UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

KATHLEEN RYAN-BLAUFUSS, CATHLEEN MILLS and KHEK KUAN, on behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

TOYOTA MOTOR CORPORATION, TOYOTA MOTOR SALES, U.S.A., INC., and DOE DEFENDANTS 1-10,

Defendants.

STEVEN KOSAREFF and LAURA KAKISH, on behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

TOYOTA MOTOR CORPORATION, TOYOTA MOTOR SALES USA, INC., and DOES 1-10, inclusive,

Defendants.

CASE NO. 8:18-cv-00201-JLS-KES

ORDER (1) GRANTING MOTION FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT, CERTIFYING SETTLEMENT CLASS, AND DIRECTING NOTICE TO THE CLASS; AND (2) SETTING FAIRNESS HEARING FOR JANUARY 13, 2023 (DOC. 219)

Before the Court is an unopposed Motion for Preliminary Approval of Settlement. (Mot., Doc. 219.) The Motion asks the Court to: (1) preliminarily approve a proposed settlement of this class action; (2) certify the settlement class; (3) appoint interim lead class counsel and the proposed class representatives as class counsel and class representatives for the settlement class; (4) approve the form and manner of giving notice to the class; (5) appoint Kroll Notice Media Solutions as the Settlement Notice Administrator; and (6) issue a preliminary injunction. (*See* Mot. at 14-34.) Having reviewed and considered the papers, and having heard oral argument, the Court GRANTS the Motion but DENIES the request for preliminary injunction and sets a fairness hearing for January 13, 2023.

I. BACKGROUND

A. History of the Litigation

The present action arises out of a defect in the Intelligent Power Modules ("IPMs")—a critical component housed in the hybrid Inverter assemblies—installed in more than 700,000 Toyota Prius 2010-2014 models.[1] (*See* Mot. at 2-3 (citing Doc. 164-21).) Inverter failures were causing the vehicles to suddenly decelerate or stall while driving because the solder attaching the Insulated-Gate Bipolar Transistors ("IGBTs") to circuit boards inside the IPM degraded due to exposure to thermal stress, and the degraded solder connection created even more heat, which deformed the IGBTs and cause the IPM to malfunction or fail (the "IPM defect"). (*Id.* at 3.)

Toyota issued a number of recalls related to the affected vehicles, modified the software in the Electronic Control Unit, and extended warranty coverage for the IPMs and Inverters under two warranty programs involving the affected vehicles, but drivers still reported having issues with the affected vehicles. (*Id.* at 3-4 (citing Doc. 164-21 at 842-43; Doc. 164-40; Doc. 164-54 at 1; Doc. 164-55 at 1; Doc. 164-19 at 830).)

[1] The vehicles affected by this defect and involved in this litigation are herein referred to as the "subject vehicles."

On January 31, 2018, Plaintiff Jevdet Rexhepi filed a class-action complaint in the Los Angeles Superior Court alleging that software installed in the different safety recalls did not eliminate the IPM defect, that Toyota engaged in common-law fraudulent concealment of the IPM defect, and that the same conducted resulted in violations of the California Consumers Legal Remedies Act ("CLRA"), Cal. Civ. Code §§ 1750-1784 and the Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200-17209, and in Toyota's unjust enrichment. (*Id.* at 4 (citing Ex. C to Fazio Decl., Doc. 219-4).)

On February 5, 2018, Plaintiffs Remy McCarthy and Robert Phillips filed a class-action complaint against Toyota in this Court, alleging that the safety recalls did not eliminate the IPM defect and Toyota's conduct constituted fraudulent concealment and negligent misrepresentation, violated the UCL, CLRA, and the False Advertising Law ("FAL"), Cal. Bus. & Prof. Code §§ 17500-17509, and breached express and implied warranties. (*Id.* (citing Doc. 1).)

On February 6, 2018, Toyota notified its dealers across the United States that the allegations in the class actions were baseless, that the previously issued recalls addressed the defect, that the existing warranty programs were appropriate for customer safety and satisfaction, and that there would be no changes to either the recalls or the warranty programs. (*Id.* (citing Doc. 113-22).)

Eight months later, however, Toyota announced another safety recall (for vehicles that had previously been recalled) because the vehicles remained at risk of stalling. (*See id.* at 5 (citing Doc. 164-47).) Toyota planned to install an updated version of the ECU software ("Updated Recall Software") that would prevent the vehicles from stalling or suddenly decelerating, regardless of IPM malfunction or failure. (*Id.* (citing Doc. 164-46 ¶¶ 2-3, 5, 7).)

During the early stages of this litigation, Plaintiffs' counsel inquired about why only certain sub-classes of vehicles were subject to some of the recalls when all of the subject

vehicles were equipped with the same ECU software. (*Id.* at 5-6 (citing Doc. 113-21 ¶¶ 14-16, 17, 18; Doc. 113-25).)

On May 22, 2020, Toyota moved to compel Plaintiffs to arbitrate; the Court denied that motion. (*Id.* (citing Docs. 109, 131).) A month later, Toyota announced another recall to install updated software that would also enable the vehicles to keep driving at speeds of approximately 60 miles per hour despite an IGBT malfunction or failure. (*See id.* at 6 (citing Doc. 164-48; Doc. 164-50 at 1146).) Toyota also announced another warranty program. (*Id.*)

Toyota initiated settlement negotiations shortly before announcing the 2020 recall, but negotiations proceeded haltingly, in part, because Toyota's motion to compel arbitration was pending before the Court and, in part, because Plaintiffs had a substantial amount of discovery to complete in addition to preparing their motion for class certification.[2] (*Id.* at 7 (citing Fazio Decl., Doc. 219-1, ¶ 19; Doc. 125).) Moreover, pandemic travel restrictions delayed Plaintiffs' depositions of Toyota's Japan-based personnel. (*Id.*) Plaintiffs propounded dozens of interrogatories, multiple sets of requests for admissions, and nearly two dozen sets of requests for production of documents; included in this discovery were requests for information verifying the efficacy of the Updated Recall Software. (*Id.*)

Settlement negotiations continued during the same period, and the Parties stipulated to the appointment of an experienced mediator, Patrick Juneau, as Settlement Special Master pursuant to Federal Rule of Civil Procedure 54. (*Id.* at 8 (citing Doc. 134).) The

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[2] Plaintiffs' litigation efforts have been substantial and include, but are not limited to: drafting and analyzing responses to 17 sets of document demands, multiple sets of interrogatories, and three requests for admissions; responding to five sets of interrogatories from Toyota; issuing document subpoenas to third parties and responding to the subpoenas Toyota served on Plaintiffs' experts; reviewing hundreds of thousands of pages of documents produced by Toyota—including a large volume of technical documents that required translation from Japanese; engaging in discovery motion practice; researching and analyzing the legal and technical issues presented by this litigation; working with experts and assessing Toyota's expert reports; and preparing and defending the depositions of the five named Plaintiffs and Plaintiffs experts. (*See* Mot. at 8 n.3.)

