to increase Recall participation and improve Subject Vehicle safety (SA  
27 § III.G.2), and to provide a Future Rental Car Reimbursement, Loaner Vehicle and

28 <sup>5</sup> Participating Counsel is defined in the Court’s March 18, 2020 Common Benefit  
Order. ECF 111 at 2.

1 Outreach Program to ensure that in the event of a future recall of the Unrecalled  
2 Vehicles, recall repairs are performed with minimal inconvenience for Toyota Class  
3 Members (SA § III.H). The latter commitment is reasonably estimated to provide  
4 \$10 million in value for the Class. *See* ECF 758 and 758-1 (Toyota’s supplemental  
5 filing with underlying data that supports the cost of these two programs). Both of  
6 these commitments provide calculable monetary benefits to the Class. *See* Prelim.  
7 Order at 26 (“the total recovery to the class can reasonably be calculated to have a  
8 value of at least \$78.5 million, including the Settlement Fund, the \$10 million credit  
9 for future loaner vehicles and outreach, and the \$3.5 million to be spent on the  
10 current Outreach Program”).

11 In addition to the \$78.5 million, the Settlement provides a long-term  
12 Extended Warranty for any Class member who obtains a recall repair for a Recalled  
13 Vehicle. SA § III.F. Economist Kirk Kleckner has calculated the value of the  
14 Extended Warranty as \$69,300,000 for Toyota Class Members with Recalled  
15 Vehicles, and a prospective value of at least 60% of that amount for Toyota Class  
16 Members with Unrecalled Vehicles. Kleckner Decl. ¶¶2(a)-(b). Courts have  
17 accepted and relied upon Mr. Kleckner’s valuations in a number of large  
18 automotive class action settlements like this one. *See, e.g., In re Volkswagen & Audi*  
19 *Warranty Extension Litig.*, 89 F. Supp. 3d 155, 169 (D. Mass. 2015) (accepting  
20 Kleckner’s warranty valuations); *In re Toyota Motor Corp. Unintended*  
21 *Acceleration Mktg., Sales Practices, & Prods. Liab. Litig.*, No. 810 ML 02151J  
22 VSF MOX, 2013 WL 12327929, at \*9 n.10 (C.D. Cal. July 24, 2013) (finding  
23 Kleckner’s warranty valuation to be “both reliable and relevant”).<sup>6</sup>

24 \_\_\_\_\_  
25 <sup>6</sup> *See also In re Takata Airbags Products Liability Litig.*, Case No. 15-MD-2599  
26 (S.D. Fla.), ECF 2162 (order granting motion for final approval of BMW  
27 settlement, supported by ECF 2033-2, declaration of Kirk Kleckner), ECF 2385,  
28 2256-4 (same for and Nissan settlements); ECF 3121 (order denying motion to  
exclude testimony of Kirk Kleckner on warranty valuation). *In re Chrysler-Dodge-  
Jeep Ecodiesel Mktg., Sales Practices, & Prods. Liab. Litig.*, No. 17-MD-02777-

*Footnote continued on next page*

1 Finally, the Settlement also creates an innovative ten-year-long Settlement  
2 Inspection Program, which benefits all Toyota Class Members by mandating  
3 procedures for the active investigation and documentation of airbag non-  
4 deployments that may be caused by electrical overstress. SA § III.E.

5 Importantly, this Settlement is non-reversionary. If there are any funds  
6 remaining after all valid, complete, and timely claims are paid, the Settlement  
7 requires a redistribution of the remaining funds to Toyota Class Members unless  
8 and until it is economically infeasible to do so, at which time any modest remaining  
9 amount will be directed to *cy pres* recipients, subject to Court approval. SA § III.C  
10 ¶ 2. This ensures that *all* of the cash secured by the Settlement will inure to the  
11 benefit of the Class and the interests advanced in this litigation.

12 **B. The Case was complex, risky, and thoroughly investigated.**

13 The valuable settlement compensation for the Class was not easily obtained,  
14 as evidenced in part by the *four years* of work it took to reach this result.

15 Indeed, this case presented a unique set of facts and complex issues from the  
16 beginning. The consolidated litigation traces back to 2019, when NHTSA expanded  
17 its investigation into ZF-TRW's DS84 ACUs to include Toyota and other  
18 automobile manufacturers. Settlement Class Counsel and other attorneys filed 26  
19 class action lawsuits alleging that Toyota and other Defendants knowingly  
20 misrepresented and withheld information about the relevant ACU Defect from  
21 consumers who purchased and leased Toyota Class Vehicles. Since then, Settlement  
22 Class Counsel have dedicated more than four years to the extensive investigation,  
23 litigation, and discovery of the complex technologies and legal issues in this case.

24 Those years brought significant challenges and a commensurate amount of  
25 work to meet them. After the initial centralization into this MDL, the Court tasked  
26 Co-Lead Counsel with filing a consolidated complaint. *See* ECF 106. This was no  
27 EMC, 2019 WL 2554232, at \*1 (N.D. Cal. May 3, 2019); ECF 561 (order granting  
28 motion for final approval of settlement, supported by ECF 491-4, declaration of  
Kirk Kleckner on warranty valuation).



1 small feat given that Plaintiffs asserted claims against six vehicle manufacturer  
2 groups and three component supplier groups, a total of *twenty-nine* Defendants—  
3 including four Toyota entities—based on Plaintiffs’ investigation at the time. In the  
4 face of a remarkable aggregation of defendants, Plaintiffs thoroughly investigated  
5 and aggressively pursued their claims, as evidenced by the detailed factual  
6 allegations and legal claims in the 564-page Consolidated Consumer Class Action  
7 Complaint. *See* ECF 119.

8 In response to the Consolidated Complaint, Toyota filed a motion: (a) to stay  
9 the Toyota Plaintiffs’ claims under the “primary jurisdiction” doctrine while  
10 NHTSA investigated the ACU Defect and evaluated Toyota’s recall, and (b) to  
11 sever claims against Toyota from the other Vehicle Manufacturer Defendant groups  
12 in this consolidated MDL. ECF 191.

13 While the motions to stay and sever were pending, Plaintiffs and Toyota  
14 continued to engage in other substantial motion practice. First, on July 27, 2020,  
15 Toyota filed a motion to dismiss pursuant to Rule 12(b)(6),<sup>7</sup> and Toyota Motor  
16 Corporation (Toyota Japan) filed a motion to dismiss pursuant to Rule 12(b)(2).  
17 ECF 214. Toyota also joined in the Defendants’ omnibus 50-page Joint Motion to  
18 Dismiss. ECF 208. Plaintiffs researched, drafted, and filed approximately 90 pages  
19 of extensive, consolidated opposition briefing on the myriad challenges raised  
20 therein. ECF 281, 289. This Court later granted part of Toyota’s motion and the  
21 Joint Motion, and ordered Plaintiffs to amend. ECF 396.

22 While the Parties<sup>8</sup> briefed the pleading challenges, Toyota *also* filed a motion  
23 to compel arbitration on December 10, 2020, which Plaintiffs successfully opposed,

24 <sup>7</sup> Toyota Motor Corporation provisionally joined the Toyota Motion pending  
25 resolution of its Rule 12(b)(2) challenge. *See* ECF 214 (Toyota Motor Corporation’s  
26 Motion to Dismiss for Lack of Personal Jurisdiction Pursuant to Rule 12(b)(2) and  
27 Toyota’s Motion to Dismiss Pursuant to 12(b)(6)).

28 <sup>8</sup> Reference to the “Parties” herein refers to the settling parties, the Toyota  
Defendants and the Toyota Plaintiffs; the Settlement does not create obligations for  
or release the remaining Defendants.

1 and this Court denied. ECF 305, 374.

2 Alongside these lengthy and complicated briefing efforts, the Parties also  
3 engaged in extensive document and information exchanges. This included the  
4 production and review of approximately 145,000 pages of documents and 4,500  
5 native files from Toyota (including Excel spreadsheets, video/audio files, etc.),  
6 many containing technical presentations and data that Toyota provided to NHTSA.  
7 Plaintiffs propounded requests for production and interrogatories to the Toyota  
8 Defendants, jurisdictional discovery on Toyota Motor Corporation, and responded  
9 to the discovery requests that Toyota served on Plaintiffs. The Parties met and  
10 conferred extensively regarding this discovery and a variety of other topics,  
11 including Toyota's ESI disclosures. Toyota also produced relevant documents that  
12 aided in the Parties' settlement discussions.

13 On May 26, 2022, Plaintiffs filed their three-volume, 1,335-page  
14 Consolidated Amended Class Action Complaint (ACAC), which reflected their  
15 deep investigation into the technology, mechanics, and other issues around the ACU  
16 Defect; plus evidence of Defendants' knowledge of the defect, all gained through  
17 years of litigation and discovery and their own independent investigation and  
18 experts. ECF 477.

19 After Plaintiffs filed the operative ACAC, the Court appointed Patrick A.  
20 Juneau as Settlement Special Master pursuant to Fed. R. Civ. P. Rule 53. ECF 473.  
21 Thereafter, the Parties commenced a series of settlement discussions and related  
22 information exchanges that facilitated more than a year of difficult negotiations.  
23 Those negotiations ultimately resulted in the Settlement Agreement now before the  
24 Court.

### 25 **III. ARGUMENT**

#### 26 **A. The Settlement is fair, reasonable, and adequate.**

27 A "district court's task in reviewing a settlement is to make sure it is 'not the  
28 product of fraud or overreaching by, or collusion between, the negotiating parties,

1 and that the settlement, taken as a whole, is fair, reasonable and adequate to all  
2 concerned.” *In re Volkswagen “Clean Diesel” Mktg., Sales Practices, & Prods.*  
3 *Liab. Litig.*, 895 F.3d 597, 617 (9th Cir. 2018) (quoting *Officers for Justice v. Civil*  
4 *Serv. Comm’n*, 688 F.2d 615, 625 (9th Cir. 1982)).

5 As detailed above, the Settlement provides significant, comprehensive  
6 benefits to the Settlement Class. This result, and all of the factors set forth in Fed.  
7 R. Civ. P. 23(e)(2), weigh strongly in favor of final approval. Indeed, the Court held  
8 in its Preliminary Approval Order that “a consideration of the applicable factors  
9 demonstrates that the Settlement Agreement is sufficiently fair, reasonable and  
10 adequate to warrant preliminary approval.” Prelim. Order at 22. The same  
11 conclusions support final approval here.

12 **1. Rule 23(e)(2)(A): Settlement Class Counsel and the**  
13 **Settlement Class Representatives have and will continue to**  
14 **zealously represent the Class.**

15 Settlement Class Counsel and the Settlement Class Representatives fought  
16 hard to protect the interests of the Class. These efforts resulted in the Settlement.  
17 See § II.A, *supra*. As the outcome reflects, Settlement Class Counsel showed  
18 dedication to investigating, prosecuting, and resolving this action over the course of  
19 nearly four years. See Fed. R. Civ. P. 23(e)(2)(A).

20 As detailed above, Settlement Class Counsel exerted significant effort to  
21 uncover the facts to advance and refine the Class claims. This includes the pursuit  
22 and review of substantial discovery from Toyota, along with discovery from other  
23 Defendants relevant to the Toyota Plaintiffs’ claims—coupled with Plaintiffs’ own  
24 investigative efforts and retention of technical experts. This research and  
25 investigation included review and synthesis of the tens of thousands of documents  
26 and electronically-stored information produced to date, which is reflected in the  
27 technical, evidence-based details in the 1,300+ page ACAC.

