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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

KATHLEEN RYAN-BLAUFUSS, CATHLEEN MILLS, and KHEK KUAN,

Plaintiffs,

v.

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

Defendants.

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

Plaintiffs,

v.

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

Defendants.

No. 8:18-cv-00201-JLS-KES

NOTICE OF PLAINTIFFS' UNOPPOSED MOTION AND MOTION FOR FINAL APPROVAL OF SETTLEMENT

DATE: January 13, 2023
TIME: 10:30 a.m.
PLACE: Courtroom 8A

Hon. Josephine L. Staton

NOTICE OF MOTION

PLEASE TAKE NOTICE that at 10:30 a.m. on January 13, 2023, or as soon thereafter as this matter may be heard by the Honorable Josephine L. Staton in Courtroom 8A on the Eighth Floor of the United States District Court for the Central District of California, 350 West First Street, Los Angeles, California, Plaintiffs Kathleen Ryan-Blaufuss, Cathleen Mills, Khek Kuan, Steven Kosareff, and Laura Nawaya (nee Kakish) (collectively, "Plaintiffs") in the above-captioned consolidated class actions will and hereby do move the Court for an order providing as follows pursuant to Federal Rule of Civil Procedure ("Rule") 23:

1. granting final approval of the Settlement proposal described in the Amended Settlement Agreement ("Settlement Agreement"), which is attached as Exhibit A to the Declaration of Jeffrey L. Fazio in Support of Plaintiffs' Unopposed Motion for Final Approval of Settlement (including (a) final approval of the distribution of benefits conferred by the Settlement Agreement and (b) affirmance of the Settlement Special Master's approval of the Parties' request to lift the cap on Redistribution Checks) on the grounds that the Settlement Agreement is fair, reasonable, and adequate;
2. confirming certification of the Class for settlement purposes pursuant to Rule 23(c) and Rule 23(e)(2);
3. confirming the appointment of Class Counsel and the Class Representatives pursuant to Rule 23(c) and Rule 23(g);
4. finding that notice to the Class was administered and completed in a reasonable manner that complies with due process and the notice requirements of Rule 23(c)(2)(B) and the fairness requirements of Rule 23(e);

5. granting Plaintiffs' Motion for Attorneys' Fees, Litigation Expenses, and Service Awards (ECF 240) pursuant to Rule 23(h) and Rule 54(d);

6. overruling the objections submitted by Class Members Maria Aline Martinez and Warren W. Suleske; and

7. entering final judgment pursuant to Rule 58(b)(2) and dismissing the action pursuant to Rule 41(a)(1)(A)(ii), but reserving and continuing jurisdiction as to the implementation, administration, and enforcement of the terms of the Settlement Agreement.

Plaintiffs base their Unopposed Motion for Final Approval of Class-Action Settlement ("Motion") on **(1)** the accompanying memorandum of points and authorities; **(2)** the Declarations of Jeffrey L. Fazio ("Fazio Decl."), Dina E. Micheletti ("Micheletti Decl."), Amnon Z. Siegel ("Siegel Decl."), Patrick A. Juneau ("Juneau Decl."), and Jeanne C. Finegan ("Finegan Decl."), and the exhibits appended thereto in support of the Motion; **(3)** Plaintiffs' Unopposed Motion for Preliminary Approval of Settlement (ECF 219) and the declarations and exhibits filed in support of that motion; **(4)** Plaintiffs' Motion for Attorneys' Fees, Litigation Expenses, and Service Awards (ECF 240) and the declarations and exhibits filed in support of that motion; **(5)** Plaintiffs' Unopposed Application for Leave to Submit Unredacted Attorney Billing Records for *In Camera* Review (ECF 239) and the billing records submitted in connection with that application; **(6)** the records, pleadings, and papers filed in this action; and **(7)** such other documentary and oral evidence or argument as may be presented to the Court at or prior to the hearing of this Motion.

DATED: December 1, 2022

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I. INTRODUCTION

As Plaintiffs explained in their Motion for Preliminary Approval of Settlement ("Preliminary Approval Motion"), the Settlement the parties reached in this action meets or exceeds each and every one of the approval criteria prescribed by Rule 23 and the decisional law in this Circuit. The Court granted preliminary approval of the Settlement, and certified a settlement Class composed of 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. *See* ECF 233 at 5, 9-14.[1]

To the extent anything has changed since then, it is that the implementation of the Settlement Agreement's provisions has demonstrated that it the Settlement is not only fair and reasonable, it is extraordinary.

As discussed below, the Settlement Notice Administrator, Kroll Notice Media ("Kroll"), has implemented a comprehensive Class Notice program whose reach exceeded predictions. For example, Direct Mail Notice was expected to reach 78% of Class Members, but the actual reach is an estimated 94%, and when combined with Media Notice, Kroll estimates that the Class Notice program reached over 98% of the settlement Class on average 5.7 times.

Moreover, the $20 million Settlement Fund will provide tens of thousands of Class Members with a substantial sum of money ***in addition to*** the funds to which

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[1] 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. *See id*. at 5.

Unless otherwise indicated, capitalized terms are defined as described in the Settlement Agreement. *See* ECF 219-2 at 6-14 § II.

they may be entitled as reimbursement for IPM or Inverter repairs or replacement as well as towing and/or rental cars.

The Settlement Fund was created to ensure that Class Members would be reimbursed for any repair or replacement of IPMs or Inverters notwithstanding the impossibility of ascertaining the number of times such repairs were made at Class Members' expense. It did so by requiring Toyota to replenish the Settlement Fund if valid Out-of-Pocket claims exhausted it before all such claims were paid and, conversely, if there was money left in the Settlement Fund after all valid Out-of-Pocket Claims were paid, by providing Class Members who had expended the time and effort to replace an IPM or Inverter with a Redistribution Check for up to $250—regardless of whether the repair was covered by warranty or paid by a Class Member.

Because Toyota insisted that the rate of reimbursement claims would be low (due to the coverage provided by federal and state warranty laws, by Toyota's New Vehicle Limited Warranty, and by the Warranty Enhancement Programs ("WEPs") that were established in the wake of Safety Recalls E0E, F0R, and 20TA10), the parties agreed to raise the $250 cap on Redistribution Checks if Toyota was correct. It was: Although the period for submitting Out-of-Pocket Claims has yet to expire, approximately $468, 720 in Out-of-Pocket Claims have been approved as valid as of November 21, 2022. *See* Juneau Decl., ¶¶ 3-7. Accordingly, the parties agreed to jointly recommend to the Settlement Special Master that the $250 cap be removed to enable the Settlement Fund residual to be distributed *pro rata*. The Settlement Special Master agreed and, if the Court approves, based on the numbers that exist today which are expected to change as additional Out-of-Pocket Claims are received and deficient claims are cured), each eligible Class Member will receive a *pro rata* share of the Settlement Fund's residue as a Redistribution Check—in addition to the other benefits conferred by the Settlement, such as Reimbursement Payments, a warranty that extends to 20 years with no mileage limitation, an appeals process, as well as free towing and loaner vehicles.

