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

JULIET MURPHY, et al.,

Plaintiffs,

vs.

TOYOTA MOTOR CORPORATION, et al.,

Defendants.

Case No. 4:21-cv-00178-ALM

Hon. Amos. L. Mazzant, III
LEAD

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

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I. INTRODUCTION

Defendants Toyota Motor Corporation, Toyota Motor North America, Inc., Toyota Motor Sales, U.S.A., Inc., and Toyota Motor Engineering & Manufacturing North America, Inc., (collectively, "Toyota") request that this Court find that the class action Settlement is fair, reasonable and adequate.[1] This Court appropriately reached that conclusion at the preliminary approval stage, *see* ECF No. 132, at 6, and subsequent events have further reinforced the soundness of that decision. In particular, the proposed Settlement has been overwhelmingly supported by Class Members, ***who have not submitted a single objection***. Moreover, on the cusp of the deadline for Class Members to seek exclusion from the Settlement, there have been only twenty-two opt-outs submitted—an infinitesimally small percentage of the Class.[2]

This incredibly favorable response is likely due to the comprehensive relief offered by the Settlement, which is the product of informed, good-faith, arm's-length negotiations that lasted for two years. Pursuant to the Settlement Agreement, Toyota has agreed to provide a Customer Support Program, which includes:

(1) an Inspection Program for the Subject Vehicle's battery compartment;

(2) a Battery Replacement Reimbursement Program, which provides partial reimbursement of the cost of replacing an incorrectly sized battery in a Subject Vehicle with one that is correctly sized;

(3) an Unreimbursed Out-of-Pocket Repair/Replacement Expense Reimbursement Program, which provides for reimbursement of certain unreimbursed out-of-pocket

[1] Unless otherwise specified, capitalized terms in this brief have the meanings assigned to them in the Settlement Agreement.

[2] Class Members have a postmark deadline of October 21, 2024—the date of the filing of this memorandum of law—to submit requests for exclusion. ECF No. 132, ¶ 19.

expenses related to the repair or parts replacement of the battery hold-down assembly unit in a Subject Vehicle; and

(4) an Unreimbursed Out-of-Pocket Unique Thermal Expense Reimbursement Program, which provides for reimbursement of unreimbursed out-of-pocket expenses related to damage to a Subject Vehicle or property caused by any thermal events, purportedly caused by a short circuit in the battery assembly unit.

See Settlement Agreement, at Section III.A–E, ECF No. 135-1. The Inspection Program and various reimbursement programs address the issues directly alleged in the operative complaint, the Amended Consolidated Class Action Complaint ("Amended Consolidated Complaint").

Furthermore, the exceedingly low opt-out rate is all the more impressive in light of the extensive efforts to apprise Class Members of the Settlement's terms. Extraordinary notice to the Class, including Direct Mail Notice, was distributed and achieved an almost unprecedented reach, with 97.9 percent of the Class receiving notice an estimated three times. *See* Suppl. Decl. of Cameron R. Azari, Esq. Regarding Implementation and Adequacy of Class Notice Plan ("Oct. 21, 2024 Azari Decl."), ECF No. 145-2, ¶ 7. As courts have recognized, this constitutes the gold standard for notice distribution. *See Good v. Am. Water Works Co., Inc.*, No. 2:14-01374, 2016 WL 5746347, at *7 (S.D.W. Va. Sept. 30, 2016) (referring to "direct mail notices" as "the gold standard for class notice").

Furthermore, the Settlement amply satisfies the requirements of Rule 23(e)(2) and the largely overlapping factors set forth in *Reed v. General Motors Corp.*, 703 F.2d 170 (5th Cir. 1983). Notably, the Settlement was achieved after the Parties engaged in extensive negotiations overseen by Court-appointed mediator Patrick A. Juneau. Moreover, the Settlement was the product of substantial discovery conducted by the Parties during the course of litigation, which

was followed by confirmatory discovery and expert analysis related to the Recall Remedy announced in November 2023. Those efforts confirmed the propriety of the Settlement as a fair, reasonable, and adequate means to achieve plenary relief on behalf of the Class, notwithstanding the contested nature of the Class Members' claims. The Settlement thus affords the Class immediate relief while avoiding the attendant risks of protracted litigation and an unknown (and uncertain) future recovery.