28 Settlement Class Counsel also fielded defensive pleading challenges from  
every angle—including researching, drafting, and filing approximately 90 pages of

1 extensive opposition briefing in response to Rule 12 challenges, a process that  
2 fleshed out the strengths and vulnerabilities of Plaintiffs' claims. Settlement Class  
3 Counsel were therefore well-positioned to evaluate the case and to negotiate a fair  
4 and reasonable Settlement. *See Ontiveros v. Zamora*, 303 F.R.D. 356, 371 (E.D.  
5 Cal. 2014). They have done so.

6 The Settlement Class Representatives are likewise actively engaged. Each  
7 has seen this litigation through the course of several years. These Representatives  
8 support the agreement on behalf of the Class, and remain willing to protect the  
9 Class until the Court finally approves the Settlement and Settlement administration  
10 is complete. Co-Lead Decl. ¶ 8. The Class was and remains well represented.

11 **2. Rule 23(e)(2)(B): The Settlement is the product of good faith,**  
12 **evidence-backed, and arm's-length negotiations.**

13 As the Court observed in granting preliminary approval, the Settlement arose  
14 out of intensive negotiations overseen by the Court-appointed Settlement Special  
15 Master Juneau, and there is "no evidence of fraud, overreaching, or collusion  
16 among the parties." Prelim. Order at 20; *see also* Fed. R. Civ. P. 23(e)(2)(B).

17 Negotiations leading up to the Settlement continued for more than a year. The  
18 lengthy timeframe reflects the detailed and technical nature of the negotiations, and  
19 efforts to inform and support them through a parallel investigatory process and  
20 exchanges of documents and information. With negotiations ongoing, and as  
21 described above (§ II.B), Defendants in this litigation produced more than a million  
22 pages of documents relevant to Plaintiffs' claims and the relevant defect in this  
23 case. Co-Lead Decl. ¶ 4. Toyota itself produced approximately 145,000 pages of  
24 documents, as well as approximately 4,500 native files including excel  
25 spreadsheets, video and audio files. Settlement Class Counsel have reviewed and  
26 analyzed relevant documents produced by Toyota, the other Defendants, and  
27 material they obtained through their own investigative efforts, in addition to the  
28

1 responses to multiple sets of interrogatories and requests for admission served on  
2 multiple Defendants, and other confirmatory discovery. *Id.* ¶ 5.

3 This robust exchange of information and documents further demonstrates  
4 that the Settlement was reached in a procedurally fair manner between well-  
5 informed parties. *See Wahl v. Yahoo! Inc.*, No. 17-CV-02745-BLF, 2018 WL  
6 6002323, at \*4 (N.D. Cal. Nov. 15, 2018) (granting final approval of class  
7 settlement where the parties had exchanged “sufficient information to evaluate the  
8 case’s strengths and weaknesses”); *see also* William B. Rubenstein et al.,  
9 4 Newberg and Rubenstein on Class Actions § 13:49 (5th ed. 2012) (extensive  
10 exchange of information shows “the parties have a good understanding of the  
11 strengths and weaknesses of their respective cases and hence that the settlement’s  
12 value is based upon such adequate information”); *In re Anthem, Inc. Data Breach*  
13 *Litig.*, 327 F.R.D. 299, 320 (N.D. Cal. 2018) (discovery exchanged gave the parties  
14 “a good sense of the strength and weaknesses of their respective cases” and was  
15 “indicative of a lack of collusion”); *Elder v. Hilton Worldwide Holdings, Inc.*, No.  
16 16-CV-00278-JST, 2021 WL 4785936, at \*7 (N.D. Cal. Feb. 4, 2021) (“[T]he  
17 extent of discovery completed supports approval of a proposed settlement” and  
18 shows “both plaintiffs and defendants ha[ve] a clear view of the strengths and  
19 weaknesses of their cases.”); *Ontiveros*, 303 F.R.D. at 371 (granting final approval  
20 where class counsel had “conducted discovery and non-discovery investigation”).

21 Likewise, Settlement Special Master Juneau’s oversight and guidance  
22 demonstrates the fair and arm’s length nature of the negotiations. “Settlements  
23 reached with the help of a mediator are likely non-collusive.” *Evans v. Zions*  
24 *Bancorp., N.A.*, No. 2:17-CV-01123 WBS DB, 2022 WL 3030249, at \*7 (E.D. Cal.  
25 Aug. 1, 2022); *see also* Prelim. Order at 20 (noting Special Master Juneau’s opinion  
26 that “the outcome . . . is the result of a fair, thorough, and fully-informed arms-  
27 length process between highly capable, experienced and informed parties and  
28 counsel.”).

1 Finally, the Settlement is non-reversionary, meaning that *none* of the value  
2 obtained for the Class will revert to Toyota if unclaimed. This, too, shows a lack of  
3 collusion and supports approval. *See* Prelim. Order at 20.

4 **3. Rule 23(e)(2)(C): The Settlement represents a fair**  
5 **compromise for substantial compensation.**

6 Avoiding years of additional, risky litigation in exchange for immediate and  
7 significant benefits is a principled compromise that works to the clear benefit of the  
8 Class. *See* Fed. R. Civ. P. 23(e)(2)(C). In short, the Settlement provides the Class  
9 significant value now, not years from now (if ever). *See In re Toys “R” Us-*  
10 *Delaware, Inc.—Fair & Accurate Credit Transactions Act (FACTA) Litig.*, 295  
11 F.R.D. 438, 453 (C.D. Cal. 2014) (“Estimates of a fair settlement figure are  
12 tempered by factors such as the risk of losing at trial, the expense of litigating the  
13 case, and the expected delay in recovery (often measured in years).”

14 As noted above, the Agreement secures a non-reversionary Settlement  
15 Amount of \$78.5 million, inclusive of commitments, to compensate the Class. It  
16 provides significant, relevant benefits to Toyota Class Members above and beyond  
17 those payments too, including a valuable long-term Extended New Parts Warranty.  
18 All Toyota Class Members also stand to benefit from the innovative Settlement  
19 Inspection Program, which will ensure investigation and documentation of relevant  
20 incidents in Subject Vehicles for ten years.

21 The compensation available to Toyota Class Members represents a material  
22 portion of Plaintiffs’ economic damages attributable to Toyota, while Plaintiffs  
23 continue to seek damages from the ZF and ST Defendants. Plaintiffs’ damages will  
24 be measured by calculating the difference in value between the Class Vehicles as  
25 marketed and the defective Class Vehicles actually received. ACAC ¶ 1456. A  
26 precise calculation of that difference will ultimately involve expert testimony at a  
27 later stage of this ongoing litigation. However, other forms of available data provide  
28 some benchmarks of the general scope of the economic damages due to the ACU

1 Defect. Market evidence shows that there is a difference in price attributable to  
2 variations in vehicle safety system functionality. For example, a 2011 Jeep  
3 Wrangler sold with seat-mounted, front side airbags is \$500 more expensive than  
4 the same model without them. Of course, the addition of side mounted airbags  
5 makes the vehicle safer, but the lack of side mounted airbags is not comparable to  
6 the risk of airbag failure and other malfunctions due to the ACU Defect. Regardless,  
7 this market data point shows that material economic differences do indeed result  
8 from differences in the effectiveness of vehicle safety systems. ACAC ¶ 1457. In  
9 another example, in the *Takata* airbag litigation, Plaintiffs’ experts performed a  
10 conjoint analysis and found that the overpayment percentage for vehicles with the  
11 dangerous airbag defect at issue in that case (which results in shards of metal  
12 shooting through the passenger compartment) was approximately ten percent of the  
13 vehicle purchase price. ACAC ¶ 1458. Again, the Takata defect is not identical to  
14 the ACU Defect here such that damages could be directly compared at this stage,  
15 but the results there provide yet another reference for the kinds of economic losses  
16 that result from differences in vehicle safety.

17 Plaintiffs’ actual damages in this case may, at the appropriate juncture and  
18 with expert opinion, differ materially from either or both of these figures.<sup>9</sup> In any  
19 event, the compensation and benefits available under the Settlement offer a material  
20 amount of either figure. Importantly, as noted above, the benefits that the  
21 Settlement confers upon the Toyota Class Members reflects just one of three  
22 defendant groups from whom the Toyota Plaintiffs seek to recover their economic  
23 loss damages incurred when they purchased or leased Toyota Class Vehicles with  
24 the ACU Defect. The Toyota Plaintiffs will continue to pursue the portions of their  
25 damages attributable to the ZF and ST Defendants as well, which are significant.

26 \_\_\_\_\_  
27 <sup>9</sup> Treble damages, which are available under RICO, do not traditionally factor into  
28 settlement value assessment. *Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 964 (9th  
Cir. 2009).

1 The recovery obtained from Toyota is a notable result for the compromise of  
2 contested claims against one of several potentially liable defendant corporate  
3 families.

4 In addition to the potential damages in this case, the recovery here is also  
5 well in line with that recently approved in automotive defect cases in this Circuit  
6 and others. *See Banh v. Am. Honda Motor Co., Inc.*, No. 2:19-CV-05984-RGK-AS,  
7 2021 WL 3468113, at \*7 (C.D. Cal. June 3, 2021) (“The settlement adequately and  
8 fairly compensates class members. They will receive automatic benefits (like the  
9 warranty extension and Infotainment System Online Resource), and they will have  
10 the opportunity to file claims for added relief in a streamlined process.”); *Brightk*  
11 *Consulting Inc. v. BMW of N. Am., LLC*, No. SACV 21-02063-CJC (JDEx), 2023  
12 WL 2347446, at \*2 (C.D. Cal. Jan. 3, 2023) (extended warranty and out-of-pocket  
13 costs); *In re Takata Airbag Prods. Liab. Litig.*, No. 14-CV-24009, 2022 WL  
14 1669038, at \*1 (S.D. Fla. Apr. 4, 2022) (approving Volkswagen settlement as the  
15 latest in several similar settlements in the *Takata* MDL).

16 The settlement reflects a fair, reasonable, and adequate compromise of  
17 Plaintiffs’ claims, especially considering (i) the costs, risks, and delay of trial and  
18 appeal and (ii) the effectiveness of the proposed distribution plan. *See* Fed. R. Civ.  
19 P. 23(e)(2)(C). This Court found the same in its Preliminary Approval Order.  
20 Prelim. Order at 20-21.

21 a. **The Settlement mitigates the risks, expenses, and**  
22 **delays the Class would bear with continued litigation.**

23 Plaintiffs believe in the strength of their case and were prepared to take it all  
24 the way to trial. But many hurdles lay ahead. The Settlement benefits described  
25 above are even more impressive given the inherent uncertainties of continued  
26 litigation.

27 For example, Plaintiffs submit the operative ACAC states valid, cognizable  
28 claims, including under RICO, but many of their claims did not survive Toyota’s



1 earlier pleading challenge.<sup>10</sup> As demonstrated by the Court’s ruling on Defendants’  
2 first round of motions to dismiss and the arguments raised in the pending second  
3 round, individual and technical requirements for Plaintiffs’ claims, among other  
4 challenges, could stand in the way of success in some instances. And even if not,  
5 Plaintiffs would still face an expensive, lengthy, and uncertain process to certify a  
6 litigation class. Assuming their claims ultimately made it to trial, Plaintiffs would  
7 still have to prove an intricate multi-party fraud, among other things. And if  
8 Plaintiffs prevailed at trial, they would have to re-litigate virtually all of these issues  
9 in the inevitable appeals. Avoiding years of additional, costly, and risky litigation in  
10 exchange for the immediate and significant Settlement benefits is a principled  
11 compromise to the clear benefit of the Class.

