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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

MARK ALTIER, ET AL.,

Plaintiffs,

vs.

TOYOTA MOTOR NORTH AMERICA, INC., TOYOTA MOTOR SALES, U.S.A., INC., ET AL.,

Defendants.

MDL No. 2905

MOTION FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT AND DIRECTION OF NOTICE UNDER FED. R. CIV. P. 23(e)

TABLE OF CONTENTS

Page

TABLE OF CONTENTS
(continued)

Page

TABLE OF AUTHORITIES

Page(s)

Cases

TABLE OF AUTHORITIES (continued)

Page(s)

TABLE OF AUTHORITIES
(continued)

Page(s)

TABLE OF AUTHORITIES (continued)

Page(s)

TABLE OF AUTHORITIES (continued)

Page(s)

NOTICE OF MOTION AND MOTION

TO ALL THE PARTIES AND COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on July 24, 2023 at 8:30am or at such other date and time as the Court may set, in Courtroom 6 of the United States District Court for the Central District of California, Lead Counsel and the Plaintiffs' Steering Committee, 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 granting preliminary approval of the Class Action Settlement and directing notice to the Class under Fed. R. Civ. P. 23(e)(1); appointing Settlement Class Counsel and Settlement Class Representatives for purposes of the Settlement only; and scheduling a final approval hearing under Fed. R. Civ. P. 23(e)(2).

I. Introduction

The Toyota Plaintiffs[1] respectfully move for the Court's preliminary approval of a Settlement with Toyota,[2] and for approval of the proposed plan to notify the Settlement Class—purchasers and lessees of approximately 5.2 million Toyota-branded Subject Vehicles—who will receive significant compensation in exchange for the proposed resolution of their claims.[3]

The Settlement includes a non-reversionary Settlement Amount of $78.5 million, plus significant benefits to Class members above and beyond cash payments, including a long-term Extended Warranty; a comprehensive Outreach Program to increase Recall participation and improve Subject Vehicle safety; and a future loaner vehicle/rental car reimbursement program to ensure that recall repairs are performed with minimal inconvenience for Class Members. The Settlement also creates an innovative ten-year-long Settlement Inspection Program, which will benefit all Class members by mandating procedures for the active investigation and documentation of airbag non-deployments that may be caused by electrical overstress. In sum, and as will be detailed in Plaintiffs' Motion for Final Approval, the value of the package of settlement benefits received by Class members far exceeds the $78.5 million in cash and commitments.

As detailed further below, this package of relief includes:

a) the opportunity to claim cash compensation (with individual payment amounts tailored to whether the Class member's vehicle is recalled);

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[1] The "Toyota Plaintiffs" or "Settlement Class Representatives" are Mark Altier, Alejandra Renteria, Samuel Choc, Tatiana Gales, Gary Samouris, Michael Hines, Brent DeRouen, Danny Hunt, Evan Green, Joy Davis, and Dee Roberts.

[2] "Toyota" means Toyota Motor North America, Inc. ("TMNA"), Toyota Motor Sales, U.S.A., Inc. ("TMS"), Toyota Motor Engineering & Manufacturing North America, Inc. ("TEMA"), and Toyota Motor Corporation.

[3] The Settlement Agreement is attached to the Declaration of Co-Lead Counsel ("Co-Lead Decl.") as Exhibit A. Capitalized terms not defined herein shall have the same definitions and meanings used in the Settlement.

b) an Outreach Program to accelerate the repair of defective Airbag Control Units ("ACUs") in recalled Toyota Subject Vehicles;

c) a Future Rental Car Reimbursement and Loaner Vehicle and Outreach Program to ensure effective implementation and ease any inconvenience for Class members in obtaining the ACU recall repair;

d) a valuable Extended New Parts Warranty, with 12 years of coverage for Subject Vehicles that receive a recall repair; and

e) an innovative Settlement Inspection Program to provide active monitoring, investigation, and documentation for any future incidents that are consistent with the ACU Defect at issue in this litigation.

After more than a year of intensive negotiations between experienced counsel for Plaintiffs and Toyota—and under the guidance of Court-appointed Settlement Special Master Juneau—Plaintiffs are proud to have reached this proposed Settlement and to present it to the Court for evaluation. Plaintiffs respectfully request approval to give notice to the Class about this positive outcome and their related rights, and ask that the Court set the matter for final settlement approval on November 13, 2023. *See* Fed. R. Civ. P. 23(e).

II. Background and Procedural History of Plaintiffs' Claims

A. Factual background: Plaintiffs allege the Toyota Subject Vehicles contain defective and dangerous DS84 ACUs.

Plaintiffs allege in the operative Consolidated Amended Class Action Complaint (ECF 477, the "ACAC" or "Complaint") that Toyota designed, manufactured, and sold millions of Subject Vehicles with a hidden and serious defect in their passenger safety systems. Specifically, the Subject Vehicles each contain a ZF-TRW ACU that is meant to determine when and whether airbag deployment is required during a crash, and to deploy airbags and tighten seatbelts where necessary, among other critical safety tasks. ACAC ¶¶ 472-477. To do so, the ACU relies on a component electronic chip designed and made by ST Micro

companies (an application specific integrated circuit, or "ASIC," known as the DS84). *Id.* ¶ 524. These particular ACUs ("DS84 ACUs") and ASICs are dangerous and defective because they are uniquely vulnerable to failure from a foreseeable condition known as electrical overstress ("EOS"). *Id.* ¶ 10. Failure of these components can prevent airbag and seatbelt deployment in crashes, among other serious malfunctions. *Id*. ¶¶ 488-89.

The National Highway Traffic Safety Administration ("NHTSA") began to investigate airbag non-deployment and related failures in vehicles with these DS84 ACUs by the summer of 2015. *Id.* ¶ 1259. In March 2018, NHTSA opened an official Preliminary Evaluation (PE 18-003) for Hyundai and Kia vehicles that included the DS84 ACUs. Just over a year later, on April 19, 2019, NHTSA upgraded its Preliminary Evaluation to an Engineering Analysis (EA 19-001), which added all vehicle makes with DS84 ACUs to the ongoing investigation, including the millions of Toyotas at issue in this litigation. As NHTSA detailed at the time, it suspected that EOS was the likely cause of airbag failures in at least two Toyota vehicles with the DS84 ACU. *Id*. ¶¶ 1125-26.

Plaintiffs allege that Toyota knew about and concealed this safety defect for years prior to NHTSA's announcement, while it made misleading statements and omissions to Plaintiffs and consumers about the safety and reliability of the Subject Vehicles and their airbags. *Id*. § IV.D.5. As set forth in the ACAC, the misrepresentations and omissions were included in Monroney labels for every Subject Vehicle, vehicle certification labels, and brochures and other marketing materials. *Id*. § IV.E. Plaintiffs contend that Toyota's conduct deceived regulators, Plaintiffs, and proposed Class Members about the Subject Vehicles' safety and reliability, ultimately causing Plaintiffs to suffer economic harms when they paid for the Vehicles. *Id.* § IV.G.

On January 17, 2020, with NHTSA's investigation ongoing, Toyota recalled 2,891,976 vehicles equipped with the defective DS84 ACUs, concluding that the

"ASIC does not have sufficient protection against negative electrical transients." ACAC ¶¶ 524, 1128. The recalled Subject Vehicles include the following models:

- 2011–2019 Toyota Corolla;
- 2011–2013 Toyota Corolla Matrix;
- 2012–2018 Toyota Avalon; and
- 2013–2018 Toyota Avalon HV

Id. ¶ 523. Toyota's recall offered a repair, but it did not provide consumers with monetary compensation. To date, over one million recalled Subject Vehicles have not received the repair, and additional progress has stagnated in the three years since the recall was announced. *Id*. ¶ 525.

Toyota has not recalled more than two million other Subject Vehicles (trucks and SUVs) that contain DS84 ACUs.[4] These are:

- 2012–2019 Toyota Tacoma;
- 2012–2017 Toyota Tundra; and
- 2012–2017 Toyota Sequoia

Together, these recalled and unrecalled vehicles are the subject of the proposed Settlement before the Court.

B. Procedural background: Plaintiffs investigated their claims through comprehensive discovery, as shown by the detailed, evidence-based allegations in the 1,300+ page operative pleading.