Parties reached a stalemate, which was broken only when: (1) the results of Toyota's testing of the Updated Recall Software illustrated that the software prevented stalling in specific Prius models and allowed them to be driven at speeds of more than 60 miles an hour despite IGBT malfunction or failure; and (2) Toyota provided Plaintiffs with confirmation under oath that the Updated Recall Software performs as designed and that Toyota was not aware of any subject vehicle equipped with the Updated Recall Software that was unable to travel 60 miles per hour after entering a fail-safe mode. (Mot. at 9 (citing Doc. 193-9 at 28-41; Doc. 195, Exs. 1-5; Doc. 164-50 at 1147-49; Fazio Decl. ¶ 19-23).)

After this information came to light, and after another five months of negotiations assisted by Special Master Juneau, the Parties addressed each of these issues in a detailed Settlement Agreement. (Mot. at 9 (citing Fazio Decl. ¶¶ 19-30; Ex. A to Fazio Decl., Proposed Settlement Agreement, Doc. 219-2).) Thereafter, the Parties filed a Notice of Settlement with the Court and finalized a formalized Settlement Agreement. (*See* Doc. 216.)

B. Proposed Class

The proposed settlement has defined the Class as, for settlement purposes only, "all persons, entities or organizations (a) who own or lease a Subject Vehicle as of the date of the entry of the Preliminary Approval Order, or (b) who, at any time before the entry of the Preliminary Approval Order, owned or leased a Subject Vehicle." (Proposed Settlement at 7.) Excluded from the Class are: (a) Toyota, its officers, directors and employees; its affiliates and affiliates' officers, directors and employees; its distributors and distributors' officers, directors and employees; and Toyota Dealers and Toyota Dealers' officers and directors; (b) Plaintiffs' Counsel; (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 as provided [by the] Settlement Agreement." (*Id.* at 7-8.)

C. Proposed Settlement

The proposed Settlement Agreement provides for a $20 million non-reversionary fund that will be replenished to the extent required to pay all valid claims for reimbursement for the repair or replacement of IPMs and Inverters in any of the 1.1 million subject vehicles, and for the cost of towing and rental cars associated with those repairs. (Mot. at 11; Proposed Settlement at 15-19.)

In the event that all reimbursement claims are paid before the fund is exhausted, the remaining balance will be distributed pro rata to all Class Members who have had an IPM or Inverter repaired or replaced in a subject vehicle, regardless of whether they had to bear the cost of repair or replacement, up to $250 (unless the Parties agree to a higher cap and jointly recommend that amount to the Settlement Special Master for approval). (Mot. at 11; Proposed Settlement at 17.)

The Settlement Agreement also includes a towing and loaner-car program by which Class Members will receive complimentary towing if their subject vehicle's IPM or Inverter requires repair and replacement and, if the repair or replacement takes more than four hours to complete, a complimentary rental car as well. (Mot. at 12; Proposed Settlement at 18-19.)

The Settlement Agreement establishes a "Customer Confidence Program" in which all Class Members, subsequent purchasers and/or transferees of subject vehicles are entitled to an extension of the warranty coverage under the existing warranty programs for 20 years from the date of the first use of the subject vehicles. (Mot at 12; Proposed Settlement at 19-21.) The Program will improve coverage in the following manner: (1) IPMs will be repaired and replaced at no cost without regard to whether they would qualify for repair or replacement under the previous warranty programs; (2) Inverters that experience a thermal event will be repaired or replaced at no cost; and (3) Inverters will be repaired or replaced at no cost if the subject vehicle displays one of the listed diagnostic trouble codes. (Mot. at 12; Proposed Settlement at 20.)

Under the Settlement Agreement, Class Members or subsequent purchasers or transferees of a subject vehicle who are denied coverage or other benefits under the Customer Confidence Program and/or the loaner/towing program will have the right to appeal their denial of coverage or benefits to the settlement claims administrator. (Mot. at 13; Proposed Settlement at 21-22.)

The Settlement Agreement provides for the Class Notice Program set forth in detail in the next section. (Mot. at 13; Proposed Settlement at 29-34.)

The Settlement Agreement releases all Class Member claims, demands, suits, petitions, liabilities, causes of action, rights, and damages of any kind against Toyota regarding the subject matter of this action, as that term is defined by the Settlement Agreement. (Proposed Settlement at 41-42, 13.) This release does not release claims for personal injury, death, property damage arising from an accident involving a subject vehicle, property damage to the subject vehicle arising from Inverter or IPM failure, other than damage to the Inverter or IPM itself, or subrogation. (*Id.* at 41.)

Lastly, the Settlement Agreement provides that Toyota will pay class counsel's attorney fees and litigation expenses and service awards to each proposed class representative in the amount recommended by the Settlement Special Master; additionally, the Special Master has proposed, and the Parties have agreed to $19.6 million for attorney fees and litigation expenses and $5,000 for each class representative service award. (Mot. at 13-14; Proposed Settlement at 45.) If the Court does not award the full amount proposed, the difference between this amount and the amount awarded by the Court will be distributed to the Class through the settlement fund. (Proposed Settlement at 45.)

D. Class Notice

The Settlement Agreement sets forth a Class Notice Program. It states that class notice "will be accomplished through a combination of Direct Mail Notice, Publication Notice, notice through the settlement website, Long Form Notice, social media notice, and other applicable notice[.]" (Proposed Settlement at 29.)

The Settlement Agreement provides for two forms of direct mail notice: (1) mailed to Class Members who are identified by Toyota as having previously had their Inverter and/or IPM replaced and who may be eligible for a potential redistribution check; and (2) mailed to the balance of Class Members who have not been identified by Toyota as having previously had their Inverter and/or IPM repaired or replaced. (*Id.* at 30.)

The Settlement Agreement also provides for Publication Notice in newspapers, magazines, and/or other media outlets as shall be agreed upon by the Parties. (*Id.* at 31.) The declaration of the Parties' proposed Settlement Notice Administrator specifies that publication notice will be issued in: (1) "two general circulation magazines, published in English with Spanish sub-headlines," including People Magazine and Time Magazine; (2) USA Today, Los Angeles edition; and (3) nine territorial newspapers along with banner advertising on the newspapers' web property. (Finnegan Decl., Doc 220, at ECF 12-14.)

