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10 UNITED STATES DISTRICT COURT  
11 CENTRAL DISTRICT OF CALIFORNIA  
12

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

15 Plaintiffs,

16 v.

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

19 Defendants.

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

22 Plaintiffs,

23 v.

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

26 Defendants.  
27  
28

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

**PLAINTIFFS' SUPPLEMENTAL  
MEMORANDUM OF LAW IN  
RESPONSE TO OBJECTIONS  
AND REQUESTS FOR  
EXCLUSION FROM THE CLASS**

**DATE:** January 13, 2023

**TIME:** 10:30 a.m.

**PLACE:** Courtroom 8A

Hon. Josephine L. Staton

1 **I. INTRODUCTION**

2 The Notice Program that has been implemented in this action has had  
3 extraordinary reach. The Notice Administrator, Kroll Notice Media (“Kroll”), reports  
4 that Direct Mail Notice and Media Notice is estimated to have reached over 98%  
5 of the nearly 1.8 million Class Members an average of 5.7 times. *See* Declaration  
6 of Jeanne C. Finegan Decl. ¶ 3.

7 Yet only a tiny fraction of the Class has opted out (116) and even fewer—*two*—  
8 have submitted objections to the Settlement. *See* Declaration of Jeffrey L. Fazio in  
9 Support of Motion for Final Approval of Settlement (“Fazio Decl.”), Exs. C-D.<sup>1</sup>

10 As courts across the country have observed, such infinitesimally small numbers  
11 create a presumption that the Settlement is favorable to the Class Members. But final  
12 approval of the Settlement is not dependent on such a presumption. Both objections  
13 are based on incorrect assumptions, misunderstandings, and a desire to obtain more  
14 benefits than what the Settlement provides. Accordingly, Plaintiffs respectfully submit  
15 that both objections should be overruled.

16 **II. SUMMARY OF PERTINENT FACTS**

17 **A. WARREN S. OBJECTION**

18 After receiving a Customer Support Program Notification from Toyota in  
19 December 2020, which stated that “Toyota has received some reports where the  
20 Intelligent Power Module (IPM) located inside the inverter assembly of the hybrid  
21 system may fail[,]” Warren responded with a letter and a phone call to express his  
22 concerns to Toyota. *See* Fazio Decl., Ex. C at 2.<sup>2</sup>

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<sup>1</sup> In keeping with the convention used in connection with the OSC (ECF 244), Plaintiffs are using Class Members’ first names in documents filed in the public record.

<sup>2</sup> The Customer Support Program Notification Warren received from Toyota appears to be associated with the Warranty Enhancement Program (“WEP”) that Toyota established in connection with Safety Recall 20TA10. The service record attached

1 In his letter to Toyota, Warren explained that he was concerned about  
2 potential IPM failure and that he wanted Toyota to provide him with data pertaining  
3 to the reports Toyota described in the notification letter. Fazio Decl., Ex. C at 2.  
4 Warren also noted that he “could not readily find the definition of ‘fail safe driving  
5 mode’ in [his] owner’s manual,” and asked Toyota to explain the meaning of that  
6 term. *Id.* Warren stated that “we take very long trips” in the Subject Vehicle and  
7 inquired about whether Toyota would bear part of the expense if IPM failure  
8 disrupted a visit or a business trip and/or required him to stay at a motel. *Id.*

9 Warren objects to the Settlement on four grounds.

10 *First*, Warren states that the hybrid system in Subject Vehicles does not  
11 appear to have been improved. *Id.* at 1 ¶ 1. Warren explains that Toyota did not  
12 replace the defective Inverter that was installed in his Subject Vehicle as original  
13 equipment, and asserts that “[t]here is no evidence that the new part will be improved  
14 over the original part. Additionally, it is not clear if multiple failures (if the  
15 replacement fails) will be covered.” *Id.*

16 *Second*, Warren states that Toyota did not respond to his request for an  
17 explanation of “fail safe driving mode,” and that when he contacted Toyota again by  
18 phone, he was told that the term meant that “the maximum fail safe driving mode  
19 speed would be 35 miles per hour for an unknown (short) distance.” *Id.* ¶ 2. Warren  
20 observes that this description conflicts with the documentation provided in  
21 connection with the Settlement. *Id.*

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24 to Warren’s objection indicates that he brought his Subject Vehicle to Danville  
25 Toyota in response to a recall notice on October 9, 2020, roughly two months after  
26 Toyota announced Safety Recall 20TA10. *See id.* at 3. Toyota now uses the term  
27 “Customer Support Program” to describe a WEP, and it denominated the one  
28 associated with Safety Recall 20TA10 as Customer Support Program 20TE10. *See generally* Fazio Decl., Ex. E. A sample customer notification letter comprises the last five pages of Exhibit E, which uses the same verbiage Warren describes in his letter to Toyota. *See id.* at 13 (“Toyota has received some reports where the Intelligent Power Module (IPM) located inside the inverter assembly of the hybrid system may fail”).