Following NHTSA's April 2019 expansion of its investigation to include Toyota and other automobile manufacturers with DS84 ACUs, consumers filed 26 class action lawsuits alleging that Toyota and other Defendants knowingly misrepresented and withheld information about the ACU Defect from consumers who purchased and leased Class Vehicles. The Judicial Panel on Multidistrict

[4] Toyota has not recalled these trucks and SUVs based on its conclusion that "due to different body construction and other factors, Toyota believes at this time that an occurrence of a sufficient negative transient at a timing that can affect airbag deployment in a crash is unlikely." *See* Part 573 Safety Recall Report, Recall 20V-024, January 17, 2020.

Litigation consolidated the actions before this Court under the heading *In re: ZF-TRW Airbag Control Units Product Liability Litigation*, Case No. 2:19-ml-02905-JAK-MRW. Shortly thereafter, the Court appointed Plaintiffs' Co-Lead Counsel, Plaintiffs' Steering Counsel, and Plaintiffs' Liaison Counsel in this MDL, ECF No. 93, and ordered Plaintiffs to file a consolidated complaint. ECF No. 106.

Plaintiffs and their experts continued to conduct extensive investigation into the ACU Defect, the causes thereof, and the entities involved in the design, manufacture, testing, approval, and sale of the DS84 ACUs and ASICs. Thereafter, on May 26, 2020, Plaintiffs filed a detailed, 564-page Consolidated Class Action Complaint reflecting their investigation. ECF No. 119. In that Consolidated Complaint, Plaintiffs brought claims against several manufacturer and supplier groups, including Toyota, for violations of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1962(c)-(d), common law fraud and unjust enrichment, as well as claims on behalf of state subclasses for breach of express and implied warranties and violations of statutory consumer protection statutes under the laws of 29 states.

On July 15, 2020, Toyota filed a motion to: (a) stay the Toyota Plaintiffs' claims to allow NHTSA to continue its investigation and evaluation of Toyota's recall based on the primary jurisdiction doctrine, and (b) sever claims against Toyota from the other Vehicle Manufacturer Defendants. ECF No. 191. Plaintiffs opposed, and this Court held a hearing on September 14, 2020. ECF Nos. 235, 254, 276. On August 20, 2021, this Court denied the motion to stay as moot, and also denied the motion to sever. ECF No. 363.

While the motions to stay and sever were pending, Plaintiffs and Toyota continued to engage in substantial motion practice. First, on July 27, 2020, Toyota filed a motion to dismiss pursuant to Rule 12(b)(6),[5] and Toyota Motor Corporation

[5] Toyota Motor Corporation provisionally joined the Toyota Motion pending resolution of its Rule 12(b)(2) challenge. *See* ECF No. 214 (Toyota Motor Corporation's Motion to Dismiss for Lack of Personal Jurisdiction Pursuant to Rule

filed a motion to dismiss pursuant to Rule12(b)(2). ECF No. 214. Toyota also joined in the 50-page Joint Motion to Dismiss filed on behalf of all Defendants on July 27, 2020. ECF No. 208. Plaintiffs filed approximately 90 pages of extensive, consolidated opposition briefing on September 25, 2020. ECF 281, 289. Toyota filed replies on November 9, 2020, ECF No. 297, 299, and briefing ultimately concluded on January 24, 2022, long after the January 25, 2021 hearing on these motions. *Compare* ECF No. 391 *with* ECF No. 323. This Court issued its ruling on February 9, 2022 granting in part and denying in part Toyota's motion and the Joint Motion, and ordered Plaintiffs to file the ACAC. ECF No. 396.

While the Parties briefed the pleading challenges, Toyota also filed a motion to compel arbitration on December 10, 2020. ECF No. 305. Plaintiffs opposed that motion on February 25, 2021, and Toyota replied on March 22, 2021. ECF Nos. 330, 336. Plaintiffs also filed a request for judicial notice in support of their opposition on April 5, 2021. ECF No. 339. This Court heard oral argument on April 26, 2021. ECF No. 345. On September 27, 2021, this Court denied Toyota's motion in full. ECF No. 374. Toyota appealed this decision to the Ninth Circuit on October 25, 2021. Approximately ten months later, Toyota voluntarily dismissed its appeal. ECF No. 545.

Alongside these thorough briefing efforts, the Parties also engaged in extensive document and information exchanges. This included the production and review of approximately 145,000 pages of documents and 4,500 native files from Toyota (including Excel spreadsheets, video/audio files, etc.), many containing technical presentations and data that Toyota provided to NHTSA. Plaintiffs propounded requests for production and interrogatories to the Toyota Defendants, jurisdictional discovery on Toyota Motor Corporation, and responded to the discovery requests that Toyota served on Plaintiffs. The Parties met and conferred

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12(b)(2) and Toyota's Motion to Dismiss Pursuant to 12(b)(6)).

extensively regarding this discovery and a variety of other topics, including Toyota's ESI disclosures. Toyota further produced relevant documents that aided in the Parties' settlement discussions. Co-Lead Decl. ¶¶ 3-4.

On May 26, 2022, Plaintiffs filed their three-volume, 1335-page ACAC reflecting their deep investigation of the technology, mechanics, and other issues regarding the ACU Defect, and Defendants' knowledge of the same, gained throughout months of litigation and discovery and their own independent research and experts. ECF No. 477. The lengthy and detailed allegations in both the ACAC and the earlier Consolidated Complaint reflect the exacting process undertaken by Settlement Class Counsel to analyze the complex technologies at issue in this case, and to research, develop, and assert the various claims and the remedies available to those impacted by Toyota's and the other Defendants' conduct.

Due to their good-faith participation in settlement discussions, Plaintiffs stipulated with Toyota to extend their deadline to respond to the ACAC while the Parties negotiated a potential settlement under the guidance of the Court-appointed Settlement Special Master, as described below.

C. The Settlement process: The Parties engaged in a lengthy, evidence-based negotiation.

Following the Court's Order on Toyota's and the remaining Defendants' first motions to dismiss, and after Plaintiffs filed the operative ACAC in May 2022, Plaintiffs, TMNA, TMS, and TEMA filed a Joint Motion for an Order Appointing Patrick A. Juneau as Settlement Special Master pursuant to Fed. R. Civ. P. Rule 53. The Court granted the motion and appointed Special Master Juneau on June 7, 2022. ECF 473. Thereafter, the Parties commenced an extensive series of settlement discussions and related information exchanges. *See* § II.B, *supra* (detailing discovery exchanged). This facilitated well over a year of sophisticated negotiations between the Parties, ultimately resulting in the proposed Settlement now before the Court.

Throughout this year of negotiations, the Parties held numerous settlement meetings, including at least six in-person sessions, and dozens more telephonic and videoconference discussions to continue those negotiations. *See* Co-Lead Decl. ¶ 6. The Parties reached agreement on material terms for a settlement in the spring of 2023, and spent the next several weeks drafting and finalizing the settlement agreement and related exhibits, including the comprehensive class notice program detailed below. *Id*.

III. The Settlement Terms and Relief Provided to the Class

The Settlement provides substantial cash compensation to Class Members through a streamlined, state-of-the-art claims process, among other important and valuable benefits explained further below.

A. The Class definition.

The Class is defined as follows: "all persons or entities who or which, on the date of the issuance of the Preliminary Approval Order, own/lease or previously owned/leased Subject Vehicles distributed for sale or lease in the United States or any of its territories or possessions." *See* Settlement Agreement ("SA"), ¶ II.A.7.[6]

The Subject Vehicles include approximately 5.2 million Toyota vehicles, model years 2011-2019, as defined in the proposed Settlement Agreement. *Id.* § II and Exhibit 2.

B. Settlement benefits to Class Members.

The Settlement provides a comprehensive package of settlement benefits for the Class, with individual benefits tailored to whether the Class Members' Subject Vehicle has been (or is later) recalled due to the relevant ACU Defect.

[6] Those excluded from the Class are: (a) Toyota, its officers, directors, employees and outside counsel; its affiliates and affiliates' officers, directors and employees; its distributors and distributors' officers and directors; and Toyota's Dealers and their officers and directors; (b) Settlement Class Counsel, Plaintiffs' counsel, and their employees; (c) judicial officers and their immediate family members and associated court staff assigned to this case; and (d) persons or entities who or which timely and properly exclude themselves from the Class. SA ¶ II.A.7.

