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UNITED STATES DISTRICT COURT
FOR THE 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.

Case No: 8:18-CV-00201-JLS-KES

DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT OF UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

Date: January 13, 2023
Time: 10:30 am
Place: Courtroom 10A
Hon. Josephine L. Staton

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I. INTRODUCTION

Defendants Toyota Motor Corporation and Toyota Motor Sales, U.S.A., Inc. (collectively, "Toyota") support Plaintiffs' request that this Court find that the class action settlement is "fair, reasonable and adequate," and finally approve it, pursuant to Rule 23, as amended.[1] After extensive discovery and motion practice and protracted litigation over several years, the Parties opened up settlement negotiations that lasted approximately 12 months that required significant assistance from Settlement Special Master Juneau. While no settlement completely satisfies either party, this Settlement provides significant relief to the Class Members who also happen to be Toyota's customers.

The settlement provides significant and immediate benefits to the Class, including a $20 million non-reversionary fund to reimburse Class Members for certain out-of-pocket expenses and a 20-year Customer Confidence Program.[2] This settlement should be granted final approval as it more than satisfies the requirements in Rule 23(e), as amended, the eight factors set forth in *Staton v. Boeing Corp.*, 327 F.3d 938, 952 (9th Cir. 2008), and "the settlement is not the product of collusion among the negotiating parties" as required in *In re Bluetooth Headset Prod. Liab. Litig*. ("*Bluetooth*"), 654 F.3d 935, 946 (9th Cir. 2011).

In addition to these substantial benefits, there is a "strong judicial policy favor[ing] settlement, particularly where complex class action litigation is concerned." *Etter v. Thetford Corp.*, No. CV1406759JLSRNBX, 2016 WL

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1 The essential terms of the settlement are summarized in this Memorandum of Points and Authorities in Support of Plaintiffs' Motion for Entry of an Order Granting Preliminary Approval of Class Action Settlement and Issuance of Related Orders. Dkt. No. 219. The Settlement Agreement, Dkt. No. 219-2, along with all exhibits and addenda sets forth in greater detail the rights and obligations of the Parties. If there is any conflict between this Memorandum and the Settlement Agreement, the Settlement Agreement governs.

2 All capitalized terms used in this Memorandum shall have the meanings assigned in the Settlement Agreement, unless otherwise defined herein.

11745096, at *9 (C.D. Cal. Oct. 24, 2016) (J. Staton) (citing *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1238 (9th Cir. 1998)).Accordingly, the Court should finally approve the settlement and dismiss the action.[3]

BACKGROUND

A. Plaintiffs' Allegations and Claims and the Parties' Motion Practice

This action alleges violations of consumer protection statutes and breaches of warranties, among other claims, arising out of allegedly defective inverters of certain Prius vehicles. The Parties have filed multiple motions on a wide range of topics and, for example, the Court denied as moot the Motion for Class Certification, Dkt. Nos. 162, 165, and the Motion for Summary Judgment, Dkt. No. 196.

B. Discovery, Confirmatory Discovery and Settlement Negotiations

Plaintiffs' Counsel discussed in their Memorandum of Points and Authorities in Support of Preliminary Approval their extensive investigation regarding the facts and the law relevant to the claims and defenses in this case, including the formal and confirmatory discovery exchanged between the Parties. Dkt. No. 219.

The Parties engaged in active litigation for over two years when they began conducting settlement negotiations in or around June 2020 (while simultaneously continuing to litigate the case). During that time, more than 30 video conferences between Class Counsel and Toyota's counsel occurred, many of which included the Court-approved Settlement Special Master Patrick Juneau, and numerous phone calls and emails made and sent on at least a weekly, and even daily, basis. There was also an extensive mediation involving Settlement Special Master Juneau on attorneys'

[3] As was required by the Preliminary Approval Order, on November 15, 2022, the Settlement Notice Administrator filed the list of opt-outs, the results of the dissemination of the notice and all objections with the Court. Also pursuant to the Preliminary Approval Order, the Parties will file supplemental memoranda of law - on November 30, 2022 - in further support of the settlement which will discuss the results of Notice and will respond to the objections and opt-outs.

fees and service awards, which only occurred after the material terms of the settlement had already been agreed upon.

