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9 *Interim Co-Lead Class Counsel*

10 UNITED STATES DISTRICT COURT  
11 CENTRAL DISTRICT OF CALIFORNIA  
12

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

15 Plaintiffs,

16 v.

17 TOYOTA MOTOR CORPORATION,  
18 TOYOTA MOTOR SALES, U.S.A.,  
INC., and DOES 1-10,

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

**DECLARATION OF JEFFREY L.  
FAZIO IN SUPPORT OF  
UNOPPOSED MOTION FOR  
PRELIMINARY APPROVAL OF  
CLASS-ACTION SETTLEMENT**

**DATE:** TBD  
**TIME:** TBD  
**PLACE:** Courtroom 10A

Hon. Josephine L. Staton

1 I, Jeffrey L. Fazio, declare as follows:

2 1. I am a partner with the law firm of Fazio | Micheletti LLP, I am a  
3 member in good standing of the State Bar of California, and I am one of the persons  
4 the Court has appointed as Interim Co-Lead Counsel in this action. Except where  
5 noted, the testimony set forth in this declaration is based on first-hand knowledge,  
6 about which I would and could testify competently in court if called upon to do so.

7 2. Attached to this declaration as collective **Exhibit A** is a true and correct  
8 copy of the Settlement Agreement the parties to this action have executed and  
9 Exhibits 1 through 11 thereto.

10 3. After earning my law degree from New York University School of Law  
11 in 1989, I worked for large firms that defended automakers in product liability cases  
12 and companies and government entities in class actions, derivative litigation, and other  
13 cases involving mass torts, securities fraud, and intellectual property theft. Since 1994,  
14 I have represented plaintiffs in class actions and other complex cases.

15 4. My partner, Dina Micheletti, and I have worked together since 1996,  
16 when I hired Ms. Micheletti as an associate at Hancock Rothert & Bunshoft LLP.  
17 We left the Hancock firm in 2003, to found Fazio | Micheletti LLP (“FM”), a  
18 boutique firm that specializes in class actions and other forms of complex litigation.  
19 Ms. Micheletti, and I have a combined total of more than 50 years of experience with  
20 consumer-fraud class actions involving automotive defects and other complex  
21 litigation.

22 5. As Special Counsel at the Hancock firm, a 120-lawyer firm with  
23 offices in San Francisco, Los Angeles, Lake Tahoe, and London, I became lead  
24 plaintiffs’ counsel in a series of six class actions involving claims that Ford Motor  
25 Company fraudulently concealed the defective nature of the Thick Film Ignition  
26 (“TFI”) modules Ford installed in over 30 million vehicles it manufactured and sold  
27 throughout the United States.

28

1           6.     In the TFI action, Ms. Micheletti and I participated in proceedings  
2 pertaining to NHTSA’s issuance of a Special Order concerning our allegations that  
3 Ford had withheld material information during the course of five separate safety  
4 investigations into stalling, which resulted in NHTSA finding that Ford had, indeed,  
5 withheld material information. In addition to working with consumer organizations  
6 as consultants, I retained as testifying experts two former NHTSA officials (Michael  
7 Brownlee, who served as the Associate Director of NHTSA’s Traffic Safety  
8 Program and Director of the Office of Defects Investigation, and Allan Kam, who  
9 served as Acting Assistant Chief Counsel for Litigation) who assisted with our  
10 effort to obtain the first court-ordered motor-vehicle recall in the United States.

11           7.     Ms. Micheletti began working with me on the TFI litigation as a  
12 Hancock associate shortly after receiving her law degree in 1996 and continued  
13 working on it (and other complex cases) for the next six years. During that time,  
14 due to its breadth and the unique issues presented by that case, the TFI litigation  
15 received national media attention that became even more pronounced when the  
16 California action went to trial, which resulted in the first court-ordered motor-  
17 vehicle recall in a private civil action.

18           8.     I became a partner at the Hancock firm in 1999 and Chairman of the  
19 firm’s Class Action & Unfair Competition practice group a year later. Among the  
20 cases Ms. Micheletti and I prosecuted during that period was a UCL class action  
21 against General Motors in which Public Citizen was a named plaintiff. In 2001, I  
22 negotiated a nationwide settlement of the TFI litigation that was valued at more than  
23 \$2.7 billion.