All Class Members may submit claims for cash compensation, including: (a) reimbursement for reasonable out-of-pocket expenses related to obtaining a Recall repair for a recalled Subject Vehicle, and (b) potential residual distribution payments of up to $250 for each Class Member. SA § III.B-C.

In addition to these cash payments, an extensive recall outreach campaign will encourage Class Member participation in Toyota's ACU Recall, which is critically important given that over a million recalled Subject Vehicles have not been repaired more than three years into the open recall. SA § III.G. As still further incentive for recall participation, and to minimize the time and effort needed for Class Members to obtain a recall repair, Toyota will also provide Class Members who are not provided a free loaner vehicle with reimbursement for reasonable rental costs of another vehicle while their Subject Vehicle receives the repair. SA § III.H.

After the repair is performed, Toyota will also provide Class Members with an Extended New Parts Warranty for 12 years, which provides substantial additional (and valuable) warranty coverage for Class Members. SA § III.F. Importantly, if Toyota issues a recall for the currently unrecalled Subject Vehicles during the Claims period, Class Members with those Subject Vehicles will also be entitled to all of the recall-related benefits described above. SA ¶¶ III.F.5. When they file their motion for final approval, Plaintiffs will provide the Court a declaration from a warranty valuation expert accepted by other MDL Courts that will describe in detail the market value of the Extended New Parts Warranty.

Finally, to protect all Class Members' interests in the safety of the Subject Vehicles they drive every day, the parties developed an innovative Settlement Inspection Program to provide technical investigation and follow up for Subject Vehicles that experience potentially EOS-related malfunctions in the field for the next ten years. SA § III.E and Exhibit 3.

If there are any funds remaining in the Settlement Fund after all valid, complete, and timely Claims for reimbursement and residual payments are paid, the

Parties anticipate a redistribution of the remaining funds to Class Members unless and until it is economically infeasible to do so. SA § III.C. Any final balance will then be directed *cy pres* subject to Court approval. *Id.* This ensures that *all* of the money secured by the Settlement will inure to the benefit of the Class and the interests advanced in this litigation, and that none of the funds will revert to Toyota.

C. Notice and Claims Administration.

The parties selected Kroll Notice Media as the Settlement Notice Administrator based on its extensive experience in administering large-scale notice programs in complex class cases,[7] and are confident in the robust, multi-faceted Class Notice Program developed for the Class here. The fees and costs of the Settlement Notice Administrator in developing and implementing the Class Notice Program, and assisting the Settlement Claims Administrator throughout the claims process, will be paid from the Settlement Fund. SA § IV. Kroll estimates that the notice costs in this case, plus the costs of supporting the Settlement Special Master in the claims program, will range from approximately $6-$6.5 million. Plaintiffs believe this is reasonable and necessary given the extensive size of the Class associated with some 5.2 million vehicles, and the proportional costs to send notice and administer claims.

This robust Class Notice Program will drive participation in the claims process to be administered by the Settlement Special Administrator, who will oversee and administer the Settlement Fund. The parties agree and mutually propose Patrick Hron and Patrick Juneau to serve in this role (SA ¶¶ II.A.43) in light to their extensive and recent experience in successfully administering similar automotive settlements of this scale. Juneau Decl. ¶¶ 3-4. The reasonable fees and costs for the Special Settlement Administrator, estimated to be $300,000-$500,000 (Juneau Decl. ¶ 9) will be paid from the Settlement Fund.

[7] *See* Declaration of Jeanne Finegan ("Finegan Decl.") at ¶¶ 8-12.

D. Attorneys' Fees, Expenses, and Service Awards.

Proposed Settlement Class Counsel will apply to the Court for an award of reasonable attorneys' fees and expenses not to exceed 33% of the Settlement Amount. Settlement Class Counsel will also apply for service awards of up to $2,500 for each of the 11 Toyota Plaintiffs to compensate them for their efforts and commitment in prosecuting this case on behalf of the Class. Any attorneys' fees, expenses, and service awards granted by the Court will be paid from the Settlement Fund. SA ¶¶ IV.E.4.

E. Creation of a Qualified Settlement Fund.

Toyota shall establish and create a Qualified Settlement Fund ("QSF"), pursuant to Internal Revenue Code § 468B and the Regulations issued thereto, with the QSF to be held by the Escrow Agent. *See* SA § III.A. As provided in Section III.A of the Settlement, Toyota shall deposit the appropriate funds into the QSF, which shall be a non-reversionary Settlement Fund. This non-revisionary Settlement Fund shall be used consistent with the terms of the Agreement to:

- Pay valid and approved claims submitted by eligible Class Members to the Out-of-Pocket Claims Process;
- Pay for the Outreach Program in Section III.G of the Settlement Agreement;
- Pay notice and related costs;
- Pay for settlement and claims administration, including expenses associated with the Settlement Special Administrator;
- Make residual cash payments to Class Members pursuant to Section III.C of the Settlement Agreement;
- Pay Settlement Class Counsel's fees and expenses as awarded by the Court;
- Make service award payments to individual Class representatives as awarded by the Court; and

- Pay applicable taxes.

See SA at § III.A.3.

IV. Legal Standard for Preliminary Approval and Decision to Give Notice

Federal Rule of Civil Procedure 23(e) governs a district court's analysis of a proposed class action settlement and creates a three-step process for approval.

First, a court must determine that it is "likely" to: (i) approve the proposed settlement as fair, reasonable, and adequate, after considering the factors outlined in Rule 23(e)(2), and (ii) certify the settlement class after the final approval hearing. *See* Fed. R. Civ. P. 23(e)(1)(B); *see also* 2018 Advisory Committee Notes to Rule 23. *Second*, a court must direct notice to the proposed class to give them an opportunity to object or to opt out. *See* Fed. R. Civ. P. 23(c)(2)(B); Fed. R. Civ. P. 23(e)(1), (5). *Third*, after a hearing, the court may grant final approval of the proposed settlement on a finding that the settlement is fair, reasonable, and adequate, and certify the settlement class. Fed. R. Civ. P. 23(e)(2). Where, as here, "the parties negotiate a settlement agreement before the class has been certified, settlement approval requires a higher standard of fairness and a more probing inquiry than may be normally required under Rule 23(e)." *Roes, 1-2 v. SFBSC Mgmt., LLC*, 944 F.3d 1035, 1048 (9th Cir. 2019); *Vianu v. AT&T Mobility LLC*, No. 19-CV-03602-LB, 2022 WL 16823044, at *7 (N.D. Cal. Nov. 8, 2022) (similar).[8]

V. Argument

A. The Settlement is a strong and fair result for the Class and should be approved.

There is a "strong judicial policy that favors settlements, particularly where complex class action litigation is concerned." *In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 556 (9th Cir. 2019). Under Rule 23(e), the Court must determine "'whether a proposed settlement is fundamentally fair, adequate, and

[8] Internal citations are omitted throughout unless otherwise indicated.

reasonable,' recognizing that '[i]t is the settlement taken as a whole, rather than the individual component parts, that must be examined for overall fairness.'" *Staton v. Boeing Co*., 327 F.3d 938, 952 (9th Cir. 2003) (quoting *Hanlon v. Chrysler Corp*., 150 F.3d 1011, 1026 (9th Cir. 1998) (overruled on other grounds)).

At the preliminary approval stage, the Court should assess whether "the proposed settlement appears to be the product of serious, informed, noncollusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval.'" *Markson v. CRST Int'l, Inc*., No. 5:17-CV-01261-SB-SP, 2022 WL 1585745, at *2 (C.D. Cal. Apr. 1, 2022) (citation omitted). Rule 23(e)(2) identifies these and several other criteria for the Court to use in deciding whether to grant preliminary approval and direct notice to the proposed class. Each factor supports preliminary approval here.

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

Settlement Class Counsel and the Settlement Class Representatives fought hard to protect the interests of the Class, as evidenced by the significant compensation available to Class Members through the proposed Settlement. Settlement Class Counsel prosecuted this action with vigor and dedication since this consolidated litigation began in 2019. *See* Fed. R. Civ. P. 23(e)(2)(A). As detailed above, Settlement Class Counsel undertook significant efforts to uncover the facts—including retaining technical experts and obtaining and reviewing substantial discovery—to continuously advance and refine the Class claims. Settlement Class Counsel also engaged in extensive research and factual investigation. This research and investigation included review and synthesis of the documents and electronically-stored information produced to date, and culminated in the filing of a 1,300-page, factually detailed ACAC. *See* § II.B, *supra*.