C. Settlement Terms

Under the proposed settlement, Toyota has agreed to provide the following relief, pursuant to certain terms and conditions: (1) a non-reversionary Qualified Settlement Fund, initially funded with $20 million dollars which will be used for reimbursement of certain out-of-pocket expenses not previously reimbursed by Toyota related to a Subject Vehicle's IPM or Inverter, with any balance remaining after all valid and timely out-of-pocket expenses have been paid, either being redistributed to certain Class Members by way of Redistribution Checks, or if administratively unfeasible, going towards a *cy pres*; (2) a Customer Confidence Program, which provides for certain repairs to and/or replacement of the IPM and/or Inverter at no cost to Class Members or subsequent owners/transferees of the Subject Vehicles for 20 years from the date the Subject Vehicle was first put into use; and (3) free loaner vehicles and/or towing of the Subject Vehicle in certain situations and as part of the Customer Confidence Program.*See* Settlement Agreement, at § III.

Additional details on the Settlement Terms, including the relief, are included in the Settlement Agreement and Plaintiffs' brief in support of preliminary approval. *See generally* Settlement Agreement (Dkt. No. 219-2) and Plaintiffs' Memorandum of Points and Authorities (Dkt. No. 219).

II. THE COURT PRELIMINARILY APPROVED THE SETTLEMENT

In the Court's 31-page order granting the motion for preliminary approval of the class settlement, Dkt. No. 233 ("Preliminary Approval Order"), which vetted the settlement based on the requirements specified in Rule 23(e), the Court found that "[i]n evaluating all applicable factors…, the Court finds that the proposed settlement should be preliminarily approved." *See* Preliminary Approval Order, at p. 16. The Court evaluated the "[s]trength of Plaintiffs' case and risk, expense, complexity, and duration of further litigation," the "amount offered in settlement," "[e]xtent of

discovery proceedings and stage of the proceedings," "[e]xperience and views of counsel," and "[a]rm's length negotiation free from collusion" and found that each one of these factors weighed in favor of preliminary approval. *Id.* at pp. 16-19.

The Court also noted: "[a]s 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." *Id.* at p. 20. The Settlement Notice Administrator filed the results of Notice, a list of the opt-outs, and the objections received on November 30, 2022. The results of the dissemination of the notice and the class's reaction to the settlement are discussed in detail in Toyota's supplemental memoranda of law in support of final approval.

LEGAL STANDARD

Federal Rule of Civil Procedure 23, as amended, sets forth that "the claims, issues, or defenses of a certified class may be settled . . . only with the court's approval." Fed. R. Civ. P. 23(e). "Whether to approve a class action settlement is 'committed to the sound discretion of the trial judge[,]' who must examine the settlement for 'overall fairness.'" *Chambers, et al. v. Whirlpool Corp., et al.*, No. 11-cv-1733 (FMO)(JCG), 2016 WL 5922456, *3 (C.D. Cal. Oct. 11, 2016) (citing *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992), cert. denied, 506 U.S. 953 (1992); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998)).

Before approving a class-action settlement, Rule 23 of the Federal Rules of Civil Procedure requires the Court to determine whether the proposed settlement is "fair, reasonable, and adequate." *Kearney, et al. v. Hyundai Motor Am.*, No. SACV 09-1298-JST (MLGx), 2013 WL 3287996, *4 (C.D. Cal. June 28, 2013) (J. Staton) (citing Fed. R. Civ. P. 23(e)(2)).To determine whether a settlement agreement meets

these standards, a district court must consider of the factors set out by *Staton*. *Id.* (citing *Staton v. Boeing Corp.*, 327 F.3d 938, 959 (9th Cir. 2008)).

"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.'" *Id.* (citing *Bluetooth* , 654 F.3d at 946-47 (internal citation and quotations omitted)). "Accordingly, the Court must look for explicit collusion and 'more subtle signs that class counsel have allowed pursuit of their own self-interests and that of certain class members to infect the negotiations.'" *Id.* (citing *Bluetooth*, 654 F.3d at 947).