1           **Third**, Warren states that “[t]he settlement is lacking in that there is no  
2 allowance by Toyota in this settlement for potential housing expenses during) the  
3 replacement of the failed unit.” *Id.* ¶ 3.

4           **Fourth**, Warren states that “[t]he proposed settlement allows the fox to guard  
5 the hen house[.]” because “Toyota does not allow customers to witness the work  
6 performed on the vehicles when brought to their dealers.” *Id.* ¶ 4 (emphasis omitted).

7           **B. MARIA M. OBJECTION**

8           Maria has objected on the ground that she sold her Subject Vehicle after it  
9 stalled twice, which she attributed to the IPM defect, and concluded that the  
10 Settlement provides her with no benefits because she sold the vehicle after having  
11 the IPM replaced under warranty. *See* Fazio Decl., Ex. D. Maria states that she  
12 “would like to have money returned to [her]” for the risk of having driven “a car that  
13 can stop out of the blue”; for the “aggravation and towing” that she experienced; for  
14 selling her Subject Vehicle “because of its unsafe status”; and “the unplanned cost  
15 of buying a new car.” *Id.*

16           **III. ARGUMENT**

17           **A. CLASS MEMBERS’ REACTION TO THE SETTLEMENT SUPPORTS**  
18                           **GRANTING FINAL APPROVAL**

19           Class Counsel take any objection seriously, but “[i]f only a small number of  
20 objections are received, that fact can be viewed as indicative of the adequacy of the  
21 settlement.” Herbert Newberg & Alba Conte, 4 NEWBERG ON CLASS ACTIONS at 108  
22 § 11.41 (4th ed. 2002). In other words, “the absence of a large number of objections  
23 to a proposed class action settlement raises a strong presumption that the terms of a  
24 proposed class settlement action are favorable to the class members.” *In re*  
25 *Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1043 (N.D. Cal. 2008) (quoting *Nat’l*  
26  
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1 *Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528-29  
2 (C.D.Cal.2004)).<sup>3</sup>

3 If any case were entitled to such a presumption, it is this one. As discussed  
4 above, notwithstanding that the Notice Program has reached **98%** of the settlement  
5 class that has been preliminarily certified in this action with an average frequency of  
6 5.7 times, and although the Class is composed of approximately **1.8 million** Class  
7 Members, and only **two** have submitted objections. Neither justifies denying final  
8 approval of the Settlement the parties negotiated in this action.

9 **1. Warren’s Objection is Based on Mistaken Assumptions and**  
10 **Incorrect Facts**

11 The first ground for Warren’s objection—that replacement Inverters may not  
12 be better than the original Inverter and that the failure of a replacement Inverter may  
13 not be covered by warranty—appears to be the product of misapprehension; that is,  
14 this ground for Warren’s objection is factually incorrect. In short, the Settlement  
15 does not involve replacing original Inverters in Subject Vehicles with new ones;  
16 rather, as explained in the Settlement Agreement,

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18 <sup>3</sup> See also *Fager v. CenturyLink Commc’ns, LLC*, 854 F.3d 1167, 1175 (10th Cir.  
19 2016) (finding no clear error in district court’s conclusion that settlement was fair in  
20 part because “only a few class members opted out” and only one filed an objection);  
21 *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 118 (2d Cir. 2005) (“If only  
22 a small number of objections are received, that fact can be viewed as indicative of  
23 the adequacy of the settlement”) (cleaned up); *In re Vizio, Inc., Consumer Priv.*  
24 *Litig.*, No. 816ML02693JLSKES, 2019 WL 12966638, at \*5–6 (C.D. Cal. July 31,  
25 2019) (“A small number of objections at the time of the fairness hearing may raise  
26 a presumption that the settlement is favorable to the class”) (Staton, J.); *Rodriguez*  
27 *v. El Toro Med. Invs. Ltd. P’ship*, No. 816CV00059JLSKES, 2018 WL 11348094,  
28 at \*4 (C.D. Cal. June 26, 2018) (“total objections and opt-outs comprise less than  
0.1% of the Class. The Court finds this relatively small number of objections and  
opt-outs supports the fairness of the settlement”) (Staton, J.); *Corson v. Toyota*  
*Motor Sales U.S.A., Inc.*, No. CV128499JGBVBKX, 2016 WL 1375838, at \*8 (C.D.  
Cal. Apr. 4, 2016) (“Given the small number of opt-outs and objections, the Court  
finds that this factor weighs in favor of final approval”); *Perkins v. LinkedIn Corp.*,  
No. 13-CV-04303-LHK, 2016 WL 613255, at \*3 (N.D. Cal. Feb. 16, 2016) (“in  
total, 86 individuals objected to the Settlement, or 0.0004% of the Class. Moreover,  
only 145 Class Members have opted out of the Settlement (0.0007% of the Class).  
Such low rates of objections and opt-outs are indicia of the approval of the class”)  
(cleaned up).

