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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

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

Case No. 2:19-ml-02905-JAK-MRW

ALL ACTIONS AGAINST THE
TOYOTA DEFENDANTS

**AMENDED [PROPOSED] ORDER
GRANTING FINAL APPROVAL OF
CLASS ACTION SETTLEMENT, AND
GRANTING ATTORNEYS' FEES,
EXPENSES, AND SERVICE AWARDS**

1 WHEREAS, the Court, having considered the Settlement Agreement (ECF 756-
2 3) between and among the Class Representatives, Settlement Class Counsel, and
3 Defendants Toyota Motor Sales, U.S.A., Inc., Toyota Motor North America, Inc., and
4 Toyota Motor Engineering & Manufacturing North America, Inc. (“Toyota”)¹; the
5 Court’s July 31, 2023 Order re Preliminary Approval of Class Settlement and
6 Directing Notice to the Class (ECF 770) (the “Preliminary Approval Order”); and
7 Plaintiffs’ motion for Final Approval of Class Settlement, and Award of Attorneys’
8 Fees, Expenses, and Service Awards to Settlement Class Representatives and the
9 parties’ memoranda in support (ECF 815-816), having held a Fairness Hearing on
10 November 16, 2023, and having considered all of the submissions and arguments with
11 respect to the Settlement, and otherwise being fully informed, and good cause
12 appearing therefor;

13 **IT IS HEREBY ORDERED AS FOLLOWS:**

14 1. This Order Granting Final Approval of Class Action Settlement (“Final
15 Approval Order”) incorporates herein and makes a part hereof the Settlement
16 Agreement and its exhibits and the Preliminary Approval Order. Unless otherwise
17 provided herein, the terms defined in the Settlement Agreement and Preliminary
18 Approval Order shall have the same meanings for purposes of this Final Approval
19 Order and accompanying Final Judgment.

20 2. The Court has personal jurisdiction over the parties to the Settlement
21 Agreement and all Toyota Class Members, and has subject matter jurisdiction to
22 finally approve the Settlement Agreement, grant final certification of the Class, settle,
23 and release all claims released in the Settlement Agreement, and dismiss the Action
24 with prejudice and enter final judgment in each Action as to Toyota. Venue is proper
25 in this District.

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27

28 ¹ Capitalized terms not defined herein have the same definitions and meanings used in the Settlement Agreement.

1 **I. THE SETTLEMENT CLASS**

2 3. Based on the record before the Court, including all submissions in
3 support of the Settlement, all objections and responses thereto, and all prior
4 proceedings in the Action, as well as the Settlement Agreement itself and its related
5 documents and exhibits, the Court hereby confirms the certification of the following
6 nationwide Class (the “Class”) for settlement purposes only:

7 (1) All persons or entities who or which, on the date of the issuance of the
8 Preliminary Approval Order, own/lease or previously owned/leased
9 Subject Vehicles distributed for sale or lease in the United States or any
10 of its territories or possessions. Excluded from this Class are: (a) Toyota,
11 its officers, directors, employees and outside counsel; its affiliates and
12 affiliates’ officers, directors and employees; its distributors and
13 distributors’ officers and directors; and Toyota’s Dealers and their officers
14 and directors; (b) Settlement Class Counsel, Plaintiffs’ counsel, and their
15 employees; (c) judicial officers and their immediate family members and
16 associated court staff assigned to this case; and (d) persons or entities
17 who or which timely and properly exclude themselves from the Class.

18 The Court finds that only those persons/entities/organizations listed on
19 Appendix A to this Final Approval Order have timely and properly excluded
20 themselves from the Class and, therefore, are not bound by this Final Approval Order
21 or the accompanying Final Judgment.

22 4. Since this Court granted preliminary approval, there have been no
23 “material changes to any of the information relevant to the application of the factors
24 that are used to determine whether the certification of a class is appropriate under Fed.
25 R. Civ. P. 23.” *Miller v. Wise Co., Inc.*, No. ED CV17-99616 JAK (PLAx), 2020 WL
26 1129863, at *4 (C.D. Cal. Feb. 11, 2020).

27 5. Therefore, the Court confirms, for settlement purposes and conditioned
28 upon the entry of the Final Approval Order and Final Judgment and upon the

1 occurrence of the Final Effective Date, that the Class meets all the applicable
2 requirements of Fed. R. Civ. P. 23(a) and (b)(3):

3 a. *Numerosity.* The Class, which is ascertainable, consists of those owners
4 and lessees at the date of the Preliminary Approval Order and former owners and
5 lessees of approximately 5.2 million vehicles located throughout the United States and
6 satisfies the numerosity requirement of Fed. R. Civ. P. 23(a)(1). Joinder of these
7 widely dispersed, numerous Toyota Class Members into one suit would be
8 impracticable.