Moreover, the litigation itself conferred a substantial benefit well before the parties reached the Settlement. As the Special Master found, this litigation catalyzed ***two*** Safety Recalls for the purpose of installing Updated Recall Software to eliminate the safety risks posed by the IPM defect in approximately 1.1 million Subject Vehicles. Toyota announced the first Safety Recall (J0V), which involved more than 800,000 Subject Vehicles, less than a year after the litigation commenced. Toyota announced the second Safety Recall (20TA10), which involved an additional 266,000 Subject Vehicles, in June 2020—after Class Counsel was able to demonstrate that thoe vehicles had been excluded from Safety Recall J0V even though they were equipped with the same hardware and the same ECU software as the vehicles Toyota included in J0V.

At bottom, the Settlement is fair and reasonable by any standard. Plaintiffs respectfully request that the Court provide final approval by granting this motion.

II. ADDITIONAL FACTS PERTINENT TO FINAL APPROVAL

A. THE CLASS-NOTICE PLAN WAS SUCCESSFULLY IMPLEMENTED AND ITS REACH EXCEEDED INITIAL ESTIMATES

Shortly after the Court issued its Preliminary Approval Order (ECF 233), Kroll (with the assistance of the parties' counsel where warranted) began the process of distributing Class Notice in accordance with the Court-approved schedule. *See* Finegan Decl. ¶¶ 3-5; ECF 240-18 ¶¶ 50-51. In compliance with that schedule, Kroll commenced the issuance of Notice with a press release on July 1, 2022, followed by the remainder of a Robust Media Notice Program, and began sending Direct Mail Notice to Class Members residing in 49 states plus the District of Columbia on July 25, 2022, ending on September 16. *See id*. ¶¶ 3-37.

Direct Mail Notice to Class Members whose Subject Vehicles are registered in New Hampshire was unexpectedly delayed, however, due to restrictions imposed by the New Hampshire Driver Privacy Act, which impeded Kroll's ability to obtain Class Member registration records in that state. *See id.* ¶¶ 4, 12, 34-37 & n. 4. When

it appeared as though the delay would cause the parties to miss the Court-approved deadline of September 16, 2022, Kroll proposed a New Hampshire-specific supplemental media plan that would enable it to geotarget New Hampshire Class Members by way of an electronic media campaign. *See id.* Shortly after the Parties' counsel approved Kroll's implementation of the supplemental media plan, however, Kroll received the New Hampshire registration data, which it used to distribute Direct Mail Notice to those Class Members on September 16, 2022. *See id.*, n. 4.

The Parties' Class Notice program was initially predicted to reach "92% of [its] target audience over 3 times," and Direct Mail Notice alone was expected to reach 78% of Class Members residing in the 50 United States and the District of Columbia. *See* ECF 220, Ex. B at 3. But the actual reach of the Class Notice program is even more impressive: Kroll has reported that the reach of the Direct Mail Notice campaign alone is **94.04%**. *See* Finegan Decl. ¶ 3. When combined with the media campaign, Kroll estimates that the Class Notice program has reached over **98%** of Class Members on average 5.7 times. *See id.*

B. LIFTING THE CAP ON REDISTRIBUTION CHECKS

One of the more difficult aspects of negotiating the settlement of this action involved agreeing on the amount of money that would be required to reimburse every Class Member who paid to repair or replace an IPM or Inverter in a Subject Vehicle and for the cost each Class Member may have incurred for towing and/or a rental car in connection with such service. Fazio Decl. ¶ 2.

On one hand, Toyota insisted that the number of IPM and Inverter repairs and replacements paid by Class Members was likely small, due primarily to those components' coverage under warranties prescribed by federal and state law, by Toyota's New Vehicle Limited Warranty, and by the Warranty Enhancement Programs ("WEPs") associated with Safety Recalls E0E, F0R, and 20TA10. *Id.* ¶ 3. On the other hand, it was not possible to ascertain the number of new IPMs and Inverters that were installed in Subject Vehicles at Class Members' expense—

regardless of whether a Toyota dealer or an independent repair shop performed the service—and that task was further confounded by repair shops' use of refurbished IPMs and Inverters as replacement parts—which required the assistance of the Settlement Special Master to help the parties resolve issues stemming from efforts to ascertain the number of IPM and Inverter repairs and replacements at customer expense and the total dollar amount attributable to them (and to the attendant towing and rental car charges). *Id.* ¶ 4.

Ultimately, the parties agreed that Toyota would deposit $20 million into a non-reversionary Settlement Fund that would be used to reimburse Class Members for the cost of repairing or replacing IPMs and Inverters and related towing and rental-car expenses. *See* ECF 219-2 at 14-18 § III.A. If the Settlement Fund was exhausted before all valid reimbursement claims were paid, Toyota would deposit enough to pay all such claims. *See id.* at 18 § III.A.4. And if reimbursement claims did not exhaust the Settlement Fund, the residual would be distributed in the form of a Redistribution Check to Class Members who had replaced an IPM or Inverter, regardless of whether the cost of the repair was borne by a Class Member or was covered under an applicable warranty. *See id.* at 17 § III.A.3.(c).[2]

The deadline for submitting Out-of-Pocket Claims does not expire until three months after the Final Effective Date, *see* ECF 219-2 at 7 § II.4, but the number of valid claims for reimbursement to-date indicates that Toyota's estimation of the number of unreimbursed IPM and Inverter repairs appears to have been accurate. Specifically, the Settlement Claims Administrator has reported receiving 795 claims for Reimbursement Payments as of November 21, 2022, of which 201 have been approved as valid and an additional 43 claims have been approved as partially valid,

[2] If the cost of distributing the Settlement Fund residual exceeds the amount that individual Class Members would receive as a Redistribution Check, the residual would be distributed *cy pres* to the Texas A&M Transportation Institute. *See id.* at 17-18 § III.A.3(d).

for a total of $468,720. Juneau Decl. ¶¶ 3-7.[3]

As a result, the current claims trajectory leaves little doubt that the vast majority of the Settlement Fund will remain after all valid claims are paid. And although the Parties had capped the amount of Redistribution Checks at $250, they also agreed to raise the cap if circumstances warranted it by making a joint recommendation to the Settlement Special Master and obtaining his approval to lift it. *See id.* at 17 § III.A.3(c).