For all these reasons, and those discussed further below, this Court should grant final approval of the Settlement.

II. BACKGROUND

A. Settlement Relief.

As is discussed in more detail below, under the proposed Settlement, Toyota has agreed to provide a Customer Support Program that provides the following multi-faceted relief: (1) the Inspection Program; (2) the Battery Replacement Reimbursement Program; (3) the Unreimbursed Out-of-Pocket Repair/Replacement Expense Reimbursement Program; and (4) the Unreimbursed Out-of-Pocket Unique Thermal Expense Reimbursement Program. *See* Settlement Agreement, Section III.A–E, ECF No. 135-1. In addition to this relief, Toyota has agreed to make payments related to the Notice Program, Class Representative awards, and Attorneys' Fees, Costs, and Expenses. In return, the Class is releasing Toyota and certain other persons and entities from the claims alleged in the Amended Consolidated Complaint.

1. Inspection Program.

The Inspection Program will provide Class Members who believe that their Subject Vehicle's battery hold down assembly is defective or that it has the incorrect battery size installed, with the opportunity to have their Subject Vehicle inspected by an authorized Toyota Dealer at no

cost to them, even if they have already had such an inspection conducted pursuant to Consumer Advisory 21TG01 ("Consumer Advisory"). *See id.*, Section III.B.

2. Battery Replacement Reimbursement Program.

The Battery Replacement Reimbursement Program component of the Customer Support Program provides that a Class Member may submit a claim for the cost of replacing a Group 26R battery with a Group 35 battery in a Subject Vehicle. *See id.*, Section III.C. This partial reimbursement would provide Class Members with $75 towards the cost of replacing a Group 26R battery with a Group 35 battery in a Subject Vehicle (i) if they purchased the replacement battery prior to the Initial Notice Date but did not receive a discount pursuant to the Consumer Advisory or (ii) if they purchase a battery at a Toyota Dealer after the Initial Notice Date. *See id.* Class Members who had already received a $32 discount pursuant to the Consumer Advisory when they replaced their battery will now receive an additional $43 reimbursement. *See id.*

3. Unreimbursed Out-of-Pocket Repair/Replacement Expense Reimbursement Program.

The Unreimbursed Out-of-Pocket Repair/Replacement Expense Reimbursement Program allows Class Members to submit claims for unreimbursed repairs or parts replacements of the battery hold-down assembly of the Subject Vehicle and related reasonable rental and/or towing expenses that were incurred prior to the Initial Notice Date. *See id.*, Section III.D.

4. Unreimbursed Out-of-Pocket Unique Thermal Expense Reimbursement Program.

The Unreimbursed Out-of-Pocket Unique Thermal Expense Reimbursement Program allows Class Members to submit claims for unreimbursed out-of-pocket damages to the Subject Vehicle and/or property damage caused by any thermal events purportedly caused by a short circuit in the battery assembly unit caused by the alleged defect to the Subject Vehicle's battery hold-down assembly and related reasonable rental and/or towing expenses. *See id.*, Section III.E.

B. Plaintiffs' Allegations and Claims.

The Parties have engaged in active litigation for more than three years, since the first putative class action complaint was filed on March 4, 2021. The Amended Consolidated Complaint filed on February 10, 2023, asserts thirty-six claims related to Toyota's design and manufacture of the 2013–2018 Toyota RAV4 vehicles, specifically pertaining to the battery terminal. The Amended Consolidated Complaint alleges that the battery "defect" can cause a failure of the battery leading the automobile to lose electrical power, experience vehicle stalling, and potentially causing a fire in the engine compartment.

C. Settlement Negotiations.

While Toyota denies all of the allegations in the Amended Consolidated Complaint, the Parties engaged in negotiations for over two years, on a parallel track to the litigation. These negotiations involved multiple in-person and video conference meetings, phone calls, and email correspondence to discuss factual and legal arguments and potential settlement relief. In the initial stages of negotiations, the Court-approved mediator Patrick A. Juneau served as a neutral third-party mediator. The Parties held their Court-ordered mediation with Mr. Juneau on April 27, 2022. They did not reach a resolution at that time; however, the Parties continued their extensive negotiations.