9 b. *Commonality.* Several questions of law or fact regarding Toyota's alleged
10 activities are common to all Toyota Class Members, and therefore commonality is
11 satisfied under Fed. R. Civ. P. 23(a)(2).

12 c. *Typicality.* The claims of Settlement Class Representatives are typical of
13 the claims of the Toyota Class Members they seek to represent for purposes of
14 settlement, and therefore Fed. R. Civ. P. 23(a)(3) is satisfied.

15 d. *Adequate Representation.* The Settlement Class Representatives' interests
16 do not conflict with those of absent members of the Class, and the Settlement Class
17 Representatives' interests are co-extensive with those of absent Toyota Class
18 Members. Additionally, this Court recognizes the experience of Co-Lead Counsel and
19 Settlement Class Counsel. The Settlement Class Representatives' and their counsel
20 have prosecuted this Action vigorously on behalf of the Class. The Court finds that the
21 requirement of adequate representation of the Class has been fully met under Fed. R.
22 Civ. P. 23(a)(4).

23 e. *Predominance of Common Issues.* The Settlement Class Representatives
24 allege a common course of conduct that applies to all Toyota Class Members and is
25 central to their claims, and the questions of law or fact common to the Toyota Class
26 Members, as it pertains to consideration of the Settlement, predominate over any
27 questions affecting any individual Class Member. Therefore, the Court finds that the
28 predominance requirement of Fed. R. Civ. P. 23(b)(3) is met.

1 f. *Superiority of the Class Action Mechanism.* The class action mechanism
2 provides a superior procedural vehicle for settlement of this matter compared to other
3 available alternatives. Class certification promotes efficiency and uniformity of
4 judgment because the many Toyota Class Members will not be forced to separately
5 pursue claims or execute settlements in various courts around the country. Therefore,
6 the Court finds that the superiority requirement of Fed. R. Civ. P. 23(b)(3) is met.

7 6. The Court finds that the Settlement Class Representatives have
8 adequately represented the Class for purposes of entering into and implementing the
9 Settlement Agreement, and confirms its appointment of the following Settlement
10 Class Representatives: Mark Altier, Alejandra Renteria, Samuel Choc, Tatiana Gales,
11 Gary Samouris, Michael Hines, Brent DeRouen, Danny Hunt, Evan Green, Joy Davis,
12 and Dee Roberts. The Court finds that these Toyota Class Members have adequately
13 represented the Class for purposes of entering into and implementing the Settlement
14 Agreement.

15 7. The Court confirms its appointment of Baron & Budd, P.C., Lieff
16 Cabraser Heimann & Bernstein, LLP, Ahdoot & Wolfson, PC, Beasley, Allen, Crow,
17 Methvin, Portis & Miles, P.C., Bleichmar Fonti & Auld LLP, Boies, Schiller &
18 Flexner L.L.P., Casey Gerry Schenk Francavilla Blatt & Penfield, LLP, DiCello Levitt
19 Gutzler LLC, Gibbs Law Group LLP, Keller Rohrback L.L.P., Kessler Topaz Meltzer
20 and Check LLP, Podhurst Orseck, P.A., Pritzker Levine LLP, Robbins Geller Rudman
21 & Dowd LLP, and Robins Kaplan LLP as Settlement Class Counsel under Fed. R. Civ.
22 P. 23(g).

23 **II. NOTICE TO TOYOTA CLASS MEMBERS**

24 8. The record shows and the Court finds that Class Notice has been given to
25 the Class in the manner approved by the Court in its Preliminary Approval Order
26 (ECF 770). *See* Second Supplemental Declaration of Jeanne C. Finegan, APR on
27 Settlement Class Notice Program Progress and Opt Outs and Objections;
28 Supplemental Declaration of Jeanne C. Finegan, APR, on the Settlement Class Notice

1 Program dated September 22, 2023 (Dkt. # 815-2). The Court finds that the form,
2 content, and methods of disseminating notice to the Toyota Class previously approved
3 and directed by the Court have been implemented by the Parties, and: (a) is reasonable
4 and constitutes the best practicable notice to Toyota Class Members under the
5 circumstances; (b) constitutes notice that was reasonably calculated, under the
6 circumstances, to apprise Toyota Class Members of the pendency of the Action and
7 the terms of the Settlement Agreement, their right to exclude themselves from the
8 Class or to object to all or any part of the Settlement, their right to appear at the
9 Fairness Hearing (either on their own or through counsel hired at their own expense),
10 Settlement Class Counsel's motion for reasonable attorney's fees and costs, and their
11 right to object to any such motion, and the binding effect of the orders and Final Order
12 and Final Judgment in the Action, whether favorable or unfavorable, on all persons
13 who do not exclude themselves from the Class; (c) constitutes due, adequate, and
14 sufficient notice to all persons or entities entitled to receive notice; and (d) fully
15 satisfied the requirements of the United States Constitution (including the Due Process
16 Clause), Fed. R. Civ. P. 23 and any other applicable law as well as complying with the
17 Federal Judicial Center's illustrative class action notices.