Circumstances warrant raising the $250 cap for two basic reasons. First, as of November 21, 2022, the total number of valid Out-of-Pocket Claims amount to less than $500,000. *See* Juneau Decl. ¶¶ 3-7. Second, 54,527 Class Members have been pre-identified as eligible to receive a Redistribution Check. *See* Finegan Decl. ¶ 12. Redistribution Checks are also available to Class Members who receive and cash their Reimbursement Payment checks, and to Class Members who identify themselves and demonstrate that they paid to replace an IPM or Inverter prior to the Final Effective Date. Juneau Decl. ¶¶ 8, 12-14.

Based on these figures, the amount remaining in the Settlement Fund after all valid claims are paid would exceed $250 per eligible Class Member; at present, a *pro rata* distribution of $19,531,730 to 54,527 eligible Class Members would result in each of those Class Members receiving a Redistribution Check in the amount of $358.19. Accordingly, the Parties agreed that eliminating the $250 cap would maximize the benefit to the Class and, therefore, jointly recommended to the

[3] The Settlement Claims Administrator and the Settlement Notice Administrator are in the process of sending deficiency letters to Class Members whose claims have been denied in whole or in part, advising them of the reason(s) for the denial and providing them with 60 days to provide information and/or documentation to cure the deficiency. Juneau Decl., ¶ 11. Reminder letters will be sent at or around the 30-day mark to Class Members who have yet to respond to the original deficiency letter, and if the Settlement Claims Administrator does not receive a response within the specified timeframe, the claim will be denied without further processing. *Id.* All timely responses will be evaluated to determine whether the deficiency has been cured and the Claim can be paid. *Id.*

Settlement Special Master that the $250 be removed. *See* Fazio Decl., Ex. B. The Settlement Special Master approved the Parties' proposal. *See id.*[4]

C. THE NUMBER OF OPT-OUTS AND OBJECTIONS IS INFINITESIMAL

In accordance with the Preliminary Approval Order, *see* ECF 233 at 26 ¶ 14, the Parties directed Kroll to configure the Settlement website to enable Class Members to opt out of the Settlement by completing a simple form and submitting it online or by mail. *See* Finegan Decl. ¶¶ 39, 44. Notwithstanding the ease with which Class Members could exercise their opt-out rights, just 116 (*i.e.,* 0.0000065% of the Class) elected to do so. *Id.* ¶ 44 & Ex. 10. Moreover, only ***two*** Class Members objected to the Settlement. *Id.* ¶ 45 & Ex. 11.

III. ARGUMENT

A. THE PROPOSED SETTLEMENT WARRANTS FINAL APPROVAL

Final approval of a class-action settlement may be granted "only after a hearing and only after finding that it is fair, reasonable, and adequate. . . ." Fed. R. Civ. P. 23(e)(2). Or, as the Ninth Circuit has explained, the proposed settlement must be "fair, adequate, and free from collusion." *Lane v. Facebook, Inc.*, 696 F.3d 811, 819 (9th Cir. 2012). And where, as here, a settlement is reached before a motion for class certification has been granted, a presumption of fairness is inapplicable; rather, "the district court must apply an even higher level of scrutiny. This additional scrutiny

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[4] Plaintiffs entered into an agreement to remove the $250 cap, which was anticipated in the Settlement Agreement. *See* ECF 219-2 at 17 § III.A.3.(c). The only other agreements were the Settlement Agreement and Amendment No. 1 to the Settlement Agreement specifying the timing for the payment of any attorneys' fees awarded. *See* Rule 23(e)(3) (requiring parties to "file a statement identifying any agreement made in connection with the proposal"); Fazio Decl. ¶ 11; Siegel Decl. ¶ 2.

If the letter agreement is approved, lifting the cap means that *cy pres* funds, if any, will likely be limited to uncashed Redistribution Checks. Assuming it is administratively feasible to do so, any such funds will be distributed to Texas A&M Transportation Institute ("TTI"). *See* ECF 219-2 at 17-18, § III.A.3(d). With expertise in engineering, planning, economics, policy, public engagement, environmental sciences, data sciences, and social sciences, TTI researchers play a key role in educating the next generation of transportation professionals, training students both in the laboratory and in the classroom. *See* https://tti.tamu.edu/about/.

requires the court to look for and scrutinize any subtle signs that class counsel have allowed pursuit of their own self-interests to infect the negotiations." *In re Apple Inc. Device Performance Litig.*, 50 F.4th 769, 782 (9th Cir. 2022) ("*Apple Device Perf. Litig.*") (cleaned up).

As the Ninth Circuit has cautioned, however, courts "must evaluate the fairness of a settlement as a whole rather than assessing its individual components" and must keep in mind that "whether a settlement is fundamentally fair within the meaning of Rule 23(e) is different from the question whether the settlement is perfect in the estimation of the reviewing court." *Lane*, 696 F.3d at 818-19.

Before it was amended in 2018, Rule 23 did not specify the factors that courts must consider in determining whether a settlement is fair, adequate, and free from collusion, so "each circuit has developed its own vocabulary for expressing these concerns." Fed. R. Civ. P. 23 advisory committee notes to 2018 amendments. In the Ninth Circuit, the relevant factors include

> the strength of the 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.

Lane, 696 F.3d at 819 (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998), *overruled on other grounds by Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011)).

The 2018 amendments to Rule 23 were not intended to displace these factors, "but rather to focus the court and the lawyers on the core concerns of procedure and substance that should guide the decision whether to approve the proposal." Fed. R. Civ. P. 23 advisory committee notes to 2018 amendments. These "core concerns,"

which overlap the factors described by the Ninth Circuit in *Hanlon* and *Lane*, entail an assessment of whether

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

Fed. R. Civ. P. 23(e)(2)(A)-(D).

1. *The Class is Adequately Represented*

Determining whether the Class has been adequately represented requires the courts to assess whether the "representative parties will fairly and adequately protect the interests of the class," and includes an inquiry into the "nature and amount of discovery" undertaken in the case. Fed. R. Civ. P. 23 advisory committee notes to 2018 amendments. *See also Hudson v. Libre Tech. Inc.*, No. 3:18-CV-1371-GPC-KSC, 2020 WL 2467060, at *5 (S.D. Cal. May 13, 2020) (noting that the analysis required by Rule 23(e)(2)(A) is redundant of the analyses required by Rule 23(a)(4) and Rule 23(g), respectively).

This Court appointed Co-Lead Class Counsel and the Class Representatives after assessing the evidence supporting adequacy under Rule 23(a)(4) and, by extension Rule 23(e)(2)(A) and Rule 23(g), in the context of preliminary approval.