24           9.     The same year, the Director of the Center for Auto Safety (“CAS”),  
25 with whom Ms. Micheletti and I had then worked for more than five years on the  
26 TFI class actions and other automotive litigation, invited Ms. Micheletti and me to  
27 contribute to CAS’s treatise on automotive issues, AUTOMOBILE DESIGN LIABILITY  
28 (West), as co-authors.

1           10. Ms. Micheletti and I continued to prosecute class actions involving  
2 fraud, false advertising, breaches of warranty, and other issues at the Hancock firm  
3 through October 2003, when we founded a boutique litigation firm, Fazio |  
4 Micheletti LLP. Since then, FM has served as lead and co-lead counsel in class  
5 actions against automakers (including Toyota) and other manufacturers in cases  
6 involving product defects, breaches of warranty, and false advertising.

7           11. For example, Ms. Micheletti and I negotiated a nationwide settlement  
8 providing full reimbursement of all costs that current and former Scion Xb owners  
9 incurred in connection with the repair and replacement of defective windshields,  
10 together with a warranty extension that virtually doubled class members' coverage.  
11 And in a case involving defective electronic throttle modules in nearly 500,000  
12 Volvos, FM's lawsuit ultimately resulted in a settlement that provided 100%  
13 reimbursement of repair and replacement costs (approximately \$1,200 per class  
14 vehicle).

15           12. In a false-advertising case against the makers of Airborne Health, Ms.  
16 Micheletti and I led settlement negotiations that resulted in a then record-setting  
17 non-reversionary cash settlement of \$23.3 million. And in a unique breach-of-  
18 warranty class action in which Apple refused to honor warranty claims based solely  
19 on so-called "Liquid Submersion Indicators" that were triggered by, among other  
20 things, humidity, Ms. Micheletti and I took the lead in negotiating a non-  
21 reversionary cash settlement of \$53 million, which was then the largest consumer-  
22 class-action settlement against Apple on record.

23           13. In sum, since its formation nearly two decades ago, FM has consistently  
24 and successfully litigated claims in a broad array of substantive areas against the  
25 largest corporations and the most elite law firms in the United States. In the cases in  
26 which FM has actively participated, Ms. Micheletti and I have been the principal  
27 authors of the vast majority of pleadings, pre-trial motions, trial briefs, writ petitions,  
28 and appellate briefs; have conducted the majority of the legal and factual research;

1 have formulated and executed the litigation strategy that drove those cases; have  
2 developed discovery strategies and have executed those strategies at every level,  
3 including preparing extensive discovery requests and engaging in discovery-motion  
4 practice, and taking and defending party and third-party depositions; have developed  
5 and implemented trial strategy and participated in class-action and individual trials;  
6 have developed and implemented settlement strategy; and have drawn upon and have  
7 participated in a variety of other litigation-related activities, including appearances  
8 before federal and state legislative bodies and speaking engagements pertaining to  
9 class-action practice.

10 14. As demonstrated by FM's management of large, complex, resource-  
11 intensive cases since the firm was founded nearly 20 years ago, FM has organized and  
12 successfully prosecuted those cases by managing resources in a cost-efficient manner,  
13 leveraging technology, and managing personnel that have the ability to contribute to  
14 that effort. FM has routinely advanced the costs of litigation and has dedicated its  
15 resources to vigorously prosecuting the claims of proposed class members. As  
16 reflected by the time and funds it has already committed to the present litigation, and  
17 by retaining and working with one of the foremost experts on electronics failure  
18 analysis.

19 15. Additional summaries of my own relevant qualifications and Ms.  
20 Micheletti's qualifications are set forth in our firm's resume, a true and correct copy  
21 of which is attached hereto as **Exhibit B**.

22 16. The named Plaintiffs and proposed Class Representatives in this case  
23 are Kathleen Ryan-Blaufuss, Catherine Mills, Khek Kuan, Steven Kosareff and  
24 Laura Nawaya (nee Kakish). Each named Plaintiff has devoted significant time and  
25 effort to the prosecution of this lawsuit, including preparing for and testifying in  
26 deposition.