18 9. The Court further finds that Toyota, through the Settlement Notice
19 Administrator, provided notice of the Settlement to the appropriate state and federal
20 government officials pursuant to 28 U.S.C. § 1715. *See* Supplemental Declaration of
21 Jeanne C. Finegan, Dkt. # 815-2, at ¶ 11. Furthermore, the Court has given the
22 appropriate state and federal government officials the requisite ninety (90) day time
23 period to comment on or object to the Settlement before entering its Final Approval
24 Order and Final Judgment.

25 **III. FINAL APPROVAL OF SETTLEMENT AGREEMENT**

26 10. The Court finds that the Settlement Agreement resulted from extensive
27 arm's length good faith negotiations between Co-Lead Counsel, on behalf of the
28 Settlement Class Representatives and Toyota, through experienced counsel, with the

1 assistance and oversight of the Court-appointed Settlement Special Master Patrick A.
2 Juneau.

3 11. Pursuant to Fed. R. Civ. P. 23(e), the Court hereby finally approves in all
4 respects the Settlement as set forth in the Settlement Agreement and finds that the
5 Settlement Agreement, and all other parts of the Settlement are, in all respects, fair,
6 reasonable, and adequate, and in the best interest of the Class and are in full
7 compliance with all applicable requirements of the Federal Rules of Civil Procedure,
8 the United States Constitution (including the Due Process Clause), the Class Action
9 Fairness Act, and any other applicable law. The Court hereby declares that the
10 Settlement Agreement is binding on all Toyota Class Members, except those identified
11 on Appendix A, and it is to be preclusive in the Action. The decisions of the
12 Settlement Special Administrator relating to the review, processing, determination,
13 and payment of Claims submitted pursuant to the Settlement Agreement are final and
14 not appealable.

15 12. Although Rule 23 imposes strict procedural requirements on the approval
16 of a class settlement, a district court's only role in reviewing the substance of that
17 settlement is to ensure that it is "fair, adequate, and free from collusion." *Hanlon v.*
18 *Chrysler Corp.*, 150 F.3d 1011, 1026–27 (9th Cir.1998) (holding that district court
19 should have broad discretion because it "is exposed to the litigants, and their
20 strategies, positions and proof"). Where, as here, "the parties negotiate a settlement
21 agreement before the class has been certified, settlement approval requires a higher
22 standard of fairness and a more probing inquiry than may be normally required under
23 Rule 23(e)." *Roes 1-2 v. SFBSC Mgmt., LLC*, 944 F.3d 1035, 1048 (9th Cir. 2019); *In*
24 *re Apple Inc. Device Performance Litig.*, No. 21-15758, 2022 WL 4492078, at *8 (9th
25 Cir. Sept. 28, 2022).

26 13. A number of factors guide the district court in making its determination,
27 including:

28

1 the strength of the plaintiffs’ case; the risk, expense, complexity, and
2 likely duration of further litigation; the risk of maintaining class action
3 status throughout the trial; the amount offered in settlement; the extent of
4 discovery completed and the stage of the proceedings; the experience and
views of counsel; the presence of a governmental participant; and the
reaction of the class members to the proposed settlement.

5 *Lane v. Facebook, Inc.*, 9 F.3d 811, 818 (9th Cir. 2012) (citing *Hanlon*, 150 F.3d at
6 1026); *Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 525 (C.D.
7 Cal. 2004).

8 14. Fed. R. Civ. P. 23(e) provides further guidance as to the requisite
9 considerations in evaluating whether a proposed settlement is fair, reasonable, and
10 adequate. It states that a court must consider whether:

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

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

23 15. In preliminarily approving the Settlement, the Court analyzed the Rule
24 23(e)(2) and Ninth Circuit factors and concluded that the Settlement was fair,
25 reasonable, and adequate. Those conclusions stand and counsel equally in favor of
26 final approval now.

27 16. As of October 30, 2023, with more than three years left in the claims
28 period, the Settlement Special Administrator has received 272,716 Registration/Claim

1 Forms, covering approximately (5.2%) of the Toyota Class Vehicles. This is already
2 in-line with the mean claims rate in class action settlements and reflects the Class’s
3 positive engagement with the Settlement.²

