IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

JULIET MURPHY, et al.,

Plaintiffs,

v.

TOYOTA MOTOR CORPORATION, et al.,

Defendants.

Consolidated Case No. 4:21-cv-00178-ALM
Hon. Amos L. Mazzant, III

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF PROPOSED CLASS ACTION SETTLEMENT

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I. INTRODUCTION

Plaintiffs, individually and on behalf of the proposed nationwide settlement class, as defined in the proposed Settlement Agreement (Ex. A to Decl. of Kimberly A. Justice in Supp. of Pls.' Unopposed Motion for Prelim. Approval of Proposed Class Action Settlement ("Justice Decl."), "SA")[1], are pleased to present for preliminary approval this proposed Settlement and submit this memorandum in support of their motion. ECF No. 125. As discussed below, the Settlement provides robust relief and substantial benefits to the Settlement Class, which consists of present and former owners of approximately 1.85 million 2013-2018 Toyota RAV4 vehicles (the "Subject Vehicles"). In this action, Plaintiffs have maintained that the Subject Vehicles are defective and create an unreasonable risk of harm for millions of consumers. Specifically, Plaintiffs assert that the Subject Vehicles have a defective battery retention system design that promotes short circuits, fires, and other thermal events in the engine compartment by allowing the metal hold-down bracket on top of the battery to contact the B+ terminal of the battery (the "Defect") under ordinary and foreseeable driving conditions. After Plaintiffs commenced this action in March 2021, Toyota implemented a Consumer Advisory campaign in November 2021 to offer free inspections of the Subject Vehicles but declined to implement a fix to alleviate the safety risk identified by Plaintiffs, asserting that the problem was limited to consumers installing incorrect-size batteries in their vehicles. Meanwhile, the Subject Vehicles continued to experience thermal events, including fires, which Plaintiffs contended were caused by the Defect and posed a safety risk to the public.

After extensive discovery efforts and work by Plaintiffs and their expert consultants, in August 2023, Plaintiffs filed a motion for class certification that was supported by expert

[1] Any term in this memorandum that is not specifically defined herein shall take on that meaning ascribed to it in the proposed Settlement Agreement.

declarations of three consultants. In those papers, Plaintiffs proposed a remedy to correct the alleged defective battery retention system including the following: a new properly-sized battery tray, a redesigned battery hold-down clamp, and a plastic hold-down bracket guard and wire harness protector to further protect from arcing. Plaintiffs also provided redacted copies of these expert declarations to the National Highway Traffic Safety Administration ("NHTSA"), Office of Defect Investigation ("ODI"). *See* Justice Decl. ¶ 7. Shortly thereafter, the Parties re-engaged in settlement discussions. Then, on November 1, 2023, Toyota issued a Recall of the Subject Vehicles, notifying Class Members that it will replace all of the affected battery clamp sub-assemblies, battery trays, and positive terminal covers in the Subject Vehicles with improved re-designed parts at no cost to owners. The Recall Remedy is substantially similar to the fix for which Plaintiffs have been advocating since at least January 2023. *See* Justice Decl. ¶ 6.

The Settlement was the result of more than three years of active litigation, including the production and review of approximately 130,000 pages of documents from Toyota, third party discovery, written discovery, five depositions of Toyota witnesses, inspection of eleven Subject Vehicles, extensive analysis conducted by Plaintiffs' engineering expert consultants, a motion for class certification, multiple protracted arm's-length settlement discussions among the Parties spanning over two years and overseen by a highly respected mediator, Patrick A. Juneau, and discovery evaluating the remedy provided by the Recall. Based upon their independent analyses, and recognizing the risks of continued litigation, Plaintiffs' Counsel believe that the proposed settlement is fair, reasonable, and in the best interest of Plaintiffs and the Class. Although Defendants Toyota Motor North America, Inc., Toyota Motor Sales, U.S.A., Inc., Toyota Motor Engineering & Manufacturing North America, Inc. (together, "Defendants") deny liability, they likewise agree that settlement is in the Parties' best interests. For those reasons, and because the

Settlement is contingent on Court approval, the Parties submit their Settlement Agreement to the Court for its review. The proposed Class satisfies the requirements of Rule 23(a) and Rule 23(b)(3), as described below. The Settlement is fair, reasonable, and adequate.

II. BACKGROUND AND PROCEDURAL HISTORY

A. Procedural History

This action involves alleged defects in the design and manufacture of the 12-volt battery retention system and the proximity of the battery's B+ terminal to the hold-down bracket in 2013-2018 Toyota RAV4 vehicles. Plaintiffs allege that the battery defect causes an electrical short circuit at the B+ terminal of the battery causing the automobile to lose electrical power, experience vehicle stalling, and potentially cause a fire in the engine compartment.