The Settlement Agreement also mandates website notice. (*See* Proposed Settlement at 31.) It provides that the "Settlement Notice Administrator shall establish a dedicated settlement website that will inform Class Members of the terms of the Settlement Agreement, including but not limited to (1) instructions on how to file a claim and obtain reimbursement, (2) instructions on how to contact the Settlement Claims Administrators for assistance with their claims, (3) frequently asked questions (FAQs) and answers, and (4) other information concerning their rights, dates and deadlines and related information." (*Id.*) The website shall include the Settlement Agreement, the Long Form Notice and Direct Mail Notice, all motions filed in connection with the Settlement (including those for preliminary and final approval and attorney's fees and costs), all court orders concerning the settlement, the documents necessary to submit an appeal, and any other court documents that may be of interest to most class members. (*Id.*)

The Settlement Agreement includes online display/banner advertising and social media notice as well. (*Id.* at 34.) Display ads will be targeted to people who have been identified as Prius owners. (Ex. B to Finegan Decl. at ECF 15-16.)

Additionally, the Parties request that the Court approve their selection of Jeanne Finegan of Kroll Notice Media ("Kroll") as Settlement Notice Administrator. (Mot. at 29; Proposed Settlement at 13.)

II. CERTIFICATION OF THE SETTLEMENT CLASS

Plaintiffs have moved to certify the Settlement Class. (Mot.) Defendants have not opposed. Therefore, the Court must determine whether to certify the proposed Class pursuant to Rule 23 of the Federal Rules of Civil Procedure.

A. Legal Standard

"A party seeking class certification must satisfy the requirements of Federal Rule of Civil Procedure 23(a) and the requirements of at least one of the categories under Rule 23(b)." *Wang v. Chinese Daily News, Inc.*, 737 F.3d 538, 542 (9th Cir. 2013). Rule 23(a) "requires a party seeking class certification to satisfy four requirements: numerosity, commonality, typicality, and adequacy of representation." *Id.* (citing *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 349 (2011)). Rule 23(a) provides:

> One or more members of a class may sue or be sued as a representative parties on behalf of all members only if:
> (1) the class is so numerous that joinder of all members is impracticable;
> (2) there are questions of law or fact common to the class;
> (3) the claims or defense of the representative parties are typical of the claims or defenses of the class; and
> (4) the representative parties will fairly and adequately protect the interest of the class.

Fed. R. Civ. P. 23(a). "Rule 23 does not set forth a mere pleading standard. A party seeking class certification must affirmatively demonstrate his compliance with the Rule—that is, he must be prepared to prove that there are *in fact* sufficiently numerous parties, common questions of law or fact, etc." *Dukes*, 564 U.S. at 350. This requires a district court to conduct a "rigorous analysis" that frequently "will entail some overlap with the merits of the plaintiff's underlying claim." *Id.* at 350-51.

"Second, the proposed class must satisfy at least one of the three requirements listed in Rule 23(b)." *Id.* at 345. Rule 23(b)(3) permits maintenance of a class action if "the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3).

B. The Proposed Class Satisfies Rule 23(a) Requirements

1. Numerosity

Rule 23(a)(1) requires that the class be "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). Here, the proposed settlement class consists of current and former owners and lessees of roughly 1.1 million subject vehicles, and the numerosity requirement is satisfied. (Mot. at 23 (citing Doc. 164-45 at 1124 ¶ 3; Doc. 164-48 at 1133 ¶ 3).)

2. Commonality

Rule 23(a)(2) requires that "there are questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). "Commonality requires the plaintiff to demonstrate that the class members have suffered the same injury." *Dukes*, 564 U.S. at 349-50 (quotations omitted). Plaintiffs must allege that the Class's injuries "depend upon a common contention" that is "capable of classwide resolution." *Id.* at 350. In other words, the "determination of [the common contention's] truth or falsity will resolve an issue that is central to the validity of each of the claims in one stroke." *Id.* "What matters to class certification . . . is not the raising of common questions—even in droves—but, rather, whether the capacity of a classwide proceeding to generate common *answers* apt to drive the resolution of the litigation." *Id.* (internal quotation marks and citations omitted).

Here, Plaintiffs' causes of action raise several questions common to the settlement class, including but not limited to: (1) whether the subject vehicles suffer from the IPM Defect; (2) whether Toyota knew or reasonably should have known that the IPM defect

existed before it sold or leased the subject vehicles to Class Members; (3) whether information Toyota concealed is material; (4) whether Toyota had a duty to disclose the IPM Defect; and (5) whether Toyota's conduct violated California consumer protection statutes. (Mot. at 24 (citing Doc. 73, ¶ 151).) These shared legal and factual issues are sufficient to satisfy the commonality requirement. *See Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1172 (9th Cir. 2010) (commonality satisfied where claims involved same defect found in vehicles of same make and model).

3. Typicality

Rule 23(a)(3) requires that "the claims or defenses of the representative parties are typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). The test for 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." *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992) (internal citation omitted). "Under the rule's permissive standards, representative claims are 'typical' if they are reasonably coextensive with those of absent class members; they need not be substantially identical." *Dukes v. Wal-Mart Stores, Inc.*, 603 F.3d 571, 613 (9th Cir. 2010) (en banc) (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998)), *rev'd on other grounds*, 564 U.S. 338 (2011). As to the representative, "[t]ypicality requires that the named plaintiffs be members of the class they represent." *Id*. The commonality, typicality, and adequacy-of-representation requirements "tend to merge" with each other. *Dukes*, 564 U.S. at 349 n.5 (citing *Gen. Telephone Co. of Southwest v. Falcon*, 457 U.S. 147, 157-58 n.13 (1982)).

The named Plaintiffs and Class Members each owned or leased a subject vehicle during the relevant timeframe; each subject vehicle suffers from the same IPM Defect, and the named Plaintiffs' claims arise from the same set of facts and legal issues as the claims of other class members. (Mot. at 25 (citing Doc. 73, ¶¶ 30-34, 36, 38-41).) Accordingly, the Court finds that the settlement Class satisfies the Rule 23(a)(3) typicality requirement.

4. Adequacy

Rule 23(a)(4) permits certification of a class action only if "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). "Resolution of two questions determines legal adequacy: (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?" *Hanlon*, 150 F.3d at 1020.

As explained above, the named Plaintiffs do not have conflicts with Class Members because they are typical of the Class and common issues affect the named Plaintiffs' and Class Members' claims. And it also appears that Plaintiffs have retained class-action counsel who have no conflicts with Class Members. (*See* Mot. at 26 (citing Fazio Decl. ¶¶ 3-15; Ex. B to Fazio Decl., Doc. 219-3; Siegel Decl., Doc. 219-5, ¶¶ 3-15; Ex. 1 to Siegel Decl., Doc. 219-5, at ECF 6-11).)