4 17. From a Class of owners and lessees of approximately 5.2 million Toyota
5 Class Vehicles, only three³ Toyota Class Members have objected to any aspect of the
6 Settlement, and only 67 opted out, collectively representing just **0.001%** of the Class.
7 The positive reaction from the Class strongly supports approval. *See, e.g., Rodriguez*
8 *v. W. Publ’g Corp.*, 563 F.3d 948, 967 (9th Cir. 2009) (approving district court’s
9 finding of “favorable reaction” to settlement where fifty-four objected in class of
10 approximately 376,000); *Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 577 (9th
11 Cir. 2004) (affirming district court’s approval of settlement where forty-five of 90,000
12 class members objected to the settlement, and 500 class members opted out); *Van Lith*
13 *v. iHeartMedia + Entm’t, Inc.*, No. 1:16-CV-00066-SKO, 2017 WL 4340337, at *14
14 (E.D. Cal. Sept. 29, 2017) (“Indeed, ‘[i]t is established that the absence of a large
15 number of objections to a proposed class action settlement raises a strong presumption
16 that the terms of a proposed class action settlement are favorable to the class
17 members.’”) (quoting *Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D.
18 523, 529 (C.D. Cal. 2004)); *Foster v. Adams & Assocs., Inc.*, No. 18-CV-02723-JSC,
19 2022 WL 425559, at *6 (N.D. Cal. Feb. 11, 2022) (“[T]he Court may appropriately
20 infer that a class action settlement is fair, adequate, and reasonable when few class
21 members object to it.”).

22 18. The Court has carefully considered the objections lodged by Diane
23 Haase, John Kress, and Rebecca Kochenderfer and concludes they do not

24 ² Federal Trade Commission Staff Report, *Consumers and Class Actions: A*
25 *Retrospective and Analysis of Settlement Campaigns* (Sep. 2019), available at
26 [https://www.ftc.gov/system/files/documents/reports/consumers-class-actions-](https://www.ftc.gov/system/files/documents/reports/consumers-class-actions-retrospective-analysis-settlement-campaigns/class_action_fairness_report_0.pdf)
[retrospective-analysis-settlement-campaigns/class_action_fairness_report_0.pdf](https://www.ftc.gov/system/files/documents/reports/consumers-class-actions-retrospective-analysis-settlement-campaigns/class_action_fairness_report_0.pdf)
(FTC’s comprehensive study of class actions, identifying the mean claims rate of 5%).

27 ³ One former Class member, Daniel Sivilich, submitted an objection taking issue
28 with his receipt of the Court-approved direct mailed notice. Mr. Sivilich has since
opted out of the Class and his objection is thus no longer pending. *See* ECF 823.

1 meaningfully “challenge the reasonableness of [the] class action settlement.” *Ebarle v.*
2 *Lifelock, Inc.*, No. 15-CV-00258-HSG, 2016 WL 5076203, at *7 (N.D. Cal. Sept. 20,
3 2016). Therefore, all objections are overruled in their entirety.

4 19. Objectors Diane Haase & John Kress (the “Kress group”) filed an
5 objection raising a variety of arguments. ECF 827. First, objectors seek immediate
6 designation of any *cy pres* recipient, rather than the Settlement’s requirement that the
7 parties propose recipients for the Court’s consideration after the close of the claims
8 period, when the amount of any such distribution will be known. The Court agrees
9 with the parties that deferring selection of proposed *cy pres* recipients until the end of
10 the claims period is the more reasonable approach for this Settlement. This is
11 particularly so given that the *cy pres* distribution is intended only as a backstop should
12 it become economically infeasible to distribute any remaining funds to the Toyota
13 Class Members, and may therefore be *de minimis*. This is a reasonable and appropriate
14 method for “distribut[ing] unclaimed or non-distributable portions of a class action
15 settlement fund,” *In re Google Inc. St. View Elec. Commc’ns Litig.*, 21 F.4th 1102,
16 1111 (9th Cir. 2021). *See also In re Volkswagen “Clean Diesel” Mktg., Sales Pracs.,*
17 *& Prod. Liab. Litig.*, No. MDL 2672 CRB (JSC), 2017 WL 2212780, at *3 (N.D. Cal.
18 May 17, 2017), *aff’d*, 746 F. App’x 655 (9th Cir. 2018) (finally approving class
19 settlement including provision that “[a]t the conclusion of the Settlement Benefit
20 Period” remaining “funds will be distributed through *cy pres* payments according to a
21 distribution plan and schedule filed by Class Counsel and approved by the Court”).
22 This objection is overruled.

23 20. Second, the Kress group raises concerns that the compensation available
24 to individual Toyota Class Members under the Settlement is disproportional to the
25 amount requested in attorneys’ fees and expenses. The Court will address attorneys’
26 fees in the sections below, but, as relevant here, the Court affirms its prior conclusion
27 that the Settlement offers substantial compensation to all Toyota Class Members. The
28 apportionment of that compensation amongst the Toyota Class Members is fairly and

1 reasonably based on the economic harm that each Toyota Class Member allegedly
2 suffered at the hands of Toyota. *See In re Volkswagen “Clean Diesel” Mktg., Sales*
3 *Practices, & Prods. Liab. Litig.*, No. 15-MD-02672-CRB, 2022 WL 17730381, at *8
4 (N.D. Cal. Nov. 9, 2022)
5 (concluding allocation formula was equitable where differing payment amounts
6 “roughly correspond[ed] to the strength of [class members’] claims and the likelihood
7 of damages at trial”).