Plaintiff Murphy filed a class action complaint in this Court, *Murphy v. Toyota Motor Corporation, et al.,* No. 4:21-cv-00178-ALM, on March 4, 2021. Plaintiffs Flowers and Lavoot filed a similar class action, *Flowers, et al. v. Toyota Motor Corporation, et al.*, No. 4:21-cv-00460-ALM, on June 17, 2021. This Court consolidated the two actions on August 2, 2021. Plaintiffs subsequently filed a consolidated class action complaint and two amendments adding plaintiffs and claims. The operative complaint is the Amended Consolidated Class Action Complaint, filed February 10, 2023, (Doc. No. 75), as amended by the Court's July 27, 2023, Order (Doc. No. 102). Plaintiffs bring claims on behalf of a nationwide class and statewide classes for violations of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301 *et seq.* ("MMWA"); breach of express warranty; breach of implied warranty of merchantability; and for violations of the consumer protection statutes of eight states.

Plaintiffs and their counsel have (i) fully investigated the facts and underlying events relating to the subject matter of this litigation; (ii) produced documents to Toyota, prepared answers to interrogatories and prepared for Plaintiff depositions; (iii) conducted substantial

discovery, including document discovery, interrogatories, requests for admission, and depositions; (iv) engaged in third party discovery; and (v) retained independent automotive engineering consultants to inspect several Subject Vehicles, analyze the alleged defect, and develop remedies to correct the Defect. Plaintiffs also moved for certification of a nationwide class, a nationwide sub-class, and eight statewide sub-classes on August 14, 2023, and produced multiple expert reports describing the alleged Defect and proposing a remedy for the Subject Vehicles. While the class certification motion was pending, this Court granted the Parties' Joint Motion to Stay Case Deadlines on September 8, 2023; the Court subsequently extended the stay to allow the Parties time to resolve the action through mediation, and appointed Patrick A. Juneau as Settlement Special Master.

On November 1, 2023, Toyota issued a recall of approximately 1.85 million 2013-2018 RAV4 vehicles. Toyota notified all owners of the Recall by December 31, 2023. The Recall will replace all affected battery clamp sub-assemblies and battery trays with newly-designed improved parts and will add positive terminal covers at no cost to owners. In December 2023 and January 2024, Plaintiffs conducted confirmatory discovery regarding the Recall, including expert analysis by Plaintiffs' independent engineering consultant.

B. Settlement Negotiations

While proceeding to litigate this matter, the Parties also engaged in extensive arms'-length settlement negotiations for over two years. On September 17, 2021, the parties filed a Joint Notice of Designated Mediator indicating that the Parties had agreed to retain Patrick A. Juneau as the Mediator in this action. Doc. No. 47. By Order dated November 10, 2021, the Court appointed Mr. Juneau as Mediator and referred the case to mediation in accordance with the Court's Mediation Plan. Mr. Juneau conducted a mediation with counsel for the parties on April 27, 2022, and although the Parties did not reach a resolution at that time, they agreed to continue in further efforts,

with Mr. Juneau's assistance, to attempt to resolve the matter. *See* Doc. No. 67. Thereafter, the Parties continued to engage in settlement negotiations. In January 2023, Plaintiffs provided Toyota with a detailed engineering analysis and settlement demand. *See* Justice Decl. ¶ 6. Although settlement negotiations at that time did not result in a resolution, the Parties re-engaged in settlement discussions after Plaintiffs filed their motion for class certification and are pleased to present this Settlement to the Court. *See generally* Justice Decl., Ex. B (Aff. of Patrick A. Juneau).

III. SUMMARY OF THE SETTLEMENT TERMS

A. The Settlement Class Definition

The Settlement Agreement defines the Class as follows:

> All individual and legal entities who, at any time prior to the occurrence of the initial notice to the Class own(ed), purchase(d), and/or lease(d) model years 2013 to 2018 RAV4s (hereinafter referred to as "the Subject Vehicles") in any of the fifty States, the District of Columbia, Puerto Rico, and all other United States territories and/or possessions. Excluded from the Class are Toyota, its officers, directors, and employees, Plaintiffs' counsel, and the Court and associated court staff assigned to this case and their immediate family members.
>
> The "Subject Vehicles" means model year 2013-2018 Toyota RAV4 vehicles, which were identified as part of Recall 23V-734. Note: hybrid vehicles are not included in the Recall or this Settlement.

See SA Sec. II.A. Class Members may request exclusion from the Class in writing. *See* SA Sec. V.

B. Release of Claims

Class Members who are bound by the Settlement Agreement release and waive all pending or future claims related to the alleged Defect. *See* SA Sec. VII. The Release excludes all personal injury and wrongful death claims. *Id*.

C. Settlement Class Member Benefits

Foremost, the Recall issued by Toyota provides the precise relief that Plaintiffs have sought throughout this litigation—a fix for the battery retention system in the Subject Vehicles that

Plaintiffs have maintained is defective. Without this fix, which consists of revised-design components and an additional guard, Plaintiffs and their counsel would not have agreed to settle the remainder of their claims. The remaining terms of the Settlement Agreement seek to further protect Class Members until such time the recall can be executed Class-wide and to make Class Members whole for out-of-pocket losses attributable to the alleged Defect. Therefore, under the terms of the Settlement Agreement, Toyota will establish a Customer Support Program ("CSP"), which grants Class Members several forms of monetary and non-monetary relief. The CSP has four components:

- **Inspection Program (*see* SA Sec. III.B).** From the Initial Notice Date, until the Recall Remedy is made available to the Class Member, Class Members may take their Subject Vehicles to a Toyota dealer to perform an inspection of the Subject Vehicle to confirm that the Subject Vehicle's battery is the correct size and ensure that the battery retention components are properly installed. If these components are found to be damaged or missing during this inspection, they will be replaced at no cost to the Class Member, provided that the correct size battery is installed at the time of the inspection.
- **Battery Replacement Reimbursement Program (*see* SA Sec. III.C).** Toyota will implement a Battery Replacement Reimbursement Program that permits Class Members to submit a claim for a partial reimbursement to replace a Group 26R battery with a Group 35 battery in a Subject Vehicle. The amount of reimbursement will be as follows:
    - For Class Members that already received a $32 discount pursuant to Consumer Advisory 21TG01, the Class Member may submit a claim to receive an additional $43 reimbursement.

- For Class Members that purchased a battery prior to the Initial Notice Date but had not received a $32 discount pursuant to Consumer Advisory 21TG01, the Class Member may submit a claim to receive a $75 reimbursement.
- For Class Members that purchase a battery at a Toyota Dealer after the Initial Notice Date, the Class Member may submit a claim to receive a $75 reimbursement.

- **Unreimbursed Out-of-Pocket Repair/Replacement Expense Reimbursement Program (*see* SA Sec. III.D).** Toyota will implement an Out-of-Pocket Repair/Replacement Expense Reimbursement Program that permits Class Members to submit a claim for Out-of-Pocket expenses incurred regarding (i) unreimbursed repairs or parts replacements of the battery hold-down assembly of the Subject Vehicle, and (ii) related reasonable rental and/or towing expenses.
- **Unreimbursed Out-of-Pocket Unique Thermal Expense Reimbursement Program (*see* SA Sec. III.E).** Toyota will implement an Unreimbursed Out-of-Pocket Unique Thermal Expense Reimbursement Program that permits Class Members to submit a claim for Out-of-Pocket expenses incurred regarding (i) unreimbursed out-of-pocket damages to the Subject Vehicle and/or property damage caused by a Unique Thermal Event caused by the alleged defect to the Subject Vehicle's battery hold-down assembly, and (ii) related reasonable rental and/or towing expenses.

D. Proposed Class Notice Program

The proposed Notice Program is robust. Class Notice will be accomplished through a combination of Direct Mail Notice, Publication Notice, notice through the Settlement website,

Long Form Notice, social media notice, and other applicable notice. *See* SA Sec. IV and Exs. 2-5 (Notice Program).

IV. THE SETTLEMENT CLASS SHOULD BE CERTIFIED

In deciding whether to preliminarily certify a settlement class, a court must consider the same factors that it would consider in connection with a proposed litigation class—*i.e.*, all Rule 23(a) factors and at least one subsection of Rule 23(b) must be satisfied—except that the Court need not consider the manageability of a potential trial, inasmuch as the settlement, if approved, would obviate the need for a trial. *Amchem Prod., Inc. v. Windsor*, 521 U.S. 591, 620 (1997); *In re Chinese-Manufactured Drywall Prod. Liab. Litig.*, 424 F.Supp.3d 456, 481 (E.D. La. 2020).

A. Rule 23(a) Requirements Are Satisfied

1. Numerosity

Rule 23(a)(1) is satisfied when "the class is so numerous that joinder of all members is impracticable." This Court has noted that joinder is impracticable "when a class consist[s] of more than forty members." *Vine v. PLS Financial Services, Inc.*, 331 F.R.D. 325, 332 (E.D. Tex. 2019). Here, Toyota has reported to NHTSA that there are approximately 1.85 million Subject Vehicles, readily satisfying the numerosity requirement. *See, e.g.,* SA Ex. 10 (Consumer Advisory 21TG01).

2. Commonality

Rule 23(a)(2) is satisfied when "there are questions of law or fact common to the class." Commonality is not a difficult bar, as it "requires only that resolution of the common questions affect all or a substantial number of the class members." *Vine*, 331 F.R.D. at 332. Here, common factual questions central to Plaintiffs' claims are whether the alleged Defect exists in the Subject Vehicles; whether the Defect is material; whether and when Toyota knew about the alleged Defect; whether Toyota concealed the alleged Defect; and the aggregate economic harm the alleged Defect caused to Class Members. Commonality is satisfied.

3. Typicality

Rule 23(a)(3) requires that "the claims or defenses of the representative parties are typical of the claims or defenses of the class." This requirement "focuses on the similarity between the named plaintiffs' legal and remedial theories and the theories of those whom they purport to represent." *Vine*, 331 F.R.D. at 333 (citations omitted). Here, each Plaintiff is typical of Class Members because each purchased or leased a Subject Vehicle with the alleged Defect and seeks to recover under the same theories of liability. *See* ECF No. 107, Exs. A-M (Pl. Decls. in Supp. of Mot. to Certify Class). Typicality is satisfied.

