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& Manufacturing North America, Inc.*

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

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

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

**TOYOTA DEFENDANTS’
MEMORANDUM OF LAW IN
FURTHER SUPPORT OF
MOTION FOR FINAL
APPROVAL**

1 **I. INTRODUCTION**

2 Defendants Toyota Motor Sales, U.S.A., Inc., Toyota Motor Engineering &
3 Manufacturing North America, Inc., and Toyota Motor North America, Inc.
4 (collectively, “Toyota”) file this Supplemental Memorandum in Further Support of
5 the Motion for Final Approval of the Settlement to address jurisdiction, the
6 successful Class Notice Program and infinitesimally small number of requested
7 exclusions, *see* Preliminary Approval Order, Dkt. # 770, p. 33, all of which support
8 the class Settlement.

9 The extraordinary notice plan was implemented, consistent with the
10 Preliminary Approval Order, and reached over 95 percent of the Class, on average 3
11 times, readily satisfying due process. *See* Second Supplemental Declaration of
12 Jeanne C. Finegan, APR on Settlement Class Notice Program Progress and Opt Outs
13 and Objections (“October 30, 2023 Finegan Declaration”), at ¶ 15. This reach and
14 frequency is well beyond the reach of other class action settlements that have
15 received final approval. *See Schneider v. Chipotle Mexican Grill, Inc.*, 336 F.R.D.
16 588, 596 (N.D. Cal. 2020) (the notice program had an average estimated frequency
17 of 3.0 per person, and was likely viewed by approximately 72.64% of the settlement
18 class); *Corzine v. Whirlpool Corp.*, No. 15-CV-05764-BLF, 2019 WL 7372275, at
19 *5 (N.D. Cal. Dec. 31, 2019) (notice program had “an approximate reach of 71.99%
and an approximate average frequency of 2.99 times each”).

20 As of October 30, 2023, Kroll Notice Media had received a total of 272,716
21 Registration/Claim Forms, with the Claims Period not closing for more than three
22 years; all of which will need to be reviewed for eligibility under the terms of the
23 Settlement Agreement. October 30, 2023 Finegan Declaration, at ¶¶ 3-4; Settlement
24 Agreement at § II.4. The tremendously positive response from the Class puts in
25 context the mere 67 Class Members who have opted out of the settlement,
26 particularly when approximately 8.3 million Direct Mailed Notices were sent and
27 emailed, amounting to an infinitesimally small figure of 0.0008% of the Class. *See*
28 October 30, 2023 Finegan Declaration at ¶ 13; *See Kearney, et al. v. Hyundai Motor*

1 *Am.*, No. SACV 09-1298-JST (MLGx), 2013 WL 3287996, *7 (C.D. Cal. June 28,
2 2013) (finding that 16 objections and 179 letters requesting exclusion out of 646,834
3 recipients of notice were “infinitesimal” figures). There have also been only two
4 objections which also raises a strong presumption that the terms of a proposed class
5 settlement action are favorable to the class members.¹

6 Based upon the comprehensive, multi-faceted settlement, the successful
7 dissemination of the Class Notice Program and the overwhelmingly positive
8 response from the Class in support of the Settlement, this Settlement should be finally
9 approved because it more than satisfies the remaining factors set forth in *In re*
10 *Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935, 946 (9th Cir. 2011).

11 **II. THIS COURT HAS JURISDICTION TO CONSIDER AND RULE ON**
12 **THE SETTLEMENT**

13 **A. This Court Has Personal Jurisdiction Over All Class Members**

14 As indicated in the Toyota Defendants’ Brief in Support of Final Approval
15 (Dkt # 816), the extraordinary notice provided to the Class, combined with the
16 opportunity to object and appear at the Fairness Hearing, fully satisfies due process
17 in order to obtain personal jurisdiction over a Rule 23(b)(3) class. *See Phillips*
18 *Petroleum Co. v. Shutts*, 472 U.S. 797, 811-12 (1985) (finding that the district court
19 obtains personal jurisdiction over the absentee class members by providing proper
20 notice of the impending class action and providing absentees with an opportunity to
21 be heard or an opportunity to exclude themselves from the class). Pursuant to the
22 Court’s Order Re Motion for Preliminary Approval (Dkt. # 770), Class Notice was
23 accomplished through a combination of Direct Mailed Notice (via email and U.S.
24 first class mail), Publication Notice, notice through the Settlement website, Long
25 Form Notice, and social media notice. *See* Settlement Agreement, Dkt. # 756-3, p.
26 22; Supplemental Declaration of Jeanne C. Finegan, APR, on the Settlement Class

27 ¹ Toyota’s responses to these objections is being filed concurrently in its
28 Supplemental Memorandum of Law In Support of Final Approval Responding to
Objections.