12 The Settlement eliminates all potential future risk, cuts through payment  
13 delay, and provides the Class with “certain and timely” compensation. Prelim.  
14 Order at 21. This factor strongly favors final approval. *See Nobles v. MBNA Corp.*,  
15 No. C 06-3723 CRB, 2009 WL 1854965, at \*2 (N.D. Cal. June 29, 2009) (“The  
16 risks and certainty of recovery in continued litigation are factors for the Court to  
17 balance in determining whether the Settlement is fair.”) (citing *In re Mego Fin.*  
18 *Corp. Sec. Litig.*, 213 F.3d 454, 458 (9th Cir. 2000) *as amended* (June 19, 2000));  
19 *Kim v. Space Pencil, Inc.*, No. C 11-03796 LB, 2012 WL 5948951, at \*5 (N.D. Cal.  
20 Nov. 28, 2012) (“The substantial and immediate relief provided to the Class under  
21 the Settlement weighs heavily in favor of its approval compared to the inherent risk  
22 of continued litigation, trial, and appeal, as well as the financial wherewithal of the  
23 defendant.”); *In re Toys “R” US*, 295 F.R.D. at 453 (similar); Fed. R. Civ. P.  
24 23(e)(2)(C)(i).

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27 <sup>10</sup> The Court previously sustained only Nevada Count 1, South Carolina Count 1,  
28 South Carolina Count 2, and Texas Count 2. *See* ECF 396 at 149-50, 160-61, 166-  
167. These counts allege breach of express or implied warranty.

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**b. Toyota Class Members can obtain relief through a straightforward claims process.**

The Parties, in consultation with the Settlement Notice and Claims Administrators, designed a simple and efficient claims process to maximize Class member participation. Toyota Class Members submit claims for out-of-pocket compensation and for residual payments using the same, streamlined Claim Form. The Claim Form is available through various channels, and Toyota Class Members may choose to submit their Claim Form either online through the Settlement website, or in hard copy. Finegan Decl. ¶¶ 6, 48. The Settlement’s method for processing claims and distributing relief is straightforward, fair, and reasonable, and “should be effective in distributing relief to the Class” (Prelim. Order at 21), weighing in further favor of final approval. *See* Fed. R. Civ. P. 23(e)(2)(C)(ii).

**c. Counsel seek reasonable attorneys’ fees and costs.**

Settlement Class Counsel’s reasonable fee request is detailed below (§ IV) but in this context it is worth reiterating that “terms of . . . [the] proposed award of attorneys’ fees” are fair and reasonable, particularly in light of the substantial, non-reversionary recovery for the Class. *See* Fed. R. Civ. P. 23(e)(2)(C)(iii); *see also* Prelim. Order at 29 (“The evidence submitted in connection with the Motion shows that, to date, the attorney’s fees submitted by Plaintiffs’ counsel are largely reasonable. Additionally, as noted, the requested fee award will likely constitute a reasonable percentage of the total value of the recovery to the Class.”).

The reasonableness of the fee request is further supported by the Declaration of Professor Brian T. Fitzpatrick, a law professor at Vanderbilt University who has authored many publications on attorneys’ fees in class action settlements. *See* Fitzpatrick Decl. ¶¶ 3-4.

1                   **4. Rule 23(e)(2)(D): The Proposed Settlement treats all Toyota**  
2                   **Class Members equitably relative to one another.**

3                   In its order granting Preliminary Approval of the Settlement, the Court  
4                   observed that the Settlement distributes relief among Toyota Class Members in a  
5                   “fair and reasonable” way. Prelim. Order at 22. This remains true. The Settlement  
6                   provides benefits reasonably proportional to the economic harm Toyota inflicted on  
7                   each Class Member by the ACU Defect. Toyota Class Members with Recalled  
8                   Vehicles may submit claims for reimbursement of out-of-pocket costs already  
9                   incurred, and Toyota Class Members with Unrecalled Vehicles will become eligible  
10                  to participate in that reimbursement claims process should their vehicle be recalled  
11                  during the three-year claims period. Additionally, relevant benefits are available for  
12                  Toyota Class Members that spend time, effort, and resources to obtain a recall  
13                  repair. Finally, *all* Toyota Class Members may register to receive a residual  
14                  payment at the conclusion of the claims period. These reasonable parameters and  
15                  objective criteria ensure that the Settlement treats Toyota Class Members equitably  
16                  relative to one another. *See* Fed. R. Civ. P. 23(e)(2)(D).

17                   **5. The Settlement satisfies the Ninth Circuit’s approval factors.**

18                  The Ninth Circuit has identified a number of additional factors for courts to  
19                  consider when evaluating a class action settlement. *See In re Bluetooth Headset*  
20                  *Prods. Liab. Litig.*, 654 F.3d 935, 946 (9th Cir. 2011) (factors are (1) the strength of  
21                  the plaintiffs’ case; (2) the risk, expense, complexity, and likely duration of further  
22                  litigation; (3) the risk of maintaining class action status throughout the trial; (4) the  
23                  amount offered in settlement; (5) the extent of discovery completed and the stage of  
24                  the proceedings; (6) the experience and views of counsel; (7) the presence of a  
25                  governmental participant; and (8) the reaction of the class members of the proposed  
26                  settlement). Most of these (factors 1-5) overlap with the Rule 23(e)(2)(C) factors  
27                  and are addressed above. The remaining relevant factors (6 and 8), addressed  
28                  below, favor final approval as well.

1                    **a.     Settlement Class Counsel endorse the Settlement.**

2                    Courts can give “considerable weight” to the opinions of experienced class  
3                    counsel who are familiar with the litigation in weighing whether to grant final  
4                    settlement approval. *Ontiveros*, 303 F.R.D. at 371 ((citing *Hanlon v. Chrysler*  
5                    *Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998)); *see also In re Volkswagen “Clean*  
6                    *Diesel” Mktg., Sales Practices, & Prods. Liab. Litig.* No. MDL 2672 CRB (JSC),  
7                    2016 WL 6248426, at \*14 (N.D. Cal. Oct. 25, 2016) (“Courts afford ‘great weight  
8                    to the recommendation of counsel, who are most closely acquainted with the facts  
9                    of the underlying litigation.’”) (quoting *Nat’l Rural Telecomms. Coop. v. DIRECTV,*  
10                    *Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004)).

11                    Based on their own significant experience in complex automotive defect  
12                    class cases like this one, and their work in this case day in and day out for over four  
13                    years, Settlement Class Counsel are confident in the result obtained for the Class  
14                    here and the process used to reach it, and strongly recommend its approval. Co-  
15                    Lead Decl. ¶ 33. *See, e.g., In re Volkswagen “Clean Diesel” Mktg., Sales Practices,*  
16                    *& Prods. Liab. Litig.*, No. MDL 2672 CRB (JSC), 2019 WL 2077847, at \*1 (N.D.  
17                    Cal. May 10, 2019) (granting final settlement approval where “Lead Counsel ha[d] .  
18                    . . . a successful track record of representing [plaintiffs] in cases of this kind . . .  
19                    [and] attest[ed] that both sides engaged in a series of intensive, arm’s-length  
20                    negotiations” and there was “no reason to doubt the veracity of Lead Counsel’s  
21                    representations”).

22                    **b.     The Notice Program is proving a success, and the**  
23                    **Class’s initial response has been positive.**

24                    Following preliminary approval, the Parties worked with respected class  
25                    notice provider Kroll Notice Media to roll out the Court-approved Notice Program  
26                    with great and ongoing success. Kroll reports that the Notice Program was designed  
27                    to reach “virtually all” Toyota Class Members and has already reached over an  
28                    estimated 95% of Toyota Class Members. Declaration of Jeanne Finegan (“Finegan

1 Decl.”) ¶¶ 14, 55. To date, Kroll has emailed 3,756,293 individual notices, along  
2 with an additional 387,333 emails to secondary email addresses, and has also  
3 mailed direct notices to 4,572,584 potential Toyota Class Members. *Id.* ¶¶ 16-17,  
4 21. Kroll also engaged in a comprehensive supplemental publication and media  
5 notice campaign, with notices issued in widely-circulated print publications, and an  
6 online and social media campaign that has generated over 30 million impressions.  
7 *Id.* ¶¶ 26-30, 39. While several years yet remain in the claims period, the Class is  
8 already showing their support for the Settlement. Toyota Class Members are  
9 visiting the Settlement Website at an impressive rate, with 1,975,136 page views  
10 registered from 760,346 unique visitors so far. *Id.* ¶ 7. As of September 21, 2023,  
11 moreover, Kroll had received 215,262 Settlement Claims, the vast majority of  
12 which were submitted through the streamlined submission portal available on the  
13 Settlement Website. *Id.* ¶ 49. In contrast, Kroll has received only 26 Requests for  
14 Exclusion and no potential Toyota Class Member has objected to the Settlement. *Id.*  
15 ¶¶ 52-53.

16 Together, these are “encouraging” signs of the Class’s engagement that—  
17 coupled with the ongoing Notice Program, and remaining time in the Claims  
18 Period—will yield substantial participation from the Class in the months and years  
19 to come. *Id.* ¶¶ 49-50. As it stands, the positive response from the Class supports  
20 final approval, and Settlement Class Counsel have every reason to believe it will  
21 stay that way.

22 \* \* \*

23 The Settlement is fair, reasonable, and adequate, and merits final approval.

24 **B. The Settlement Class satisfies the applicable Rule 23 requirements**  
25 **and should be certified.**

26 After considering the relevant Rule 23(a) and 23(b)(3) requirements at the  
27 preliminary approval phase, the Court concluded the necessary requirements were  
28 satisfied and “the Class should be conditionally certified for the purpose of

1 settlement.” Prelim. Order at 16, 22. This remains true, and the Settlement Class  
2 should be finally certified for settlement purposes.

3 **1. Rule 23(a)(1): The Class is sufficiently numerous.**

4 Rule 23(a)(1) is satisfied where, as here, “the class is so numerous that  
5 joinder of all class members is impracticable.” Fed. R. Civ. P. 23(a)(1). The Class  
6 includes current and former owners and lessees of at least 5.2 million Subject  
7 Vehicles, which is “sufficient to satisfy the numerosity requirement.” Prelim. Order  
8 at 13; *see also 5 Moore’s Federal Practice—Civil* § 23.22 (2016) (a “class of 41 or  
9 more is usually sufficiently numerous.”). Numerosity remains satisfied.

10 **2. Rule 23(a)(2): The Class Claims present common questions**  
11 **of law and fact.**

12 “Federal Rule of Civil Procedure 23(a)(2) conditions class certification on  
13 demonstrating that members of the proposed class share common ‘questions of law  
14 or fact.’” *Stockwell v. City & Cty. of San Francisco*, 749 F.3d 1107, 1111 (9th Cir.  
15 2014). Commonality “does not turn on the number of common questions, but on  
16 their relevance to the factual and legal issues at the core of the purported class’  
17 claims.” *Jimenez v. Allstate Ins. Co.*, 765 F.3d 1161, 1165 (9th Cir. 2014). “Even a  
18 single question of law or fact common to the members of the class will satisfy the  
19 commonality requirement.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 369  
20 (2011).