To assess counsel's adequacy, courts consider four factors: (1) the work done in identifying or investigating potential claims; (2) counsel's class action or complex litigation experience and the types of claims asserted in the action; (2) counsel's knowledge of the applicable law; and (4) the resources counsel will commit to representing the class. *See* Fed. R. Civ. P. 23(g)(1)(A)(i)-(iv). Interim Co-Lead Class counsel have decades of experience litigating class actions and other forms of complex litigation; this experience includes litigating a successful jury trial involving the same defect at issue in the present action. (*See* Fazio Decl. ¶¶ 3-15; Ex. B to Fazio Decl.; Siegel Decl. ¶¶ 3-15; Ex. 1 to Siegel Decl.) Counsel have also devoted significant time, effort, and resources, and have prosecuted this lawsuit vigorously since its inception, including filing various discovery motions and motions for summary judgment and class certification. Accordingly, the Court concludes that the adequacy requirement is satisfied.

C. The Proposed Class Satisfies Rule 23(b)'s Requirements

Plaintiffs also seek to certify the class pursuant to Rule 23(b)(3), which considers whether common questions of law or fact predominate over individual questions and whether a class action is superior to other available methods of adjudication. Fed. R. Civ. P. 23(b)(3).

1. Predominance

"The Rule 23(b)(3) predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Hanlon*, 150 F.3d at 1022. "Rule 23(b)(3) focuses on the relationship between the common and individual issues." *Id.* "When common issues 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." *Id.* (quoting 7A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice & Procedure § 1778 (2d ed. 1986)).

Questions of law and fact common to Class Members predominate over those affecting only individual members. The questions of law and fact at issue in this case are grounded in the same IPM Defect affecting all subject vehicles, the same rounds of safety recalls, and Toyota's uniform failure to disclose the existence of the IPM Defect. (Mot. at 27 (citing Docs.164-46, 164-48).) This satisfies the predominance inquiry.

2. Class Action Superior to Other Methods

"The superiority inquiry under Rule 23(b)(3) requires determination of whether the objectives of the particular class action procedure will be achieved in the particular case." *Hanlon*, 150 F.3d at 1023. "This determination necessarily involves a comparative evaluation of alternative mechanisms of dispute resolution." *Id.* "The overarching focus [of the superiority inquiry] remains whether trial by class representation would further the goals of efficiency and judicial economy." *Vinole v. Countrywide Home Loans, Inc.*, 571 F.3d 935, 946 (9th Cir. 2009)). Additionally, "[w]here recovery on an individual basis

would be dwarfed by the cost of litigating on an individual basis, this factor weighs in favor of class certification." *Wolin*, 617 F.3d at 1175 (citations omitted).

Plaintiffs state that "the cost to replace a defective Inverter can exceed $3,000." (Mot. at 28 (citing Doc. 165-1 ¶ 33).) While this may be a significant amount to an individual consumer, it is dwarfed in comparison to the cost of litigating a case against a major automobile manufacturer like Toyota. Accordingly, the Court finds that the superiority requirement has been satisfied. *See Amchem Prod., Inc. v. Windsor*, 521 U.S. 591, 617 (1997) ("The policy at the very core of the class action mechanism is to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights[.]") (citation and internal quotation marks omitted).

As Plaintiffs have satisfied Rule 23's requirements, the Court grants the request to certify the Class for settlement purposes.

III. PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

A. Legal Standard

To preliminarily approve a proposed class action settlement, Federal Rule of Civil Procedure 23(e)(2) requires the Court to determine whether the proposed settlement is fair, reasonable, and adequate. Fed. R. Civ. P. 23(e)(2). In turn, review of a proposed settlement typically proceeds in two stages, with preliminary approval followed by a final fairness hearing. Manual for Complex Litigation, § 21.632 (4th ed. 2004).

Although there is a "strong judicial policy that favors settlements, particularly where complex class action litigation is concerned," *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1238 (9th Cir. 1998) (citation omitted), "[t]he purpose of Rule 23(e) is to protect the unnamed members of the class from unjust or unfair settlements affecting their rights," *In re Syncor ERISA Litig.*, 516 F.3d 1095, 1100 (9th Cir. 2008) (citation omitted). Accordingly,

> to determine whether a settlement agreement meets these standards, a district court must consider a number of factors, including: the strength of plaintiffs' case; the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class action status throughout the trial; the amount offered in settlement; the extent of 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.

Staton v. Boeing Co., 327 F.3d 938, 959 (9th Cir. 2003) (internal citation and quotation marks omitted). "The relative degree of importance to be attached to any particular factor will depend upon and be dictated by the nature of the claim(s) advanced, the type(s) of relief sought, and the unique facts and circumstances presented by each individual case." *Officers for Justice v. Civil Serv. Comm'n of City & Cty. of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982). "'It is the settlement taken as a whole, rather than the individual component parts, that must be examined for overall fairness,' and 'the settlement must stand or fall in its entirety.'" *Staton*, 327 F.3d at 960 (quoting *Hanlon*, 150 F.3d at 1026) (alterations omitted).

In addition to these factors, where "a settlement agreement is negotiated *prior* to formal class certification," the Court must also satisfy itself that "the settlement is not [ ] the product of collusion among the negotiating parties." *In re Bluetooth Headset Prods. Liab. Litig*., 654 F.3d 935, 946-47 (9th Cir. 2011) (quotation marks omitted). In such circumstances, courts apply "a higher standard of fairness and a more probing inquiry than may normally be required under Rule 23(e)." *Dennis v. Kellogg Co*., 697 F.3d 858, 864 (9th Cir. 2012) (internal quotation marks and citation omitted).

At this preliminary stage and because Class Members will receive an opportunity to be heard on the settlement, "a full fairness analysis is unnecessary[.]" *Alberto v. GMRI, Inc*., 252 F.R.D. 652, 665 (E.D. Cal. 2008). Instead, preliminary approval and notice of the settlement terms to the proposed class are appropriate where "[1] the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, [2] has no obvious deficiencies, [3] does not improperly grant preferential treatment to class

representatives or segments of the class, and [4] falls with the range of possible approval. . . ." *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007) (internal quotation marks and citation omitted); *see also Acosta v. Trans Union, LLC*, 243 F.R.D. 377, 386 (C.D. Cal. 2007) ("To determine whether preliminary approval is appropriate, the settlement need only be *potentially fair*, as the Court will make a final determination of its adequacy at the hearing on Final Approval, after such time as any party has had a chance to object and/or opt out.")

In evaluating all applicable factors below, the Court finds that the proposed Settlement Agreement should be preliminarily approved.