1 Notice Program dated September 22, 2023 (Dkt. # 815-2) (“September 22, 2023
2 Finegan Declaration”).

3 **B. Notice Satisfied the Requirements of Rule 23(c) and (e) and Due**
4 **Process**

5 The extraordinary notice plan was implemented, consistent with the
6 Preliminary Approval Order, and is estimated to have reached over 95 percent of the
7 Class approximately 3 times, readily satisfying due process. September 22, 2023
8 Finegan Declaration at ¶ 3; October 30, 2023 Finegan Declaration, at ¶ 15. This
9 reach is well beyond the reach of other class action settlements that have received
10 final approval. *See Schneider v. Chipotle Mexican Grill, Inc.*, 336 F.R.D. 588, 596
11 (N.D. Cal. 2020) (the notice was likely viewed by approximately 72.64% of the
12 settlement class with an average estimated frequency of 3.0 per person); *Corzine v.*
13 *Whirlpool Corp.*, No. 15CV-05764-BLF, 2019 WL 7372275, at *5 (N.D. Cal. Dec.
14 31, 2019) (notice program had “an approximate reach of 71.99% and an approximate
15 average frequency of 2.99 times each”).

16 Courts have approved notice plans in settlements that have employed similar
17 notice methods to those used here. *See, e.g., McCrary v. Elations Co., LLC*, 13-0242
18 JGB (SPx), 2016 WL 769703, at *4 (C.D. Cal. Feb. 25, 2016) (granting final
19 approval where notice plan included email, mail, website, telephone number, and
20 publication notice); *In re LinkedIn User Privacy Litigation*, 309 F.R.D. 563, 586
21 (N.D. Cal. 2015) (finding that class members received sufficient notice where the
22 notice plan included email, settlement website, summary notice, and toll-free
23 telephone number); *Roberts v. Electrolux Home Prod., Inc.*, No. 13-cv-2339
24 (CAS)(VBK), 2014 WL 4568632, at *3 (C.D. Cal. Sept. 11, 2014) (finding that class
25 members received sufficient notice where a notice plan included direct notice,
26 publication notice in magazines, internet banner notices, the creation of a settlement
27 website with copies of the Notice, Claim Form, FAQ or “long form” notice, and
28 relevant pleadings, and a toll-free number); *Lerma v. Schiff Nutrition Int’l, Inc.*, No.
11-cv-1056 (MDD), 2015 WL 11216701, at *3 (S.D. Cal. Nov. 3, 2015) (concluding
~~that class notice which comprised of consumer and internet publications, a toll-free~~

1 number, and an informational website constituted the “best notice practicable under
2 the circumstances.”).

3 As of October 30, 2023, the Settlement Notice Administrator has received a
4 total of 272,716 Registration/Claim Forms, with the Claims Period not closing for at
5 least three more years. See October 30, 2023 Finegan Declaration at ¶¶ 3-4. The
6 tremendously positive response from the Class puts in context the mere two
7 objections filed to the settlement and the very small number of Class Members who
8 have opted out of the settlement.

9 • **Direct Mailed Notice**

10 The Direct Mailed Notice informed potential Class Members of the proposed
11 settlement including their potential remedies and the web address for the informative
12 settlement website. As of September 22, 2023, the Settlement Notice Administrator
13 sent approximately 3.76 million email notices and 4.57 million mailed notices were
14 sent. See September 22, 2023 Finegan Declaration ¶¶ 16-21. *Smith v. Bimbo*
15 *Bakeries USA, Inc.*, No. 12cv-01689 (CAS)(PJW), 2015 WL 12724072, at *1 (C.D.
16 Cal. Jan. 29, 2015) (finding distribution of notice by first-class mail the “best notice
17 practicable under the circumstances.”); *Ruch v. AM Retail Grp., Inc.*, No. 14-cv-
18 05352-MEJ, 2016 WL 5462451, at *6 (N.D. Cal. Sept. 28, 2016); *Schuchardt v. Law*
19 *Office of Rory W. Clark*, 314 F.R.D. 673, 680 (N.D. Cal. 2016) (finding notice by
20 U.S. Mail best notice available under circumstances).

21 “Of the 3,756,293 initial email notices sent through this campaign, 467,789
22 emails bounced back and were not deliverable. For an email campaign of this
23 magnitude, this is a reasonable and expected proportion of email bounce backs. Of
24 the 467,789 bounced emails, Kroll had a valid secondary email for 387,333 Class
25 Members and made a second email attempt. Of those secondary emails, 40,583
26 emails bounced back from this attempt. For the 80,456 who did not have a valid
27 secondary email address, Kroll mailed a postcard to those with a valid mailing
28 address.” See September 22, 2023 Finegan Declaration at ¶ 16.