ARGUMENT

A. This Court Has Jurisdiction to Consider and Rule on the Settlement

1. The Court Has Original Jurisdiction Over All Claims

This Court has original jurisdiction pursuant to 28 U.S.C. § 1332(d)(2) because Plaintiffs' Amended Consolidated Master Complaint alleges that the amount in controversy in this class action exceeds $5,000,000 dollars, exclusive of interest and costs; the proposed Class includes more than 100 members, more than one of whom reside in a state other than California; and Toyota has purposefully availed itself of the privilege of conducting business activities within the State of California, where Toyota is incorporated and where Toyota engaged in the conduct alleged in this Complaint. *See* Docket No. 73, at ¶27; *see also Vasquez v. First Student, Inc.*, No. 14-cv-06760 (ODW), 2014 WL 6837279, at *2 (C.D. Cal. Dec. 3, 2014) (noting that, pursuant to 28 U.S.C.A. § 1332(d)(2), the Class Action Fairness Act provides federal courts original jurisdiction over class actions in which (1) the class consists of at least 100 proposed members; (2) the matter in controversy is greater than $5,000,000 after aggregating the claims of the proposed class members, exclusive of interest and costs; and (3) any member of a class of plaintiffs is a citizen of a State different from any defendant). In addition, the existence of original jurisdiction authorizes this Court to exercise supplemental jurisdiction under 28 U.S.C. § 1367(a) over the

remaining state law claims. *See* 28 U.S.C. § 1367(a) ("[I]n any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action ... that they form part of the same case or controversy under Article III.").

2. The Court Has Personal Jurisdiction Over All Class Members

This Court has personal jurisdiction over the Plaintiffs, who are parties to this class action and have agreed to serve as representatives for the Class. The Court also has personal jurisdiction over absent Class Members because due-process compliant notice has been provided to the Class. The court in *In re Toyota Motor Corp. Unintended Acceleration Mktg., Sales Practices, & Prod. Liab. Litig.*, No. 10-ML-02151 (JVS), 2013 WL 3224585, at *4 (C.D. Cal. June 17, 2013), citing to *Phillips Petroleum Company v. Shutts*, 472 U.S. 797, 811-12 (1985), held that a court properly exercises personal jurisdiction over absent, out-of-state Class members where the court and the parties have safeguarded absent Class members' right to due process.

The extraordinary notice provided to Class Members is discussed in further detail in Toyota's Supplemental Memorandum in Support of Final Approval. The notice provided to the Class, combined with the opportunity to object and appear at the Fairness Hearing, fully satisfies due process in order to obtain personal jurisdiction over a Rule 23(b)(3) class. *See Phillips Petroleum Co.*, 472 U.S. at 811-12 (finding that the district court obtains personal jurisdiction over the absentee class members by providing proper notice of the impending class action and providing absentees with an opportunity to be heard or an opportunity to exclude themselves from the class).

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

Under Rule 23(e)(1) and 23(c)(2)(B), the Court must direct the best notice that is practicable under the circumstances in a reasonable manner to all Class Members

who would be bound by the proposed settlement. *See Beltran v. Olam Spices & Vegetables, Inc.*, No. 11:8-CV-01676-NONE-SAB, 2021 WL 1105246, at *4 (E.D. Cal. Mar. 23, 2021) (citing FED. R. CIV. P. 23(e)(1)). Here, Class Notice was accomplished through a combination of Direct Mail Notice, Publication Notice, notice through the settlement website, Long Form Notice, and social media notice. *See* Settlement, Dkt. 219-2, p. 29. The Settlement Notice Administrator will file the Results of the Dissemination of the Notice with the Court by November 15, 2022. Preliminary Approval Order, Dkt. 167, at 30. Toyota's discussion of the Notice Program, including the results of the Notice Program, in its Supplemental Brief in Support of Final Approval also filed on November 30, 2022. *Id.*, at 31.