The Settlement Class Representatives are also actively engaged. Each

preserved and collected documents and information related to their claims, provided their documents to counsel for production to Defendants, work with counsel to prepare responses to detailed Interrogatories, actively monitored progress in the litigation, and worked with counsel to review and evaluate the terms of the proposed Settlement Agreement and has endorsed its terms. Each Representative has also expressed their continued willingness to protect the Class until the Settlement is approved and its administration completed. *See* Co-Lead Decl. ¶ 9.

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

A "presumption of correctness" attaches where, as here, a "class settlement [was] reached in arm's-length negotiations between experienced capable counsel after meaningful discovery." *See Free Range Content, Inc. v. Google, LLC*, No. 14-CV-02329-BLF, 2019 WL 1299504, at *6 (N.D. Cal. Mar. 21, 2019); *Harris v. Vector Mktg. Corp.*, No. C-08-5198 EMC, 2011 WL 1627973, at *8 (N.D. Cal. Apr. 29, 2011) ("An initial presumption of fairness is usually involved if the settlement is recommended by class counsel after arm's-length bargaining."). The Parties undertook serious, informed, and arm's-length negotiations over more than a year—including multiple in-person negotiation sessions and still further remote sessions via videoconference and telephone. *See* § II.C; *see also* Co-Lead Decl. ¶ 6. These detailed, technical, and evidence-based discussions, overseen and guided by the Court-appointed Settlement Special Master Patrick Juneau, culminated in in the proposed Settlement now before the Court. *See* Fed. R. Civ. P. 23(e)(2)(B).

a. The detailed factual record shows the Parties' negotiations were appropriately informed and non-collusive.

Where extensive information has been exchanged, "[a] court may assume that the parties have a good understanding of the strengths and weaknesses of their respective cases and hence that the settlement's value is based upon such adequate information." William B. Rubenstein et al., 4 *Newberg on Class Actions* § 13:49

(5th ed. 2012) ("*Newberg*"); *cf. In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 320 (N.D. Cal. 2018) (concluding that the "extent of discovery" and factual investigation undertaken by the parties gave them "a good sense of the strength and weaknesses of their respective cases in order to 'make an informed decision about settlement" (quoting *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000))). *See Wahl v. Yahoo! Inc.,* No. 17-CV-02745-BLF, 2018 WL 6002323, at *4 (N.D. Cal. Nov. 15, 2018) (granting final approval of class settlement where the parties had exchanged "sufficient information to evaluate the case's strengths and weaknesses").

Similarly, a meaningful exchange of documents and information also evidences that the litigation was adversarial, and therefore serves as "an indirect indicator that a settlement is not collusive but arms-length." 4 *Newberg* § 13:49; *see also In re Anthem*, 327 F.R.D. at 320 ("Extensive discovery is also indicative of a lack of collusion . . . ."); *In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prods. Liab. Litig.*, No. MDL 2672 CRB (JSC), 2019 WL 2077847, at *1 (N.D. Cal. May 10, 2019) ("Lead Counsel vigorously litigated this action during motion practice and discovery, and the record supports the continuation of that effort during settlement negotiations.").

The extensive record here shows the Settlement to be well-informed and reached by adversarial parties. With negotiations ongoing, and as described above (§ II.B-C), Defendants in this litigation produced more than a million pages of documents relevant to Plaintiffs' claims and the relevant defect in this case. Co-Lead Decl. ¶ 4. Toyota itself produced approximately 145,000 pages of documents, as well as approximately 4,500 native files including excel spreadsheets, video and audio files. Settlement Class Counsel have reviewed and analyzed relevant documents produced by Toyota, the other Defendants, as well as material they obtained through their own investigative efforts, in addition to the responses to multiple sets of interrogatories and requests for admission served on multiple

Defendants, and other confirmatory discovery.

This extensive factual record all informed Plaintiffs' understanding of the strengths and weaknesses of their claims against Toyota.

b. Oversight and guidance from the Settlement Special Master further supports the adversarial negotiation.

In addition to the detailed record and extent of the investigation detailed above, "[s]ettlements reached with the help of a mediator are likely non-collusive." *Evans v. Zions Bancorp., N.A.*, No. 2:17-CV-01123 WBS DB, 2022 WL 3030249, at *7 (E.D. Cal. Aug. 1, 2022) (citation omitted). This case was certainly no exception; the Parties' enduring negotiations occurred under the guidance of the respected and experienced Court-appointed Settlement Special Master Juneau, which weighs heavily in favor of approval. *See* Juneau Decl. ¶ 6; *see also Rosales v. El Rancho Farms*, No. 1:09-CV-00707-AWI, 2015 WL 4460635, at *16 (E.D. Cal. July 21, 2015), *report and recommendation adopted*, 2015 WL 13659310 (E.D. Cal. Oct. 2, 2015) ("[T]he 'presence of a neutral mediator [is] a factor weighing in favor of a finding of non-collusiveness.'" (citation omitted)); *Pierce v. Rosetta Stone, Ltd.*, No. C 11-01283 SBA, 2013 WL 5402120, at *5 (N.D. Cal. Sept. 26, 2013) (similar).

c. The significant results for the Class support the lack of any collusion.

Finally, where Class Members stand to receive substantial benefits from the proposed resolution, as they do here, there is little room for argument that counsel failed to protect the interests of the Class or otherwise engaged in collusive behavior. Plaintiffs' Counsel are experienced class action litigators and skilled negotiators. *See* Co-Lead Decl. ¶ 1. This too weighs in favor of approval. *See In re Volkswagen*, 2019 WL 2077847, at *1 (granting final settlement approval where "Lead Counsel ha[d] . . . a successful track record of representing [plaintiffs] in cases of this kind . . . [and] attest[ed] that both sides engaged in a series of intensive, arm's-length negotiations" and there was "no reason to doubt the veracity

of Lead Counsel's representations").

3. Rule 23(e)(2)(C): The Settlement provides substantial compensation in exchange for the compromise of strong claims.

The Settlement provides substantial relief for the Class, especially considering (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of the proposed distribution plan and claims program; and (iii) the fair terms of the requested award of attorney's fees. *See* Fed. R. Civ. P. 23(e)(2)(C).

As noted above, the Settlement secures a non-reversionary Settlement Amount of $78.5 million, inclusive of commitments, to compensate the Class. It provides significant, relevant benefits to Class Members above and beyond those payments too, including an Outreach Program to drive Recall participation to improve Subject Vehicle safety, and a Future Rental Car Reimbursement/Loaner Vehicle and Outreach Program to ensure that recall repairs are performed with minimal inconvenience for Class Members, plus a long-term Extended New Parts Warranty to follow. Finally, all Class Members stand to benefit from the innovative Settlement Inspection Program, which creates a process to ensure investigation and documentation of any potentially EOS-related airbag non-deployments for ten years. This is well in line with the compensation approved in other auto defect cases in this Circuit and others too. *See Banh v. Am. Honda Motor Co., Inc*., No. 2:19-CV-05984-RGK-AS, 2021 WL 3468113, at *7 (C.D. Cal. June 3, 2021) ("The settlement adequately and fairly compensates class members. They will receive automatic benefits (like the warranty extension and Infotainment System Online Resource), and they will have the opportunity to file claims for added relief in a streamlined process."); *Brightk Consulting Inc. v. BMW of N. Am., LLC*, No. SACV 21-02063-CJC (JDEx), 2023 WL 2347446, at *2 (C.D. Cal. Jan. 3, 2023) (extended warranty and out-of-pocket costs); *In re Takata Airbag Prods. Liab. Litig*., No. 14-CV-24009, 2022 WL 1669038, at *1 (S.D. Fla. Apr. 4, 2022) (approving Volkswagen settlement as the latest in several similar settlements in the Takata

MDL).

This is a remarkable result for the compromise of contested claims that have not yet survived a motion to dismiss.

a. The Settlement mitigates the substantial risks, expenses, and delays the Class would bear with continued litigation through trial and appeal.