21 Courts routinely find commonality where, as here, the class claims arise from  
22 an automaker’s alleged uniform course of fraudulent conduct to misrepresent and  
23 conceal a defect in its vehicles. *See, e.g., In re Volkswagen “Clean Diesel” Mktg.*,  
24 No. 15-MD-02672-CRB, 2022 WL 17730381, at \*3 (N.D. Cal. Nov. 9, 2022); *In re*  
25 *Chrysler-Dodge-Jeep Ecodiesel Mktg., Sales Practices, & Prods. Liab. Litig.*, No.  
26 17-MD-02777-EMC, 2019 WL 536661, at \*6 (N.D. Cal. Feb. 11, 2019); *In re*  
27 *Takata Airbag Prods. Liab. Litig.*, No. 14-24009-CV, 2017 WL 11680208, at \*3  
28

1 (S.D. Fla. Sept. 19, 2017); *Looper v. FCA US LLC*, No. LACV 14-00700-VAP  
2 (DTBx), 2017 WL 11650429, at \*4 (C.D. Cal. Mar. 23, 2017).

3 Like those cases, the Settlement Class’s claims here are rooted in common  
4 questions about the Toyota Defendants’ omission of material information about a  
5 defect in the Subject Vehicles. *See* Prelim. Order at 14 (describing common  
6 question of “whether Toyota’s alleged omissions and uniform misrepresentations to  
7 Class Members were fraudulent”); *see also Guido v. L’Oreal, USA, Inc.*, 284 F.R.D.  
8 468, 478 (C.D. Cal. 2012) (whether misrepresentations “are unlawful, deceptive,  
9 unfair, or misleading to reasonable consumers are the type of questions tailored to  
10 be answered in ‘the capacity of a classwide proceeding’”) (quoting *Dukes*, 564 U.S.  
11 at 350)).

12 These common questions will, in turn, generate common answers “apt to  
13 drive the resolution of the litigation” for the Settlement Class as a whole. *See*  
14 *Dukes*, 564 U.S. at 350. Conversely, “[w]ithout class certification, individual Class  
15 members would be forced to separately litigate the same issues of law and fact  
16 which arise from” the Defendants’ fraud. *In re Volkswagen “Clean Diesel” Mktg.,*  
17 *Sales Practices, & Prods. Liab. Litig.*, No. 2672 CRB (JSC), 2016 WL 4010049, at  
18 \*10 (N.D. Cal. July 26, 2016). Commonality remains satisfied. *See* Prelim. Order at  
19 14.

20 **3. Rule 23(a)(3): The Settlement Class Representatives’ claims**  
21 **are typical of other Toyota Class Members’ claims.**

22 Under Rule 23(a)(3), “the claims or defenses of the representative parties”  
23 must be “typical of the claims or defenses of the class.” *Parsons v. Ryan*, 754 F.3d  
24 657, 685 (9th Cir. 2014) (quoting Fed. R. Civ. P. 23(a)(3)). Representative claims  
25 are “‘typical’ if they are reasonably coextensive with those of absent class  
26 members; they need not be substantially identical.” *Johnson v. City of Grants Pass*,  
27 72 F.4th 868, 888 (9th Cir. 2023) (quoting *Staton v. Boeing Co.*, 327 F.3d 938, 957  
28 (9th Cir. 2003)). Here, the same course of conduct injured the Settlement Class

1 Representatives and the other members of the Settlement Class in the same ways.  
2 Each purchased or leased Subject Vehicles with defective DS84 ACUs. As a result,  
3 they paid more for their Subject Vehicles than they reasonably should have. The  
4 typicality requirements are satisfied. *See also* Prelim. Order at 14 (finding  
5 typicality).

6 **4. Rule 23(a)(4): The Settlement Class Representatives and**  
7 **Settlement Class Counsel have and will continue to**  
8 **adequately protect the interests of the Class.**

9 Rule 23(a)(4)'s adequacy requirement is met where "(1) . . . the named  
10 plaintiffs and their counsel have [no] conflicts of interest with other class members  
11 and (2) . . . the named plaintiffs and their counsel [have] prosecute[d] the action  
12 vigorously on behalf of the class." *Evon v. Law Offices of Sidney Mickell*, 688 F.3d  
13 1015, 1031 (9th Cir. 2012) (quoting *Hanlon*, 150 F.3d at 1020). Both are true here.  
14 *See* Prelim. Order at 15 (finding adequacy satisfied for both the Toyota Plaintiffs  
15 and Class Counsel at preliminary approval).

16 The Settlement Class Representatives "are entirely aligned [with the  
17 Settlement Class] in their interest in proving that [Defendants] misled them and  
18 share the common goal of obtaining redress for their injuries." *VW 2L Preliminary*  
19 *Approval Order*, 2016 WL 4010049, at \*11. They understand their duties, have  
20 agreed to consider the interests of absent Class Members, and have reviewed and  
21 uniformly endorsed the Settlement terms. *See* Co-Lead Decl. ¶ 8. The Settlement  
22 Class Representatives are more than adequate.

23 Furthermore, as discussed more fully in § IV below, Settlement Class  
24 Counsel have undertaken extensive amounts of work, effort, and expense in this  
25 MDL and specifically in litigating the Toyota Plaintiffs' Claims. They have  
26 demonstrated their willingness to devote whatever resources were necessary to  
27 reach a successful outcome throughout the four years of investigation, litigation,  
28 and parallel settlement negotiations. They, too, satisfy Rule 23(a)(4).



1                   5.     **Rule 23(b)(3)—Predominance: Common issues of law and**  
2                   **fact predominate.**

3                   The predominance inquiry “focuses on whether the ‘common questions  
4 present a significant aspect of the case and they can be resolved for all members of  
5 the class in a single adjudication.” *In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d  
6 539, 557 (9th Cir. 2019) (quoting *Hanlon*, 150 F.3d at 1022). At its core,  
7 “[p]redominance is a question of efficiency.” *Butler v. Sears, Roebuck & Co.*, 702  
8 F.3d 359, 362 (7th Cir. 2012). Thus, “[w]hen common questions present a  
9 significant aspect of the case and they can be resolved for all members of the class  
10 in a single adjudication, there is clear justification for handling the dispute on a  
11 representative rather than on an individual basis.” *Hanlon*, 150 F.3d at 1022.

12                  The Ninth Circuit favors class treatment of fraud claims stemming from a  
13 “‘common course of conduct.’” *See In re First Alliance Mortg. Co.*, 471 F.3d 977,  
14 990 (9th Cir. 2006); *Hanlon*, 150 F.3d at 1022-23. Even outside of the settlement  
15 context, predominance is readily met for consumer claims arising from the  
16 defendants’ common course of conduct. *See Amchem Prods., Inc. v. Windsor*, 521  
17 U.S. 591, 625 (1997); *Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168,  
18 1173, 1175 (9th Cir. 2010) (consumer claims based on uniform omissions  
19 certifiable where “susceptible to proof by generalized evidence,” even if  
20 individualized issues remain); *Friedman v. 24 Hour Fitness USA, Inc.*, No. CV 06-  
21 6282 AHM (CTx), 2009 WL 2711956, at \*8 (C.D. Cal. Aug. 25, 2009) (“Common  
22 issues frequently predominate” in actions alleging “injury as a result of a single  
23 fraudulent scheme.”).

24                  Here, too, questions of law and fact common to the Toyota Class Members’  
25 claims predominate over any questions affecting only individual members because  
26 the common issues “turn on a common course of conduct by the defendant . . . in  
27 [a] nationwide class action.” *See Hyundai*, 926 F.3d at 559 (citing *Hanlon*, 150 F.3d  
28 at 1022–23). Defendants’ common course of conduct—manufacturing and selling

1 vehicles with defective ACUs without disclosing that alleged defect to consumers  
2 Toyota Class Members—is central to Plaintiffs’ claims. Common, unifying  
3 questions include, for example: when Toyota first learned of the ACU Defect,  
4 whether representations about the Subject Vehicle’s airbags and safety systems  
5 were misleading to reasonable consumers, and whether Toyota’s actions were  
6 fraudulent. *See* Prelim. Order at 16 (finding predominance satisfied based on these  
7 questions).

8 Indeed, “[i]n many consumer fraud cases, the crux of each consumer’s claim  
9 is that a company’s mass marketing efforts, common to all consumers,  
10 misrepresented the company’s product”—here, the vehicles’ inclusion of passenger  
11 safety features without defects. *See In re Hyundai*, 926 F.3d at 559. In sum, Toyota  
12 allegedly “perpetrated the same fraud in the same manner against all Class  
13 Members.” *Volkswagen*, 2016 WL 4010049, at \*12. Predominance remains  
14 satisfied.

15 **6. Rule 23(b)(3)—Superiority: Class treatment is superior to**  
16 **other available methods for the resolution of this case.**

17 The superiority inquiry asks “whether the objectives of the particular class  
18 action procedure will be achieved in the particular case.” *Hanlon*, 150 F.3d at 1023.  
19 In other words, it “requires the court to determine whether maintenance of this  
20 litigation as a class action is efficient and whether it is fair.” *Wolin*, 617 F.3d at  
21 1175-76. Under Rule 23(b)(3),

22 the Court evaluates whether a class action is a superior  
23 method of adjudicating plaintiff’s claims by evaluating  
24 four factors: “(1) the interest of each class member in  
25 individually controlling the prosecution or defense of  
26 separate actions; (2) the extent and nature of any litigation  
27 concerning the controversy already commenced by or  
28 against the class; (3) the desirability of concentrating the  
litigation of the claims in the particular forum; and (4) the  
difficulties likely to be encountered in the management of  
a class action.”

*Trosper v. Styker Corp.*, No. 13-CV-0607-LHK, 2014 WL 4145448, at \*17 (N.D.

1 Cal. Aug. 21, 2014).

2 Class treatment here is far superior to litigating millions of individual  
3 consumer actions. “From either a judicial or litigant viewpoint, there is no  
4 advantage in individual members controlling the prosecution of separate actions.  
5 There would be less litigation or settlement leverage, significantly reduced  
6 resources and no greater prospect for recovery.” *Hanlon*, 150 F.3d at 1023; *see also*  
7 *Wolin*, 617 F.3d at 1176 (“Forcing individual vehicle owners to litigate their cases,  
8 particularly where common issues predominate for the proposed class, is an inferior  
9 method of adjudication.”). The maximum damages sought by each Class Member,  
10 while significant at the individual level, are relatively small in comparison to the  
11 substantial cost of prosecuting each one’s individual claims, especially given the  
12 technical nature of the claims at issue. *See Smith v. Cardinal Logistics Mgmt. Corp.*,  
13 No. 07-2104 SC, 2008 WL 4156364, at \*11 (N.D. Cal. Sept. 5, 2008) (small interest  
14 in individual litigation where damages averaged \$25,000-\$30,000 per year of  
15 work).

16 Class resolution is also superior from an efficiency and resource perspective.  
17 Indeed, “[i]f Class Members were to bring individual lawsuits against [Defendants],  
18 each Member would be required to prove the same wrongful conduct to establish  
19 liability and thus would offer the same evidence.” *Volkswagen*, 2016 WL 4010049,  
20 at \*12. The conduct at issue involves over 5.2 million Subject Vehicles, and “there  
21 is the potential for just as many lawsuits with the possibility of inconsistent rulings  
22 and results.” *Id.* “Thus, classwide resolution of their claims is clearly favored over  
23 other means of adjudication, and the proposed Settlement resolves Class Members’  
24 claims at once.” *Id.* Superiority is met here, and Rule 23(e)(1)(B)(ii) is satisfied.