See ECF 233 at 12, 19-20. As Plaintiffs noted then, two questions relevant to this analysis are these: "'(1) Do the representative plaintiffs and their counsel have any conflicts of interest with other class members, and (2) will the representative plaintiffs and their counsel prosecute the action vigorously on behalf of the class?'" ECF 219 at 25:21-26 (quoting *Staton v. Boeing Co.*, 327 F.3d 938, 957 (9th Cir. 2003)).

With respect to the first question, Class Counsel confirmed that they have no conflicts with Class Members. *See* ECF 219-1 ¶¶ 2-15 & Ex. B; ECF 219-5 ¶¶ 3-15 & Ex. 1. Each Class Representative has done the same. *See* ECF 247-10 ¶ 11; ECF 247-2 ¶ 10; ECF 240-31 ¶ 10; ECF 240-32 ¶ 2; ECF 240-33 ¶ 2.

The answer to the second question—"will the representative plaintiffs and their counsel prosecute the action vigorously on behalf of the class?"—is a resounding "Yes." Each Class Representative put his or her name and reputation on the line for the sake of the Class, and no recovery would have been possible without their efforts. The Class Representatives have also submitted detailed declarations describing the exemplary work they have done on behalf of the Class by, *inter alia*, responding to voluminous discovery; reviewing pleadings where relevant; preparing for and being deposed; remaining in contact with and communicating with Class Counsel concerning the litigation; preparing declarations where needed; and reviewing and communicating with Class Counsel regarding the Settlement Agreement and its exhibits. *See generally* ECF 247-10; ECF 247-2; ECF 240-31; ECF 240-32; ECF 240-33; *see also* ECF 240-18 ¶¶ 57-65; ECF 240-22 ¶ 45.

Class Counsel's vigorous, hard-fought litigation efforts are discussed in detail in Plaintiffs' Preliminary Approval Motion, *see* ECF 219 at 2-14, ECF 219-1 ¶¶ 18-27; in the Fee Petition, *see* ECF 240 at 2-11, 21-22, and the supporting declarations by Class Counsel, *see* ECF 240-1 ¶¶ 4-72, ECF 240-18 ¶¶ 18-65, ECF 240-22 ¶¶ 2-8, ECF 240-23 ¶¶ 12-13, ECF 240-24 ¶¶ 6-12, ECF 240-25 ¶¶ 2-3, ECF 240-27 ¶¶

3-4; and in the detailed billing records Class Counsel submitted to the Court for *in camera* review, *see generally* ECF 239 and related *in camera* submissions.

In short, since this litigation began in January 2018 Class Counsel have performed a considerable amount of work investigating and researching the facts and technical issues underlying this litigation with the assistance of experts before and after the initial complaints were filed, and the investigation and analysis continued throughout the litigation until the parties announced that they had reached a settlement.[5]

The Court acknowledged and discussed these efforts in its Preliminary Approval Order. *See* ECF 233 at 2-5, 17-18. Since the Court issued that Order, Class Counsel have continued representing the Class diligently in connection with the Class Notice and the claims process, and they will continue to do so in the wake of final approval, should this motion be granted. *See* Finegan Decl. ¶ 5; Juneau Decl. ¶ 16; ECF 240-18 ¶¶ 49-56.

Plaintiffs respectfully submit that the Court's assessment of the work Class Counsel and Plaintiffs have done on behalf of the Class—as well as the additional work Class Counsel continued to perform in connection with the Fee Petition, the administration of the Settlement, and the present motion—readily satisfies the

[5] Among other things, Class Counsel prepared an in-depth analysis of the factual and legal issues involved in the litigation, which served as a roadmap for discovery and the analysis of documents produced in discovery; developed procedures to overcome the limitations on overseas deposition discovery imposed by the pandemic; propounded hundreds of interrogatories, requests for admissions, and requests for production; reviewed and analyzed (with and without the assistance of experts) nearly 200,000 pages of documents obtained in the course of discovery, in the context of various motions, and additional documents as a result of independent research; prepared and reviewed voluminous discovery-related correspondence; participated in numerous meet-and-confer sessions, which frequently consumed hours of time over the course of several days; successfully opposed two motions to dismiss and a motion to compel arbitration; researched and drafted a motion for class certification and several motions to resolve discovery disputes; defended Class Representatives and Plaintiffs' experts in deposition; and deposed one of Toyota's experts, Sarah Butler, before announcing the Settlement. *See, e.g.*, ECF 240-1 ¶¶ 4-72.

requirements of Rule 23(e)(2)(A) and augurs in favor of final approval. The same facts also further support the Court's uncontested order finding that Plaintiffs satisfied the numerosity, commonality, typicality and adequacy criteria enumerated in Rule 23(a), the predominance and superiority criteria of Rule 23(b)(3), *see* ECF 233 at 9-14, as well as the adequacy requirements underlying the appointment of Jeffrey Fazio and Dina Micheletti of Fazio | Micheletti LLP and Amnon Siegel of Miller Barondess LLP as Lead Class Counsel under Rule 23(g), and Plaintiffs Steven Kosareff, Laura Nawaya, Kathleen Ryan Blaufuss, Cathleen Mills, and Khek Kuan as Class Representatives under Rule 23(a)(4), *see* ECF 233 at 19-20.

2. *The Settlement was Negotiated at Arm's Length*

Rule 23(e)(2)(B) requires the Court to ensure the settlement was "negotiated at arm's length." Fed. R. Civ. P. Rule 23(e)(2)(B). Because this case settled prior to class certification, to satisfy Rule 23(e)(2)(B) the Court must "look for and scrutinize any subtle signs that class counsel have allowed pursuit of their own self-interests to infect the negotiations." *Apple Device Perf. Litig.*, 50 F.4th at 782. The Ninth Circuit has identified three indicia of such collusion:

> (1) when counsel receive a disproportionate distribution of the settlement, or when the class receives no monetary distribution but class counsel are amply rewarded;
>
> (2) when the parties negotiate a "clear sailing" arrangement providing for the payment of attorneys' fees separate and apart from class funds, which carries "the potential of enabling a defendant to pay class counsel excessive fees and costs in exchange for counsel accepting an unfair settlement on behalf of the class; and
>
> (3) when the parties arrange for fees not awarded to revert to defendants rather than be added to the class fund.

In re Bluetooth Headset Prod. Liab. Litig., 654 F.3d 935, 947 (9th Cir. 2011) (citations omitted).

There are no such signs here—subtle or otherwise—as demonstrated by the application of the *Bluetooth* criteria to the facts of this case.

First, Class Counsel will not receive a disproportionate distribution of the Settlement. As discussed in the Fee Petition, the Settlement provides more than $180 million in monetary and non-monetary relief to the Class, which makes the $19 million fee award proposed by the Settlement Special Master fair and reasonable, regardless of the method used to assess it. *See* ECF 240 at 11-24.