B. The Settlement Is "Fair, Reasonable, and Adequate" Under the Criteria Discussed in Rule 23(e) and Applied in the Ninth Circuit

The claims of a certified class may be settled only with court approval, and the Court may approve a settlement "only after a hearing and only on finding that it is fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2).[4]

The 2018 Committee Notes recognize that, prior to the December 1, 2018 amendment (the "Amendment"), each circuit had developed its own list of factors to be considered in determining whether a proposed class action settlement was fair, reasonable, and adequate. *See* Fed. R. Civ. P. 23(e)(2), Advisory Committee Notes. According to the Committee Notes, the Amendment is not intended to displace any such factors, but rather to direct the parties to present the settlement to the court in terms of a shorter list of core concerns by focusing on the primary procedural considerations and substantive qualities that should always matter to the decision whether to approve the proposal. *See id.*

[4] Effective December 1, 2018, Rule 23(e)(2) was amended to provide that the Court may approve the Settlement only after a hearing and only on finding that it is fair, reasonable, and adequate after considering 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 attorney's 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.

When evaluating the fairness of a settlement, courts in the Ninth Circuit generally weigh the *Staton* factors, many of which overlap with the requirements set forth in the amendments to Rule 23(e)(2):

1. the strength of plaintiffs' case;
2. the risk, expense, complexity, and likely duration of further litigation;
3. the risk of maintaining class action status throughout the trial;
4. the amount offered in settlement;
5. the extent of discovery completed, and the stage of the proceedings;
6. the experience and views of counsel;
7. the presence of a governmental participant; and
8. the reaction of the class members to the proposed settlement.[5]

Staton v. Boeing Co., 327 F.3d 938 (9th Cir. 2003).

These factors are "by no means an exhaustive list of relevant considerations," and "[t]he relative degree of importance to be attached to any particular factor will depend on the unique circumstances of each case." *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982); *Staton*, 327 F.3d at 960 (quoting *Hanlon*, 150 F.3d at 1026). "The ultimate decision by the judge involves balancing the advantages and disadvantages of the proposed settlement as against the consequences of going to trial or other possible but perhaps unattainable variations on the proffered settlement." *National Ass'n of Chain Drug Stores v. New England Carpenters Health Benefits Fund*, 582 F.3d 30, 44 (1st Cir. 2009).

C. <u>The Strength of Plaintiff's Case, and the Risk, Expense, Complexity, and Duration of Further Litigation.</u>

5 *See* footnote 4, *supra.*

The potential weaknesses in Plaintiffs' case and the enormous complexity, expense, and likely duration of further motion and discovery practice and a trial of this litigation weigh in favor of a finding that the settlement is fair, reasonable, and adequate. *Adoma v. Univ. of Phoenix, Inc.*, 913 F. Supp. 2d. 964, 975 (E.D. Cal. 2012) (internal quotation marks omitted) ("In evaluating the strength of the case, a court assesses "objectively the strengths and weaknesses inherent in the litigation and the impact of those considerations on the parties' decisions to reach [a settlement agreement]."). If this class action were to proceed, it would undoubtedly be a costly and lengthy process for all Parties. "In assessing the risk, expense, complexity, and likely duration of further litigation, the court evaluates the time and cost required." *Id.* at 976.

As the Court has already seen and ruled on in several instances, this litigation involves millions of Class Members and multiple legal claims and defenses. If this case were to proceed as a litigation class, it would require an enormous outlay of additional time, money, and energy from the Court and the Parties. The Court has denied as moot the Motion for Class Certification, Dkt. Nos. 162, 165, and the Motion for Summary Judgment, Dkt. No. 196. If the litigation does not settle, then those motions and several other related and unfiled motions would need to be heard and decided upon, which includes risk for both Parties.