B. Analysis of Factors

1. Strength of Plaintiff' case and risk, expense, complexity, and duration of further litigation

"Settlement eliminates the risks inherent in certifying a class, prevailing at trial, and withstanding any subsequent appeals, and it may provide the last opportunity for class members to obtain relief." *Scott v. HSS Inc.*, 2017 WL 10378568, at *8 (C.D. Cal. Apr. 11, 2017). Given the potential risks of further litigation, this factor therefore weighs in favor of granting preliminary approval. *See Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 526 (C.D. Cal. 2004) ("In most situations, unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results." (citation omitted)).

2. Amount offered in settlement

The proposed settlement provides Class Members with substantial monetary and non-monetary benefits, including: a $20-million dollar, non-reversionary, evergreen fund available to satisfy all valid reimbursement claims for expenses to repair or replace an IPM or Inverter, and related towing and rental car charges; if a balance remains in the fund after all out-of-pocket claims have been paid, the balance shall be distributed on a pro-rata basis to class members; and Toyota will offer all class members the Customer Confidence

Program to provide prospective coverage for repairs to and/or replacement of the Inverter and/or IPM for twenty (20) years from the date of the first use of the subject vehicle. (*See* Mot. at 1-2; Proposed Settlement, at 14-27.) The Court concludes that these benefits support granting preliminary approval.

3. Extent of discovery proceedings and stage of the proceedings

This factor requires the Court to evaluate whether "the parties have sufficient information to make an informed decision about settlement." *Linney*, 151 F.3d at 1239. Courts have held that conducting both formal and informal discovery can support preliminary approval of a settlement. *See Clesceri v. Beach City Investigations & Protective Servs., Inc.*, 2011 WL 320998, at *9 (C.D. Cal. Jan. 27, 2011) ("In the present matter, only informal discovery has been conducted, but in the context of class action settlements, formal discovery is not a necessary ticket to the bargaining table where the parties have sufficient information to make an informed decision about settlement." (cleaned up)); *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454 (9th Cir. 2000) (finding plaintiffs had "sufficient information to make an informed decision about the [s]ettlement" where formal discovery had not been completed but class counsel had "conducted significant investigation, discovery and research, and presented the court with documentation supporting those services.").

The Parties have reached a settlement at a relatively late stage of the proceedings, and the Court finds that this factor favors preliminary approval. Although this action was initiated in 2018, settlement discussions did not commence until June 2020, after Plaintiffs' counsel had conducted substantial investigation and discovery. (Mot. at 16.) And even after settlement discussion began, the Parties continued to engage in extensive formal and informal discovery, litigated multiple discovery motions, and undertook rounds of briefing for the motions to compel arbitration, class certification, and summary judgment. (*Id.* at 17.) Negotiations took place for 17 months before the Parties reached a settlement, and "[c]onsequently, every material issue underwent intensive scrutiny and

discussion before it became part of the Settlement Agreement[.]" (*Id.*) Thus, there is no doubt that the Parties have abundant information on which to make informed decisions about settlement, and this factor favors approval.

4. Experience and views of counsel

"Parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in litigation." *In re Pac. Enterprises Sec. Litig.*, 47 F.3d 373, 378 (9th Cir. 1995). As a result, representation by competent counsel familiar with the law in the relevant area and with "the strengths and weaknesses of [the Parties'] respective positions, suggests the reasonableness of the settlement." *In re Immune Response Sec. Litig.*, 497 F. Supp. 2d 1166, 1174 (S.D. Cal. 2007). "On the other hand, recognizing the potential conflict of interest between attorneys and the class they represent, the Court should not blindly follow counsel's recommendations, but give them appropriate weight in light of all factors surrounding the settlement." *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 622 (N.D. Cal. 1979).

Plaintiffs' counsel aver that they have deep experience in this area of the law, and they also understand that there are no certainties in litigation or jury trials, particularly in cases involving consumer fraud. (Mot. at 20 (citing Fazio Decl. ¶¶ 3-15; Ex. B to Fazio Decl.; Siegel Decl. ¶¶ 3-15; Ex. 1 to Siegel Decl.).) Counsel state that they are aware Plaintiffs face substantial risk at each stage of this litigation; for instance, Plaintiffs could prevail on certification, only to risk loss on appeal if Toyota were to persuade the Ninth Circuit that it had the better argument, or because an intervening change in law favored Toyota. (*Id.*) Particularly given the experience of Plaintiffs' counsel in this action, the Court finds that this factor favors preliminary approval.

5. Arm's length negotiation free from collusion

Although the "proposed settlement need not be ideal," it "must be fair, free of collusion, [and] consistent with counsel's fiduciary obligations to the class." *Rollins v. Dignity Health*, 336 F.R.D. 456, 461 (N.D. Cal. 2020).

As explained previously, the Settlement Agreement is the product of a lengthy negotiation and litigation process conducted by experienced class-action counsel. (Mot.) Moreover, a Settlement Special Master participated in various aspects of the negotiations, and he resolved the issues pertaining to Plaintiffs' attorney fees and costs and service awards for the proposed class representatives by making a mediator's proposal that both sides agreed to accept; further; if the award differs from the Special Master's recommendation, the difference will not revert to Toyota, but it will be deposited in the Settlement Fund for distribution for distribution to the class. (*Id.* at 17.) Thus, the Court finds the proposed settlement appears to be the product of well-informed, arms'-length negotiations, and the proposed settlement lacks any overt or subtle signs of collusion. *See Kim v. Allison*, 8 F.4th 1170, 1179 (9th Cir. 2021) (court is required to search for subtle signs plaintiff's counsel has subordinated class relief to self-interest); *Adona v. Univ. of Phoenix, Inc.*, 913 F. Supp. 2d 964, 977 (E.D. Cal. 2012) ("A settlement following sufficient discovery and genuine arms-length negotiation is presumed fair." (quotations omitted)).

IV. APPOINTMENT OF LEAD CLASS COUNSEL AND CLASS REPRESENTATIVES

"An order that certifies a class action . . . must appoint class counsel under Rule 23(g)." Fed. R. Civ. P. 23(c)(1)(B). As it appears that Interim Co-Lead Class Counsel, Jeffrey L. Fazio and Dina A. Micheletti and Annon Z. Siegel have no conflicts of interest with the Class, they are experienced in litigating class action lawsuits, and for the reasons stated previously above, the Court appoints Interim Co-Lead Class Counsel as Co-Lead Class Counsel. (*See* Mot. at 28; Fazio Decl.; Siegel Decl; *see also* Order, Doc. 74 (appointing Fazio, Micheletti, and Siegel as Interim Class Counsel).)