Second, although Toyota has agreed to pay Class Counsel's attorneys' fees separately from the benefits the Settlement confers upon the Class, Class Counsel never sought a clear-sailing agreement and Toyota never agreed to one. Again, after the Parties negotiated the substantive material terms of the Settlement for the Class, the issues relating to Class Counsel's attorneys' fees and litigation expenses were mediated by the Settlement Special Master, who proposed $19 million in attorneys' fees and $600,000 for Class Counsel's litigation expenses. *See* ECF 219-2 at 45 § VIII.A. The Parties agreed to the Settlement Special Master's proposal, which mooted the need to discuss a clear-sailing provision even if Class Counsel had considered it, and they did not. *See id.* at § VIII.B.[6]

Third, the Parties did not arrange for unawarded fees to revert to Toyota. To the contrary, the Parties expressly agreed "that if the Court does not award the full amount proposed by the Settlement Special Master, the difference between that amount and the amount awarded by the Court will be distributed to the Class through the Settlement Fund QSF . . . ." ECF 219-2 at 45 § VIII.C.

Moreover, as explained in the Preliminary Approval Motion, the Settlement Special Master participated in various aspects of the negotiation of this Settlement,

[6] As discussed in the Fee Petition, Class Counsel's litigation expenses exceeded the $600,000 they agreed to accept when the Settlement Special Master proposed it. *See* ECF 240 at 10:14-11:8 (discussing same).

the issues were often hotly-contested, and the process itself was quite lengthy. *See, e.g.*, ECF 219 at 17:1-6 ("parties came to the bargaining table with vastly different views of the merits and value of the claims and defenses, which is only part of the reason settlement negotiations took 17 months to complete. Consequently, every material issue underwent intensive scrutiny and discussion before it became part of the Settlement Agreement . . ."). The Court examined the facts presented at the preliminary-approval stage and concluded, correctly, that the proposed Settlement

> 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.

ECF 233 at 19.

Nothing has changed since then. Accordingly, Plaintiffs respectfully submit that the Court's initial, uncontested assessment of the Parties' arm's-length negotiations is correct, and that this factor is satisfied.

3. *The Relief Obtained for the Class is More Than Adequate*

Rule 23 requires the Court to ensure that the relief provided for the class is adequate, accounting for the "costs, risks and delay of trial," the effectiveness of the

claims process, the terms and timing of the proposed fee award, and any agreement required to be identified under Rule 23(e)(3). Fed. R. Civ. Proc. 23(e)(2)(A).[7]

Again, the relief conferred upon the Class as a result of this litigation is quite substantial: in addition to more than $180 million worth of monetary and non-monetary benefits provided by the Settlement Agreement, the Settlement Special Master has found that it catalyzed two separate Safety Recalls (J0V and 20TA10) in which Toyota installed the Updated Recall Software in approximately 1.1 million Subject Vehicles. *See, e.g.*, ECF 219 at 4:26-9:23.

a. The Inherent Risks and Delay of Trial and Appeal Favor Final Approval

As this Court acknowledged in its Preliminary Approval Order, "there is no doubt that the Parties have abundant information on which to make informed decisions about settlement, and this factor favors approval." ECF 233 at 18. If approved, the Settlement Agreement provides Class Members with an impressive array of benefits after the Final Effective Date, without the delay and inherent risks of continued, protracted litigation, trial or appeals, thus easily satisfying Rule 23(e)(2)(C)(i).[8]

The alternative to this Settlement is continued litigation, including class certification, a renewed motion for summary judgment, trial, and likely an appeal.

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[7] Together, these criteria essentially subsume the factors articulated in *Hanlon* and *Lane* as they pertain to final approval—except for the presence of governmental participants and the reaction of Class Members to the proposed settlement, which are discussed separately in Plaintiffs' Supplemental Memorandum of Law in Response to Objections and Requests for Exclusion from the Class (filed herewith). The proposed award of attorneys' fees, Fed. R. Civ. P. 23(e)(3)(iii), is discussed in Section III.A.2., above.

[8] Class Counsel fought long and hard, often with the assistance of an experienced Settlement Special Master, to obtain the benefits provided by the proposed Settlement, including full reimbursement of the amounts Class Members paid to replace IPMs and Inverters in Subject Vehicles, and for related towing and rental car expenses, This is a substantial component of the relief Plaintiffs would have sought

Even if Plaintiffs were to clear each of these hurdles, the benefits resulting from success at trial would be delayed for years. And the likelihood that Plaintiffs would prevail at each stage of the litigation is by no means a given. As Plaintiffs explained in their Preliminary Approval Motion, the strength of their case is demonstrated, in part, by the fact that the litigation withstood two motions to dismiss and a motion to compel arbitration, and catalyzed not one, but two safety recalls (J0V and 20TA10) whose sole purpose was to install the Updated Recall Software Toyota developed after this litigation began. Nonetheless, at the time the parties entered into the Settlement Agreement, a motion for class certification was pending, *see* ECF 162-64, as was Toyota's motion for summary judgment, *see* ECF No. 196, both of which present significant hurdles.

In its opposition to Plaintiffs' class-certification motion and in its motion for summary judgment, Toyota vigorously denied the factual allegations in the operative complaint as well as any legal liability arising from those claims, and has asserted numerous defenses on the merits. For example, Toyota contended that Plaintiffs cannot prove with common evidence that the IPM defect exists in Subject Vehicles or that Toyota knew about it prior to the sale of those Vehicles. *See, e.g.*, ECF 194 at 12:17-17:17.[9]

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at trial. *See* ECF 73 at 70 (Prayer for Relief) ¶ 3 (seeking "damages sustained as a result of the IPM Defect in amounts to be proven at trial, including, but not limited to, costs incurred in connection with the replacement or repair of the IPM or hybrid inverter assembly in Class Vehicles.").

[9] With respect to the latter, Toyota correctly observed that "[t]his Court has held previously that each Plaintiff must allege facts to show that Toyota knew of the Inverter defect prior to his or her date of purchase.'" *See id*. at 15:11-14 (quoting ECF 35 at 6). Were Toyota to prevail on that issue, Plaintiffs would be unable to establish their fraud claims at trial, regardless of whether they were able to certify those claims. Toyota also challenges Plaintiffs' ability to certify their damages model, arguing, *inter alia*, that, it is "inherently flawed" and fails to satisfy any of the requirements of *Comcast Corp. v. Behrend*, 569 U.S. 27. (2013). *See* ECF 194 at 22-29. Moreover, nationwide class certification in the settlement context is quite different than certifying a nationwide class for litigation purposes. *See In re Hyundai*

Moreover, Toyota argues that the economic loss rule bars Plaintiffs' fraudulent concealment claims, that Plaintiffs' implied warranty claims fail because their vehicles are fit for ordinary use, and that the applicable statutes of limitations bars nearly all of Plaintiffs' claims. *See* ECF 196 at 11-24. If Toyota were to prevail on these arguments, it would dispose of some or all the claims in this class action.