25 \* \* \*

26 The Settlement Class meets all relevant requirements of Rule 23(a) and (b).  
27 Plaintiffs thus request that the Court confirm the certification of the Settlement  
28 Class and the appointment of the Settlement Class Representatives.

1           **C. The Court should confirm Plaintiffs’ Counsel as Settlement Class**  
2           **Counsel under Rule 23(g)(1).**

3           Settlement Class Counsel have undertaken a significant amount of work,  
4 effort, and expense in litigating the Toyota Plaintiffs’ Claims. Following these  
5 efforts, the Court appointed Co-Lead Counsel and the PSC as Settlement Class  
6 Counsel at the preliminary approval stage. Prelim. Order at 29. In the intervening  
7 period, Settlement Class Counsel have continued to demonstrate the skill and  
8 experience necessary to oversee and effectuate this Settlement through their efforts  
9 in the approval process and in overseeing the Notice Program roll out. Plaintiffs  
10 thus request that the Court confirm Settlement Class Counsel under Rule 23(g)(1)  
11 in connection with Final Approval of the Settlement.

12           **IV. SETTLEMENT CLASS COUNSEL’S REQUESTED FEE IS FAIR,**  
13           **REASONABLE, AND APPROPRIATE.**

14           This is a complex case, both factually and legally. For four years, Settlement  
15 Class Counsel have doggedly pursued Toyota, and the other Defendants, for  
16 equipping and selling Class Vehicles with a dangerous safety defect. Describing the  
17 litigation as protracted and contentious would be an understatement. As the Court is  
18 well aware, the parties dispute nearly every fact and Defendants—including  
19 Toyota—have raised every conceivable challenge against Plaintiffs’ claims.  
20 Settlement Class Counsel persisted despite these hurdles, in an immense effort and  
21 substantial allocation of resources, and achieved a remarkable result. Settlement  
22 Class Counsel now seek fair and reasonable compensation for the time and effort it  
23 took to do so, which they undertook without any guarantee of recovery or  
24 reimbursement.

25           “[L]awyer[s] who recover[] a common fund . . . [are] entitled to a reasonable  
26 attorney’s fee from the fund as a whole.” *Boeing Co. v. Van Gemert*, 444 U.S. 472,  
27 478 (1980). This “common benefit doctrine” allows a court to “assess[] attorney’s  
28 fees against the entire fund, thus spreading fees proportionately among those

1 benefited by the suit.” *Id.*; Fitzpatrick Decl. ¶¶ 10-13. Here, Settlement Class  
2 Counsel request attorneys’ fees of \$25 million, which reflects approximately 16.8%  
3 of the total Settlement value obtained for Toyota Class Members (i.e.,  
4 \$147,800,000).<sup>11</sup> For the reasons explained below, the request is “‘fundamentally  
5 fair, adequate, and reasonable’” considering the facts and circumstances of this  
6 litigation. *Staton v. Boeing Co.*, 327 F.3d 938, 963 (9th Cir. 2003) (quoting Fed. R.  
7 Civ. P. 23(e)); Fitzpatrick Decl. ¶ 17.

8 In deciding whether a requested attorneys’ fee amount is appropriate, courts  
9 in this Circuit look to a number of factors including: (1) the results achieved; (2) the  
10 complexity of the case and skill required; (3) the risks of litigation; (4) the benefits  
11 to the class beyond the immediate generation of a cash fund; (5) the market rate of  
12 customary fees for similar cases; (6) the contingent nature of the representation and  
13 financial burden carried by counsel; and (7) a lodestar cross-check. *See, e.g., In re*  
14 *Volkswagen “Clean Diesel” Mktg., Sales Practices, & Prods. Liab. Litig.*, No. 2672  
15 CRB (JSC), 2017 WL 1047834, at \*1 (N.D. Cal. Mar. 17, 2017) (“*VW 2L Fee*  
16 *Order*”) (citing *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048-52 (9th Cir.  
17 2002)); *see also Six (6) Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301,  
18 1311 (9th Cir. 1990); Fitzpatrick Decl. ¶ 16. Each factor strongly supports  
19 Settlement Class Counsel’s request in this case. *Id.* ¶¶ 17-30. For the reasons below,  
20 the Court should affirm its preliminary finding that Plaintiffs’ requested fee was  
21 “likely [to] be reasonable,” and award the well-supported and reasonable request.

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22 <sup>11</sup> As the Court noted in its Preliminary Approval Order, Settlement Class Counsel  
23 anticipated a fee request of “up to 33%” of the \$78.5 million Settlement Amount,  
24 and the actual percentage would be lower after taking into account both the  
25 monetary and non-monetary benefits to the Class. Prelim. Order at 24. Settlement  
26 Class Counsel’s fee request is now far below 33% after incorporating the value of  
27 the Extended New Parts Warranty. In any event, the Court noted that even the 33%  
28 figure “may be warranted here, where favorable results were achieved for the Class,  
substantial non-monetary benefits will be conferred, and counsel have undertaken  
significant risks in pursuing this litigation over the course of several years.” *Id.* at  
26.

1 Prelim. Order at 26.

2 Finally, as discussed in § IV.B. below, Settlement Class Counsel also are  
3 entitled to reimbursement of reasonable out-of-pocket expenses. Fed. R. Civ. P.  
4 23(h); see *Miller v. Ghirardelli Chocolate Co.*, No. 12-CV-04936-LB, 2015 WL  
5 758094, at \*7 (N.D. Cal. Feb. 20, 2015) (attorneys may recover reasonable  
6 expenses that would typically be billed to paying clients in non-contingency  
7 matters) (citing *Harris v. Marhoefer*, 24 F.3d 16, 20 (9th Cir. 1994)). Here, they  
8 request reasonable expenses of \$472,730.40.

9 **A. Settlement Class Counsel obtained substantial monetary**  
10 **compensation for the Toyota Class.**

11 The result Class Counsel secured for the Class is the central factor to  
12 evaluate the reasonableness of a requested fee. *In re Bluetooth*, 654 F.3d at 942; *In*  
13 *re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1046 (N.D. Cal. 2008); see also  
14 *In re Nexus 6P Prods. Liab. Litig.*, No. 17-CV-02185-BLF, 2019 WL 6622842, at  
15 \*12 (N.D. Cal. Nov. 12, 2019) (“The most critical factor is the results achieved for  
16 the class.”); *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983) (same); Federal  
17 Judicial Center, *Manual for Complex Litigation* § 21.71 (4th ed.) (“The  
18 ‘fundamental focus is the result actually achieved for class members.’”) (citing Fed.  
19 R. Civ. P. 23(h) committee note).

20 That principle strongly supports the requested fees here. As described in  
21 detail above, the Settlement provides sizeable monetary relief to the Class—\$78.5  
22 million in cash compensation and commitments, including a \$65 million cash  
23 common fund, a \$3.5 million outreach program, and a \$10 million credit for  
24 Toyota’s commitment to provide future loaner vehicles and reimbursements. The  
25 Court held in its Preliminary Approval Order that “the total recovery to the class  
26 can reasonably be calculated to have a value of at least \$78.5 million, including the  
27 Settlement Fund, the \$10 million credit for future loaner vehicles and outreach, and  
28 the \$3.5 million to be spent on the current Outreach Program.” Prelim. Order at 26.

1 Individual cash compensation to Toyota Class Members is also substantial,  
2 and fairly reflects the harm each Class Member suffered at the hands of Toyota on  
3 account of the ACU Defect. That this Settlement achieves material monetary relief  
4 through the compromise of contested claims is a remarkable result and strongly  
5 supports the requested fees. *See In re Nexus 6P*, 2019 WL 6622842, at \*12 (upward  
6 adjustment from the 25% benchmark was warranted where settlement “allow[ed]  
7 all class members to receive a monetary benefit”).

8 **1. The Settlement provides significant, valuable benefits in**  
9 **addition to the cash compensation.**

10 As described above, the Settlement also secures a comprehensive set of  
11 valuable non-monetary benefits for Toyota Class Members, which are “appropriate  
12 to include . . . in the denominator of the percentage method.” Fitzpatrick Decl. ¶ 15.  
13 This includes the Extended Warranty available to every Class member who obtains  
14 an available Recall Repair. This 12-year Extended Warranty, valued by a leading  
15 economist in this field at \$69,300,000 for Toyota Class Members with Recalled  
16 Vehicles, and with an additional prospective value of at least 60% of that for Toyota  
17 Class Members with Unrecalled Vehicles should a recall be required (Kleckner  
18 Decl. 2(a)-(b)), is reasonably and properly considered part of the Settlement value  
19 secured for the Class. *See infra* § II.A.

20 The innovative ten-year Inspection Protocol, which mandates procedures for  
21 the active investigation and documentation of airbag non-deployments that may be  
22 caused by electrical overstress, likewise provides valuable benefits to the Class.  
23 This significant (but unquantified) nonmonetary relief further supports the  
24 requested fee. *See Pan v. Qualcomm Inc.*, No. 16-CV-01885-JLS-DHB, 2017 WL  
25 3252212, at \*12 (S.D. Cal. July 31, 2017) (concluding that “substantial” non-  
26 monetary relief that could not be accurately valued supported fee award of nearly  
27 30%).  
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2. **The Settlement resulted from Settlement Class Counsel’s zealous representation in complex and risky litigation.**

This case involves dozens of Defendants and allegations of an enduring and complex scheme. Defendants include six vehicle manufacturer groups and three component supplier groups, comprising a total of twenty-nine Defendants (many of them based outside the U.S.) that played various roles in the design, manufacture, testing, and sale of the Class Vehicles, and concealing the defect therein.

Investigating and uncovering the ACU Defect and evidence thereof in numerous crashes that Plaintiffs identified over the course of almost 15 years was technically challenging—in particular given the range of Class Vehicles implicated—with vehicle models dating as far back as 2010. Plaintiffs allege that the ACU Defect can be traced back to the ZF and STMicro Defendants’ design and testing of the DS84 ACU as far back as 2008. They also alleged that Toyota and the other Vehicle Manufacturer Defendants had knowledge of the ACU Defect, at minimum, shortly after the DS84 ACUs were installed in the Class Vehicles, and coordinated with each other to share information about and to conceal it from consumers.

Investigating allegations of an extensive scheme that began nearly 15 years ago required comprehensive analysis of contemporaneous documentation and complex testing and engineering documents. Arriving at a nuanced understanding of the ways in which the Class Vehicles experience the defect in crashes (and otherwise) took time, effort, and expertise. To do so, Settlement Class Counsel worked closely with experts to understand the complex minutiae of electrical engineering principles and microchip circuitry. Complexities aside, it was a risky case, too, for several reasons. As detailed above, the majority of Plaintiffs’ claims against Toyota (and others) have not yet survived a motion to dismiss.

That Settlement Class Counsel achieved such substantial relief at this juncture speaks to their skill, effort, and dedication to the Class. It also strongly



1 supports their fee request. *See, e.g., Hanlon*, 150 F.3d at 1029 (The “complexity and  
2 novelty of the issues” can justify upward departure from benchmark); *In re Oracle*  
3 *Sec. Litig.*, 852 F. Supp. 1437, 1450–51 (N.D. Cal. 1994) (same).