27 17. I am informed and believe that each Class Representatives reviewed  
28 the Settlement Agreement, discussed it with counsel (including myself, Ms.

1 Micheletti, or Mr. Siegel), and approved of the terms, as indicated by their signatures  
2 on the Settlement Agreement. If the present motion is granted, each Class  
3 Representative will submit an additional declaration describing the work they have  
4 done on behalf of Class Members.

5 18. A summary of Class Counsel’s efforts from the outset of this litigation  
6 (with the assistance of Associated Counsel, where appropriate) includes, but is not  
7 limited to, the following:

8 a. conducting legal research, review, and analyses that led to the  
9 formulation of the legal theories that drove Plaintiffs’ litigation and settlement  
10 strategy;

11 b. expending hundreds of thousands of dollars to fund the litigation  
12 together with Associated Counsel;

13 c. drafting the first complaint to be filed in the state litigation  
14 (*Rexhepi v. Toyota Motor Sales U.S.A., Inc.*, No. BC692528 (Cal. Super. Ct., Los  
15 Angeles Cty.) (a true and correct copy of which is attached hereto as **Exhibit C**)),  
16 which served as the basis for the complaint that was later filed by Plaintiffs Rajdave  
17 Bhandari and Jevdet Rexhepi in this Court, which was later consolidated with the  
18 *McCarthy* action;

19 d. identifying and retaining experts, including (among others)  
20 Michael G. Pecht, Ph.D, Christopher Nosalek, and Steven Boyles, who participated  
21 in the litigation on behalf of Plaintiffs as testifying and consulting experts from the  
22 inception of the litigation, and who helped Class Counsel address myriad technical  
23 issues by reviewing large volumes of documents and participating in extensive  
24 discussions pertaining to, among other things, issues to be addressed in pleadings  
25 and various motions, including Plaintiffs motion for class certification;

26 e. researching and uncovering additional facts necessary to amend  
27 the initial complaints to address such fact-intensive issues as, *inter alia*, the  
28 existence, nature, and scope of the defect at issue in this litigation (the “IPM defect”)

1 and Defendants’ pre-sale knowledge of the IPM defect before and after Plaintiffs  
2 began propounding formal discovery;

3 f. drafting the Consolidated Master Complaint (ECF 42) and the  
4 Amended Consolidated Master Complaint (ECF 73);

5 g. drafting the motion for appointment of interim co-lead class  
6 counsel;

7 h. defeating two motions to dismiss the consolidated actions;

8 i. drafting the Stipulated Protective Order (ECF 72);

9 j. propounding comprehensive party discovery, including but not  
10 limited to, dozens of interrogatories from each named Plaintiff, three sets of requests  
11 for admissions, and 17 sets of requests for production of documents, including  
12 requests for information verifying the efficacy of the electronic control unit (“ECU”)  
13 software that Toyota developed and installed in more than 1.1 million vehicles in  
14 Safety Recalls J0V and 20TA10 (the “Updated Recall Software”);

15 k. engaging in the exhaustive meet-and-confer efforts necessary to  
16 yield approximately 200,000 pages of documents produced by Toyota (exclusive of  
17 natives), including dense, technical, engineering and other material concerning the  
18 defect at issue in this litigation, a large volume of which of which were produced in  
19 Japanese, requiring translation where appropriate;<sup>1</sup>

20 l. propounding third-party discovery, including deposition and  
21 document subpoenas;

22 m. conducting research that resulted in a substantial volume of  
23 documents;

24 n. drafting comprehensive Rule 30(b)(6) deposition notices (which  
25 were ultimately precluded by the pandemic);

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<sup>1</sup> The documents produced by Toyota.