4. Adequacy

Rule 23(a)(4) requires that "the representative parties will fairly and adequately protect the interests of the class." Class counsel's adequacy is established where, as here, "Plaintiff's attorneys have extensive experience litigating consumer class actions." *Vine*, 331 F.R.D. at 334, *see also* ECF No. 35 (Order appointing interim class counsel); ECF No. 106 at 13-14 (Pls.' Mem. in Supp. of Mot. to Certify Class). Class representatives are adequate if they are generally familiar with the claims and the alleged wrongdoing. *Vine*, 331 F.R.D. at 335. Here, each Class Representative understands the litigation and her or his role in it, and each has litigated this case vigorously and completely to achieve the best possible recovery for the Class. *See* ECF No. 107, Exs. A-M (Pl. Decls. in Supp. of Mot. to Certify Class); ECF No. 106 at 13-15 (Pls.' Mem. in Supp. of Mot. to Certify Class). Adequacy is satisfied.

5. Ascertainability

A proposed class must also be ascertainable. *See In re Deepwater Horizon*, 739 F.3d 790, 821 (5th Cir. 2014) ("In order to maintain a class action, the class sought to be represented must be . . . clearly ascertainable.") Here, the proposed Class consists of purchasers and lessees of Subject Vehicles who may be identified through Toyota's records and/or public records. Indeed,

Toyota has already shown the ability to identify Class Members, by mailing Consumer Advisory 21TG01 to owners and lessees of over 1.85 million Subject Vehicles and more recently, notifying Class Members of the Recall. *See, e.g.*, SA Ex. 10 (Consumer Advisory 21TG01).

B. Rule 23(b) Requirements Are Satisfied

A damages class may be certified under Rule 23(b) if "questions of law or fact common to the members of the class predominate over any questions affecting only individual members." A question is common "where 'the same evidence will suffice for each member to make a *prima facie* showing[,] [or] the issue is susceptible to generalized, class-wide proof.'" *Vine*, 331 F.R.D. at 337 (quoting *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 453 (2016)).

Several common questions of fact predominate in this action, including whether the Subject Vehicles contain a common design defect; whether the defect is material and presents a safety risk; whether Toyota concealed that defect; and whether Class Members suffered economic damage. Foremost, Consumer Advisory 21TG01 and the Recall Remedy each concern the same battery retention system and apply to all Subject Vehicles. In addition, in their Motion to Certify Class, Plaintiffs offered class-wide evidence to answer each common question of fact. *See*, *e.g.*, ECF No. 107, Ex. N (Nranian Decl. in Supp. of Mot. to Certify Class) ¶ 92 (common battery retention system "allows metal components to contact the positive terminal of the battery, resulting in short circuits and fires."); ECF No. 107, Ex. O (Kitchen Decl. in Supp. of Mot. to Certify Class) ¶ 23 (alleged defect presents a safety risk because "[t]he Class Vehicles are at an elevated risk of fire due to a dangerous and defective condition of the battery retention system,"); ECF No. 107, Ex. EE (Japanese owner's manual disclosing alleged defect to Japanese consumers giving rise to duty to disclose here); ECF No. 107, Ex. P (Stockton Decl, in Supp. of Mot. to Certify Class) ¶¶ 33-35, 37 (demonstrating class wide economic damages using a cost-of-repair model that proxies for the average overcharge paid at the time of purchase).

Common questions of law also predominate in this action. First, Plaintiffs' federal law claims under the MMWA are common to Class Members in every state. In addition, Plaintiffs' claims based in fraudulent concealment are also common to Class Members in every state, because "factual disputes arising from the fraudulent concealment doctrine can be properly resolved on a class-wide basis . . . notwithstanding slight variations in state law as to how certain of the elements are described." *Allapattah Services, Inc. v. Exxon Corp.*, 188 F.R.D. 667 (S.D. Fla. 1999).

Finally, class treatment is superior under Rule 23(b). "Each individual class member has a fairly small amount of money at issue, making the prospect that any single member would pursue her own action unlikely," *Vine*, 331 F.R.D. at 341, particularly considering the complexity of the factual issues central to this litigation. Rule 23(b)(3)(B) and (C) factors are satisfied because this action has already consolidated all pending federal litigation related to the alleged Defect. Moreover, the Settlement Agreement allows the Court to "dispense altogether" with concerns over the difficulties of managing a class action. *In re Deepwater*, 739 F.3d at 818. Class settlement is clearly superior to other methods of adjudication.

Because all prongs of Rules 23(a) and 23(b)(3) are satisfied here, the Court should certify the Settlement Class.

V. THE SETTLEMENT WARRANTS APPROVAL

There is a strong federal policy favoring settlement of class actions. *See Kincade v. Gen. Tire & Rubber Co.*, 635 F.2d 501, 507 (5th Cir. 1981); *see also Vaughn v. Am. Honda Motor Co.*, 627 F.Supp.2d 738, 746 (E.D. Tex. 2007) (in evaluating a class action settlement, courts consider "the public interest in favor of settlement of class action lawsuits."). Settlement of a class action requires final court approval after a hearing to consider "whether a proposed class action settlement is fair, reasonable, and adequate." *Jones v. Singing River Health Servs. Found.*, 865 F.3d 285, 293 (5th Cir. 2017). At this stage, the Court should preliminarily approve the proposed settlement and

direct notice to Class Members if the parties show "that the court *will likely be able to*: (i) approve the proposal under Rule 23(e)(2); and (ii) certify the class for purposes of judgment on the proposal." Fed. R. Civ. P. 23(e)(1)(B) (emphasis added). *See also* Fed R. Civ. P. 23(e) Advisory Committee Notes to 2018 Amendments (showing Committee's intent to refine standards for approval of proposed class settlements). Therefore, the Court's preliminary evaluation focuses on "whether the settlement is within the range of possible approval due to an absence of any glaring substantive or procedural deficiencies." *Skinner v. Hunt Military Communities Mgmt. LLC*, No. SA-22-CV-00799-JKP, 2023 WL 6532670 at *2 (W.D. Tex. Jan. 23, 2023).