The Settlement benefits described above are even more impressive given the inherent uncertainties of continued litigation. Class Members' certain and timely receipt of the benefits under the Settlement is an unquestionably reasonable outcome when faced with the challenges ahead. *See Nobles v. MBNA Corp*., No. C 06-3723 CRB, 2009 WL 1854965, at *2 (N.D. Cal. June 29, 2009) ("The risks and certainty of recovery in continued litigation are factors for the Court to balance in determining whether the Settlement is fair."); *Kim v. Space Pencil, Inc.*, No. C 11-03796 LB, 2012 WL 5948951, at *5 (N.D. Cal. Nov. 28, 2012) ("The substantial and immediate relief provided to the Class under the Settlement weighs heavily in favor of its approval compared to the inherent risk of continued litigation, trial, and appeal, as well as the financial wherewithal of the defendant.").

This case, like those cited above, is not without risk. For example, while Plaintiffs submit the operative ACAC states valid, cognizable claims, including under RICO, their claims did not survive Toyota's earlier pleading challenge. Looking ahead, individual and technical requirements for Plaintiffs' state law claims, among other challenges, could stand in the way of success in some instances. *See, e.g.*, *Gant v. Ford Motor Co*., 517 F. Supp. 3d 707, 719 (E.D. Mich. 2021) (dismissing Michigan Consumer Protection Act claim and concluding that motor vehicle sales and lease transactions are not covered by the statute); *Counts v. Gen. Motors, LLC*, 237 F. Supp. 3d 572, 594 (E.D. Mich. 2017) (similar). Plaintiffs would likely face these same challenges, and others, here.

Finally, while Plaintiffs have not moved to certify a litigation class, that process would be expensive, lengthy, and, again, uncertain. Avoiding years of

additional, costly, and risky litigation in exchange for the immediate and significant Settlement benefits is a principled compromise to the clear benefit of the Class.

b. Class Members will obtain relief through a straightforward Claims Process.

The Parties were exacting and intentional in their efforts to ensure that the claims process, overseen by the Settlement Special Administrator with support from the Settlement Notice Administrator, will be straightforward and efficient, and build from recent experience in administering similar claims processes in other automotive settlements. Juneau Decl. ¶ 7. The effort required and safeguards incorporated in this process are proportional to the compensation available, and necessary and appropriate to preserve the integrity of the Claims Process.

Class Members will submit claims for out-of-pocket compensation, and for residual payments, using the same, streamlined Claim Form developed in consultation with the Settlement Notice and Special Administrators. Registration/Claim forms will be available to Class Members via U.S. Mail, e-mail, internet, social media, and other similar agreed-upon manners of dissemination. Likewise, Class Members may choose to submit their claim either online through a link on the Settlement website, or in hard copy. In this way, Class Members can choose options that best suit their preferences to participate in the claims program.

Notably, Class Members need not meet a high burden to show eligibility for reimbursement of out-of-pocket expenses. Indeed, the Settlement requires only that Class Members provide documents that are necessary to prove the validity of their claim, like a receipt or invoice. Finegan Decl. Ex. F at 3-4. If Class Members do not have those documents available, they can submit a signed affidavit attesting to their expenses, ensuring that Class Members have multiple avenues to provide minimally necessary documentation—or no documentation at all—to validate and support their claims. *Id*.

c. Settlement Class Counsel will seek reasonable attorneys' fees and expenses.

Settlement Class Counsel will move for an award of reasonable attorneys' fees and reimbursement of their litigation expenses for work performed and expenses incurred in furtherance of this litigation and its successful result. Fed. R. Civ. P. 23(e)(2)(C)(iii). Settlement Class Counsel will ask the Court to award up to 33% of the $78.5 million Settlement Amount in attorneys' fees and reasonable expenses. As will be explained further in their forthcoming motion for attorneys' fees – which will be filed in conjunction with the motion for final settlement approval – Counsel's fee request will amount to significantly less than the Ninth Circuit's benchmark 25% of the total value of the Settlement, which includes the value of the 12-year extended warranty, as well as significant additional benefits provided under the proposed Agreement. *See, e.g., Rainbow Bus. Sols. v. MBF Leasing LLC*, No. 10-CV-01993-CW, 2017 WL 6017844, at *1 (N.D. Cal. Jun. 22, 2020) (the fund from which a fee percentage is calculated includes "the total benefit made available to the settlement class, including costs, fees, and injunctive relief"); *Banh*, 2021 WL 3468113, at *7 ("[I]t is the complete package taken as a whole, rather than the individual component parts [of a proposed settlement] that must be examined for overall fairness.").[9]

This request is within the range regularly approved in this Circuit. *See, e.g.*, *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002) (Ninth Circuit cases hold that attorneys' fees between 20 and 30 percent of the settlement value is within the "usual range"); *Hernandez v. Dutton Ranch Corp.*, No. 19-CV-00817-EMC, 2021 WL 5053476, at *6 (N.D. Cal. Sept. 10, 2021) (collecting cases and

[9] *See also, e.g., Miller v. Ghirardelli Chocolate Co.*, No. 12-CV-04936-LB, 2015 WL 758094, at *5 (N.D. Cal. Feb. 20, 2015) ("When determining the value of a settlement, courts consider both the monetary and nonmonetary benefits that the settlement confers."); *Pokorny v. Quixtar, Inc.*, No. C 07–0201 SC, 2013 WL 3790896, at *1 (N.D. Cal. July 18, 2013) ("The court may properly consider the value of injunctive relief obtained as a result of the settlement in determining the appropriate fee.").

finding that "[d]istrict courts within this circuit, including this Court, routinely award attorneys' fees that are one-third of the total settlement fund . . . [s]uch awards are routinely upheld by the Ninth Circuit").

Settlement Class Counsel's fee application and supporting documentation will be filed in advance of the objection deadline, and it will be available on the Settlement website after it is filed. Any attorneys' fees and expenses the Court awards will be paid from the Settlement Fund.[10] SA § VIII.

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

The proposed Settlement does not provide preferential treatment to any class member, and "compensates class members in a manner generally proportionate to the harm they suffered on account of [the] alleged misconduct." *Altamirano v. Shaw Indus., Inc.*, No. 13-CV-00939-HSG, 2015 WL 4512372, at *8 (N.D. Cal. July 24, 2015). Class Members with recalled Subject Vehicles will have the opportunity to submit claims for reimbursement of out-of-pocket costs already incurred, and Class Members with unrecalled Subject Vehicles will become eligible to participate in that Claims Process should their vehicles become subject to a recall during the claims period. SA ¶¶ III.F.5. Additional, relevant benefits are available for Class Members that spend time, effort, and resources to obtain a recall repair. Finally, all Class Members may register to receive a residual payment to be distributed pro rata at the conclusion of the Claims Period. Thus, the benefits are proportionate to the harm each Class Member suffered on account of the ACU Defect. These reasonable parameters ensure that the Settlement treats Class Members equitably relative to one another. *See* Fed. R. Civ. P. 23(e)(2)(D).

Likewise, the Settlement Class Representatives will not receive preferential treatment or compensation disproportionate to their respective harm and

[10] There are no agreements between the Parties other than the Settlement. *See* Fed. R. Civ. P. 23(e)(3) ("The parties seeking approval must file a statement identifying any agreement made in connection with the proposal.").

contribution to the case. They are permitted to make claims for compensation like any other Class Member. Moreover, Settlement Class Counsel will seek $2,500 to compensate their efforts and commitment in prosecuting this case on behalf of the Class, which is well in line with sums routinely approved in other class cases in this district. *See Cisneros v. Airport Terminal Servs*., No. 2:19-CV-02798-VAP-SPx, 2021 WL 3812163, at *9 (C.D. Cal. Mar. 26, 2021) ("Courts have generally found that $5,000 incentive payments are reasonable." (citation omitted)); *La Fleur v. Med. Mgmt. Int'l, Inc*., No. EDCV 13-00398-VAP, 2014 WL 2967475, at *8 (C.D. Cal. June 25, 2014) (approving incentive awards of $15,000 each to two class representatives from $535,000 settlement).

B. The Court should appoint Settlement Class Counsel for purposes of effectuating the Settlement and Class Notice Program.

The Court is required to appoint class counsel to represent the Class. *See* Fed. R. Civ. P. 23(g). At the outset of the MDL, the Court chose Co-Lead Counsel and the PSC due to their qualifications, experience, and commitment to the successful prosecution of this litigation. *See* ECF No. 106. The criteria that the Court considered in appointing Lead Counsel and the PSC align with the considerations set forth in Rule 23(g). *See, e.g.*, *Clemens v. Hair Club for Men, LLC*, No. C 15-01431 WHA, 2016 WL 1461944, at *2 (N.D. Cal. Apr. 14, 2016). As noted above, Co-Lead Counsel and the PSC firms have undertaken an enormous amount of work, effort, and expense in this MDL and in litigating Plaintiffs' claims against Toyota. *See* Co-Lead Decl. ¶¶ 3-7.