1 o. drafting innumerable meet-and-confer letters and email  
2 messages to Toyota's counsel and conducting the legal research, review, and  
3 analysis of authorities that informed that correspondence;

4 p. reviewing and analyzing the documents produced by  
5 Defendants, as well as other material uncovered as a result of investigation, research,  
6 and analysis of the facts and technical issues underlying Plaintiffs' claims;

7 q. responding to inquiries by telephone and email from Prius  
8 owners;

9 r. working with each of the named Plaintiffs to respond to Toyota's  
10 discovery requests, answer questions and discuss issues as they arose during the  
11 course of the litigation, and preparing them for deposition;

12 s. engaging in formal and informal discovery-motion practice  
13 before Magistrate Judge Karen E. Scott when certain meet-and-confer efforts  
14 ultimately failed;

15 t. defeating an 11th-hour motion to compel arbitration;

16 u. researching, drafting, and coordinating Plaintiffs' motion for  
17 class certification;

18 v. preparing testifying experts for class-certification depositions  
19 and defending those depositions;

20 w. preparing for and deposing Toyota's statistical expert, Sarah  
21 Butler;

22 x. navigating the challenges presented by the global pandemic,  
23 which, among other things, prevented Plaintiffs from engaging in pre-certification  
24 discovery, including the deposition of Toyota engineers in Japan who are the source  
25 of most of the technical knowledge in this case, and required creative work-arounds  
26 to prepare this case for certification (*see, e.g.*, ECF 128, 129 (describing same));

27 y. reviewing and analyzing myriad documents and other  
28 evidentiary material pertaining to the technical issues involved with Plaintiffs'



1 motion for class certification, including the documents and video presentations  
2 Toyota submitted in opposition to class certification;

3 z. continuing to investigate and develop the facts and legal theories  
4 as the case has progressed;

5 aa. engaging in settlement discussions from June 2020 through  
6 November 2021 and related confirmatory discovery; and

7 bb. negotiating and drafting the Settlement Agreement and exhibits.

8 19. Toyota initiated settlement negotiations shortly before announcing Safety  
9 Recall 20TA10, but negotiations proceeded haltingly, in part because Toyota's motion  
10 to compel arbitration was still pending before the Court. The parties continued to  
11 engage in extensive formal and informal discovery efforts, multiple discovery motions,  
12 and the briefing of motions to compel arbitration and for class certification and  
13 summary judgment on a parallel track for more than a year without reaching a  
14 settlement, during which the parties also continued discussing settlement.

15 20. As a result of their extensive efforts during the litigation, the parties were  
16 well-informed about the issues in this case before and during settlement discussions.  
17 The parties came to the bargaining table with vastly different views of the merits and  
18 value of the claims and defenses, which is only part of the reason settlement  
19 negotiations took 17 months to complete. Consequently, every material issue  
20 underwent intensive scrutiny and discussion before it became part of the Settlement  
21 Agreement, many with the assistance of Special Master Juneau, who was apprised of  
22 the legal and factual issues in this case by way of, inter alia, relevant pleadings,  
23 targeted settlement-related memoranda and other settlement-related  
24 communications, discussions with the parties, formal mediation sessions, and the  
25 briefs submitted in connection with Plaintiffs' class-certification motion and  
26 Toyota's motion for summary judgment.

27 21. Negotiations did not result in a settlement before Plaintiffs filed their  
28 motion for class certification because Toyota had yet to produce evidence

1 demonstrating that the safety risks posed by the IPM defect could be addressed  
2 without replacing the hybrid inverter assembly.

3 22. On one hand, replacing the inverters in every Class Vehicle that required  
4 one was not something Toyota had any incentive to embrace voluntarily, given that  
5 doing so was tantamount to agreeing to provide a remedy that Plaintiffs could only  
6 achieve in litigation with a complete victory at trial—and then only in California, given  
7 the extraordinary difficulty of certifying a nationwide litigation class under the  
8 circumstances presented here. On the other hand, Plaintiffs could not agree to a  
9 settlement without knowing whether the Updated Recall Software performed the  
10 way Toyota claimed it did.