1 Plaintiffs have assessed the evidence Toyota submitted to the Court in  
2 opposition to Plaintiffs’ motion for class certification and confirmatory  
3 discovery pertaining to Toyota’s testing and analyses of the software  
4 installed in Subject Vehicles by way of Safety Recalls J0V and 20TA10  
5 (“Recall Software”), by which Toyota confirmed that the Recall  
6 Software fail-safe modes ensure that the malfunction or failure of an  
7 Insulated-Gate Bipolar Transistor in a Subject Vehicle’s IPM will not  
8 “result in rapid deceleration of the vehicle, a loss in the vehicle’s power  
9 steering or an impact on the ability to brake normally in the vehicle [and  
10 that] the vehicle can be driven at safe speeds above approximately 60  
11 mph while in the fail-safe mode of operation.”

12 ECF 219-2 at 6 § I.S.

13 As for Warren’s concern that an Inverter failure may not be covered by  
14 warranty, *see* Fazio Decl., Ex. C at 1, the answer is that the Settlement would provide  
15 coverage if the failure was caused by the IPM defect. As explained in the Settlement  
16 Agreement, it expands coverage under the WEPs in four ways:

- 17 • by extending coverage under the existing WEPs (which is triggered by the  
18 appearance of Diagnostic Trouble Code (“DTC”) P0A94, P0A1A, P324E,  
19 and/or P3004 in computer diagnostic testing) to 20 years from the date of the  
20 Subject Vehicle’s first use, *see* ECF 219-2 at III.C.1.(a);
- 21 • by adding two more DTCs (P0A7A and P0A78) to the original list of four  
22 DTCs that trigger coverage for the repair or replacement of an Inverter, *id.* at  
23 20 § III.C.1.(b);
- 24 • by providing coverage for Inverters that fail as a result of a Thermal Event  
25 (which is defined as “damage to casings and other parts of an Inverter, as  
26 Toyota has used the term in connection with its Thermal Event Protocol,” *id.*  
27 at 14 § II.50.), regardless of which DTC is triggered, if the Toyota Dealer  
28



1 determines that the Inverter needs to be repaired or replaced, *id.* at 20 §  
2 III.C.1.(c); and

- 3 • by providing coverage for the repair or replacement of IPMs, regardless of  
4 whether a DTC is triggered, if a Toyota Dealer determines that the IPM has  
5 failed and “cannot demonstrate that the IPM failure was due to anything other  
6 than Thermal Stress” (which is defined as “exposure of one or more Insulate-  
7 Gate Bipolar Transistors in the IPM to excessive amounts of heat and/or  
8 electrical current,” *id.* at 14 § II.51.), 20 § III.C.1.(d).

9 There is no indication, however, that the Inverter in Warren’s Subject Vehicle  
10 has failed. Although he has provided a service record from Danville Toyota, it  
11 indicates that the work performed involved its brakes, its wheels and tires, and it  
12 explicitly states that no DTCs were found. *See* Fazio Decl., Ex. C at 3.

13 The second ground for Warren’s objection—that the verbal description of  
14 “fail safe mode” he received when he contacted Toyota by phone conflicts with the  
15 description in the Settlement Agreement—is also based on incorrect information. To  
16 the extent that Warren was informed that fail-safe mode means that a Subject Vehicle  
17 will travel for a short period at no more than 35 miles per hour, that person appears  
18 to have provided Warren with information relating to the fail-safe mode in Subject  
19 Vehicles *before* the ECU software was updated in connection with Safety Recalls  
20 J0V and 20TA10. *See, e.g.,* ECF 164, Ex. 52 at 1167 at row 3 \*1.

21 As discussed above, Toyota has confirmed that, after the ECU software in  
22 Subject Vehicles was modified for use in Safety Recalls J0V and 20TA10, Subject  
23 Vehicles “can be driven at safe speeds above approximately 60 mph while in the  
24 fail-safe mode of operation.” ECF 219-2 at 6 § I.S. (quoting ECF 193-9).