4 **3. Settlement Class Counsel’s requested fee percentage is**  
5 **reasonable, appropriate, and strongly supported by**  
6 **precedent.**

7 When a settlement establishes a common fund, it is both appropriate and  
8 preferred to award attorneys’ fees based on a percentage of the monetary benefit  
9 obtained. *See Vizcaino*, 290 F.3d at 1047. The fund is not limited to cash payments,  
10 and reasonably includes *all* benefits obtained for the Class with a calculable  
11 economic value. Fitzpatrick Decl. ¶ 15; *see also In re Zoom*, 2022 WL 1593389, at  
12 \*10 (subsequent history omitted); *Miller*, 2015 WL 758094, at \*5 (same)  
13 (collecting cases); *Banh*, 2021 WL 3468113, at \*7 (“[I]t is the complete package  
14 taken as a whole . . . that must be examined for overall fairness.”).<sup>12</sup>

15 Settlement Class Counsel request \$25 million in fees. As explained above,  
16 this represents approximately 16.9% of the calculable Settlement Value obtained in  
17 this case. Even under Professor Fitzpatrick’s “as conservative as possible” valuation  
18 of the Settlement, which excludes the added value of (a) the Outreach program, (b)  
19 Future Rental Car Reimbursement, Loaner Vehicle, and Outreach Program, (c) or  
20 Settlement Inspection Program, and (d) the prospective relief in the Extended New  
21 Parts Warranty, the requested fees represent only approximately 18% of the \$134  
22 million valuation. Fitzpatrick Decl. ¶¶ 18-19. Either amount is well below the  
23 “benchmark award of” 25%, and awards commonly approved in this Circuit. *See*

24 <sup>12</sup> *See also, e.g., Rainbow Bus. Sols. v. MBF Leasing LLC*, No. 10-CV-01993-CW,  
25 2017 WL 6017844, at \*1 (N.D. Cal. Dec. 5, 2017) (the fund from which a fee  
26 percentage is calculated includes “the total benefit made available to the settlement  
27 class, including costs, fees, and injunctive relief”); *Staton*, 327 F.3d at 974 (when  
28 “accurately ascertained,” the value of “injunctive relief” is included “as part of the  
value of a common fund for purpose of applying the percentage method of  
determining fees.”); *Pokorny v. Quixtar, Inc.*, No. C 07–0201 SC, 2013 WL  
3790896, at \*1 (N.D. Cal. July 18, 2013) (similar).

1 Fitzpatrick Decl. ¶¶ 17, 20-23 (discussing empirical analyses showing a mean and  
2 median awarded percentages in all class action cases of 23.9% and 25). Notably,  
3 Professor Fitzpatrick found that “some *four-fifths* of fee awards in the Ninth Circuit  
4 are above what class counsel requested here.” *Id.* at ¶ 21.<sup>13</sup>

5 Consistent with this authority, in granting preliminary approval, the Court  
6 observed that “Plaintiffs have presented substantial support for the position that the  
7 requested award will likely be reasonable under the percentage method,” pending  
8 further information on the value of the Extended Warranty. Prelim. Order at 26.  
9 That further information is now before the Court, with the Extended Warranty  
10 valued by a respected expert to be at least \$69,300,000 in economic value for  
11 Toyota Class Members with Recalled Vehicles, and prospective value of at least  
12 60% of that amount Toyota Class Members with Unrecalled Vehicles.

13 As Professor Fitzpatrick opined, “[i]n my opinion, this percentage is easy to  
14 justify under the Ninth Circuit’s factors in light of the empirical studies of class  
15 action fees and in light of the research on the economic incentives in class action  
16 litigation.” Fitzpatrick Decl. ¶ 19.<sup>14</sup> Settlement Class Counsel respectfully submit

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17  
18 <sup>13</sup> See also, e.g., *In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. MDL 3:07-md-  
19 1827 SI, 2011 WL 7575003, at \*1 (N.D. Cal. Dec. 27, 2011) (awarding attorneys’  
20 of 30% of \$405 million settlement fund); *In re CRT Antitrust Litig.*, MDL No. 1917,  
21 2016 WL 4126533, at \*5 (N.D. Cal. Aug. 3, 2016) (awarding 30% of \$576,750,000  
22 fund); *In re Mego*, 213 F.3d at 463 (upholding district court’s award of 33 1/3  
23 percent of the settlement fund); *Vizcaino*, 290 F.3d at 1046 (affirming fee award of  
24 28% of \$96,885,000 settlement fund under the percentage method); *Boyd v. Bank of*  
25 *Am. Corp.*, No. SACV 13-0561-DOC (JPRx), 2014 WL 6473804, at \*8 (C.D. Cal.  
26 Nov. 18, 2014) (awarding 33% of \$5,800,000 settlement); *Fernandez v. Victoria*  
27 *Secret Stores, LLC*, No. CV 06-04149 MMM SHX, 2008 WL 8150856, at \*16  
28 (C.D. Cal. July 21, 2008) (awarding 34% of the \$8,500,000 common fund); *Stuart*  
*v. RadioShack Corp.*, No. C-07-4499 EMC, 2010 WL 3155645, at \*6 (N.D. Cal.  
Aug. 9, 2010) (awarding 33% of common fund); *Barbosa v. Cargill Meat Sols.*  
*Corp.*, 297 F.R.D. 431, 450 (E.D. Cal. 2013) (awarding 33% of common fund).

<sup>14</sup> Indeed, even if measured against the more conservative \$78.5 million Settlement  
Amount (which does not reflect the full settlement value obtained for the Class), the

*Footnote continued on next page*

1 the request is indeed reasonable and appropriate, as supported by the favorable and  
2 valuable outcome achieved for the Class in this case, and the dedicated, focused,  
3 and technical work that Settlement Class Counsel undertook to obtain it.

4 **4. Settlement Class Counsel carried considerable financial**  
5 **burden in prosecuting this complex litigation.**

6 It is an established practice to reward attorneys who, as here, assume  
7 representation on a contingent basis to compensate them for the risk that they might  
8 be paid nothing at all. *See In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d  
9 1291, 1299-1300 (9th Cir. 1994). Such a practice encourages the legal profession to  
10 assume such a risk and promotes competent representation for plaintiffs who could  
11 not otherwise hire an attorney. *Id.*; *see also Vizcaino*, 290 F.3d at 1051. Settlement  
12 Class Counsel devoted tens of thousands of hours and advanced whatever expenses  
13 were necessary to investigate and see this case through to a successful outcome, all  
14 with no guarantee of reimbursement. Co-Lead Decl. ¶¶ 14, 28. In so doing,  
15 Settlement Class Counsel “turn[ed] down opportunities to work on other cases to  
16 devote the appropriate amount of time, resources, and energy necessary handle this  
17 complex case.” *VW 2L Fee Order*, 2017 WL 1047834, at \*3. This factor further  
18 supports Settlement Class Counsel’s request.

19 **5. A lodestar cross-check confirms the requested fees are**  
20 **reasonable.**

21 “Because the benefit to the class is easily quantified in common-fund  
22 settlements,” the Ninth Circuit permits district courts “to award attorneys a  
23 percentage of the common fund in lieu of the often more time-consuming task of

24 \_\_\_\_\_  
25 reasonable fee request (31.8%) continues to find strong support. In this Circuit, “fee  
26 awards exceed[] the [25%] benchmark” in “most common fund cases.” *In re NCAA*  
27 *Athletic Grant-in-Aid Cap Antitrust Litig.*, No. 4:14-MD-2541-CW, 2017 WL  
28 6040065, at \*2 (N.D. Cal. Dec. 6, 2017) *aff’d*, 768 F. App’x 651 (9th Cir. 2019)  
(emphasis added); *see also Hernandez*, 2021 WL 5053476, at \*6 (collecting cases  
and finding that attorneys’ fees awards that are one-third of the total settlement fund  
“are routinely upheld by the Ninth Circuit”).

1 calculating the lodestar.” *In re Bluetooth*, 654 F.3d at 942. Nevertheless, courts  
2 employ a streamlined lodestar analysis to “cross-check” the reasonableness of a  
3 requested award. *See, e.g., Vizcaino*, 290 F.3d at 1050. In so doing, the Court need  
4 not “closely scrutinize each claimed attorney-hour, but [may] instead use[ ]  
5 information on attorney time spent to focus on the general question of whether the  
6 fee award appropriately reflects the degree of time and effort expended by the  
7 attorneys.” *Spann v. J.C. Penney Corp.*, 211 F. Supp. 3d 1244, 1265 (C.D. Cal.  
8 2016); *see also Rieckborn v. Velti PLC*, No. 13-3889, 2015 WL 468329, at \*21  
9 (N.D. Cal. Feb. 3, 2015) (similar).

10 As explained below and in the accompanying Co-Lead Counsel Declaration,  
11 Settlement Class Counsel worked a reasonable number of hours billed at reasonable  
12 rates under the circumstances of this complex, multi-district litigation.

13 a. **Class Counsel expended a reasonable number of hours**  
14 **advancing this complex litigation.**

15 As summarized above, this is a technical case that required thorough  
16 investigation and analysis undertaken over nearly four years. *See, e.g., § II, supra*;  
17 Co-Lead Decl. ¶¶ 3-5. During this time, Settlement Class Counsel have dedicated  
18 some 69,602.5 hours in advancing this litigation through to date.

19 In complex, multi-defendant litigation like this, in which counsel performs  
20 work to advance multiple claims collectively, the vast majority of the work is for  
21 the benefit of the entire MDL, not just the case against one of the Defendants. For  
22 that reason, it is common for counsel to apportion a percentage of the total lodestar  
23 attributable to a particular settling defendant, because it is not practicable to  
24 disaggregate the common benefit work across each individual defendant. That  
25 approach applies equally here.

26 In their professional judgment and based on their familiarity with the work  
27 performed at their direction, Co-Lead Counsel estimate the work fairly and  
28 reasonably attributed to efforts that benefited the Settlement Class and the

1 prosecution of their claims against Toyota as follows: from the total hours worked,  
2 70% of the efforts are attributable to the six Vehicle Manufacturer Defendants, and  
3 the remaining 30% of work is specific to the two supplier Defendants (ZF and ST  
4 Micro), recognizing that much of the work for the suppliers also advances the  
5 claims against the Vehicle Manufacturer Defendants. *Id.* ¶¶ 15-16; *see also* ECF  
6 750-1 at ¶ 13 (Co-Lead declaration for preliminary settlement approval estimating  
7 the same).

8         Within the amount allotted to the Vehicle Manufacturer Defendants, Co-Lead  
9 Counsel estimate approximately 40% of that work is reasonably associated with  
10 Toyota. This apportionment to Toyota is supported by: (a) the size and scale of the  
11 Toyota Class, which alone covers nearly a third of the at least 15 million Class  
12 Vehicles at issue in this consolidated litigation; (b) the focused efforts on Toyota  
13 and the other Defendants’ joint pleading challenges to Plaintiffs’ Consolidated Class  
14 Action Complaint; (c) Toyota’s unique attacks on Plaintiffs’ claims and the resulting  
15 work required to respond, including the motion to sever claims against Toyota from  
16 all other Defendants, the motion to compel arbitration, and the appeal (since  
17 dropped) of the same; (d) the discovery, investigative and expert work that  
18 developed and advanced the Toyota Plaintiffs’ claims to this favorable resolution;  
19 and (e) the focused, intensive, and novel efforts to develop and negotiate over the  
20 course of more than a year a comprehensive Settlement structure with Toyota as the  
21 first settling Defendant—including innovative features such as the Inspection  
22 Program—that Co-Lead Counsel reasonably anticipate will inform efficient  
23 negotiations in any subsequent settlements in this case.