Additionally, because it appears that proposed lead Plaintiffs Kathleen Ryan Blaufuss, Cathleen Mills, Khek Kuan, Steven Kosareff, and Laura Nawaya each owned or leased a subject vehicle during the relevant timeframe, and each subject vehicle suffers

from the same IPM defect, these plaintiffs do not appear to have any conflicts of interest with the Class, and the Court appoints them as Lead Plaintiffs. (*See* Fazio Decl. ¶¶ 16, 17.) In advance of the Final Fairness Hearing, however, each Class Representative shall submit a declaration confirming that they have no conflicts of interest with the other Class Members and describing the work they have done on behalf of Class Members. (*See id.*)

V. CLASS NOTICE

For a class certified under Rule 23(b)(3), "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). However, actual notice is not required. *See Silber v. Mabon*, 18 F.3d 1449, 1452-54 (9th Cir. 1994).

As the proposed Class Notice distribution program includes both first-class Direct Mail Notice and Publication Notice, in addition to Publication and Online Display/Banner Advertising and Social Media Notices, the Court finds the proposed Class Notice Plan satisfies due process and Rule 23's requirements. The proposed Settlement Notice Administrator, Kroll, estimates that the direct mail outreach measures, alone, are estimated to reach at least 78% of targeted class members residing in the fifty states and District of Columbia. (Mot. at 29; Ex. B to Finegan Decl. at ECF 14.) When combined with the publication outreach, the Notice Program is estimated to reach at least 92% of the target audience over three times. (Ex. B to Finegan Decl. at ECF 14.)

The content of the proposed Class Notices also appears to generally satisfy the requirements of due process and Rule 23. The parties have drafted four versions of the Class Notices: the Long-Form Notice, two slightly different versions of Direct-Mail Notice in the form of summary postcards, and a summary Publication Notice. (*See* Exs. 4, 6-8 to Proposed Settlement, Doc. 219-2.) These Notices generally describe the Class, the options open to Class Members, the terms of the Settlement Agreement, the benefits to Class Representatives, information regarding attorney fees, indicate the time and date of the

Fairness Hearing, and describe the contact information of the Settlement Claims Administrator and how to make inquiries. *See* Manual for Complex Litigation § 21.312. The Court finds that the Class Notice and methodology as described in the Settlement Agreement, Notice Plan, and in the Declaration of the Settlement Notice Administrator generally: (a) meet the requirements of due process and Federal Rules of Civil Procedure 23(c) and (e); (b) constitutes the best notice practicable under the circumstances to all persons entitled to notice; and (c) satisfies the Constitutional requirements regarding notice. In addition, the Court finds that the Class Notice (a) apprises Class Members of the pendency of the Action, the terms of the proposed settlement, their rights and deadlines under the settlement; (b) is written in simple terminology; (c) is readily understandable by Class Members; (d) provides sufficient notice of Class Counsel's request for attorneys' fees and costs and incentive awards to Class Representatives; and (e) complies with the Federal Judicial Center's illustrative class action notices. Nonetheless, there are a handful of issues with the Class Notices that require modification or correction. The Court identifies the necessary changes in Section VII, below.

Additionally, the Court has reviewed the materials submitted in support of the appointment of Kroll as the Settlement Notice Administrator. (*See* Ex. 9 to Proposed Settlement at ECF 153-162; Finegan Decl.) Kroll has a wealth of experience implementing notice programs in complex litigation, and the Court finds due process will be served by Kroll's appointment, and the request to appoint Kroll is granted.

VI. PRELIMINARY INJUNCTION

The Parties request that "[t]o avoid confusion and to protect the rights and interests of Class Members, as well as its own jurisdiction, the Court should issue a preliminary injunction pending final approval of the settlement to enjoin Class Members and their representatives from pursuing claims that are similar to those alleged in the Amended Consolidated Master Complaint." (Mot. at 34 (citing Doc. 73).)

"Under the All Writs Act, a district court may issue writs necessary and appropriate in aid of its jurisdiction and agreeable to the usages and principles of law." *Jacobs v. CSAA Inter-Insurance*, 2009 WL 1201996, at *2 (N.D. Cal. May 1, 2019) (citing 28 U.S.C. § 1651). Based on that authority, courts have held that a "district court may enjoin named and absent members who have been given the opportunity to opt out of a class from prosecuting separate class actions in state court." *Id.* (citing *Carlough v. Amchen Products, Inc.*, 10 F.3d 189, 204 (3d Cir. 1993)). Indeed, "[u]nder an appropriate set of facts, a federal court entertaining complex litigation, especially when it involves a substantial class of persons from multiple states, or represents a consolidation of cases from multiple districts, may appropriately enjoin state court proceedings in order to protect its jurisdiction." *In re Diet Drugs*, 282 F.3d 220, 235 (3d Cir. 2002).

In contrast to the bulk of the authority cited in the Motion, there is no allegation that there is a specific risk or threat of parallel state action here. (Mot. at 34.) Indeed, the Parties appear to seek a preemptory injunction to cut off any potential parallel litigation before it may begin. Additionally, although the case law focuses on a court's authority to enjoin state actions, here, the Parties seek to enjoin "any action or proceeding in any matter covered by the proposed settlement." (*Id.*) Thus, the Court finds the Parties' request, at this stage, premature, and it declines to use its discretion to issue a preliminary injunction; however, the request is denied without prejudice to the filing of a Motion for Preliminary Injunction should the need for one arise.

VII. CONCLUSION

For the foregoing reasons, the Court hereby GRANTS the Motion for Preliminary Approval of Settlement and ORDERS as follows:

1. The Court finds that it has jurisdiction over the Action and each of the Parties for purposes of settlement and asserts jurisdiction over the Class Members for purposes of effectuating this settlement and releasing their claims. The Court shall retain continuing jurisdiction for the purpose of enforcing the Settlement Agreement after the entry of a Final

Order and Judgment.

2. The Court preliminarily approves the settlement of this Action as memorialized in the Settlement Agreement, subject to further consideration at the Fairness Hearing. The Court sets a Fairness Hearing for **January 13, 2023 at 10:30 a.m**. Additionally, for the reasons previously set forth, the Court conditionally certifies the Class as defined by the Settlement Agreement.

3. The Fairness Hearing will be held before the Honorable Josephine L. Staton at the United States District Court, Central District of California, 350 W 1st St., Los Angeles, CA, 90012, Courtroom 8A, to consider, *inter alia*, the following: (a) whether the Class should be certified for settlement purposes; (b) whether the settlement and Settlement Agreement should be finally approved as fair, reasonable and adequate; and (c) Class Counsel's application for attorneys' fees and litigation expenses ("Fee Request") and the Class Representatives' service awards.