Plaintiffs vigorously dispute each of Toyota's contentions, but it cannot be denied that the very existence of those disputes illustrates the risks inherent in continued litigation. And although Class Counsel have deep experience in this area of law, *see, e.g.*, ECF 240-18 ¶¶ 2-17 & Exhibit C (ECF 240-21); ECF 240-22 ¶¶ 9-20 & Ex. 1, that experience also makes them quite cognizant of the substantial risk Plaintiffs would continue to face at each stage of this litigation. For example, Plaintiffs could prevail on certification, defeat Toyota's summary judgment motion, and succeed at trial, but lose a subsequent appeal—not only if Toyota were to persuade an appellate panel that it had the better argument, but if intervening changes in existing law were to favor Toyota.[10]

& Kia Fuel Econ. Litig., 926 F.3d 539, 563 (9th Cir. 2019) ("The prospect of having to apply the separate laws of dozens of jurisdictions presented a significant issue for trial manageability [in *Mazza v. Am. Honda Motor Co.*, 666 F.3d 581 (9th Cir. 2012), *overruled in part by Olean Wholesale Grocery Coop., Inc. v. Bumble Bee Foods LLC*, 31 F.4th 651 (9th Cir. 2022)], weighing against a predominance finding. In settlement cases, such as the one at hand, the district court need not consider trial manageability").

[10] Indeed, two years after this Court rejected Toyota's effort to bar Plaintiffs from simultaneously litigating legal and equitable claims/remedies (*see McCarthy v. Toyota Motor Corp.*, No. 8:18-cv-00201, 2018 WL 6318841, *6 (C.D. Cal. Sept. 14, 2018), the Ninth Circuit decided *Sonner v. Premier Nutrition Corp.*, 971 F. 3d. 834, 842 (9th Cir. 2020), which this Court and others have interpreted as requiring plaintiffs to demonstrate that they have an inadequate remedy at law before pursuing their equitable claims/remedies. *See, e.g., Audrey Heredia v. Sunrise Senior Living LLC*, No. 8:18-cv-01974, 2021 WL 819159, at *4 (C.D. Cal. Feb. 10, 2021) ("To the extent this Court previously ruled differently, those rulings do not survive Sonner, which made clear that a plaintiff's failure to plead inadequate remedies at law dooms the claim for equitable relief at any stage"). Nor is this a mere abstraction: Toyota relies on *Sonner* in seeking summary judgment of Plaintiffs' claims for violation of the UCL and unjust enrichment, and for equitable relief under the CLRA. *See* ECF 196 at 10:5-11:19.

Put simply, the Settlement Agreement meets the standard for determining whether it is fair, reasonable and adequate, regardless of whether Plaintiffs could have done better if they achieved a complete victory on the merits at trial. *See, e.g., In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) ("It is well-settled law that a cash settlement amounting to only a fraction of the potential recovery does not *per se* render the settlement inadequate or unfair. Even assuming that Nadler's methodology was more sound, the Settlement amount of almost $2 million was roughly one-sixth of the potential recovery, which, given the difficulties in proving the case, is fair and adequate") (internal quotation marks and citation omitted).[11]

b. The Ease of Distributing Settlement Benefits, Including Claims-Processing Methods, Favor Final Approval

Rule 23(e)(2)(C)(ii) requires the Court to consider "the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims." Fed. R. Civ. P. 23(e)(2)(C)(ii). The proposed method of distributing settlement benefits in this case is demonstrably simple and effective. To begin with, Class Members do not have to do anything to activate the extended warranty provided by the Customer Confidence Program; to the contrary, it will begin automatically after the Final Effective Date, *see* ECF 219-2 at 19-20 §

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[11] *See also Shlensky v. Dorsey*, 574 F.2d 131, 147-48 (3d Cir. 1978) ("This figure, which is approximately 15% of the maximum amount of unlawfully disbursed corporate funds alleged to be involved in the suit, can hardly be said to provide a grossly inadequate benefit to Gulf in view of the uncertainties of this litigation"); City of Detroit v. Grinnell Corp., 495 F.2d 448, 455 (2d Cir. 1974) ("The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved"); *Shaw v. Abercrombie & Fitch Co.*, No. SACV191490JGBEX, 2021 WL 8315427, at *8 (C.D. Cal. Oct. 15, 2021) (approving settlement representing approximately 10% of potential recovery as fair and reasonable in light of risks if litigation continued); *Redwen v. Sino Clean Energy, Inc.*, No. CV 11-3936 PA (SSX), 2013 WL 12303367, at *6 (C.D. Cal. July 9, 2013) (finding that risks inherent in continuing litigation made settlement "well within the range of possible approval"); *In re Cendant Corp. Derivative Action Litig.*, 232 F. Supp. 2d 327, 336 (D.N.J. 2002) ("The settlement of $54 million represents less than two percent of that amount, a small percentage. This amount may be justifiable, however, given the fact that the Settling Defendants appear to have significant defenses that increase the risks of litigation").

III.C.1, as will the benefits provided by the Towing/Loaner Program, *see id.* at 19 § III.B.2. Moreover, to ensure that Toyota dealers and personnel remain aware of the terms of the extended warranty through its duration, thus minimizing the need for administrative appeals, the Settlement Agreement requires Toyota to "take affirmative, reasonable steps to ensure that its customer service personnel and all Toyota dealerships are sufficiently notified of and educated about the terms of the Loaner/Towing Program and the Customer Confidence Program. This notice shall remain available in a manner that is easily accessible to Toyota dealership and Toyota customer service personnel (similar to the manner in which Toyota Dealers and Toyota customer-service representatives are informed about recalls and service campaigns) for the duration of the Customer Confidence Program." *See id*. at 22-23 § III.C.4.[12]

Obtaining a Reimbursement Payment is also simple. The entire claims process can be completed electronically via the Settlement website, from filing the initial Registration and Reimbursement Claim Form to curing any deficiencies identified by the Settlement Claims Administrator. *See* Finegan Decl. ¶ 40.[13] Moreover, the Claim Period is substantial (having begun with the implementation of the Class Notice program and ending three months after the Final Effective Date), thereby providing all Class Members with ample time to submit a claim. *See* ECF 219-2 at 7, § II.4. Indeed, claims processing is already underway, which will enable the Settlement Claims Administrator to begin paying valid Out-of-Pocket Claims shortly after the Final Effective Date. *See* Juneau Decl. ¶¶ 3-11. To that end, the parties' counsel have remained in close contact with the Settlement Claims

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[12] If a claim under the Customer Confidence Program is denied, Class Members will be entitled to file an appeal, either online or by mail. *See* ECF 219-2 at 21-22 § III.C.2. The appeal will be decided by the Settlement Claims Administrator. *See id*.