8 21. Third, the Kress group contends the Settlement is a so-called “coupon”
9 settlement because the Settlement benefits will encourage Toyota Class Members to
10 visit Toyota dealerships to receive recall repairs, at which point Toyota may have “the
11 **opportunity** to make additional money . . . by inspecting each vehicle and
12 **recommending** any repairs needed. ECF 827 at 9. That does not render this a coupon
13 settlement, which is an agreement that requires class members to “hand over . . . more
14 money to obtain the benefits of the Settlement.” *In re Anthem, Inc. Data Breach Litig.*,
15 No. 15-MD-02617-LHK, 2018 WL 3960068, at *28 (N.D. Cal. Aug. 17, 2018); *see*
16 *also In re Online DVD-Rental Antitrust Litig.* is illustrative. 779 F.3d 934 (9th Cir.
17 2015). No aspect of the Settlement requires Toyota Class Members to spend any
18 money to obtain its benefits, and the Court therefore overrules this objection.

19 22. The Court addresses the remaining objections from the Kress group, as
20 well as another objector, Rebecca Kochenderfer, that pertain to attorneys’ fees in the
21 section below.

22 23. The Parties are hereby directed to implement and consummate the
23 Settlement according to the terms and provisions of the Settlement Agreement. In
24 addition, the Parties are authorized to agree to and adopt such amendments and
25 modifications to the Settlement Agreement as (a) shall be consistent in all material
26 respects with this Final Order Approving Class Action Settlement, and (b) do not limit
27 the rights of the Class.

28

1 **IV. CLASS COUNSEL’S APPLICATION FOR ATTORNEYS’ FEES, COSTS**
2 **AND EXPENSES, AND SERVICE AWARDS TO CLASS**
3 **REPRESENTATIVES**

4 24. Class Counsel requests an award of \$25 million in attorneys’ fees and
5 \$472,730.40 in costs, for an aggregate total of \$25,472,730.40, for work undertaken in
6 prosecuting the claims resolved by the Settlement. This amount is to be paid from the
7 Settlement Fund. *See* Settlement Agreement, § VIII.A.

8 25. Federal Rule of Civil Procedure 23(h) provides that, “[i]n a certified class
9 action, the court may award reasonable attorneys’ fees and nontaxable costs that are
10 authorized by law or by the parties’ agreement.” Fed. R. Civ. P. 23(h). “Attorneys’ fees
11 provisions included in proposed class action agreements are, like every other aspect of
12 such agreements, subject to the determination whether the settlement is
13 ‘fundamentally fair, adequate and reasonable.’” *Staton v. Boeing Co.*, 327 F.3d 938,
14 964 (9th Cir. 2003) (citation omitted). Thus, “courts have an independent obligation to
15 ensure that the award, like the settlement itself, is reasonable.” *In re Bluetooth*
16 *Headset Prod. Liab. Litig.*, 654 F.3d 935, 941 (9th Cir. 2011).

17 26. When, as here, a settlement establishes a calculable monetary benefit for
18 a class, a court has discretion to award attorneys’ fees based on a percentage of the
19 monetary benefit obtained, or by using the lodestar method. *In re Volkswagen “Clean*
20 *Diesel” Mktg., Sales Practices, & Prod. Liab. Litig.*, No. 2672 CRB (JSC), 2017 WL
21 1047834, at *1 (N.D. Cal. Mar. 17, 2017); *see also Staton*, 327 F.3d at 967. The
22 Settlement is non-reversionary, eliminating incentive to discourage Toyota Class
23 Members’ participation in the Settlement, and ensuring that the full value benefits the
24 Class in this litigation. Settlement Class Counsel’s requested fee represents 16.9% of
25 the total Settlement value obtained for Toyota Class Members (i.e., \$147,800,000).
26 This award—which is below the Ninth Circuit’s 25% “benchmark award”—is
27 justified under the facts of case, particularly given the exceptional results obtained for
28 the Class. Declaration of Brian Fitzpatrick T. Fitzpatrick (“Fitzpatrick Decl.”), ECF