24         Based on the above, the estimated Toyota lodestar for purposes of the  
25 attorneys’ fee request, using the applicable rate caps, is approximately  
26 \$10,820,547.22. Co-Lead Decl. ¶ 17. Including the anticipated future work to  
27 implement and protect the Settlement through the three-year Claims Period,  
28 Settlement Class Counsel expects the lodestar attributable to Toyota to be

1 \$11,520,547.22.<sup>15</sup>

2 That time was (and will continue to be) spent effectively. With those hours,  
3 Settlement Class Counsel reviewed and analyzed the more than a hundred thousand  
4 documents obtained through discovery from Toyota for Toyota Plaintiffs' claims, and  
5 millions more of pages of relevant documents in the MDL, all of which informed the  
6 efforts to prosecute Plaintiffs' claims. Co-Lead Decl. ¶ 23. Reviewing, coding,  
7 analyzing and summarizing this discovery was a very significant undertaking that  
8 was critical to the litigation and resolution of this case. *Id.*

9 Settlement Class Counsel also engaged in thorough legal research and briefing  
10 efforts on issues for each of Toyota's motions, as well as the Joint Motion brought by  
11 all Defendants. *Id.* ¶ 22. Indeed, Toyota moved to stay the Toyota Plaintiffs' claims  
12 during the pendency of NHTSA's investigation, and tried to sever those claims so it  
13 could create a separate litigation track, and moved to compel Toyota Plaintiffs to  
14 arbitrate their claims. Toyota Plaintiffs' thorough and careful efforts to respond to  
15 each of these challenges ultimately prevailed to keep their claims in the consolidated  
16 pleadings before this Court. Toyota's pleading challenges, however, proved more  
17 successful, and most of Toyota Plaintiffs' claims against Toyota did not survive its  
18 motion to dismiss. ECF 396. Toyota Plaintiffs pressed on thereafter, researching and

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19  
20 <sup>15</sup> Based on their experience in defending and implementing other automotive class  
21 settlements, Settlement Class Counsel estimate that approximately \$700,000 in  
22 lodestar (1,050 more hours over three years) will be necessary for the on-the-  
23 ground efforts to finalize, implement, and protect the Settlement. This will include,  
24 for example, work required to: (1) obtain final approval of the Settlement; (2)  
25 defend the Settlement against objections, if any; (3) protect the Settlement on  
26 appeal (if any appeals are lodged); and (4) oversee and help implement the  
27 Settlement, which will include, among other things, responding to inquiries from  
28 Class members who owned or leased one of the approximately 5.2 million Subject  
Vehicles. Co-Lead Decl. ¶¶ 18-19. Settlement Class Counsel's reasonable hours  
appropriately reflect the efforts necessary to secure and protect the favorable  
outcome here.

1 developing a 1,300+ page factually detailed operative Complaint that they believe  
2 adequately states claims against Toyota and each of the remaining Defendants.

3 The settlement process itself also took an enormous amount of time and  
4 persistence, and involved dozens of meetings, calls, information and data exchanges  
5 and much more. *Id.* ¶ 6. Underpinning all of this was Settlement Class Counsel’s  
6 work to fully understand the complex electrical engineering principles and related  
7 issues involved in the ACU Defect, which provided the framework for understanding  
8 the allegations and alleged damages in this case.

9 As this (partial) list demonstrates, this litigation (and its result) took  
10 monumental effort. Importantly, the Toyota Plaintiffs and Settlement Class Counsel  
11 fought hard to reach this stage, facing challenges from Toyota at every turn. The  
12 results won, after the hurdles faced, strongly support the fee award requested here.  
13 Fitzpatrick Decl. ¶ 29 (“class counsel’s lodestar confirms that their fee request is  
14 reasonable”). As the Court found at preliminary approval, “the hours charged to date  
15 appear to be reasonable.” Prelim. Order at 28.

16 **b. Settlement Class Counsel billed reasonable rates for**  
17 **those hours.**

18 In granting preliminary approval, the Court found that “[t]he rates claimed  
19 appear reasonable based on the Court’s familiarity with rates in similar cases and  
20 quality of work performed in this matter.” Prelim. Order at 28. That alone is enough  
21 to support the reasonable rates requested. *See Ingram v. Oroudjian*, 647 F.3d 925,  
22 928 (9th Cir. 2011) (Courts may “rely on [their] own familiarity with the legal  
23 market.”).

24 Moreover, the Court-entered common benefit order (“CBO”) (ECF 111)  
25 imposes limitations on the hourly rates for all participating Plaintiffs’ Counsel. *Id.*  
26 at 6 (\$895/hour for partners; \$350-\$600/hour for associates; \$415/hour for  
27 document review attorneys; and \$175-\$275/hour for paralegals and assistants). For  
28 many timekeepers, these Court-capped hourly rates fall well below their standard

1 and customary rates. *See* Co-Lead Decl. ¶¶ 10, 24. Indeed, the total lodestar  
2 applying each timekeeper’s standard and routinely Court-approved hourly rates is  
3 \$12,100,004.84, for a reduction of nearly 10.6% (\$1,279,457.62) from the market-  
4 rate fees of participating counsel. Settlement Class Counsel respectfully submit that  
5 compliance with the CBO provides strong support for the reasonableness of the  
6 rates used.

7 Further, consistent with the Court’s request for additional evidence  
8 supporting their hourly rates (Prelim. Order at 28), Plaintiffs proffer that the  
9 reasonableness of Settlement Class Counsel’s rates is also confirmed by comparison  
10 to rates commonly approved for attorneys in this Circuit. Indeed, “[a]ffidavits of the  
11 plaintiffs’ attorney and other attorneys regarding prevailing fees in the community,  
12 and rate determinations in other cases, particularly those setting a rate for the  
13 plaintiffs’ attorney, are satisfactory evidence of the prevailing market rate.” *United*  
14 *Steelworkers of Am. v. Phelps Dodge Corp.*, 896 F.2d 403, 407 (9th Cir. 1990).

15 Courts in this Circuit routinely approve similar or higher hourly rates to those  
16 here in complex class action cases like this. *See, e.g., Ramirez v. Trans Union, LLC*,  
17 No. 12-CV-00632-JSC, 2022 WL 17722395, at \*9 (N.D. Cal. Dec. 15, 2022)  
18 (approving hourly rates ranging “from \$1,325 to \$560 for partners and associates,  
19 and \$485-\$455 for ‘litigation support’ and paralegals”); *Gutierrez, JR. v. Amplify*  
20 *Energy Corp.*, No. 8:21-cv-01628-DOC (JDEx) (C.D. Cal. Jan. 26, 2023), ECF  
21 Nos. 667, 726 (standard hourly rates of \$650-\$1,010/hour for partners, \$640-  
22 \$675/hour for associates, and \$525/hour for discovery/document review attorneys  
23 were “consistent with market rates”); *In re Wells Fargo & Co. S’holder Derivative*  
24 *Litig.*, 445 F. Supp. 3d 508, 527 (N.D. Cal. 2020), *aff’d*, 845 F. App’x 563 (9th Cir.  
25 2021) (approving hourly rates up to \$1,075 for partners and \$660 for associates);  
26 *Waldrup v. Countrywide Fin. Corp.*, No. 2:13-CV-08833-CAS-AGR<sub>x</sub>, 2020 WL  
27 13356468, at \*2 (C.D. Cal. July 16, 2020) (approving Baron & Budd’s hourly rates  
28 of \$825 to \$975 for partners, and \$495 to \$625 for associates, requested at ECF



1 479-1 at 16).<sup>16</sup>

2 Overall, the blended average billing rate for the work described above is  
3 approximately \$500.57 per hour. Co-Lead Decl. ¶ 17. This is in line with average  
4 rates in this District and reasonable here given the skill, experience, and reputation  
5 of Settlement Class Counsel—all of whom the Court appointed through a  
6 competitive leadership application process. *See, e.g., In re Volkswagen “Clean*  
7 *Diesel” Mktg., Sales Practices, & Prods. Liab. Litig.*, No. 2672 CRB (JSC), ECF  
8 3396-2 ¶ 29 (N.D. Cal. June 30, 2017) (noting that the average blended rate of 40  
9 class action settlements approved in that District in 2016 and 2017 was \$528.11 per  
10 hour); *VW 2L Fee Order*, 2017 WL 1047834, at \*5 (approving blended average  
11 billing rate of \$529 per hour); *Herrera v. Wells Fargo Bank, N.A.*, No. 8:18-CV-  
12 00332-JVS-MRW, 2021 WL 9374975, at \*13 (C.D. Cal. Nov. 16, 2021) (approving  
13 a blended rate of approximately \$613 per hour); *Perez v. Rash Curtis & Assocs.*,  
14 No. 4:16-cv-03396-YGR, 2020 WL 1904533, at \*20 (N.D. Cal. Apr. 17,  
15 2020) (reviewing cases and finding blended rate of \$634.48 to be reasonable).

16 Finally, recent data on the average rates charged in this district provides still  
17 further evidence in support of the rates used. Specifically, the “Real Rate Report  
18 identifies attorney rates by location, experience, firm size, areas of expertise and  
19 industry, as well as specific practice areas, and is based on actual legal billing,  
20 matter information, and paid and processed invoices from more than eighty  
21 companies.” *Rolex Watch USA Inc. v. Zeotec Diamonds Inc.*, No. CV 02-1089 PSG  
22

23 <sup>16</sup> *See also In re Toyota Motor Corp. Unintended Acceleration Mktg., Sales*  
24 *Practices, & Prods. Liab. Litig.*, No. 810ML02151JVSMOX, 2013 WL 12327929,  
25 at \*33 (C.D. Cal. July 24, 2013) (approving rates up to \$950 per hour over ten years  
26 ago in automotive class action); *Schroeder v. Envoy Air, Inc.*, No. CV 16-4911-  
27 MWF (KSX), 2019 WL 2000578, at \*8 (C.D. Cal. May 6, 2019) (approving rates of  
28 up to \$890 for partners and up to \$750 for associates); *Keegan v. Am. Honda Motor*  
*Co, Inc.*, No. CV1009508MMMAJWX, 2014 WL 12551213, at \*23 (C.D. Cal. Jan.  
21, 2014) (approving class counsel’s hourly rates up to \$875 for partners and \$595  
for associates).

1 (VBKx), 2021 WL 4786889, at \*3 (C.D. Cal. Aug. 24, 2021). “[N]umerous courts  
2 in this District and elsewhere have turned to the annual Real Rate Report as a  
3 helpful guide.” *Sarabia v. Ricoh USA, Inc.*, No. 820 CV 00218 JLS KES, 2023 WL  
4 3432160, at \*8 (C.D. Cal. May 1, 2023) (collecting cases).

5 The most recent Real Rate Report, based on data collected through Q2 of  
6 2022 (i.e., not adjusted for the subsequent inflation in the last year), supports the  
7 reasonableness of the hourly rates reflected in the CBO. *See* Co-Lead Decl. ¶¶ 26-27.  
8 Specifically, it reflects hourly rates for litigation partners in Los Angeles of \$516  
9 (for the first quartile) to \$1,049 (for the third quartile), with an average hourly rate  
10 of \$725. *Id.*, ¶ 27 and Ex. C, at 16. For Los Angeles litigation associates, hourly  
11 rates are \$400-\$855 per-hour, with an average hourly rate of \$642. *Id.* These figures  
12 are well in line with those charged here.