Plaintiffs therefore submit that Co-Lead Counsel and the PSC should be appointed as Settlement Class Counsel under Rule 23(g)(3) to conduct the necessary steps in the Settlement approval process.

C. The Court will be able to certify the proposed Class for settlement purposes upon final approval.

Certification of a settlement class is "a two-step process." *In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prods. Liab. Litig.*, No. 2672 CRB (JSC),

2016 WL 4010049, at *10 (N.D. Cal. July 26, 2016) (Breyer, J.) (citing *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 613 (1997)). First, the Court must find that the proposed settlement class satisfies the requirements of Rule 23(a). *Id*. (citing Fed. R. Civ. P. 23(a)). Second, the Court must find that "a class action may be maintained under either Rule 23(b)(1), (2), or (3)." *Id*. (citing *Amchem*, 521 U.S. at 613); *see also In re Hyundai*, 926 F.3d at 557 (en banc) (upholding district court's preliminary approval and certification of nationwide settlement class).[11]

The proposed Class here readily satisfies all Rule 23(a)(1)-(4) and (b)(3) certification requirements.

1. The Class meets the requirements of Rule 23(a).

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

Rule 23(a)(1) requires that "the class is so numerous that joinder of all class members is impracticable." Fed. R. Civ. P. 23(a)(1). A "class of 41 or more is usually sufficiently numerous." 5 *Moore's Federal Practice—Civil* § 23.22 (2016); *see also Hernandez v. County of Monterey*, 305 F.R.D. 132, 153 (N.D. Cal. 2015). The Class, as defined, includes current and former owners and lessees of at least 5.2 million Subject Vehicles. Numerosity is easily satisfied here.

b. Rule 23(a)(2): The Class claims present common questions of law and fact.

"Federal Rule of Civil Procedure 23(a)(2) conditions class certification on demonstrating that members of the proposed class share common 'questions of law or fact.'" *Stockwell v. City & County of San Francisco*, 749 F.3d 1107, 1111 (9th Cir. 2014). Commonality "does not turn on the number of common questions, but on their relevance to the factual and legal issues at the core of the purported class' claims." *Jimenez v. Allstate Ins. Co.*, 765 F.3d 1161, 1165 (9th Cir. 2014). "'Even a single question of law or fact common to the members of the class will satisfy the

[11] The Court has jurisdiction over the Action and the Parties pursuant to 28 U.S.C. §§ 1331 and 1332 for purposes of settlement, and venue is proper in this district pursuant to 28 U.S.C. § 1391(a).

commonality requirement.'" *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 369 (2011).

Courts routinely find commonality where, as here, the class claims arise from a defendant's uniform course of fraudulent conduct. *See, e.g.*, *In re Volkswagen "Clean Diesel" Mktg.,* No. 15-MD-2672-CRB, 2022 WL 17730381, at *3 (N.D. Cal. Nov. 9, 2022) ("In cases like this one, where fraud claims [about vehicle performance] arise out of a uniform course of conduct, commonality is routinely found."); *In re Chrysler-Dodge-Jeep Ecodiesel Mktg., Sales Practices, & Prods. Liab. Litig.*, No. 17-MD-02777-EMC, 2019 WL 536661, at *6 (N.D. Cal. Feb. 11, 2019) (commonality satisfied where claims arose from the defendants' "common course of conduct" in perpetrating alleged vehicle emissions cheating scheme); *Cohen v. Trump*, 303 F.R.D. 376, 382 (S.D. Cal. 2014) (finding "common questions as to 'Trump's scheme and common course of conduct, which ensnared Plaintiff[] and the other Class members alike").[12]

Here, the Class claims are rooted in common questions relating to Defendants' omission of important information about a serious defect in the Subject Vehicles. *See, e.g.*, ACAC § V.D; *see also In re Takata Airbag Prods. Liab. Litig.*, No. 14-24009-CV, 2017 WL 11680208, at *3 (S.D. Fla. Sept. 19, 2017) (similar common questions about defective airbag modules satisfied commonality requirement); *Looper v. FCA US LLC*, No. LACV 14-00700-VAP (DTBx), 2017 WL 11650429, at *4 (C.D. Cal. Mar. 23, 2017) (similar common questions about defective steering linkages satisfied commonality requirement).

[12] Likewise, commonality is satisfied in cases where defendants deployed uniform misrepresentations to deceive the public (such as the Monroney labels here). *See Ries v. Ariz. Beverages USA LLC*, 287 F.R.D. 523, 537 (N.D. Cal. 2012) ("Courts routinely find commonality in false advertising cases . . . ."); *Astiana v. Kashi Co.*, 291 F.R.D. 493, 501-02 (S.D. Cal. 2013) (same); *see also Guido v. L'Oreal, USA, Inc.*, 284 F.R.D. 468, 478 (C.D. Cal. 2012) (whether misrepresentations "are unlawful, deceptive, unfair, or misleading to reasonable consumers are the type of questions tailored to be answered in 'the capacity of a classwide proceeding to generate common answers apt to drive the resolution of the litigation'" (quoting *Dukes*, 564 U.S. at 350)).

These common questions will, in turn, generate common answers "apt to drive the resolution of the litigation" for the entire Class. *See Dukes*, 564 U.S. at 350. As the Class's "injuries derive from [D]efendants' alleged 'unitary course of conduct,'" Plaintiffs have "identified a unifying thread that warrants class treatment." *Sykes v. Mel Harris & Assocs., LLC*, 285 F.R.D. 279, 290 (S.D.N.Y. 2012), *aff'd* 780 F.3d 70 (2d Cir. 2015). Indeed, "[w]ithout class certification, individual Class members would be forced to separately litigate the same issues of law and fact which arise from . . . [defendants'] alleged common course of conduct." *Volkswagen*, 2016 WL 4010049, at *10.

c. Rule 23(a)(3): The Settlement Class Representatives' claims are typical of other Class Members' claims.

Under Rule 23(a)(3), Plaintiffs' claims are "typical" if they are "reasonably coextensive with those of absent class members; they need not be substantially identical." *Parsons v. Ryan*, 754 F.3d 657, 685 (9th Cir. 2014) (citation omitted). "The test of typicality is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs and whether other class members have been injured by the same course of conduct." *Hernandez*, 305 F.R.D. at 159. Typicality "assure[s] that the interest of the named representative aligns with the interests of the class." *Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1175 (9th Cir. 2010) (quoting *Hanon v. Dataprods. Corp.*, 976 F.2d 497, 508 (9th Cir. 1992)). Thus, where a plaintiff suffered a similar injury and other class members were injured by the same course of conduct, typicality is satisfied. *See Parsons*, 754 F.3d at 685; *see also Evon v. Law Offices of Sidney Mickell*, 688 F.3d 1015, 1030 (9th Cir. 2012).

Here, the same course of conduct injured the Class Representatives and the other Class Members in the same ways, because each purchased or leased Subject Vehicles with defective DS84 ACUs. As a result, they paid more for their Subject Vehicles than they reasonably should have. The typicality requirements are

satisfied.

d. Rule 23(a)(4): The Settlement Class Representatives and Settlement Class Counsel have and will protect the interests of the Class.

Rule 23(a)(4)'s adequacy requirement is met where, as here, "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). Adequacy entails a two-prong inquiry: "(1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?" *Evon*, 688 F.3d at 1031 (quoting *Hanlon*, 150 F.3d at 1020). Both prongs are readily satisfied here.

The Settlement Class Representatives have no interests antagonistic to Class Members and will continue to protect the Class's interests in overseeing the Settlement administration and through any appeals. *See Clemens*, 2016 WL 1461944, at *2-3. Indeed, the Settlement Class Representatives "are entirely aligned [with the Class Members] in their interest in proving that [Defendants] misled them and share the common goal of obtaining redress for their injuries." *Volkswagen*, 2016 WL 4010049, at *11. They understand their duties as representatives and have reviewed and uniformly endorsed the Settlement terms. *See* Co-Lead Decl. ¶ 9; *see also, e.g.*, *Trosper v. Styker Corp.*, No. 13-CV-0607-LHK, 2014 WL 4145448, at *12 (N.D. Cal. Aug. 21, 2014) ("All that is necessary is a 'rudimentary understanding of the present action and . . . a demonstrated willingness to assist counsel in the prosecution of the litigation.'"). The proposed Settlement Class Representatives are more than adequate.