While Plaintiffs believe they have meritorious claims, Defendants deny liability and the propriety of any litigation class or classes, and it is entirely possible that the Court would find against Plaintiffs. The settlement, which guarantees that Class Members receive substantial recoveries, provides significant advantages over "rolling the dice" and proceeding to final adjudication on the merits—after which the Class might achieve nothing. *See, e.g.*, *In re Toyota Motor Corp. Unintended Acceleration Mktg., Sales Practices, & Prods. Liab. Litig.*, No. 8:10-ML-02151, 2013 WL 12327929, at *14 (C.D. Cal. July 24, 2013) (approving class settlement

noting, "[s]imply put, Plaintiffs might eventually recover more with continued litigation, but they also might recover nothing").

"Generally, 'unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results.'" *Barbosa v Cargill Meat Sols. Corp.*, 297 F.R.D. 431, 446 (E.D. Cal. 2013) (citing *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 526 (C.D. Cal. 2004)). Moreover, settlement is encouraged in class actions where possible. *See id.* (citing *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976) ("It hardly seems necessary to point out that there is an overriding public interest in settling and quieting litigation. This is particularly true in class action suits which are now an ever increasing burden to so many federal courts and which present serious problems of management and expense.")).

As such, and in contrast to this risk, uncertainty, and possible length, it is beneficial to Class Members that, through this settlement, they will be able to receive "immediate recovery by way of the compromise to the mere possibility of relief in the future, after protracted and expensive litigation." *See Whirlpool Corp.*, 2016 WL 5922456 at *6 (citing *Nat'l Rural Telecommc'ns.*, 221 F.R.D. at 526); *Knapp v. Art.com, Inc.*, 283 F. Supp. 3d 823, 832 (N.D. Cal. 2017) (stating the relief provided by settlement is "preferable to lengthy and expensive litigation with uncertain results"). Just as the Court found that this factor weighed in favor of granting preliminary approval, it also weighs in favor of final approval, as the settlement would avoid all of the lengthy, costly, and uncertain aspects of litigation. *See also, e.g.*, *Williams v. Costco Wholesale Corp.*, No. 02-cv-2003, 2010 WL 2721452, at *3 (S.D. Cal. July 7, 2010) ("Given these risks, the Court agrees that the actual recovery through settlement confers substantial benefits on the class that outweigh the potential recovery through full adjudication."); *Bond v. Ferguson Enters.*, No. 1:09-cv-01662, 2011 WL 284962, at *7 (E.D. Cal. Jan. 25, 2011) ("Even if Plaintiffs were to prevail, they would be required to expend considerable additional time and

resources, potentially outweighing any additional recovery obtained through successful litigation.").

D. The Risk of Maintaining Class Action Status Through Trial.

If the litigation were to continue, Toyota would strenuously argue that a litigation class could not be certified here, and, even if a litigation class were certified, Toyota would appeal the decision pursuant to Fed. R. Civ. P. 23(f). The risk of maintaining class action status is magnified as "nationwide class certification under California law or the laws of multiple states is rare." *See Whirlpool Corp.*, 2016 WL 5922459, at *6 (citing *Mazza*, 666 F.3d at 585 (vacating class certification order because the district court "erroneously concluded that California law could be applied to the entire nationwide class")); *In re Pharm. Indus. Average Wholesale Price Litig.*, 252 F.R.D. 83, 94 (D. Mass. 2008) ("While numerous courts have talked-the-talk that grouping of multiple state laws is lawful and possible, very few courts have walked the grouping walk.")).

Further, if Plaintiffs were to obtain class certification of a litigation class and defeat a motion for summary judgment, then trial preparation would be necessary to continue to prosecute this litigation, which would be hard-fought, zealously contested, time consuming, uncertain, and expensive. *See Manner v. Gucci America, Inc.*, No. 15-cv-00045 (BAS)(WVG), 2016 WL 1045961, *6 (S.D. Cal. March 16, 2016) (approving the settlement where continued litigation would be "expensive, complex, and time consuming"); *In re DJ Orthopedics, Inc. Securities Litig.*, No. 01-cv-2238, 2004 WL 1445101, *3 (S.D. Cal. June 21, 2004) (finding the settlement to be "a more favorable path because the ultimate results of continued litigation are both uncertain and costly"). In light of these risks and the certainty that comes with the settlement relief, this factor weighs in favor of the settlement.