[13] The parties recently asked that Kroll add an online deficiency-cure option to the Settlement website to ensure that the process of curing a deficiency is as efficient as the claims-submission process. *See* Finegan Decl. at n. 10.

Administrator to ensure that all questions regarding the claims-approval process are quickly addressed, with the mutual goal of ensuring valid claims are approved, and that Class Members who have submitted deficient claims receive a letter spelling out exactly what they must do to cure the identified issues. *See, id.* ¶ 16. Moreover, reminder notices will be sent to Class Members who receive deficiency letters, to ensure they do not simply forget to submit their response. *See id.* ¶¶ 11, 14.

With respect to Redistribution Checks, to date 54,527 Class Members have been automatically registered to receive one if issued, without having to do anything more. *See* Finegan Decl., ¶ 12. Redistribution Checks will also automatically be sent to all Class Members who receive and cash a Reimbursement Payment check. *See* ECF 219-2 at 16 § III.A.3.(a). All other eligible Class Members can register to receive a Redistribution Check by filling out the online Registration and Reimbursement Claim Form via the settlement website, or by submitting that form by mail. *See id.*, Ex. 1. In short, it is hard to imagine how the parties could have made the process of obtaining settlement benefits any easier, while still fulfilling their obligation to deter unjustified claims.

Finally, upon the Final Effective Date, if a Subject Vehicle requires an IPM or Inverter repair or replacement, the Class Member or subsequent purchaser will be entitled to free towing from a Toyota dealer or Toyota's 24/7 Roadside Assistance Hotline (and, if either is unable to provide towing within a reasonable time, reimbursement for towing from a third-party service up to $250) and, if the IPM/Inverter repair exceeds four hours, the Class Member or subsequent purchaser will be entitled to a free loaner car until the work is completed. *See* ECF 219-2 at 18-19 § III.B.

4. *The Settlement Treats Class Members Equitably Relative to Each Other*

The proposed settlement must "treat[] class members equitably relative to each other." Fed. R. Civ. Proc. 23(e)(2) (D). The consideration here includes "whether the

apportionment of relief among class members takes appropriate account of differences among their claims, and whether the scope of the release may affect class members in different ways that bear on the apportionment of relief. Fed. R. Civ. P. 23 advisory committee notes to 2018 amendments. This criterion has been satisfied.

To begin with, the two Safety Recalls catalyzed by this litigation (J0V and 20TA10) provided (and continue to provide) all Class Members who owned or leased a Subject Vehicle at the time of or following the implementation of those Safety Recalls with the right to install the Updated Recall Software in their Subject Vehicle free of charge. *See* ECF 240-10 at 6 ¶¶ 7-8; ECF 240-11 at 5¶¶ 7-8. Moreover, all Class Members who bore the cost of repairing or replacing an IPM or Inverter prior to the Final Effective Date are subject to the same criteria for obtaining a Reimbursement Payment, and all Class Members who currently own or lease a Subject Vehicle are treated equally in terms of their entitlement to participate in the prospective benefits conferred by the Settlement Agreement, such as the Customer Confidence Program and the Loaner/Towing Program, and those valuable benefits transfer to subsequent transferees of those vehicles. *See* ECF 219-2 at 14-27 § III. Indeed, the Settlement Agreement does away with the existing requirement that Class Members have the Recall Remedies performed on their Subject Vehicles in order to avail themselves of the existing extended warranties. *See id*. at 19-20 § III.C.1.

Similarly, all Class Members who replaced an IPM or Inverter in a Subject Vehicle prior to the Final Effective Date are eligible for a Redistribution Check. *See id*. at 16-17 § III.A.3.(a)-(c). This includes the 54,527 Class Members identified bv Toyota as falling within this category (who were sent Direct Mail Notice advising them that they are automatically eligible for a Redistribution Check), and all Class Members who submit timely claims for Reimbursement. *See* Finegan Decl. ¶ 12; Juneau Decl. ¶ 8. To the extent any Class Member was not identified by Toyota or are not automatically eligible because they submitted a claim for a Reimbursement Payment, they need only properly fill out a simple Registration and

Reimbursement Claim Form to qualify for a Redistribution Check. *See* ECF 219-2, Ex. 1.

Class Members who no longer own their vehicles and did not have the IPM or Inverter replaced (*i.e.*, those who bought and sold Subject Vehicles in which the IPM defect did not manifest) will be subject to the Settlement's single, uniform release if they chose to remain in the Class and will not eligible for Settlement benefits (beyond the installation of the Updated Recall Software if they owned or leased a Subject Vehicle after the dates on which the recall software was made available), but that does not constitute preferential treatment. *See In re Mego,* 213 F.3d 454, 461 (9th Cir. 2000) (affirming order overruling objection that large portion of class would not recover from defendant).[14]

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[14] More recently, the Ninth Circuit overruled objections that a release included '"all former or current U.S. owners' of certain devices who downloaded iOS software before Apple disclosed potential defects, yet the settlement limits recovery to the subset of owners who can attest that 'they experienced' the alleged defects." *Apple Device Perf. Litig.*, 50 F.4th at 780-81. As the Ninth Circuit explained, "[t]that compromise was reasonable. It reflected the bargaining and compromise inherent in settling disputes." *Id.* at 781 (cleaned up). *See also Kang v. Fyson*, No. 22-15694, 2022 WL 6943174, at *3 (9th Cir. Oct. 12, 2022) (Rule 23(e)(2)(D) not violated by settlement allocating damages "based on the number of shifts worked during the period rather than on each member's commission payments. That form of pro rata calculation is a simple, efficient, and reasonable way of allocating damages"); *Radcliffe v. Hernandez*, 794 F. App'x 605, 608 (9th Cir. 2019) ("Rule 23's flexible standard allows for the unequal distribution of settlement funds so long as the distribution formula takes account of legitimate considerations and the settlement remains 'fair, reasonable, and adequate'"; noting that Rule 23 does not "prohibit[] parties from tying distribution of settlement funds to actual harm") (quoting Rule 23(e)(2)); *Feltzs v. Cox Commc'ns Cal., LLC*, No. SACV192002JVSJDEX, 2022 WL 2079144, at *11 (C.D. Cal. Mar. 2, 2022) ("The Advisory Committee Notes connected to Rule 23(e)(2)(D) state that the equity inquiry looks to 'whether the apportionment of relief among class members takes appropriate account of differences among their claims.' The Court finds that this distinction between the certified and uncertified claims is logical given the dramatically different likelihood of success"); *In re Cathode Ray Tube Antitrust Litig.*, 2016 WL 721680, *21-25 (N. D. Cal. Jan. 28, 2016) (same: "if such claims were worth little or nothing, releasing them without compensation does not render the Proposed Settlement unfair, unreasonable or inadequate)"); *Nwabueze v. AT&T, Inc.*, No. C 09–01529, 2013 WL 6199596, at *8 (N.D. Cal. Nov. 27, 2013) ("That a settlement could potentially have reached a more favorable result for certain individuals in the class does not demonstrate that the agreed-upon settlement is not fair, adequate, and reasonable"); *Glass v. UBS Fin. Servs., Inc.*, No. 06-4068, 2007