Similarly, as demonstrated throughout this litigation, Lead Counsel and the PSC firms have undertaken an enormous amount of work, effort, and expense in this MDL and in advancing the Toyota Plaintiffs' claims. They have demonstrated their willingness to devote whatever resources were necessary to reach a successful outcome throughout the nearly four years since this consolidated litigation began.

They, too, satisfy Rule 23(a)(4).

2. The Class meets the requirements of Rule 23(b)(3).

Rule 23(b)(3)'s requirements are also satisfied because (i) "questions of law or fact common to class members predominate over any questions affecting only individual members"; and (ii) a class action is "superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3).

a. Common issues of law and fact predominate.

"The predominance inquiry 'asks whether the common, aggregation-enabling, issues in the case are more prevalent or important than the non-common, aggregation-defeating, individual issues.'" *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 453 (2016). "When 'one or more of the central issues in the action are common to the class and can be said to predominate, the action may be considered proper under Rule 23(b)(3) even though other important matters will have to be tried separately, such as damages or some affirmative defenses peculiar to some individual class members.'" *Id.* At its core, "[p]redominance is a question of efficiency." *Butler v. Sears, Roebuck & Co.*, 702 F.3d 359, 362 (7th Cir. 2012). Thus, "[w]hen common questions present a significant aspect of the case and they can be resolved for all members of the class in a single adjudication, there is clear justification for handling the dispute on a representative rather than on an individual basis." *Hanlon*, 150 F.3d at 1022.

The Ninth Circuit favors class treatment of fraud claims stemming from a "common course of conduct." *See In re First Alliance Mortg. Co.*, 471 F.3d 977, 990 (9th Cir. 2006); *Hanlon*, 150 F.3d at 1022-23. Even outside of the settlement context, predominance is readily satisfied for consumer claims arising from the defendants' common course of conduct. *See Amchem Prods.*, 521 U.S. at 625; *Wolin*, 617 F.3d at 1173, 1176 (consumer claims based on uniform omissions certifiable where "susceptible to proof by generalized evidence," even if individualized issues remain); *Friedman v. 24 Hour Fitness USA, Inc.*, No. CV 06-

6282 AHM (CTx), 2009 WL 2711956, at *8 (C.D. Cal. Aug. 25, 2009) (common issues predominate where alleged injury is a result "of a single fraudulent scheme").

Here, too, questions of law and fact common to the Class Members' claims predominate over any questions affecting only individuals, because the common issues "turn on a common course of conduct by the defendant . . . in [a] nationwide class action." *See In re Hyundai*, 926 F.3d at 559 (citing *Hanlon*, 150 F.3d at 1022–23). Indeed, "[i]n many consumer fraud cases, the crux of each consumer's claim is that a company's mass marketing efforts, common to all consumers, misrepresented the company's product"—here, the vehicles' safety and inclusion of airbags and seatbelts without defects. *Id.*

Toyota's common course of conduct—manufacturing and selling Subject Vehicles with defective ACUs, and without disclosing that defect to consumers—is central to the claims asserted in the ACAC. Common, unifying questions include, for example when Defendants first learned of the ACU Defect, and whether Defendants' pervasive representations about the Subject Vehicles' airbags and safety systems were misleading to reasonable consumers. As such, Defendants allegedly "perpetrated the same fraud in the same manner against all Class members." *Volkswagen*, 2016 WL 4010049, at *12. Predominance is satisfied.

b. Class treatment is superior to other available methods for the resolution of this case.

Superiority asks "whether the objectives of the particular class action procedure will be achieved in the particular case." *Hanlon*, 150 F.3d at 1023. In other words, it "requires the court to determine whether maintenance of this litigation as a class action is efficient and whether it is fair." *Wolin*, 617 F.3d at 1175-76. Under Rule 23(b)(3), "the Court evaluates whether a class action is a superior method of adjudicating plaintiff's claims by evaluating four factors: '(1) the interest of each class member in individually controlling the prosecution or defense of separate actions; (2) the extent and nature of any litigation concerning

the controversy already commenced by or 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*, 2014 WL 4145448, at *17.

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

Class resolution is also superior from an efficiency and resource perspective. Indeed, "[i]f Class members were to bring individual lawsuits against [Defendants], each Member would be required to prove the same wrongful conduct to establish liability and thus would offer the same evidence." *Volkswagen*, 2016 WL 4010049, at *12. With a Class of well over 5.2 million associated with at least that many Subject Vehicles, "there is the potential for just as many lawsuits with the possibility of inconsistent rulings and results." *Id.* "Thus, classwide resolution of their claims is clearly favored over other means of adjudication, and the proposed Settlement resolves Class members' claims at once." *Id.* Superiority is met here, and Rule 23(e)(1)(B)(ii) is satisfied.

* * *

For all the reasons set forth above, Plaintiffs respectfully submit that the Court will—after notice is issued and Class Member input received—"likely be able to . . . certify the class for purposes of judgment on the proposal." *See* Fed. R. Civ. P. 23(e)(1)(B).

D. The proposed Class Notice Program provides the best practicable notice and should be approved.

Rule 23(e)(1) requires that before a proposed settlement may be approved, the Court "must direct notice in a reasonable manner to all class members who would be bound by the proposal." *Id.* "Notice is satisfactory if it 'generally describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and come forward and be heard.'" *Churchill Vill., L.L.C., v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004). For a Rule 23(b)(3) settlement class, the Court must "direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B). The best practicable notice is that which is "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950).

The proposed Class Notice Program readily meets these standards. The Parties created the notice program—including both the content and the distribution plan—with Kroll Notice Media, an experienced firm specializing in notice in complex class action litigation. The program includes a Long Form Notice, Publication Notice, and Direct Mailed Notice, supplemental email notice, and a comprehensive Settlement website that are each clear and complete, and that meet all the requirements of Rule 23. The Parties' proposed notices are neutral, written in an easy-to-understand clear language, eye-catching, and reflect the exemplars

published by the Federal Judicial Center ("FJC").[13]

The Long Form Notice is designed to explain Class Members' rights and obligations under the Settlement in clear terms and in a well-organized and reader-friendly format. *See In re Hyundai*, 926 F.3d at 567 ("[S]ettlement notices must 'present information about a proposed settlement neutrally, simply, and understandably.'"); *see also* Finegan Decl., Exhibit A ("Notice Plan"). It includes an overview of the litigation; an explanation of the Settlement benefits; contact information for Settlement Class Counsel; the address for a comprehensive Settlement website that will house links to the notice, motions for approval, attorneys' fees, and other important documents; instructions on how to access the case docket; and detailed instructions on how to participate in, object to, or opt out of the Settlement. *Id*. The Settlement website will also feature a user-friendly tool for potential Class Members to enter their VIN to confirm whether their Subject Vehicles is eligible under the Settlement.

The principal method of reaching Class Members will be through direct, individual notice, consisting of email notices where email contact information validated by third-party data sources is available, and mailed notices by U.S. first class mail to those Class Members for whom externally validated email addresses are not available. *Id.*; *see also* Finegan Decl. Ex. C, D, E. The email notice conveys the structure of the Settlement and is designed to capture Class Members' attention with concise, plain language. The email notice program was designed (and will be implemented) to avoid spam filters and to be easily readily across all formats, including mobile. *See* Notice Plan at p. 3. The Direct Mailed Notice is similarly structured and provides all basic information about the Settlement and Class Members' rights thereunder. Both Direct Mailed Notice, Publication Notice, and

[13] *See: Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide*, FED. JUD. CTR 1, 3 (2010), https://www.fjc.gov/sites/default/files/2012/NotCheck.pdf

email notice direct readers to the Settlement website, where the Long Form Notice is available, for more information.

The Class Notice Program will also include a robust internet notice campaign including social media advertising, digital banner advertisements, and digital search campaign. *See* Notice Plan at p. 5. These extensive online efforts will be further complemented by targeted print campaigns including a magazine with nationwide circulation, and publication in eight territorial newspapers along with banner advertisements on those newspapers' websites. *Id.* at p. 3. Finally, Class Members can find detailed information about the Settlement through a toll-free information line, and a Settlement website featuring clear explanations and all relevant documents. *Id.* at p. 7.