Pursuant to Rule 23(e)(2), in order to grant preliminary approval, the Court must find that the proposed Settlement 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 the (i) costs, risks, and delay of trial and appeal, (ii) the effectiveness of any of the proposed methods 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. Fed. R. Civ. P. 23(e)(2) (amended Dec. 2018); *Cone v. Vortens, Inc.*, No. 4:17-CV-001-ALM-KPJ, 2019 WL 2517835, *2 (E.D. Tex. Apr. 25, 2019) report and recommendation adopted, No. 4:17-CV-001-ALM-KPJ, 2019 WL 1970545 (E.D. Tex. May 3, 2019); *C.C. v. Scott*, No. 4:18-CV-828-SDJ, 2022 U.S. Dist. LEXIS 174005, *5 (E.D. Tex. Sep. 26, 2022); *In re Chinese-Manufactured Drywall Prod. Liab. Litig.*, 424 F.Supp.3d. at 485.

Courts in the Fifth Circuit often consider the requirements of Rule 23(e)(2) as informed by the *Reed* factors. *See, e.g., Kostka v. Dickey's Barbecue Restaurants, Inc.*, No. 3:20-cv-03424-K, et al., 2022 WL 16821685 (N.D. Tex. Oct. 14, 2022).

A. Class Representatives and Class Counsel Have Adequately Represented the Settlement Class

Proposed Class Counsel and Class Representatives have consistently acted in the best interests of the Class. Class Counsel has vigorously prosecuted this complex litigation for three years, conducting extensive discovery and expert consultation to support Plaintiffs' allegations. Likewise, the Class Representatives have been actively engaged in providing information about their Subject Vehicles and supporting their claims through discovery and with sworn declarations. *See* ECF No. 106 at 13-14 (Pls.' Mem. in Supp. of Mot. To Certify Class).

B. The Settlement Stems from Informed Arm's-Length Negotiations Between Counsel

Settlement negotiations are procedurally fair when "parties and the district court possess ample information with which to evaluate the merits of the competing positions." *Ayers v. Thompson*, 358 F.3d 356, 369 (5th Cir. 2004). Parties may possess sufficient information even if they have not completed full merits discovery. *See, e.g., In re Heartland Payment Systems, Inc. Customer Data Breach*, 851 F.Supp.2d 1040, 1064-65 (S.D. Tex. 2012) (review of 4,000 pages of documents and one interview with defendant's executive was sufficient for counsel to gauge strengths of case). Here, the Parties have been engaged in discovery for over 20 months and have exchanged at least 130,000 pages of documents and served and responded to numerous interrogatories and requests for admission. Plaintiffs also took five depositions of Toyota witnesses, conducted eleven inspections of Subject Vehicles, retained four expert consultants, and performed confirmatory discovery regarding the Recall.

Further, the Fifth Circuit has recognized that "[t]he involvement of an experienced and well-known mediator is also a strong indicator of procedural fairness." *Jones*, 865 F.3d at 295–96. Here, the Parties have worked closely with Court-appointed Mediator and Settlement Special Master Patrick A. Juneau throughout the mediation process. Mr. Juneau's role is a strong indicator that the Settlement is procedurally fair. *See generally* Mot. Ex. B (Juneau Decl.).

C. The Relief Provided for the Class Is Substantial

Rule 23(e)(2)(C) requires a court to consider whether "the relief provided for the class is adequate, taking into account . . . the effectiveness of any proposed method of distributing relief to the class, including the method of processing class member claims" and "the terms of any proposed award of attorneys' fees, including timing of payment." Here, through the Recall, Toyota has committed to fixing the alleged Defect. Moreover, the additional comprehensive resolution provided in the Settlement Agreement further addresses what Plaintiffs allege is a longstanding problem in the Subject Vehicles, reimburses Class Members for incurred out-of-pocket costs, and proposes methods of distribution aimed at efficient and expedient resolution of Class Members' claims.

1. The Cost, Risk, and Delay of Trial and Appeal Support Approval

The relief available to Class Members under the Settlement Agreement is significant and easily justifies Plaintiffs' decision to avoid the cost, risk, and delay of additional proceedings that may not deliver a more—or even equally—favorable outcome to the Class. Plaintiffs are confident in the merits of the case, but they recognize that defense counsel has advocated zealously on Toyota's behalf and would continue to do so absent a settlement. In the absence of this Settlement, Plaintiffs would renew their motion for class certification and even if this Court were to certify a litigation class or classes, Toyota no doubt would appeal that decision to the Fifth Circuit Court of Appeals. This class certification process alone would involve considerable delay and risk. As this

District has noted in a similar class action, "[l]itigation of this type is expensive and time consuming. Class certification proceedings and interlocutory appeals would have delayed benefit to the class." *Vaughn*, 672 F.Supp.2d at 747.