The release is also narrowly tailored and affects all Class Members equally in that it is specifically "limited to, and does not extend beyond, issues pertaining to the Subject Matter of the Action, and does not extend to failure of or damage to the Inverter or IPM caused by anything other than Thermal Stress." ECF 219-2 at 41-42 § VII.B ("Release and Waiver"). Importantly, the Release carves out claims for "(1) personal injury, (2) death, (3) property damage arising from an accident involving a Subject Vehicle, (4) property damage to the Subject Vehicle arising from Inverter or IPM failure, other than damage to the Inverter or IPM itself, or (5) subrogation." *Id.* For these reasons, this factor favors final approval as well.

5. *Government Participants Had No Role in the Settlement*

One of the factors the Ninth Circuit has articulated for determining whether final approval is appropriate is whether government participants affected the settlement. *E.g.*, *Lane*, 696 F.3d at 819. The government played no role in this litigation. To the contrary, the Settlement Special Master found that Safety Recalls J0V and 20TA10 were catalyzed by the litigation itself, *see* ECF 219-2, Ex. 10, and the Customer Confidence Program substantially improves upon warranties prescribed by the state and federal governments.

6. *The Comprehensive Class Notice Program Satisfies Due Process and Rule 23*

Class Members must be notified of a proposed settlement using "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). Due process does not require actual receipt of notice where publication

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WL 221862, at *8 (N.D. Cal. Jan. 26, 2007) (rejecting objection that settlement failed to fully compensate the class, reasoning that objector "misunderstands the purpose of the settlement, which is not to provide full compensation . . ., but to compensate class members for the value of their legal claims").

notice is the best notice practicable. *E.g., Silber v. Mabon*, 18 F.3d 1449, 1454 (9th Cir. 1994); *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d at 1080.

Here, the content of the notices supplies all of the information required by Rule 23(c)(2)(B)(i)-(vii) (directly or by reference), in clear, easy to understand language. While the various versions of the notices differ in the amount of detail they provide, ***all*** versions of the Class notices inform Class Members (directly or by reference) of the nature of the action, the class definition, the class claims, the right to enter an appearance, the right to opt-out and the process/deadlines for doing so, and the binding effect of a class judgment. *See* Finegan Decl., Exs. 1-8.[15]

As a result of these comprehensive efforts, the anticipated reach of the notice program ***exceeded*** the estimates provided in connection with preliminary approval. Then, Kroll estimated that the parties' comprehensive Notice Program was expected to reach an impressive "92% of this target audience over 3 times," with Direct Mail Notice expected to reach 78% of Class Members. *See* ECF 220, Ex. B at 3. The actual reach, however, was even greater: Direct Mail Notice and Media Notice is estimated to have reached over 98% of Class Members on average of 5.7 times, with Direct Mail Notice reaching an estimated 94% of Class Members. Finegan Decl. ¶ 3.[16]

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[15] A copy of the Long Form Notice is available at https://www.toyotapriusinvertersettlement.com/home/512/DocumentHandler?docPath=/Documents/Long_Form_w_Exhibits_corrected_URL.pdf.

[16] Specifically, Kroll mailed 54,527 Direct Mail Notices to Class Members in the United States and District of Columbia identified by Toyota as having previously had their Inverter and/or IPM replaced and who are eligible to receive a potential Redistribution Check and 1, 734, 193 Direct Mail Notices to the remaining Class Members in the U.S. and District of Columbia. *See id*. ¶ 12. Direct Mail Notices that were returned as undeliverable were subject to skip tracing and were remailed where possible. *See id.*, ¶¶ 13-14. Additional forms of notice included: **(1)** Publication Notice in two general circulation magazines, published in English with Spanish sub-headlines; **(2)** Publication Notice in *USA Today*, Los Angeles edition; (3) Publication Notice in nine territorial newspapers along with banner advertising on the newspapers' web property; **(4)** a press release in English and Spanish

Accordingly, the robust notice plan in this case easily satisfies Rule 23(c)(2)(B) and the requirements of due process, thus warrants final approval for the same reasons the notice plan earned preliminarily approved. *See* ECF 233 at 7-8, 20-21, & 23, ¶¶ 6-11.

IV. CONCLUSION

The Settlement the parties reached in this case took nearly a year and a half to negotiate, but it was well worth the effort. It provides real, substantial relief to Class Members and it complies with each and every approval criterion established by Rule 23 and Ninth Circuit decisional law. Accordingly, Plaintiffs respectfully request that the Court grant final approval of the Settlement for each of the reasons described above.

DATED: December 1, 2022 **FAZIO | MICHELETTI LLP**

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distributed in the U.S. and U.S. territories; **(5)** social media advertising in the United States and U.S. territories through Facebook, Instagram and Twitter in English and Spanish; **(6)** online display banner advertising specifically targeted to reach Class Members in the United States and U.S. territories in English and Spanish, including but not limited to, utilizing popular Prius forums, where possible to do so; **(7)** online display banner advertising; **(8)** an informational website (www.toyotapriusinvertersettlement.com), which contains important deadlines and other settlement-related information; important documents, including, but not limited to, the Long Form Notices (in English and Spanish) and relevant legal memoranda (including the motion for preliminary approval and Plaintiffs' fee petition); settlement updates; a vehicle information number ("VIN") lookup function to determine whether a vehicle is a Subject Vehicle; an online opt-out option (which was deactivated when the time within which to opt out had passed); an electronic claim filing option (with the ability to cure deficiencies online as well); and the ability to communicate with Kroll online; a toll-free information line for Class Members; **(9)** the supplemental New Hampshire notice program discussed in Section II.A., above; and **(10)** CAFA Notice to appropriate state and federal government officials. *See* Finegan Decl. ¶ 6.

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