13 c. **Class Counsel’s performance and the results achieved**  
14 **justify a reasonable lodestar multiplier.**

15 The Ninth Circuit *requires* an upward multiplier when certain risk factors are  
16 present and authorizes a multiplier for certain “reasonableness” factors, including  
17 the quality of representation, the complexity of the issues presented, and most  
18 importantly, the benefit obtained for the class.<sup>17</sup> *See, e.g., Stetson v. Grissom*, 821  
19 F.3d 1157, 1166 (9th Cir. 2016); *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70  
20 (9th Cir. 1975); *In re Bluetooth*, 654 F.3d at 942. In this Circuit, multipliers in the 1-  
21 4 range are “presumptively acceptable.” *Dyer v. Wells Fargo Bank, N.A.*, 303 F.R.D.

22 \_\_\_\_\_  
23 <sup>17</sup> The “reasonableness” factors are (1) the time and labor required, (2) the novelty  
24 and difficulty of the questions involved, (3) the skill requisite to perform the legal  
25 service properly, (4) the preclusion of other employment by the attorney due to  
26 acceptance of the case, (5) the customary fee, (6) whether the fee is fixed or  
27 contingent, (7) time limitations imposed by the client or the circumstances, (8) the  
28 amount involved and the results obtained, (9) the experience, reputation, and ability  
of the attorneys, (10) the “undesirability” of the case, (11) the nature and length of  
the professional relationship with the client, and (12) awards in similar cases. *Kerr*,  
526 F.2d at 70.

1 326, 334 (N.D. Cal. 2014).

2 At preliminary approval, based on Settlement Class Counsel’s estimated  
3 multiplier between 2.35 and 2.53, the Court found that the “the application of the  
4 multiplier requested is likely to be reasonable.” Prelim. Order at 29. Settlement  
5 Class Counsel confirm that the lodestar of \$11,520,547.22 (using the capped billing  
6 rates from the CBO) yields a moderate multiplier of 2.17 for work performed in  
7 furtherance of Plaintiffs’ claims against Toyota, including time anticipated for the  
8 on-the-ground work necessary to implement, oversee, and protect this Settlement  
9 through potential appeals. Co-Lead Decl. ¶¶ 18, 19.

10 This requested multiplier is “*below* the lodestar multipliers that are typical in  
11 complex cases with large recoveries like the settlement here.” Fitzpatrick Decl. ¶ 29  
12 (citing a study showing mean and median multipliers of 2.70 and 2.09, respectively,  
13 for recoveries between \$69.6 million and \$175.5 million). And it is more than  
14 justified by this litigation, especially when considering the contingent nature of  
15 Settlement Class Counsels’ work. Moreover, as discussed at length above, the result  
16 obtained by Settlement Class Counsel in light of the significant challenges they  
17 faced at every turn and the enormous effort they undertook in this litigation over the  
18 course of four years more than supports the modest multiplier they request here. *See*  
19 §§ II.B, IV.A.2, *supra*.

20 **d. The requested multiplier is squarely in line with those**  
21 **routinely approved in this Circuit.**

22 While the relevant facts and history of this case provide ample support for  
23 the multiplier sought, it also bears mention that the request is squarely within the  
24 “presumptively acceptable range of 1.0-4.0” in this Circuit. *Dyer*, 303 F.R.D. at  
25 334; *see also Ochinero v. Ladera Lending, Inc.*, No. SACV 19-1136 JVS (ADSx),  
26 2021 WL 4460334, at \*8 (C.D. Cal. July 19, 2021) (“lodestar multipliers of 1.5 to  
27 3.0 are most common”). This presumption is borne out in court orders routinely  
28 approving multipliers in line with those sought here.

1 Multipliers for large settlements, like this one, tend to fall on the high end of  
2 the 1-4 range. A 2017 study of attorneys’ fees awarded in 458 class actions over a  
3 five-year period (2009-2013) by Theodore Eisenberg and Geoffrey Miller found  
4 that the *average* multiplier in cases with settlements valued over \$67.5 million was  
5 2.72 (above the multipliers here). *See* Theodore Eisenberg, Geoffrey Miller & Roy  
6 Germano, *Attorneys’ Fees in Class Actions 2009-2013*, 92 N.Y.U. L. Rev. 937, 967  
7 (2017); *see also* William B. Rubenstein et al., 5 Newberg and Rubenstein on Class  
8 Actions § 15:89 (6th ed.) (presenting data from three different fee studies, including  
9 Eisenberg & Miller, with the mean lodestar multiplier for settlement funds at or  
10 near the size in this case from each study was: 2.7, 2.39, and 2.72).

11 As this data shows, courts routinely approve lodestar multipliers at or above  
12 those sought here, this includes settlements with a percentage of the fund near or  
13 above the benchmark 25% as well. *See Vizcaino*, 290 F.3d at 1051 n.6 (approving  
14 3.65 multiplier, and citing appendix of cases showing “a range of 0.6-19.6, with  
15 most . . . from 1.0-4.0 and a bare majority . . . in the 1.5-3.0 range”); *In re NCAA*  
16 *Grant-in-Aid*, 2017 WL 6040065, at \*1 (attorneys’ fees based on a 3.66 multiplier  
17 and 20% of a \$208 million fund); *see also* ECF 761-1 (compendium chart of cases  
18 with percentage near or above the benchmark 25%, and with a lodestar multiplier of  
19 approximately 2.5 or above).

20 Settlement Class Counsel’s requested multiplier—2.17 with anticipated  
21 future time and 2.31 without, *see* Co-Lead Decl. ¶¶ 17, 19—is a reasonable and  
22 appropriate multiplier, based on both the record in this case, and with reference to  
23 awards regularly made in this Circuit. Fitzpatrick Decl. ¶ 29.

24 **B. Settlement Class Counsel’s expenses are reasonable and**  
25 **appropriate.**

26 Settlement Class Counsel may “recover their reasonable expenses that would  
27 typically be billed to paying clients in non-contingency matters.” *Brown v. CVS*  
28 *Pharmacy, Inc.*, No. 15-cv-7631, 2017 WL 3494297, at \*9 (C.D. Cal. Apr. 24,

1 2017); *see also Staton*, 327 F.3d at 974; Fed. R. Civ. P. 23(h). This includes  
2 expenses that are reasonable, necessary, and directly related to the litigation. *See*  
3 *Willner v. Manpower Inc.*, No. 11-cv-2846, 2015 WL 3863625, at \*7 (N.D. Cal.  
4 June 22, 2015).

5 Here, Settlement Class Counsel seek \$472,730.40 in litigation expenses. This  
6 includes \$397,730.40 in funds expended by Lead Counsel and PSC firms to  
7 advance the common benefit, and \$75,000 that Settlement Class Counsel are  
8 responsibly reserving to cover the anticipated costs associated with the future on-  
9 the-ground administration and Settlement implementation efforts over the course of  
10 the next three years. Co-Lead Decl. ¶ 28. At approximately 0.3% of the total  
11 Settlement value of \$147,800,000, these costs are *significantly* less than the average  
12 costs awarded in class action settlements. Theodore Eisenberg & Geoffrey P. Miller,  
13 *Attorney Fees and Expenses in Class Action Settlements: 1993–2008*, 7 J. Empirical  
14 Legal Stud. 248, 267 (2010) (mean and median of 2.8% and 1.7% before 2002 and  
15 2.7% and 1.7% thereafter); Eisenberg-Miller, *Attorneys’ Fees* (2017), *supra*, at 963  
16 (mean and median of 3.9% and 1.7% since 2009).

17 More importantly, these costs are commensurate with the stakes, complexity,  
18 and intensity of this particular litigation. This includes, for example, costs for  
19 eDiscovery services and the document processing platform necessary for  
20 processing, maintaining, and analyzing the millions pages of documents produced  
21 in this litigation, for witness and expert fees necessary given the technical nature of  
22 the litigation and the efforts undertaken to resolve it, and for travel expenses related  
23 to, among other things, hearing attendance and meetings and negotiations  
24 throughout the United States. Co-Lead Decl. ¶¶ 28-31.

25 No doubt, this is a technical, complex case, and it has been expensive to  
26 prosecute. But, as courts have recognized, “Class Counsel had a strong incentive to  
27 keep expenses at a reasonable level due to the high risk of no recovery when the fee  
28 is contingent.” *Gutierrez v. Amplify Energy Corp.*, No. 821 CV 01628 DOC JDEX,

1 2023 WL 3071198, at \*7 (C.D. Cal. Apr. 24, 2023). Those incentives apply equally  
2 here, and Settlement Class Counsel expended only that which they believed was  
3 necessary to advance the interests of the Class. The requested costs are reasonable  
4 and should be reimbursed.

5 **C. The Settlement Class Representatives have earned the requested**  
6 **service awards through four years of dedication to this case.**

7 Settlement Class Counsel request service awards of \$2,500 for each of the 11  
8 Settlement Class Representatives, to be paid from the Settlement fund. At the  
9 preliminary approval phase, this Court concluded that based on the Settlement  
10 Class Representatives “active roles in the litigation, the number of hours spent on  
11 the case, and the four-year period that it has been pending, incentive awards in the  
12 amount of \$2,500 are reasonable.” Prelim. Order at 23. That conclusion remains  
13 sound. The requested amount falls below the \$5,000 “presumptively reasonable”  
14 service award in this Circuit, and the time and efforts the proposed Representatives  
15 dedicated to prosecuting this case clearly supports the request here. *In re CRT*, 2016  
16 WL 4126533, at \*11. *See also, e.g., Cisneros v. Airport Terminal Servs. Inc.*, No.  
17 2:19-CV-02798-VAP-SPx, 2021 WL 3812163, at \*9 (C.D. Cal. Mar. 26, 2021)  
18 (“Courts have generally found that \$5,000 incentive payments are reasonable.”); *In*  
19 *re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 943 (9th Cir. 2015) (affirming  
20 awards of \$5,000); *In re Mego*, 213 F.3d at 463 (same).

21 The Settlement Class Representatives have protected and continue to protect  
22 the interests of the Class by, among other things: providing extensive factual  
23 information to assist counsel with drafting the complaints; regularly communicating  
24 with counsel to stay abreast of developments in this litigation; searching for  
25 relevant and responsive materials about their Class Vehicles, and providing those  
26 materials to counsel for production in discovery; conferring with counsel to prepare  
27 and finalize detailed responses to Interrogatories, Requests for Production of  
28 Documents, and Requests for Admissions; evaluating the terms of the Settlement

1 Agreement; and expressing their continued willingness to protect the Class until the  
2 Settlement is approved and its administration completed. Settlement Class Counsel  
3 estimates that over the course of four years, and conservatively, these efforts took at  
4 least 20 hours of time from each of the Toyota Plaintiffs. They have earned the  
5 moderate service awards requested.

6 **V. CONCLUSION**

7 Settlement Class Representatives and Settlement Class Counsel respectfully  
8 request that the Court certify the Settlement Class and appoint Settlement Class  
9 Counsel and Settlement Class Representatives; grant final approval to the  
10 Settlement; and award \$25,000,000 in attorneys' fees and \$472,730.40 in  
11 reasonable expenses to be allocated by Co-Lead Counsel among the firms  
12 performing work under the Common Benefit Order, and award Class  
13 Representatives \$2,500 each as service awards.

14  
15 Dated: September 22, 2023

Respectfully submitted,

16  
17 /s/ Roland Tellis

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**CERTIFICATE OF SERVICE**

I hereby certify that on September 22, 2023, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record, including counsel for Defendants.

/s/ Roland Tellis  
Roland Tellis

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