1 • **Website and Toll-Free IVR Telephone Number**

2 Pursuant to the terms of the Settlement Agreement, the Settlement Notice
3 Administrator created a dedicated website, also available in Spanish, and an IVR
4 telephone number as part of Class Notice. Persons who visit the website can, among
5 other things, (i) review important documents, including the Long Form Notice; (ii)
6 review responses to frequently asked questions, (iii) submit out-of-pocket claims for
7 reimbursement or a Residual Distribution claim; (iv) confirm whether they are a
8 Class Member; (v) find the number for the IVR; and (vi) the address for the
9 Settlement Notice Administrator for Claim submission purposes. As of October 30,
10 2023, the website has had 975,820 unique users. October 30, 2023 Finegan
11 Declaration at ¶ 11. To date, there have been 19,377 calls to the IVR toll-free
12 number. *Id.*, at ¶ 12.

13 • **Notice Has Been Published and Disseminated on Other Media**

14 In addition to the notice disseminated above, the Settlement Notice
15 Administrator has also published notice and placed notice on other electronic media.
16 Notice was placed in United States magazines, Territory newspapers, Online Display
17 Ads (United States and U.S. Territories), Social Media Ads, Key Word Search Ads,
18 through the issuance of a Press Release, and geotargeted online display and display
19 ads for residents of California, Pennsylvania, and New Hampshire. *See* September
20 22, 2023 Finegan Declaration at ¶¶ 26-45.

21 • **Notice Has Successfully Informed Class Members of the Settlement**

22 The notice plan provided interlocking methods that both aimed to reach each
23 Class Member individually and directly using reasonably available address
24 information, and also provided multiple alternative forms of notice through which
25 Class Members may have learned of the settlement or obtained further information
26 about their rights. The program followed well-recognized and established
27 procedures for class action notice. Thus, the procedure for providing notice and the
28 content of the class notice constituted the best practicable notice to Class Members.
The Notice Administrator has informed the Court that Notice reached an estimated

1 95 percent of the Class on average 3 times. October 30, 2023 Finegan Declaration
2 at ¶ 15.

3 Here, the methods of dissemination and contents of the notice more than
4 satisfy Rule 23’s notice requirements that the notice should be “reasonably
5 calculated, under all the circumstances, to apprise interested parties of the pendency
6 of the class action and afford them an opportunity to present their objections.”
7 *Keegan v. Am. Honda Motor Co, Inc.*, 2:10-cv-09508-MMM-AJW, 2014 WL
8 12551213, at *6 (C.D. Cal. Jan. 21, 2014) (quoting *Mullane v. Cent. Hanover Bank*
9 & *Trust*, 339 U.S. 306, 314 (1950)).

10 • **The Notices Provided Class Members with the Required**
11 **Information in a Comprehensive, Clear and Readily**
12 **Understandable Format**

13 The notices provided all reasonably identifiable Class Members with a clear
14 and succinct description of the Class and the terms of the preliminarily approved
15 Settlement in plain, easily understood language that complies with the Federal
16 Judicial Center’s illustrative notices. *See Churchill Vill., L.L.C. v. Gen. Elec.*, 361
17 F.3d 566, 575 (9th Cir. 2004) (“Notice is satisfactory if it ‘generally describes the
18 terms of the settlement in sufficient detail to alert those with adverse viewpoints to
19 investigate and to come forward and be heard.’”); *see also* Federal Judicial Center’s
20 illustrative notices at www.FJC.gov. As a result, Class Notice clearly informs Class
21 Members of the relevant aspects of the litigation and Settlement and their rights under
22 the Settlement. *See Dalton v. Lee Publications, Inc.*, No. 08-cv-1072 (GPC)(NLS),
2015 WL 11582842, at *6 (S.D. Cal. Mar. 6, 2015).

23 **C. The Class Action Fairness Act Notice Favors Final Approval**

24 Notice under the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1715, has
25 been satisfied. In a class action settlement, CAFA requires that “[n]ot later than 10
26 days after a proposed settlement of a class action is filed in court, each defendant that
27 is participating in the proposed settlement shall serve [notice of the proposed
28 settlement] upon the appropriate State official of each State in which a class member
resides and the appropriate Federal official[.]” 28 U.S.C. § 1715(b). A court is

1 precluded from granting final approval of a class action settlement until CAFA notice
2 requirements are met. 28 U.S.C. § 1715(d) (“An order giving final approval of a
3 proposed settlement may not be issued earlier than 90 days after the later of the dates
4 on which the appropriate Federal official and the appropriate State official are served
5 with the notice required under [28 U.S.C. § 1715(b)]”).