E. The Amount Offered in Settlement.

The settlement is fair, reasonable, and adequate, particularly when compared to the significant consideration offered in this settlement. In granting preliminary

approval of the Settlement Agreement, the Court concluded "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* Preliminary Approval Order, at pp. 16-17.

When evaluating the sufficiency of a settlement, the Court must consider the settlement as a whole and not its individual components, such as the direct cash relief provided through the class monetary fund. *See Officers for Justice v. Civil Serv. Comm'n of S.F.*, 688 F.2d 615, 628 (9th Cir. 1982) ("It is the complete package taken as a whole, rather than the individual component parts, that must be examined for overall fairness."); *see also Sebastian v. Sprint/United Management Co.*, No. 8:18-cv-00757-JLS-KES, 2019 WL 13037010 (C.D. Cal. Dec. 5, 2019) (J. Staton) (same).

Further, "the provisions of a class action settlement must be viewed in terms of a range of probabilities, not mere possibilities." *Id.* at 630. The Court's essential function is to assess "whether the settlement falls below the lowest point in the range of reasonableness." *Long v. HSBC USA, Inc.*, No. 14 Civ. 6233, 2015 WL 5444651, at *5 (S.D.N.Y. Sept 11, 2015) (citation omitted)."[T]he very essence of a settlement is compromise, a yielding of absolutes and an abandoning of highest hopes." *Whirlpool Corp.*, 2016 WL 5922456 at *6 (citing *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1242 (9th Cir. 1998)) (internal quotation marks omitted). Considering the significant multi-faceted benefits provided to the Class Members and the allegations provided in the Amended Master Class Action Complaint, this factor also weighs in favor of granting final approval.

F. The Extent of Discovery Completed and The Stage of The Proceedings

The settlement here should be "presumed fair" as it followed "sufficient discovery and genuine arms-length negotiation." *Whirlpool Corp.*, 2016 WL 5922456 at *6 (citing *Nat'l Rural Telecommc'ns.*, 221 F.R.D. at 528); *Linney v. Cellular Alaska P'ship*, Case Nos. 98-cv-3008 DLJ, C–97–0203 DLJ, C–97– 0425 DLJ, C–97–0457 DLJ, 1997 WL 450064, *5 (N.D. Cal. July 18, 1997), aff'd, 151 F.3d 1234, 1234 (9th Cir. 1998) ("The involvement of experienced class action counsel and the fact that the settlement agreement was reached in arm's length negotiations, after relevant discovery had taken place create a presumption that the agreement is fair."). As noted in the Preliminary Approval Order, "[t]he Parties have reached a settlement at a relatively late stage of the proceedings, and the Court finds that this factor favors preliminary approval." *See* Dkt No. 233, at p. 17.

As discussed more in Plaintiffs' Memorandum of Points and Authorities in Support of Preliminary Approval, even after the settlement discussions 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. *See* Dkt. No. 131, 162, 165, and 196. Furthermore, the Parties' negotiations lasted over a year, included the production of confirmatory discovery, and involved numerous mediation sessions before Settlement Special Master Patrick A. Juneau.

In light of these efforts, the Court previously determined that "there [wa]s no doubt that the Parties have abundant information on which to make informed decisions about settlement." *See* Preliminary Approval Order, at p. 18.

As such, the Parties here clearly "entered the settlement discussions with a substantial understanding of the factual and legal issues from which they could advocate for their respective positions." *Whirlpool Corp.*, 2016 WL 5922456 at *6; *See Nat'l Rural Telecommc'ns*, 221 F.R.D. at 527-28 (finding that the parties'

understanding of the factual and legal issues through completion of discovery "strongly militates in favor of the [c]ourt's approval of the settlement"); *Sarkisov v. StoneMor Partners L.P.*, No. 13-cv-04834 (JD), 2015 WL 5769621, at *3 (N.D. Cal. Sept. 30, 2015) (finally approving settlement where "the discovery done in the case was appropriate, and plaintiff's counsel has detailed a sufficiently robust investigation into class and liability issues.").Thus, this factor also supports approval of the settlement.