11 23. According to the testing information Toyota produced in opposition to  
12 class certification, the Updated Software prevented stalling by way of two different  
13 “fail-safe” modes that prevented stalling in all third-generation Prius hatchbacks and  
14 Prius v wagons. But that evidence did not end the negotiation deadlock. Rather, it was  
15 because Toyota provided Plaintiffs with confirmation under oath that the Updated  
16 Recall Software performs as designed and that Toyota is aware of no evidence  
17 involving a Subject Vehicle equipped with the Updated Recall Software that was  
18 unable to travel ~60 miles per hour after entering a fail-safe mode.

19 24. Because the Updated Recall Software does not reduce the rate at which  
20 IPMs and Inverters malfunction and fail, hence Subject Vehicles will continue to  
21 need towing, to replace failed IPMs (and Inverters if IGBT failure results in damage  
22 that extends beyond the IPM), and a loaner vehicle while the repair or replacement  
23 is underway. Moreover, current and former owners of Subject Vehicles who have  
24 borne the cost of towing, repairing or replacing an IPM or Inverter, and/or a rental  
25 car due to the IPM defect require compensation for those expenditures. Accordingly,  
26 Class Counsel negotiated terms that addressed these issues in the Settlement  
27 Agreement.

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1           25. Among other things, Special Master Juneau helped the parties resolve  
2 issues stemming from efforts to ascertain the number of IPM and Inverter repairs  
3 and replacements at customer expense and the total dollar amount attributable to  
4 them (and to the attendant towing and rental car charges) for the purpose of creating  
5 a fund from which Class Members would be reimbursed for such expenses.  
6 Ultimately, the parties agreed that Toyota would deposit \$20 million into a non-  
7 reversionary Settlement Fund that would be used to pay valid reimbursement claims  
8 by Class Members and, if Settlement Funds were depleted by payment of claims,  
9 Toyota will replenish it until all valid claims are paid.

10           26. The parties also agreed that if the Settlement Fund had a residual  
11 balance after all claims for reimbursement are paid, those funds would be distributed  
12 to Class Members whose Subject Vehicle's IPM or Inverter was repaired or  
13 replaced, regardless of whether the repair or replacement was performed at customer  
14 expense or under warranty. The parties also agreed that if the cost of distributing the  
15 residual is greater than the amount distributed to individual Class Members, the  
16 balance would be distributed *cy pres* to the Texas A&M Transportation Institute with  
17 the approval of the Court. The parties anticipate submitting a specific proposal for  
18 the use of *cy pres* funds at a later point in these proceedings.

19           27. After the parties reached agreement as to the substantive terms of the  
20 Settlement Agreement, they began negotiating the details of notice to the Class, the  
21 procedures relating to the administration of claims for reimbursement and benefits,  
22 appeal procedures, and the attorneys' fees and litigation expenses incurred by  
23 Plaintiffs' counsel, service awards for the proposed Class Representatives.

24           28. Special Master Juneau also assisted the parties with resolving issues  
25 pertaining to whether this litigation and the efforts made by Class Counsel catalyzed  
26 Toyota to develop the Updated Recall Software that it installed in Subject Vehicles  
27 via Safety Recalls J0V and 20TA10, and to determine the amount Toyota should pay  
28 for the attorneys' fees and litigation expenses incurred by Plaintiffs' counsel and the

1 amount of the service awards the proposed Class Members should receive, subject  
2 to the approval of the Court. Special Master Juneau found that this litigation was the  
3 catalyst of both recalls (J0V and 20TA10) and the extended warranty that Toyota  
4 provided in connection with the latter recall, and he issued a mediator's proposal in  
5 the amount of \$19.6 million for Plaintiffs' attorneys' fees and costs and \$5,000 for  
6 each proposed Class Representative as a service award.

7 29. The parties then agreed that, in the event the Court does not award the  
8 full amount of the mediator's proposal, the difference would revert to the Settlement  
9 Fund for the benefit of Class Members.

10 30. The parties notified the Court that they had reached a settlement on  
11 November 11, and the Settlement Agreement was fully executed by November 15,  
12 2021.

13 I declare that the foregoing is true and correct under penalty of perjury under  
14 the laws of the United States of America, and that this declaration was executed at  
15 Danville, California, on December 4, 2021.

16  
17 */s/ Jeffrey L. Fazio*  
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19 Jeffrey L. Fazio  
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