Assuming Plaintiffs could prevail in the Fifth Circuit on class certification issues, significant time and expense would continue to be incurred. First, Plaintiffs would need to complete merits and expert discovery which would include negotiating, receiving, translating, and reviewing documents from Japan-based Defendant Toyota Motor Corporation, and conducting depositions of its executives. Plaintiffs also would face anticipated motions for summary judgment, pretrial motions, and trial proceedings, each of which presents new layers of risk, cost, and delay for Class Members. Here, as in *Vaughn*, Class Counsel have conducted "an extensive investigation into the facts of the case and conducted a large amount of discovery into the underlying facts and [Toyota's] defenses," *id.*, and with "a full appreciation for the merits of the case," determined considering the cost, risk, and delay of trial, the Settlement Agreement represents a fair and reasonable outcome to Class Members. *See id.* at 748.

2. The Claims Process and Proposed Method of Distributing Relief Are Straightforward

The parties have negotiated a claims process aimed at distributing relief to Class Members efficiently and expeditiously. *See* SA Sec. III.F. and Ex. 6. Class Members need only submit a Claim Form to a Court-appointed Settlement Claims Administrator, who will use reasonable efforts to approve and pay timely claims.

3. Class Counsel Will Pursue Attorneys' Fees and Expenses and Class Representative Service Awards Separately from the Settlement Agreement

At the conclusion of the Parties reaching agreement on the substantive material terms of this Settlement Agreement, the Parties mediated attorneys' fees, costs and expenses, and individual

Class Representative service awards with the assistance of Settlement Special Master Juneau. Following a series of intensive negotiations between the Parties and Settlement Special Master Juneau which spanned five days, Settlement Special Master Juneau proposed a mediator's number of $13,250,000 for Class Counsel's attorneys' fees. *See* SA Sec. VIII., Justice Decl., Ex. B (Juneau Aff. ¶ 9). Additionally, Class Counsel agreed to limit any petition for an award of costs and expenses to $350,000. *Id*. The parties further agreed that Class Counsel may petition the Court for Class Representative service awards of $5,000 for each of the Class Representatives. *Id*. The Parties subsequently agreed and accepted Settlement Special Master Juneau's mediator number. Class Counsel will file a separate motion for attorneys' fees, costs and expenses and Class Representative service awards. If approved by the Court, the Settlement Agreement directs that Toyota pay the approved amounts to an account specified by Class Counsel within thirty days of the Final Effective Date. *See* SA Sec. VIII.D. This process ensures that the attorneys' fees will not be unreasonable or excessive, demonstrating that the Settlement Agreement is not—and does not give the appearance of being—collusive. *See, e.g., Turner v. Murphy Oil USA, Inc.*, 472 F. Supp. 2d 830, 845 (E.D. La. 2007) ("Because the parties have not agreed to an amount or even a range of attorneys' fees, there is no threat of the issue explicitly tainting the fairness of settlement bargaining.").

D. All Settlement Class Members Are Treated Equitably

The Recall seeks to restore all current owners and lessees of Subject Vehicles to the same position: a Subject Vehicle free from the alleged Defect. Furthermore, though the Customer Service Program consists of four separate programs that grant different relief to Class Members based on eligibility criteria, the ultimate effect of the Settlement Agreement likewise will restore Class Members to the same position: a Class Vehicle free from the alleged Defect, and without out-of-pocket expenses related to the alleged Defect. Thus, "negotiations resulted in a settlement

that is fair to all of the class members and does not unjustly benefit any group of class members." *Vaughn*, 627 F.Supp.2d at 748.

E. The Remaining *Reed* Factors Warrant Preliminary Approval

The Fifth Circuit's *Reed* factor test, like Rule 23(e)(2), aims to assess the fairness and reasonability of a proposed settlement. "Indeed, the Rule 23(e)(2) requirements overlap significantly with the *Reed* factors." *Kostka*, 2022 WL 16821685, at *10.

1. Absence of Fraud or Collusion Behind the Settlement

The Court may presume absence of any fraud or collusion where, as here, no evidence has been presented to the contrary. *See Welsh v. Navy Fed. Credit Union*, No. 16-CV-1062, 2018 WL 7283639, at *12 (W.D. Tex. Aug. 20, 2018). This presumption is particularly appropriate here because the parties entered the agreement after mediation and protracted discussions, which "suggests that the settlement was not the result of improper dealings." *Erica P. John Fund, Inc. v. Halliburton Co.*, No. 3:02-CV-1152-M, 2018 WL 1942227, at *4 (N.D. Tex. Apr. 25, 2018).

2. Complexity, Expense, and Likely Duration of the Litigation

As described, *supra* Sec.V.C.1, the cost, duration, and complexity of the proceedings in the absence of a settlement justify a Settlement to avoid further litigation.