25 The third ground for Warren’s objection—that the Settlement is deficient  
26 because it does not provide Class Members with “housing expenses” if their Subject  
27 Vehicle requires a repair that requires more than four hours to complete—is  
28 misplaced. This is not a valid basis for objecting to the Settlement. *See, e.g.,*

1 *Browning v. Yahoo! Inc.*, No. C04-01463 HRL, 2007 WL 4105971, at \*5 (N.D. Cal.  
2 Nov. 16, 2007) (“contrary to the objectors' assumptions, courts do not modify  
3 proposed settlements just because objectors prefer to pay less or receive more”)  
4 (citing *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998) (“It is the  
5 settlement taken as a whole, rather than the individual component parts, that must  
6 be examined for overall fairness. Neither the district court nor this court have the  
7 ability to delete, modify, or substitute certain provisions”), *overruled on other*  
8 *grounds by Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011)).\

9 The same is true of the fourth ground for Warren’s objection—that “Toyota  
10 does not allow customers to witness the work performed on the vehicles when  
11 brought to their dealers.” Toyota may or may not have valid reasons for prohibiting  
12 customers from observing the work its dealers perform (*e.g.*, liability and/or insurer  
13 constraints), but without more, a mere suspicion that the “fox is guarding the  
14 henhouse” is not a valid ground for objecting to the Settlement. *See, e.g., United*  
15 *States v. State of Oregon*, 913 F.2d 576, 581 (9th Cir. 1990) (“In this circuit, we have  
16 usually imposed the burden on the party objecting to a class action settlement”).

17 **2. *Maria’s Objection is Also Based on Mistaken Assumptions and***  
18 ***Incorrect Facts***

19 As discussed above, Maria objects to the Settlement on the ground that she  
20 will receive no benefit from the Settlement because she sold her Subject Vehicle  
21 after it stalled while driving it on two occasions, both of which she has attributed to  
22 the IPM defect, but that attribution is based purely on her assumption. There is  
23 nothing in the record to suggest that the stalling she experienced is attributable to the  
24 IPM. Put simply, cars stall for a variety of reasons and the ECU software Toyota  
25 installed in connection with Safety Recalls J0V and 20TA10 does not prevent  
26 stalling due to other causes. *See* Fazio Decl., Ex. D at 1. There is, however, evidence  
27 that the updated ECU software enables a Subject Vehicle to travel up to 60 mph if  
28 its IPM or Inverter fails, and that Toyota is unaware of any incident in which a



1 Subject Vehicle equipped with that software stalled as a result of IPM or Inverter  
2 failure. As explained in the Settlement Agreement,

3 in Toyota’s initial and supplemental responses to Cathleen Mills  
4 Interrogatory No. 7 (which response Toyota updated and supplemented  
5 in a verified response on November 4, 2021 and November 26, 2021),  
6 Toyota confirmed that the Recall Software ensures that Subject  
7 Vehicles will enter fail-safe mode in the event of an IPM or Inverter  
8 malfunction or failure, and that Toyota is aware of no incident in which  
9 a Subject Vehicle equipped with the Recall Software was unable to  
10 travel ~60 miles per hour after entering fail-safe mode.

11 ECF 219-2 at 6 § I.S.

12 Moreover, should the information Toyota provided in its verified response to  
13 Mills Interrogatory No. 7 change, Toyota would be obligated to supplement its  
14 responses to that confirmatory discovery. *See* Fed. R. Civ. P. 26(e)(2) (“A party is  
15 under a duty seasonably to amend a prior response to an interrogatory . . . if the party  
16 learns that the response is in some material respect incomplete or incorrect and if the  
17 additional or corrective information has not otherwise been made known to the other  
18 parties during the discovery process or in writing”). As of the filing of this  
19 memorandum, Toyota has not done so. Fazio Decl. ¶ 10.

20 Additionally, because Maria had her IPM replaced under warranty, she is pre-  
21 registered to automatically receive a Redistribution Check. *See* Finegan Decl. ¶ 45  
22 (mistakenly referring to Class Member Maria as “Aline”). Moreover, if Maria’s  
23 Subject Vehicle was towed to the dealer in connection with the IPM replacement,  
24 the Settlement would entitle her to reimbursement for that expense (and for any  
25 rental-car expenses that she may have incurred)—in addition to a likely  
26 Redistribution Check. *See* ECF 219-2 at 14-23 §§ III.A.-D; Fazio Decl., Ex. B  
27 (agreement to lift \$250 cap). Thus, Maria is simply wrong about the Settlement  
28 providing her with no benefits simply because she sold her Subject Vehicle.



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