1 815-4, at ¶ 17 (opining that Settlement Class Counsel’s fee request is a below-
2 benchmark request and is easily justifiable in the Ninth Circuit.); *see also, e.g., In re*
3 *TFT–LCD (Flat Panel) Antitrust Litig.*, No. MDL 3:07–md–1827 SI, 2011 WL
4 7575003, at *1 (N.D. Cal. Dec. 27, 2011) (awarding attorneys’ fees of 30% of \$405
5 million settlement fund); *In re CRT Antitrust Litig.*, MDL No. 1917, 2016 WL
6 4126533, at *5 (N.D. Cal. Aug. 3, 2016) (awarding 30% of \$576,750,000 fund);
7 *Hernandez v. Dutton Ranch Corp.*, No. 19-CV-00817-EMC, 2021 WL 5053476, at *6
8 (N.D. Cal. Sept. 10, 2021) (collecting cases and finding that “[d]istrict courts within
9 this circuit . . . routinely award attorneys’ fees that are one-third of the total settlement
10 fund . . . [s]uch awards are routinely upheld by the Ninth Circuit”); *Andrews, et al. v.*
11 *Plains All Am. Pipeline L.P., et al.*, No. CV154113PSGJEMX, 2022 WL 4453864, at
12 *2 (C.D. Cal. Sept. 20, 2022) (settlement recovering between 25% and 65% of
13 potential compensatory damages justified awarding 32% of \$230 million common
14 fund) (collecting additional cases).

15 27. A lodestar cross-check also confirms the reasonableness of the award
16 sought. Fitzpatrick Decl. ¶ 30 (opining that “class counsel’s lodestar confirms that
17 their fee request is reasonable.”). The Court has received detailed lodestar billing
18 reports from Settlement Class Counsel. Both the hours worked, and the rates billed (a
19 blended average rate of approximately \$500.57 per hour) are customary and
20 reasonable. *See, e.g., In re Volkswagen “Clean Diesel” Mktg., Sales*
21 *Practices, & Prods. Liab. Litig.*, No. 2672 CRB (JSC), ECF 3396-2 ¶ 29 (N.D. Cal.
22 June 30, 2017) (noting that the average blended rate of 40 class action settlements
23 approved in that District in 2016 and 2017 was \$528.11 per hour); *Herrera v. Wells*
24 *Fargo Bank, N.A.*, No. 8:18-CV-00332-JVS-MRW, 2021 WL 9374975, at *13 (C.D.
25 Cal. Nov. 16, 2021) (approving a blended rate of approximately \$613 per hour). The
26 total lodestar yields a multiplier of 2.17, including a reasonable estimate of anticipated
27 future work to implement and protect the Settlement. This is well within the range of
28 reason and supported by the facts of this case. *See* Fitzpatrick Decl. ¶ 30 (this

1 requested multiplier is “below the lodestar multipliers that are typical in complex
2 cases with large recoveries like the settlement here”); *see also* Theodore Eisenberg,
3 Geoffrey Miller, & Roy Germano, *Attorneys’ Fees in Class Actions 2009-2013*, 92
4 N.Y.U. L. Rev. 937, 967 (2017) (finding that the average multiplier in cases valued
5 over \$67.5 million was 2.72); William B. Rubenstein et al., 5 *Newberg and*
6 *Rubenstein on Class Actions* § 15:89 (6th ed.) (presenting data from three different fee
7 studies, including Eisenberg & Miller, with the mean lodestar multiplier for settlement
8 funds at or near the size in this case from each study was: 2.7, 2.39, and 2.72); *see*
9 *also Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048-52 (9th Cir. 2002), 290 F.3d at
10 1051 n.6 (approving 3.65 multiplier, and citing appendix of cases showing “a range of
11 0.6-19.6, with most . . . from 1.0-4.0 and a bare majority . . . in the 1.5-3.0 range”).

12 28. In sum, both the percentage of the fund and the lodestar multiplier are
13 reasonable in light of the substantial benefits obtained for the Class and the risks and
14 complexities of this litigation.

15 29. The Kress group raises three arguments about the attorneys’ fees request.
16 The Court overrules each of these objections. First, for the reasons explained above,
17 the Court declines to exclude the calculable economic value of Toyota’s commitments
18 to a provide an Outreach Program and Extended New Parts Warranty from the
19 Settlement value. The Court considers the value of the non-monetary benefits to the
20 Class as a whole in assessing the reasonableness of the requested fees, and finds that
21 the value of those benefits “can be accurately ascertained.” *Staton*, 327 F.3d at 974. In
22 fact, the value of the non-monetary benefits is well-supported by the record before this
23 Court. *See* ECF 758-1 (Toyota declaration substantiating the value of its commitments
24 to the \$3.5 million Outreach Program and \$10 million to the Future Rental Car
25 Reimbursement, Loaner Vehicle and Future Outreach Programs); 815-3 (Declaration
26 of Kirk Kleckner on valuation for Extended Warranty). For similar reasons, the Court
27 also overrules the Kress group’s arguments in favor of a negative multiplier and lower
28 percentage because of the “megafund” size of the total settlement value. The Court

1 considers the fund size as “one relevant circumstance” in assessing the requested fees,
2 and finds that the fees are reasonable and appropriate with respect to the total
3 settlement value of \$147.8 million. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047
4 (9th Cir. 2002) (3.65 multiplier and 28% of a fund of \$96.88 million).