Based on their experience, Kroll anticipates that the Notice Plan will provide direct notice of the settlement an average of *three times* for "over 90%" of the Class, which far exceeds the FJC guidelines. Finegan Decl. ¶ 19 and Exhibit A. This Class Notice Program satisfies due process and Rule 23, and comports with all accepted standards. Finegan Decl. ¶ 3.

Finally, Defendants will serve notices in accordance with the requirements of 28 U.S.C. § 1715(b) within 10 days of the filing of this motion. SA § IV.H. The Settlement fully complies with all of CAFA's substantive requirements because it does not provide for a recovery of coupons (28 U.S.C. § 1712), does not result in a net loss to any Class Member (28 U.S.C. § 1713), and does not provide for payment of greater sums to some Class Members solely on the basis of geographic proximity to the Court (28 U.S.C. § 1714).

E. The Court should issue a preliminary injunction pending final approval of the proposed Settlement.

Pursuant to the "necessary in aid of" exception to the Anti-Injunction Act, 28 U.S.C. § 2283, and the All Writs Act, 28 U.S.C. § 1651(a), this Court may: (i) issue a preliminary injunction and stay all other actions, pending final approval by the

Court; and (ii) issue a preliminary injunction enjoining potential Class Members, pending the Court's determination of whether the Settlement Agreement should be given final approval, from challenging in any action or proceeding any matter covered by this Settlement Agreement, except for proceedings in this Court. 28 U.S.C. § 2283;[14] 28 U.S.C. § 1651(a);[15] *see also Hanlon*, 150 F.3d at 1025. Other courts in this district have preliminarily barred all Class Members and/or their representatives from commencing, prosecuting, continuing to prosecute, or participating in any action or proceeding against any of the Released Parties pending the Court's determination of whether to grant final approval of the Settlement. *Mercado v. Volkswagen Grp. of Am., Inc.*, No. 18-cv-2388JWH, 2021 WL 8773053, at *5 (C.D. Cal. Nov. 4, 2021); *Hartranft v. TVI, Inc.*, No. SACV 15-01081-CJC-DFM, 2019 WL 1746137, at *6 (C.D. Cal. Apr. 18, 2019) (same).

Similarly other districts in California have also issued preliminary injunctions. "A district court may enjoin state proceedings which affect the rights of class members, where the court is supervising a settlement of a class action that is so far advanced that it is equivalent to a res over which the court requires control

[14] This exception allows a federal court to effectively prevent its jurisdiction over a settlement from being undermined by pending parallel litigation in state courts. *Stratton v. Glacier Ins. Adm'rs, Inc.*, No. 1:02-CV-06213 OWW DLB, 2007 WL 274423, at *1 (E.D. Cal. Jan. 29, 2007) (noting that the court had enjoined the parties from proceeding in related state court litigation after preliminary approval of a settlement until a final judgment was entered in the federal case); *In re Sch. Asbestos Litig.*, No. 83-0268, 1991 WL 61156, at *2 (E.D. Pa. Apr. 16, 1991); *aff'd mem.*, 950 F.2d 723 (3d Cir. 1991).

[15] The All Writs Act permits this Court to issue "all writs necessary or appropriate in aid of [its] jurisdiction[ ] and agreeable to the usages and principles of law." 28 U.S.C. § 1651(a); *see also Jacobs v. CSAA Inter-Ins.*, No. C 07-00362-MHP, 2009 WL 1201996, at *2 (N.D. Cal. May 1, 2009). The Act permits a federal district court to protect its jurisdiction by enjoining parallel actions by class members that would interfere with the court's ability to oversee a class action settlement. *See Sandpiper Vill. Condo. Ass'n, Inc. v. La.-Pac. Corp.*, 428 F.3d 831, 845 (9th Cir. 2005) (explaining that *Hanlon* "recognized that a temporary stay pending settlement of the nationwide class action was appropriate under the All Writs Act and the Anti-Injunction Act because concurrent state proceedings at such a sensitive stage in the federal proceedings would have threatened the jurisdiction of the district court"); *Jacobs*, 2009 WL 1201996, at *2-3 (invoking the "in aid of jurisdiction" exception to "enjoin named and absent members who have been given the opportunity to opt out of a class from participating in separate class actions").

and where it would be intolerable to have conflicting orders from different courts." *Jacobs*, 2009 WL 1201996, at *2; *James v. Uber Techs. Inc.*, No. 3:19-cv-06462-EMC, Dkt. No. 195, at ¶15 (N.D. Cal. Apr. 5, 2021) (unpublished) (barring and enjoining named plaintiffs and settlement class members who do not exclude themselves from the settlement classes from "filing, commencing, prosecuting, maintaining, intervening in, participating in, conducting, or continuing any action"); *Malone v. W. Digit. Corp.*, No. 5:20-cv-03584-NC, Dkt. No. 63 at ¶34 (N.D. Cal. July 21, 2021) (unpublished) (the bar and injunction of plaintiffs and settlement class members from filing or pursuing actions is "necessary to protect and effectuate the [s]ettlement [a]greement and th[e] [p]reliminary [a]pproval [o]rder"); *see also Lucas v. Kmart Corp.*, 234 F.R.D. 688, 697 (D. Colo. 2006) ("The Court . . . finds it appropriate to preliminarily enjoin members of the [classes] from asserting or pursuing any of the claims to be released pursuant to this settlement in either federal or state court, as numerous other courts have done in connection with preliminary approval of proposed class action settlements.").

Such an injunction is permissible and appropriate here in order to "effectuate the settlement." *Hartranft*, 2019 WL 1746137, at *6; *Jacobs*, 2009 WL 1201996, at *2 (similar). Indeed, federal courts have often recognized that injunctions against filed parallel actions are particularly appropriate in complex litigation, which "makes special demands on the court that may justify an injunction otherwise prohibited." *In re Diet Drugs*, 282 F.3d 220, 235 (3d Cir. 2002); *see also Klein v. O'Neal, Inc.*, 705 F. Supp. 2d 632, 685 (N.D. Tex. 2010) ("[I]njunctive relief is consistent with the settlement agreement and necessary to protect the integrity and enforcement of this complex class settlement."); *Liles v. Del Campo*, 350 F.3d 742, 746 (8th Cir. 2003) ("Injunctions of related proceedings in other federal courts are appropriate when necessary for adjudication or settlement of a case.").

Moreover, within the context of complex litigation, "[t]he threat to the federal court's jurisdiction posed by parallel state actions is particularly significant

where there are conditional class certifications and impending settlements in federal actions." *In re Diet Drugs*, 282 F.3d at 236; *see also Stratton*, 2007 WL 274423, at *1 (noting that the court had enjoined the parties from proceeding in related state court litigation after preliminary approval of a settlement until a final judgment was entered in the federal case).

Where, as here, substantial negotiations have progressed to the point of settlement, competing actions and communications would jeopardize the realization of a nationwide settlement, interfere with this Court's ability to manage the settlement, and potentially cause unnecessary confusion for Class Members. *Jacobs*, 2009 WL 1201996, at *3. The notice plan and notice materials will be disseminated to the Class and will discuss the terms of the proposed Settlement and their rights as Class Members. Class Members should be allowed to evaluate their options under the settlement without potentially confusing competing notices or communications. The present circumstances warrant the Court's issuance of a preliminary injunction pursuant to the All Writs Act and an exception to the Anti-Injunction Act. For these reasons, the Court should issue a preliminary injunction pending final approval of the settlement, enjoining Class Members and their representatives from pursuing claims that are similar to those alleged in the ACAC.

VI. Conclusion

Plaintiffs respectfully request that the Court: (1) determine under Rule 23(e)(1) that it is likely to approve the Settlement and certify the Class; (2) direct notice to the Class through the proposed notice program; (3) appoint Lead Plaintiffs' Counsel as Settlement Class Counsel to conduct the necessary steps in the Settlement approval process; (4) issue a preliminary injunction pending final approval of the proposed settlement; and (5) schedule the final approval hearing under Rule 23(e)(2) for November 13, 2023.

Dated: July 14, 2023

Respectfully submitted,

/s/ Roland Tellis

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CERTIFICATE OF SERVICE

I hereby certify that, on July 14, 2023 service of this document was accomplished pursuant to the Court's electronic filing procedures by filing this document through the ECF system.

/s/ *Roland Tellis*
Roland Tellis