On November 1, 2023, Toyota announced that it was conducting a recall involving the 2013–2018 RAV4 vehicles and was preparing the remedy to address the recall. On November 6, 2023, the Parties requested a three-month continuance of the September 8, 2023 stay to provide time for the parties to continue the settlement discussions. From December 2023 to January 2024, Plaintiffs conducted confirmatory discovery regarding the Recall, including expert analysis by Plaintiffs' independent engineering consultant. The Parties' confirmatory discovery addressed the

factual and legal issues in the litigation, including the technical solution offered in the Recall and other technical matters. This confirmatory discovery was in addition to the extensive discovery conducted in the litigation, including Toyota's production of over 132,000 pages of documents, the Parties' exchange of extensive written discovery requests and responses—including that of technical information related to the batteries and battery hold-down assemblies—and five depositions of Toyota employees.

On February 1, 2024, the Parties filed a joint motion to appoint Patrick A. Juneau as the Settlement Special Master in the Action, which was granted by the Court on February 2, 2024. After the Parties agreed on the principal terms of the Settlement, they held a separate mediation on attorneys' costs and fees and Class Representative service awards with the Settlement Special Master on March 7, 2024. On March 28, 2024, Plaintiffs filed an Unopposed Motion for Preliminary Approval of Proposed Class Action Settlement, ECF No. 126, which was granted by the Court on April 9, 2024, ECF No. 132.

D. The Court Preliminarily Approved the Settlement.

In the Court's Preliminary Approval Order, the Court thoroughly analyzed the Settlement based on the requirements specified in Rule 23(e) and granted preliminary approval. ECF No. 132. The Court carefully evaluated the Rule 23 factors and found that "the Settlement and the exhibits . . . [are] fair, reasonable, and adequate" and that the Settlement "was reached in the absence of collusion and is the product of informed, good-faith, arm's length negotiations between the Parties and their capable and experienced counsel that were overseen by the Court-appointed mediator, Patrick A. Juneau." *See id.* ¶¶ 3, 8.

The Court also noted that the Notice Program and methodology (a) meet the requirements of due process and Rule 23; (b) constitute the best notice practicable under the circumstances to

all persons entitled to notice; and (c) satisfy the Constitutional requirements regarding notice. *Id.* ¶ 10. The Settlement Notice Administrator has filed declarations that describe the current status of Class Notice, *see* ECF Nos. 141-16 and 145-2, and will file an updated declaration with the full results of Class Notice, a list of the opt-outs, and the objections, if any, received by the Court-ordered date of November 14, 2024.

E. Extraordinary Notice Was Successfully Disseminated.

Through the dissemination of various interlocking types of notice, the Notice is estimated to have reached approximately 97.9 percent of the Class approximately three times, readily satisfying due process. Oct. 21, 2024 Azari Decl., ¶ 7. This reach is well beyond the reach of other class action settlements that have received final approval in this Circuit, and it exceeds the estimated reach included in the Court-approved Notice Plan. *See In re Heartland Payment Sys., Inc. Customer Data Sec. Breach Litig.*, 851 F. Supp. 2d 1040, 1050 (S.D. Tex. 2012) (finding notice sufficient where it reached 81.4% of potential class members an estimated 2.5 times and ultimately granting final approval); *Armstrong v. Kimberly-Clark Corp.*, No. 3:20-CV-3150-M, 2024 WL 1123034, at *3 (N.D. Tex. Mar. 14, 2024) (finding notice sufficient where direct mailed notice reached only 62 percent of the estimated class members and notice also consisted of a settlement website and telephone number for additional explanations); *Welsh v. Navy Fed. Credit Union*, No. 5:16-CV-1062-DAE, 2018 WL 7283639, at *11 (W.D. Tex. Aug. 20, 2018) (finding that the "class received reasonable notice of the Settlement and sufficiently understood the terms of the Notice Program" based on the "number of class members who received direct notice of the Settlement and the high number of responses from the class members," where 90% of the class received direct notice of the settlement); *see also* Settlement Agreement, Ex. 2 (Notice Program), ECF No. 128-1, at 95.