G. The Experience and Views of Counsel

The Parties are represented by counsel who investigated and considered their own and the opposing parties' positions and measured the terms of the settlement against the risks of continued litigation. The Court noted that "[p]articularly given the experience of Plaintiffs' counsel in this action," this factor weighed in favor of preliminary approval, and similarly, this factor also weighs strongly in favor of final approval as well. *See* Preliminary Approval Order, at p. 18.

As stated in *Whirlpool Corp.*, and in language equally applicable here, at this stage, [the parties' counsel] "are most closely acquainted with the facts of the underlying litigation…[and] are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in the litigation." *Whirlpool Corp.*, 2016 WL 5922456 at *7 (citing *Nat'l Rural Telecommc'ns*, 221 F.R.D. at 528). As such, great weight should be accorded to Class Counsel's judgment in recommending this settlement for final approval. *Id.*; *see also Rodriguez v. W. Pub'g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009) ("This circuit has long deferred to the private consensual decision of the parties.").

H. The Presence of a Governmental Participant

There is no government participant in this case. Therefore, this factor is inapplicable. *See Wren v. RGIS Inventory Specialists*, No. 06-cv-05778(JCS), 2011 WL 1230826, *10 (N.D. Cal. April 1, 2011), supplemented by 2011 WL 1838562

(N.D. Cal. 2011) (noting that lack of government entity involved in case rendered this factor inapplicable to the analysis).

III. SETTLEMENT IS NOT A PRODUCT OF COLLUSION

"A settlement following sufficient discovery and genuine arms-length negotiation is presumed fair," because these conditions "suggest . . . that the Parties arrived at a compromise based on a full understanding of the legal and factual issues surrounding the case." *National Rural Telecommunications v. DIRECTV*, 221 F.R.D. at 527-28 (C.D. Cal. 2004) (citations omitted). Here, there can be no question that the Settlement was not a product of collusion, and instead was the result of hard-fought, arm's length negotiation.In granting Preliminary Approval, the Court carefully scrutinized the settlement and concluded that "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* Preliminary Approval Order, at p. 19 (citing *Kim v. Allison*, 8 F.4th 1170, 1179 (9th Cir. 2021)).

Furthermore, Settlement Special Master Patrick A. Juneau attended numerous mediation sessions with the Parties. The assistance of an impartial mediator also strongly suggests the absence of collusion. *See, e.g.*, *Morales v. Steveco, Inc.*, No. 1:09-cv-704, 2011 WL 5511767, at *11 (E.D. Cal. Nov. 10, 2011).

In addition, the settlement contains no reversionary clause and includes a clause where any unawarded attorneys' fees will be distributed to the Class through the Settlement Fund QSF, meaning that all funds will be distributed to Class Members, unless administratively unfeasible, in which case remaining amounts in the QSF will go to an approved *cy pres*. *See* Settlement Agreement, Dkt. No. 219-2, III.A.3.d (any "remaining funds in the Settlement Fund shall be distributed *cy pres* to Texas A&M Transportation Institute with the Court's approval") and IX.C. This further indicates a lack of collusion, supporting final approval. *Betancourt v. Advantage Hum. Resourcing, Inc.*, No. 14-cv-01788, 2015 WL 12661922, at *7 (N.D. Cal. Aug. 28, 2015). Simply put, "the risk of collusion among counsel is so

small that it is effectively non-existent." *Wade v. Kroger Co.*, No. 3:01CV-699-R, 2008 WL 4999171, at *3 (W.D. Ky. Nov. 20, 2008).