5 30. Finally, the Court finds that the Kress group’s claims that the Settlement
6 includes a “clear sailing provision,” a “reverter,” and a “kickback,” are factually
7 incorrect. ECF 817 at 15-16. The Settlement does not include any such provision. To
8 the contrary, the Settlement includes an express reservation of Toyota’s right to oppose
9 the attorneys’ fees motion, and likewise provides that Toyota must deposit into the
10 Settlement Fund any balance it does not spend toward the \$3.5 million Outreach
11 Program, and that no unspent or unclaimed funds shall revert to Toyota.

12 31. Another objector, Rebecca Kochenderfer, likewise challenges the
13 requested attorneys’ fees and asks the Court to appoint a third party to conduct an
14 audit of the hours billed and rates claimed at the expense of Class Members and the
15 Settlement Fund. The Court finds that such an appointment is not necessary and not in
16 the interests of the Class; the Court has received the detailed time entries for all of the
17 hours worked and the hourly rates claimed under the Court-ordered Common Benefit
18 Order in this case, and finds that the hourly rates are reasonable and conform to the
19 Court’s Common Benefit Order, which established rate limits that effectively
20 discounted Settlement Class Counsel’s rates. The Court also finds the hours worked
21 are reasonable and well-supported by counsel’s entries and related declarations.

22 32. Class Counsel’s request for \$25 million in attorneys’ fees and
23 \$472,730.40 in costs (for a total of \$25,472,730.40) is hereby **GRANTED**.

24 33. Finally, Plaintiffs request a service award of \$2,500 to be paid to each of
25 the 11 Settlement Class Representative in addition to compensation available to them
26 through the claims program. The requested amount falls below the \$5,000
27 “presumptively reasonable” service award in this Circuit, and the time and efforts the
28 proposed Representatives dedicated to prosecuting this case clearly supports the

1 request here. *In re CRT*, 2016 WL 4126533, at *11. The request for service awards for
2 each of the Settlement Class Representatives, Mark Altier, Alejandra Renteria, Samuel
3 Choc, Tatiana Gales, Gary Samouris, Michael Hines, Brent DeRouen, Danny Hunt,
4 Evan Green, Joy Davis, and Dee Roberts, is therefore **GRANTED**.

5 **V. DISMISSAL OF CLAIMS, RELEASE, AND INJUNCTION**

6 34. The Actions are hereby dismissed with prejudice on the merits and
7 without costs to Toyota, except as otherwise provided herein or in the Settlement
8 Agreement.

9 35. Upon entry of this Final Order and the Final Judgment, Settlement Class
10 Representatives, and each member of the Class (except those listed on Appendix A),
11 on behalf of themselves and any other legal or natural persons or entities who or
12 which may claim by, through or under them, including their executors, administrators,
13 heirs, assigns, predecessors and successors, agree to fully, finally and forever release,
14 relinquish, acquit, discharge and hold harmless the Released Parties from any and all
15 claims, demands, suits, petitions, liabilities, causes of action, rights, losses and
16 damages and relief of any kind and/or type regarding the subject matter of the Actions,
17 including, but not limited to, injunctive or declaratory relief, compensatory,
18 exemplary, statutory, punitive, restitutionary damages, civil penalties, and expert or
19 attorneys' fees and costs, whether past, present, or future, mature, or not yet mature,
20 known or unknown, suspected or unsuspected, contingent or non-contingent,
21 derivative, vicarious or direct, asserted or un-asserted, and whether based on federal,
22 state or local law, statute, ordinance, rule, regulation, code, contract, tort, fraud or
23 misrepresentation, common law, violations of any state's or territory's deceptive,
24 unlawful, or unfair business or trade practices, false, misleading or fraudulent
25 advertising, consumer fraud or consumer protection statutes, or other laws, unjust
26 enrichment, any breaches of express, implied or any other warranties, violations of
27 any state's Lemon Laws, the Racketeer Influenced and Corrupt Organizations Act, or
28 the Magnuson-Moss Warranty Act, or any other source, or any claims under the Trade

1 Regulation Rule Concerning the Preservation of Consumers' Claims and Defenses, 16
2 C.F.R. § 433.2, or any claim of any kind, in law or in equity, arising from, related to,
3 connected with, and/or in any way involving the Actions.

4 36. Notwithstanding the foregoing, Settlement Class Representatives and
5 Toyota Class Members are not releasing and are expressly reserving all rights relating
6 to claims for personal injury, wrongful death, or actual physical property damage
7 arising from an incident involving a Subject Vehicle, including the deployment or
8 non-deployment of an airbag. This Release is limited to, and does not extend beyond,
9 issues pertaining to the Subject Matter of the Action. Settlement Class Representatives
10 and Toyota Class Members also are not releasing and are expressly reserving all rights
11 relating to claims against Excluded Parties, with the exception of the claims covered
12 by Section VII.C of the Settlement Agreement.