4. Jeffrey L. Fazio and Dina E. Micheletti of Fazio Micheletti LLP and Amnon Z. Siegel of Miller Barondess LLP are qualified and adequate to serve the settlement Class and are appointed Class Counsel.

5. The Court appoints Ms. Ryan-Blaufuss, Ms. Mills, Mr. Kuan, Mr. Kosareff, and Ms. Kakish as Class Representatives. Class Representatives shall submit declarations describing the work they have done on behalf of Class Members for the Fairness Hearing.

6. The Class Notices shall be amended as follows before issuance:

- All dates left blank shall be filled in appropriately.
- All Notices reflecting the time, date, and location of the Fairness Hearing shall be updated to reflect that the hearing shall be held at the First Street United States Courthouse, 350 West 1st St., Los Angeles, CA, 90012, Courtroom 8A.
- The Notices shall be amended to clarify that the class has been certified only for settlement purposes.

- All Notices shall be amended to more accurately reflect the process set forth for filing objections to the settlement. For instance, the Notices shall be amended to delete the phrase <You may write to the Court and explain why you do not like the settlement>. (*See* Ex. 6 to Proposed Settlement at ECF 137, 144 (Mail Notices); Ex. 4 to Proposed Settlement at ECF 100 (Long-Form Notice); Ex. 8 to Proposed Settlement at ECF 150 (Publication Notice).) Section F of the Long-Form Notice shall also be amended to clarify that objections may not be filed by individuals directly with the Court. (*See* Ex. 4 to Proposed Settlement at ECF 110.) The Notices shall be amended to reflect that individuals may send their objections to the settlement with the Settlement Notice Administrator, who will gather the objections and file them with the Court prior to final approval of the settlement.

7. The Court otherwise hereby approves the Class Notice and the methodology described in the Settlement Agreement and in the Declaration of the Settlement Notice Administrator in all respects, and it hereby orders that notice be commenced no later than 45 days after the entry of this Order.

8. The Court approves the selection of R.L. Polk & Company as the third party data provider of Toyota customer data. All address information shall be updated as described in the Settlement Agreement and in the Declaration of the Settlement Notice Administrator.

9. Having considered the resumes and declarations of Patrick A. Juneau and Thomas Juneau of Juneau David, APLC, as Settlement Claims Administrators and Jeanne Finegan of Kroll Notice Media as Settlement Notice Administrator, the Court approves the proposed appointment of each.

10. The Settlement Notice Administrator shall send the Direct Mail Notice, substantially in the forms attached to the Settlement Agreement as Exhibit 6 (for those Class

Members identified as having had their subject vehicle's Inverter and/or IPM replaced) and Exhibit 7 (for the balance of the Class Members), by first-class U.S. Mail, proper postage prepaid to current and former registered owners of Subject Vehicles, as identified by data to be provided to the Settlement Notice Administrator by R.L. Polk & Co. The mailings of the Direct Mail Notice to the persons and entities identified by R.L. Polk & Co. shall be substantially completed within 120 days of the entry of this Order.

11. Except as previously noted, the Court further approves, as to form and content, the Long-Form Notice and the Publication Notice, which are attached to the Settlement Agreement as Exhibits 4 and 8, respectively. The Court also approves the establishment of an internet website for the settlement. The website shall conform to the terms of the Settlement Agreement, and shall include documents relating to the settlement, orders of the Court relating to the settlement and such other information as Toyota and Class Counsel mutually agree would be beneficial to potential Class Members. The Website shall also accept electronically filed claim forms and shall be optimized for search engines and for use on mobile phones. Toyota shall pay the costs of the Class Notice in accordance with the Settlement Agreement. The Parties are hereby authorized to establish the means necessary to implement the notice and/or other terms of the Settlement Agreement.

12. Not later than twenty (20) days before the date of the Fairness Hearing, the Settlement Notice Administrator shall file with the Court: (a) a list reflecting all timely, valid requests for exclusion; (b) the details outlining the scope, methods of distribution, and results of the Class Notice, and (c) all timely filed objections.

13. The Parties are authorized to take all necessary and appropriate steps to establish the means necessary to implement the Settlement Agreement. Class Counsel and Toyota's Counsel are hereby authorized to use all reasonable procedures in connection with approval and administration of the settlement that are not materially inconsistent with this Order or the Settlement Agreement, including making, without further approval of the

Court, minor changes to the Settlement Agreement, to the form or content of the Class Notice or to any other exhibits that the Parties jointly agree are reasonable or necessary.

14. Class Members who wish to be excluded from the Class must submit an opt-out form either online via the settlement website or via written request to the Settlement Notice Administrator, specifying that he or she wants to be excluded and otherwise complying with the terms stated in the Long Form Notice. Any request for exclusion must be signed by the potential Class Member and contain the following information: the name of the Action; the full name, current residential and mailing addresses (if different), and telephone number of the excluding Class Member; the model year, make, model, and vehicle identification number ("VIN") of the Class Member's Subject Vehicle(s); a statement clearly indicating that the Class Member wants to be excluded from the Class; and the excluding Class Member's signature (an attorney's signature is not sufficient). The Court has reviewed and hereby approves the opt-out form submitted by the Parties at the Court's request (*see* Doc. 231-1).

15. Potential Class Members who timely and validly exclude themselves from the Class shall not be bound by the Settlement Agreement, the settlement, or the Final Order and Final Judgment. If a potential Class Member files a request for exclusion, they may not assert an objection to the settlement. The Settlement Notice Administrator shall provide copies of any requests for exclusion to Class Counsel and Toyota's Counsel as provided in the Settlement Agreement.

16. Any potential Class Member who does not properly and timely exclude himself or herself from the Class shall remain a Class Member and shall be bound by all the terms and provisions of the Settlement Agreement and the settlement and the Final Order and Final Judgment, whether or not such Class Member objected to the settlement or submits a Claim Form.

17. Any Class Member who has not requested exclusion and who wishes to object to the settlement or Fee or Costs Request or service awards to the Class Representatives

must mail their objection to the Settlement Administrator, who shall provide scanned copies of all objections to Class Counsel and Toyota's Counsel within one business day of receipt. Plaintiffs' counsel shall file all objections with the Court in connection with Plaintiffs' motion for final approval and response to objections. For an objection to be considered by the Court, the objection must be received by the Settlement Administrator within 160 days after the entry of this Order.