The notices provided all reasonably identifiable Class Members with a clear and succinct description of the Class and the terms of the preliminarily approved Settlement in plain, easily understood language that complies with the Federal Judicial Center's illustrative notices. *See* Oct. 21, 2024 Azari Decl., ¶¶ 7, 26–29; Federal Judicial Center's illustrative notices at www.FJC.gov. As a result, Class Notice clearly informed Class Members of the relevant aspects of the litigation and Settlement and their rights under the Settlement. *See Welsh*, 2018 WL 7283639, at *8 ("Notice . . . therefore requires that class members be given information reasonably necessary for them to make a decision whether to object to the settlement.") (quoting *In re Katrina Canal Breaches Litig.*, 628 F.3d 185, 197 (5th Cir. 2010)); *Jallo v. Resurgent Cap. Servs., L.P.*, No. 4:14-cv-00449, 2017 WL 914291, at *3 (E.D. Tex. Mar. 7, 2017) (Mazzant, J.) (finding notice adequate where it "gave all class members sufficient information to enable them to make informed decisions as to the parties' proposed settlement, and the right to object to, or opt out of, it").

Courts have approved and found due process satisfied in other settlements where notice plans employed similar notice methods to those used here. *See, e.g., Celeste v. Intrusion Inc.*, No. 4:21-cv-307-sdj, 2022 WL 17736350, at *8 (E.D. Tex. Dec. 16, 2022) (granting final approval and noting that the delivery of notices "through multiple mediums—including email, postcards, publication, and a website—increas[ed] the likelihood that class members would receive the notices and understand them"); *Singh v. 21Vianet Grp., Inc.*, No. 2:14-cv-00894-JRG-RSP, 2018 WL 6427721, at *1 (E.D. Tex. Dec. 7, 2018) (approving the settlement where notice consisted of direct mail notice, a settlement website, and one-time publications in two newspapers); *Al's Pals Pet Care v. Woodforest Nat'l Bank, NA*, No. 4:17-CV-3852, 2019 WL 387409, at *2 (S.D. Tex. Jan. 30, 2019) (consisting of direct mail notice—by mail and email—and a website); *Duncan v. JPMorgan Chase Bank, N.A.*, No. SA-14-CA-00912-FB, 2016 WL 4419472, at *6 (W.D. Tex.

May 24, 2016) (accepting that the "best notice practicable" was provided where the notice plan consisted of direct notice, publication notice, and a settlement website); *DeHoyos v. Allstate Corp.*, 240 F.R.D. 269, 278, 293 (W.D. Tex. 2007) (finding the settlement agreement fair, reasonable, and adequate "[g]iven the wide reach of the notice," where 80% of adults were reached through the notice program consisting of publication notice in English and Spanish alongside a toll-free number, website, and post-office box for additional information).

Here, the Class Notice was accomplished through a multi-layered approach consisting of a combination of Direct Mail Notice, Publication Notice, a Press Release, Settlement Website, Long Form Notice, social media notice, and other applicable notice. *See* Settlement Agreement, at Section IV, ECF No. 135-1.

Direct Mail Notice. The Direct Mail Notice informed Class Members of the proposed Settlement, including their potential remedies and the web address for the informative Settlement website. Per the Preliminary Approval Order, the Notice Administrator purchased data containing identifying information and last known mailing addresses corresponding with the Vehicle Identifying Numbers (VINs) from S&P Global Automotive, formerly known as Polk ("Polk"). ECF No. 132, ¶ 15; Declaration of Cameron R. Azari, Esq. Regarding Implementation and Adequacy of Class Notice Plan ("Sept. 16 Azari Decl."), ¶ 11, ECF No. 141-16,; Oct. 21, 2024 Azari Decl., ¶ 9. To the extent Polk did not already have the needed Class Members' vehicle and contact information in its existing database, Polk requested the class vehicle and owner contact information from the respective state Departments of Motor Vehicles. Sept. 16 Azari Decl., ¶ 11; Oct. 21, 2024 Azari Decl., ¶ 9. As of October 17, 2024, the Settlement Notice Administrator sent approximately 2.2 million email notices, and nearly 2.2 million mailed

notices were sent, including remailings. *See* Oct. 21, 2024 Azari Decl., ¶¶ 10, 12–13; *Welsh*, 2018 WL 7283638, at *8 (stating the preference for direct mailed notice where a potential class member's address is known or available through reasonable efforts).