13 37. By not excluding themselves from the Action and to the fullest extent
14 they may lawfully waive such rights, all Settlement Class Representatives and Toyota
15 Class Members are deemed to acknowledge and waive Section 1542 of the Civil Code
16 of the State of California and any law of any state or territory that is equivalent to
17 Section 1542. Section 1542 provides that:

18 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS**
19 **WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO**
20 **EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING**
21 **THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST**
22 **HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT**
23 **WITH THE DEBTOR.**

24 38. The Court orders that the Settlement Agreement shall be the exclusive
25 remedy for all claims released in the Settlement for all Toyota Class Members not
26 listed on Appendix A.

27 39. Therefore, except for those listed on Appendix A, Settlement Class
28 Representatives and all Toyota Class Members shall not now or hereafter institute,

1 maintain, prosecute, assert, instigate, and/or cooperate in the institution,
2 commencement, filing, or prosecution of any suit, action, claim and/or proceeding,
3 whether legal, administrative or otherwise against the Released Parties, either directly
4 or indirectly, on their own behalf, on behalf of a class or on behalf of any other person
5 or entity with respect to the claims, causes of action and/or any other matters released
6 through this Settlement.

7 40. Pursuant to the All Writs Act, 28 U.S.C. § 1651(a), and the exceptions to
8 the Anti-Injunction Act, 28 U.S.C. § 2283, the Court finds that issuance of a
9 permanent injunction against all Toyota Class Members (except for those listed on
10 Appendix A) instituting or prosecuting any claims released pursuant to the Settlement
11 with respect to Toyota Subject Vehicles is necessary and appropriate in aid of its
12 continuing jurisdiction and authority over the Settlement and the Action.

13 **V. OTHER PROVISIONS**

14 41. Without affecting the finality of this Final Approval Order or the
15 accompanying Final Judgment, the Court retains continuing and exclusive jurisdiction
16 over the Action and all matters relating to the administration, consummation,
17 enforcement, and interpretation of the Settlement Agreement and of this Final
18 Approval Order and the accompanying Final Judgment, to protect and effectuate this
19 Final Approval Order and the accompanying Final Judgment, and for any other
20 necessary purpose. The Settlement Class Representatives, and each Toyota Class
21 Member not listed on Appendix A are hereby deemed to have irrevocably submitted to
22 the exclusive jurisdiction of this Court, for the purpose of any suit, action, proceeding,
23 or dispute arising out of or relating to the Settlement Agreement or the applicability of
24 the Settlement Agreement, including the exhibits thereto, and only for such purposes.

25 42. In the event that the Effective Date does not occur, certification of the
26 Class shall be automatically vacated and this Final Approval Order and the
27 accompanying Final Judgment, and other orders entered in connection with the
28

1 Settlement and releases delivered in connection with the Settlement, shall be vacated
2 and rendered null and void as provided by the Settlement Agreement.

3 43. Without further order of the Court, the Parties may agree to reasonably
4 necessary extensions of time to carry out any of the provisions of the Settlement
5 Agreement. Likewise, the Parties may, without further order of the Court, agree to and
6 adopt such amendments to the Settlement Agreement (including exhibits) as are
7 consistent with this Final Approval Order and the accompanying Final Judgment and
8 do not limit the rights of Class Members under the Settlement Agreement.

9 44. Nothing in this Final Approval Order or the accompanying Final
10 Judgment shall preclude any action in this Court to enforce the terms of the Settlement
11 Agreement.

12 45. Neither this Final Approval Order nor the accompanying Final Judgment
13 (nor any document related to the Settlement Agreement) is or shall be construed as an
14 admission by the Parties. Neither the Settlement Agreement (or its exhibits), this Final
15 Approval Order, the accompanying Final Judgment, or any document related to the
16 Settlement Agreement shall be offered in any proceeding as evidence against any of
17 the Parties of any fact or legal claim; provided, however, that Toyota and the Released
18 Parties may file any and all such documents in support of any defense that the
19 Settlement Agreement, this Final Approval Order, the accompanying Final Judgment,
20 and any other related document is binding on and shall have res judicata, collateral
21 estoppel, and/or preclusive effect in any pending or future lawsuit by any person who
22 is subject to the release described above asserting a released claim against any of the
23 Released Parties.

24 46. The Settlement Notice Administrator shall fulfill any escheatment
25 obligations that arise.

26 47. The Court reserves and retains exclusive and continuing jurisdiction over
27 the Settlement concerning the administration and enforcement of the Settlement
28 Agreement and to effectuate its terms.

1 48. A copy of this Final Approval Order shall be filed in, and applies to, the
2 Action.

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SO ORDERED this ____ day of _____ 202_.

HON. JOHN A. KRONSTADT
United States District Court