18. For an objection to be considered by the Court, the objection must also set forth: (a) the case name and number of the Action; (b) the objector's full name, current residential address, mailing address (if different), telephone number, and e-mail address; (c) an explanation of the basis upon which the objector claims to be a Class Member, including the make, model year, and VIN(s) of the Subject Vehicle(s); (d) an explanation of the objection including the legal and factual bases and copies of any documents supporting the objection; (e) the name and address of each lawyer (if any) who is representing the objecting Class Member, or who may seek or claim entitlement to compensation for any reason in connection with the objection; (f) the number of times the objector and the objector's counsel (if any) has objected to a class action settlement within the five years preceding the date that the objector files the objection; and the case number of each case in which the objector and/or the objector's attorney has made such objection. If the Class Member or the Class Member's counsel has not made any prior objection in the past five years, the Class Member and Class Member's counsel shall affirmatively so state in the written materials provided with the objection; (g) a statement as to whether the objecting Class Member intends to appear at the Final Approval Hearing either individually or through counsel; (h) the full name, telephone number and address of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement Agreement; (i) the identity of all counsel (if any) who will appear on behalf of the objecting Class Member at the Final Approval Hearing; (j) a list of all persons who will or may offer testimony in

support of the objection; and (k) the objector's signature and date of signature. Any documents supporting the objection must also be attached to the objection.

19. No objection that substantially fails to satisfy these requirements and any other requirements found in the Long-Form Notice shall be considered by the Court. Objections shall be mailed to the Settlement Notice Administrator's address.

20. Plaintiffs shall file their motion for final approval, which shall include Plaintiffs' response to validly submitted objections (if any), and Class Counsel's application for attorneys' fees and litigation expenses, no later than 180 days after the entry of this Order. Class Counsel has indicated they will seek $19.6 million in fees and costs while the settlement fund is initially set to be $20 million. The Ninth Circuit's benchmark for fees for common fund settlements is 25% of the total fund. *See Stanger v. China Elec. Motor, Inc.*, 812 F.3d 734, 738 (9th Cir. 2016). Class Counsel's application for attorney fees must, therefore, make a sufficient showing justifying any upward departure from the Ninth Circuit's benchmark. This shall include quantifying the non-monetary benefits conferred upon the settlement Class. Copies of Plaintiffs' motion for final approval and Class Counsel's application for attorneys' fees and litigation expenses shall be posted on the settlement website. Responses to validly submitted objections shall also be served on the person making the objection.

21. Pending the Fairness Hearing and the Court's decision whether to finally approve the settlement, all proceedings in the Action, other than proceedings necessary to carry out or enforce the Settlement Agreement or this Order, are stayed and suspended, until further order from this Court.

22. Any Class Member who has not excluded themself from the Class may appear at the Fairness Hearing in person or by counsel (at his/her/its own expense) and may be heard, to the extent allowed by the Court, either in support of or in opposition to the settlement and/or the Fee Request. However, no Class Member shall be heard at the Fairness Hearing unless such person/entity files a "Notice of Intent to Appear in *Remy*

McCarthy et al., v. Toyota Motor Corp., et al." with the Clerk of Court on or before the date listed in the Schedule. In the notice, the Class Member must include his/her/its name, address, telephone number, the make, model year, and VIN number of his/her/its Subject Vehicle(s), and a signature. The Clerk of Court's address is as follows:

Clerk of Court
First Street U.S. Courthouse
350 W 1st Street, Courtroom 8A, 8th Floor
Los Angeles, CA 90012-4565

23. Class Members who intend to object at the Fairness Hearing must also have followed the procedures for objecting in writing as set forth in this Order.

24. The deadlines set forth in this Order, including the date and time of the Fairness Hearing shall be subject to extension by the Court without further notice to the Class Members other than that which may be posted at the Court, on the Court's website, and/or the settlement website at www.toyotapriusinvertersettlement.com. The Court retains jurisdiction to consider all further applications arising out of or in connection with the settlement. The Court may approve the settlement, with such modifications as may be agreed to by the Parties to the settlement, if appropriate, without further notice to the Class, except that notice of such modifications shall be posted on the settlement website. Class Members should check the settlement website regularly for updates and further details regarding the settlement.

25. Any Class Member may hire an attorney at their own expense to appear in the Action. Such attorney shall file a Notice of Appearance with the Court so that it is received on or before the date listed in the Schedule.

26. As set forth in the Settlement Agreement, if the Settlement Agreement is not finally approved by the Court or is terminated for any reason (in whole or in part) the settlement will be rescinded and will be without further legal effect. The Parties will then litigate the lawsuit as if this settlement had never occurred, without prejudice to any claims

or defenses they may have. Pursuant to Fed. R. Evid. 408, the settlement, the Settlement Agreement, and all related briefing, arguments, transcripts, and documents will be inadmissible in any proceeding to prove or disprove the validity of any claim, defense, or allegation asserted in the Action. The provisional certification of the Class pursuant to this Order shall be vacated automatically and the Action shall proceed as though the Class had never been certified. The Parties shall have all of the rights, defenses, and obligations they would have had absent the Settlement Agreement.

27. The Court hereby establishes the following Schedule, in accordance with the Parties' agreement, which shall govern the settlement proceedings in this Action unless continued or otherwise modified by the Court:

EVENT	DEADLINES
Initial Class Notice to be Disseminated	Within 45 days of Preliminary Approval Order
Direct Mail Notice to be Substantially Completed	Within 120 days of Preliminary Approval Order
Plaintiffs' Motion, Memorandum of Law and Other Materials in Support of their Requested Award of Attorneys' Fees, Reimbursement of Expenses, and Request for Class Representatives' Service Awards to be Filed with the Court	130 days after Preliminary Approval Order
Postmark Deadline for All Objections Mailed by Class Members to Settlement Notice Administrator	160 days after Preliminary Approval Order
Deadline for filing Notice of Intent to Appear at Fairness Hearing by Class Members and/or their Personal Attorneys	160 days after Preliminary Approval Order (filing is to be with Clerk of the Court)
Postmark Deadline for Class Members to Mail their Request to Exclude Themselves (Opt-Out) to Settlement Notice Administrator	160 days after Preliminary Approval Order
Settlement Notice Administrator Shall File List of Opt-Outs, the Results of the Dissemination of the Notice, and All Objections with the Court	180 days after Preliminary Approval Order
Parties' Motion for Final Approval, Memoranda of Law, and Other Materials in	180 days after Preliminary Approval Order

Support of Final Approval to be Filed with the Court	
Parties' Supplemental Memorandum of Law in Further Support of the Settlement to be Filed with the Court and Response to Objections and Requests for Exclusion from the Class	195 days after Preliminary Approval Order
Fairness Hearing	January 13, 2023 at 10:30 a.m.

DATED: May 19, 2022~~May 19, 2022~~~~May 17, 2022~~

JOSEPHINE L. STATON

HON. JOSEPHINE L. STATON
UNITED STATES DISTRICT JUDGE