3. Stage of Proceedings and Amount of Discovery Completed

As described, *supra* Sec. V.B., the parties have engaged in extensive discovery, and thus "possess ample information with which to evaluate the merits of the competing positions." *Ayers*, 358 F.3d at 369.

4. Probability of Plaintiffs' Success on the Merits and Range of Possible Recovery

When considering these factors, the Court "must not try the case in the settlement hearings because the very purpose of the compromise is to avoid the delay and expense of such a trial."

Reed v. General Motors Corp., 703 F.2d 170, 172 (5th Cir. 1983). Here, the terms of the Settlement Agreement represent a substantial recovery for Class Members, who will obtain relief for their economic damages, including their incurred out-of-pocket expenses. This relief is sufficient to justify avoiding the risks of a trial that is likely to turn on complex expert testimony. *See, e.g., Celeste Neely*, No. 4:21-CV-307-SDJ, 2022 WL 17736350, at *7 (E.D. Tex. Dec. 16, 2022) (approving settlement to avoid a "protracted battle of the experts").

5. Opinions of Class Counsel, Class Representatives, and Absent Class Members

Class Counsel and Class Representatives all agree that the Settlement is an excellent result. Absent Class Members will have the opportunity to lodge any objection to the Settlement after the Court approves the proposed Class Notice, *see infra* Sec.VI.

The Settlement Agreement satisfies Rule 23(e)(2)(C) and the *Reed* factors and warrants preliminary approval.

VI. THE COURT SHOULD APPROVE THE PROPOSED CLASS NOTICE

"Rule 23's notice requirement implicates due process concerns, because notice of a mandatory class settlement will deprive class members of their claims and therefore requires that class members be given information reasonably necessary for them to make a decision whether to object to the settlement." *In re Chinese-Manufactured Drywall Prod. Liab. Litig.*, 424 F.Supp.3d 456, 494 (E.D. La. 2020). Rule 23's notice requirement includes both procedural and substantive components.

A. The Method of Notice Is Adequate

For classes certified under Rule 23(b)(3), the law demands "the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2); *see also Vaughn*, 627 F. Supp. 2d at 744. Here, the

Parties' proposed Notice Program includes direct email, publication, the establishment of a settlement website, Long Form Notice, a toll-free telephone number, internet banner notifications, and a social media program. SA Secs. IV.B-G. This comprehensive Notice Program readily satisfies due process obligations because it is designed to reach potential Class Members, fully inform potential Class Members of the proposed Settlement, and provide the information they require to make informed decisions about their rights. *See Mullane v. Central Hanover Trust*, 339 U.S. 306, 315 (1950) ("But when notice is a person's due, process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it."); *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156 (1974) (*citing Mullane*, 339 U.S. at 314) ("[N]otice must be reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections."); *see also* SA Ex. 7 (Decl. of Cameron R. Azari, Esq. Regarding Class Notice Plan) ¶¶ 13-17. The proposed Short Form and Long Form Class Notices are "written in plain, understandable English," *In re Chinese-Manufactured Drywall*, 424 F.Supp.3d at 494 and "designed to be clear, substantive, and informative." *In re Oil Spill by Oil Rig Deepwater Horizon*, 295 F.R.D. 112, 151 (E.D. La. 2013). As such, the Notice Program likewise comports with the guidance for effective notice articulated in the Manual for Complex Litigation 4th Ed, and follows the FJC's Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide (2010). *See* SA Ex. 7 ¶ 16. Accordingly, this Court should approve the form of notice and the method of publication that Plaintiffs propose as they satisfy the requirements of Rule 23.

B. The Content of the Notices Is Adequate

The proposed Notices satisfy all requirements. They are written in plain English and advise Class Members of their rights and obligations under the Settlement. All forms of notice satisfy

Rule 23(c)(2)(B)'s requirements that the notice state (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3).

VII. THE COURT SHOULD APPOINT THE SETTLEMENT NOTICE ADMINISTRATOR AND SETTLEMENT CLAIMS ADMINISTRATOR

Plaintiffs propose that Epiq Systems ("Epiq") be appointed by the Court to serve as the Settlement Notice Administrator in this case. Epiq was selected by the Parties after a competitive bidding process. A comprehensive summary of the experience and judicial recognition Epiq has received is included in the Settlement Notice Administrator's Declaration and Notice Program appended to the Settlement Agreement as Exhibit 7.

Finally, Plaintiffs propose that Patrick A. Juneau and Patrick Hron of Juneau David, APLC, be appointed by the Court to serve as the Settlement Claims Administrator to carry out the Claims Process in the Settlement Agreement. The Parties selected Patrick A. Juneau and Patrick Hron of Juneau David, APLC, because of their extensive experience administering similar settlements. A comprehensive summary of the qualifications of Juneau David, APLC, is included in the Declaration of Patrick A. Juneau submitted in support of the motion as Exhibit B.