6 Kroll Notice Media timely and properly caused the required CAFA Notice to
7 be sent on July 18, 2023, and as such, more than 90 days have passed from “the dates
8 on which the appropriate Federal office and the appropriate State official [were]
9 served.” See September 22, 2023 Finegan Declaration, ¶ 11; 28 U.S.C. § 1715(d);
10 *Rubin-Knudsen v. Arthur Gallagher & Co.*, No. EDCV186227JGBSPX, 2021 WL
11 4924765, at *4 (C.D. Cal. Mar. 19, 2021) (holding the granting of final approval in
12 abeyance until the 90-day CAFA notice period expires). At this time, there have
13 been no substantive requests or responses from state and federal officials on this
14 matter.

15 **III. REACTION TO THE CLASS ACTION SETTLEMENT IS**
OVERWHELMINGLY POSITIVE AND FAVORS FINAL APPROVAL

16 In light of the large class size in this case, the number of opt outs and objections
17 are *de minimis* and the response to the settlement can only be described as
18 overwhelmingly favorable. See *Jonsson v. USCB, Inc.*, No. 13-cv-8166 (FMO)(SH),
19 Dkt. # 83, at 11 (C.D. Cal. May 28, 2015) (Olguin, J.) (citing *Nat’l Rural Telecomms.*
20 *v. DirectTV, Inc.*, 221 F.R.D. 523, 529 (C.D. Cal. 2004)) (“It is established that the
21 absence of a large number of objections to a proposed class action settlement raises
22 a strong presumption that the terms of a proposed class settlement action are
23 favorable to the class members.”). In fact, the objections that were raised are
24 unavailing in light of the overall benefit to the Class and should be overruled.

25 **a. The Number of Class Members Requesting Exclusion is**
26 **Extremely Small**

27 The Court should approve the settlement because a “low number of opt-outs
28 and objections in comparison to class size is typically a factor that supports

1 settlement approval.” See *In re LinkedIn User Privacy Litig.*, 309 F.R.D. 573, 589
2 (N.D. Cal. 2015) (citing *Hanlon*, 150 F.3d at 1027 (“[T]he fact that the overwhelming
3 majority of the class willingly approved the offer and stayed in the class presents at
4 least some objective positive commentary as to its fairness.”)).

5 Here, of the over 8.3 million Direct Mailed Notices that have been sent and
6 emailed, only 67 individuals have timely sought exclusion from the Class. See
7 October 30, 2023 Finegan Declaration at ¶ 13. Therefore, the percentage of persons
8 seeking exclusion is approximately 0.0008%, an incredibly low percentage which
9 favors approval. See *Kearney, et al. v. Hyundai Motor Am.*, No. SACV 09-1298-JST
10 (MLGx), 2013 WL 3287996, *7 (C.D. Cal. June 28, 2013) (J. Staton) (finding that
11 16 objections and 179 letters requesting exclusion out of 646,834 recipients of notice
12 were “infinitesimal” figures); see also *Sebastian v. Sprint/United Management Co.*,
13 No. 8:18-cv-00757-JLS-KES, 2019 WL 13037010 (C.D. Cal. Dec. 5, 2019) (granting
14 final approval to a class in which 0.67% of the Class had submitted opt-out requests).

15
16 **IV. CONCLUSION**

17 For the foregoing reasons and the arguments made in the Memorandum of Law
18 in Support of Motion for Final Approval of Class Settlement and the Supplemental
19 Memorandum of Law in support of Motion for Final Approval Responding to
20 Objections, Toyota respectfully requests that the Court find that the Notice satisfied
21 due process and other requirement and finally approve the settlement as fair,
22 reasonable, and adequate pursuant to Federal Rule of Civil Procedure 23(e), and
23 issue further relief as the Court deems reasonable and just.

24
25 Dated: October 30, 2023

KING & SPALDING LLP

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By: /s/ John P. Hooper

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John P. Hooper (pro hac vice)

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*Counsel for Toyota Motor North America,
Inc., Toyota Motor Sales, U.S.A., Inc.,
Toyota Motor Engineering & Manufacturing
North America, Inc.*

CERTIFICATE OF SERVICE

1
2 I hereby certify that on October 30, 2023, I electronically filed the foregoing
3 with the Clerk of the Court using the CM/ECF system which will send notification
4 of such filing to the e-mail addresses denoted on the Electronic Mail Notice List, and
5 I hereby certify that I have mailed the foregoing document or paper via the United
6 States Postal Service to the non-CM/ECF participants indicated on the Electronic
7 Mail Notice List.

8 I certify under penalty of perjury under the laws of the United States of
9 America that the foregoing is true and correct. Executed on October 30, 2023.

10
11 /s/ Jason Bush
12 Jason Bush

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