IV. THIS COURT SHOULD ISSUE A PERMANENT INJUNCTION

Assuming this Court finally approves the settlement, the Court should issue a permanent injunction pursuant to the All Writs Act, 28 U.S.C. § 1651(a), and the exceptions to the Anti-Injunction Act, 28 U.S.C. § 2283. The rights and interests of the Class Members and the jurisdiction of this Court will be impaired if Class Members who have not opted out of the Class proceed with other actions alleging substantially similar claims to those asserted in this litigation and/or those claims that are resolved and/or released pursuant to the Settlement Agreement. Numerous federal courts in this circuit and elsewhere have recognized their power to enjoin class members who did not opt out of a settlement from filing or continuing to prosecute state court actions that would interfere with the implementation of a finally approved class action settlement. *See Ugas v. H&R Block Enterprises, LLC*, No. 09-cv-06510 (CAS)(SHX), 2013 WL 12114094, at *1 (C.D. Cal. Nov. 18, 2013); *Guilbaud v. Sprint Nextel Corp.*, No. 13-cv-04357 (VC), 2016 WL 7826649, at *5 (N.D. Cal. Apr. 15, 2016); *In re American Honda Motor Co., Inc. Dealership Relations Litig.*, 315 F.3d 417, 441-42 (4th Cir. 2003); *In re Diet Drugs*, 282 F.3d 220, 235 (3d Cir. 2002); *Williams v. General Electric Capital Auto Lease, Inc.*, 159 F.3d 266, 275 (7th Cir. 1998). The fact that Settlement Class Members have been afforded an opportunity to opt out of the settlement justifies the issuance of an injunction to aid the Court in its management of the settlement. *See Ross v. Trex Co.*, No. 09-cv-00670 (JSW), 2013 WL 791229 (N.D. Cal. Mar. 4, 2013).

Courts may issue a permanent injunction pursuant to the "necessary in aid of" exception to the Anti-Injunction Act. 28 U.S.C. § 2283. This exception allows a federal court to effectively prevent its jurisdiction over a settlement from being undermined by pending parallel litigation in state courts. *Hanlon*, 150 F.3d at 1026 ("[A] federal court may intervene and enjoin state court proceedings in three narrow

circumstances, one of which includes when it is necessary to protect the court's jurisdiction."). In addition, another exception to the Anti-Injunction Act permits courts to issue injunctions where it is necessary "to protect or effectuate [a court's] judgment[]," such as where a court has finally approved a class action settlement. *McCormick v. American Equity Investment Life Insurance Co.*, 2016 WL 850821, *6 (C.D. Cal. Feb. 29, 2016); *Rotandi v. Miles Indus. Ltd.*, No. 11-cv-02146 (EDL), 2014 WL 12642117, at *3 (N.D. Cal. Jan. 15, 2014) (enjoining all class members who did not opt out from the settlement from "commencing or prosecuting any new action, … against the released party relating to or arising out of the subject matter of the action" under the All Writs Act and the Anti-Injunction Act).

Furthermore, the All Writs Act also permits this Court to issue "all writs necessary or appropriate in aid of [its] jurisdiction[]." 28 U.S.C. § 1651(a). The All Writs Act permits a federal district court to protect its jurisdiction by enjoining parallel actions by class members that would interfere with the court's ability to oversee a class action settlement. *See Hanlon*, 150 F.3d at 1025; *In re Linerboard Antitrust Litig.*, 361 Fed. Appx. 392, 396 (3d Cir. 2010). The Court may issue an injunction as soon as the litigation reaches the settlement stage in order to "effectuate a final settlement." *See Hanlon*, 150 F.3d at 1025. The present circumstances warrant a permanent injunction in order to prevent those Settlement Class Members who did not opt out of the settlement from interfering with the implementation of the settlement and jeopardizing the rights and interests of the Settlement Class Members and this Court's jurisdiction. *See, e.g.*, *McCormick*, 2016 WL 850821, *6.

CONCLUSION

In light of the arguments above, Toyota respectfully requests that the Court enter an Order granting final approval, pursuant to Federal Rule of Civil Procedure 23(e), to the Parties' proposed class action settlement and providing such other and further relief as the Court deems reasonable and just.

Dated: November 30, 2022

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By */s/ John P. Hooper*
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CERTIFICATE OF SERVICE

I hereby certify that on November 30, 2022, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the Electronic Mail Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on November 30, 2022.

/s/ John P. Hooper
John P. Hooper