VIII. CONCLUSION

For the foregoing reasons, the Court should issue a Preliminary Approval Order that will:

(1) Preliminarily approve the proposed Settlement Agreement pursuant to Rule 23(e)(2);

(2) Preliminarily certify a class (the "Class") for settlement purposes only pursuant to Rule 23 consisting of:

> All individuals or legal entities who, at any time as of the occurrence of the Initial Notice Date, own(ed), purchase(d), or lease(d) Subject

> Vehicles in any of the fifty States, the District of Columbia, Puerto Rico and all other United States territories and/or possessions ("Class Members"). Excluded from the Class are: (a) Toyota, its officers, directors and employees; (b) Plaintiffs' Counsel; (c) the Court and associated court staff assigned to this case and their immediate family members. In addition, persons or entities are not Class Members once they timely and properly exclude themselves from the Class, as provided in this Settlement Agreement, and once the exclusion request is finally approved by the Court.
>
> The "Subject Vehicles" means model year 2013-2018 Toyota RAV4 vehicles, which were identified as part of Recall 23V-734. Note: hybrid vehicles are not included in the Recall or this Settlement.

(3) Preliminarily appoint Plaintiffs as Class Representatives[2] pursuant to Rule 23;

(4) Preliminarily appoint Class Counsel[3] for the Class Representatives and Class Members pursuant to Rule 23(g);

(5) Appoint Epiq Systems as the Settlement Notice Administrator and Patrick A. Juneau and Patrick J. Hron of Juneau David, APLC as the Settlement Claims Administrator;

(6) Determine that the Class Notice Program complies with all legal requirements, including, but not limited to, Rule 23 of the Federal Rules of Civil Procedure and the Due Process Clause of the United States Constitution, and direct Notice to Class Members pursuant to Rule 23(e)(1);

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[2] Class Representatives are Juliet Murphy, Penni LaVoot, Ranay Flowers, Paola Guevara, James Charles, Angela Charles, Jennifer Cardelli, Pamela Woodman, Kris Huchteman, Melissa Willis, Maria Mora, and Nicole Sylva.

As of this Motion, Lee Krukowski, previously identified as a potential class representative, was unreachable and has not executed the Settlement Agreement. *See* Justice Decl. Ex. C (Aff. of Greg Coleman, dated March 28, 2024) and SA, at pp. 10 and 55. Should Mr. Krukowski execute the Settlement Agreement prior to the Preliminary Approval Hearing, the Parties agree the Court should grant him the same benefits the Court will award the other Class Representatives.

[3] Class Counsel are Kimberly A. Justice of Freed Kanner London & Millen LLC; David C. Wright of McCune Law Group APC; Todd A. Walburg of Bailey & Glasser LLP; and Bruce W. Steckler of Steckler Wayne Cherry & Love PLLC.

(8) Require Class Members who wish to exclude themselves to submit an appropriate and timely written request for exclusion as directed in this Settlement Agreement and Long Form Notice and provide that a failure to do so shall bind those Class Members who remain in the Class;

(8) Require Class Members who wish to object to this Settlement Agreement to submit an appropriate and timely written statement as directed in this Settlement Agreement and Long Form Notice;

(9) Pending the Fairness Hearing and the Court's decision whether to finally approve the Settlement, issue a preliminary injunction staying all other actions and enjoining Class Members from commencing, continuing, or prosecuting against any of the Released Parties (as that term is defined in the Agreement) any action or proceeding in any court or tribunal asserting any of the matters, claims, or causes of action that are to be released in the Agreement; and

(10) Schedule a Final Approval hearing pursuant to Rule 23(e)(2) to determine whether the Settlement Agreement should be finally approved by the Court, and whether the requested Attorneys' Fees, Costs and Expenses and Class Representative service awards should be granted.

Dated: March 28, 2024

Respectfully submitted,

/s/ Bruce W. Steckler

Bruce W. Steckler
STECKLER WAYNE
CHERRY & LOVE PLLC
12720 Hillcrest Road, Suite 1045
Dallas, Texas 75230
Telephone: (972) 387-4040
Facsimile: (972) 387-4041
bruce@swclaw.com

Interim Liaison Class Counsel

Kimberly A. Justice (admitted *pro hac vice*)
FREED KANNER LONDON & MILLEN LLC
923 Fayette Street
Conshohocken, PA 19428
Telephone: (610) 234-6487
Facsimile: (224) 632-4521
kjustice@fklmlaw.com

Interim Lead Class Counsel

David C. Wright (admitted *pro hac vice*)
MCCUNE WRIGHT AREVALO, LLP
3281 E. Guasti, Road, Suite 100
Ontario, California 91761
Telephone: (909) 557-1250
Facsimile: (909) 557-1275
dcw@mccunewright.com

Todd A. Walburg (admitted p*ro hac vice*)
twalburg@baileyglasser.com
BAILEY & GLASSER LLP
1999 Harrison Street, Suite 660
Oakland, California 94612
Telephone: (510) 272-8000
Facsimile: (510) 463-0291

Plaintiffs Executive Committee

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on March 28, 2024, all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3).

By: */s/ Bruce W. Steckler*
Bruce W. Steckler

CERTIFICATE OF CONFERENCE

The undersigned hereby certifies that pursuant to Local Rule CV-7(a)(h), the parties telephonically met and conferred on multiple occasions regarding this Motion for Preliminary Approval of Proposed Class Action Settlement. Defendants do not oppose the relief sought in this Motion.

By: */s/ Kimberly A. Justice*
Kimberly A. Justice