Email Notice. The Notice Administrator sent email notices to all identified Class Members for whom a valid email address was available. *See* Oct. 21, 2024 Azari Decl., ¶ 10. For any Email Notice for which a bounce code was received indicating that the message was undeliverable for reasons such as an inactive or disabled account, at least two additional attempts were made to deliver the Email Notice. *Id.* ¶ 11.

Postcard Notice. The Notice Administrator sent postcard notices to identified Class Members with an associated physical address for whom a valid email address was not available and/or to all identified Class Members with an associated physical address for whom the email notice was undeliverable after multiple attempts. *See id.* ¶ 12.

Settlement Website and Toll-Free Telephone Number. Pursuant to the terms of the Settlement Agreement, the Settlement Notice Administrator created a dedicated website, also available in Spanish, and a telephone number, with the option to speak with a live operator, as part of Class Notice. *Id.* ¶¶ 21–22. Persons who visit the website can, among other things: (i) review important documents, including the Long Form Notice; (ii) review responses to frequently asked questions; (iii) submit out-of-pocket claims for reimbursement; (iv) confirm whether they are a Class Member; (v) find the number for the IVR; and (vi) find the address for the Settlement Notice Administrator for Claim submission purposes. *Id.* ¶ 21. Similar information can be found with the toll-free

telephone number. *Id.* ¶ 22. As of October 17, 2024, the website has had 231,410 unique users. *Id.* ¶ 21. Also as of October 17, 2024, there have been 13,743 calls to the toll-free number. *Id.* ¶ 22.

Notice Has Been Published and Disseminated on Other Media. In addition to the notice disseminated above, the Settlement Notice Administrator has also published notice and placed notice on other electronic media. Notice was placed in eight newspapers and their associated websites, covering Puerto Rico and other U.S. Territories; social media and online display advertising was published nationwide through the Google Display Network, Facebook, and Instagram in English and Spanish; sponsored search listings were acquired on the three most frequently visited internet search engines: Google, Yahoo!, and Bing; and an informational release was distributed nationwide in English and Spanish on PR Newswire. *Id.* ¶¶ 15–20. The Informational Release resulted in 495 new stories/postings regarding the Settlement. *Id.* ¶ 20.

Thus, the Notice Program provided interlocking methods that aimed to reach each Class Member individually and directly using reasonably available address information and also provided multiple alternative forms of notice through which Class Members may learn of the Settlement or obtain further information about their rights. The program followed well-recognized and established procedures for class action notice. Therefore, the methods of dissemination and contents of the notice more than satisfy Rule 23's notice requirements that the notice should be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the class action and afford them an opportunity to present their objections." *Jallo*, 2017 WL 914291, at *3 (Mazzant, J.) (granting final approval where the "class members were given a fair

and reasonable opportunity to object to the settlement"). Thus, the procedure for providing notice and the content of the Notice Program constituted the best practicable notice to Class Members.

F. The Class Action Fairness Act Notice Favors Final Approval.

Notice under the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1715, has also been satisfied. In a class action settlement, CAFA requires that "[n]ot later than 10 days after a proposed settlement of a class action is filed in court, each defendant that is participating in the proposed settlement shall serve [notice of the proposed settlement] upon the appropriate State official of each State in which a class member resides and the appropriate Federal official[.]" *Id.* 28 U.S.C. § 1715(b). A court is precluded from granting final approval of a class action settlement until CAFA notice requirements are met. *Id.* § 1715(d) ("An order giving final approval of a proposed settlement may not be issued earlier than 90 days after the later of the dates on which the appropriate Federal official and the appropriate State official are served with the notice required under [28 U.S.C. § 1715(b)].").

The Notice Administrator timely and properly caused the required CAFA Notice to be sent on April 5, 2024 to 57 officials (the Attorney General of the United States, the Attorneys General of 50 states, the District of Columbia, and the United States Territories), and, as such, more than 90 days have passed from "the dates on which the appropriate Federal office and the appropriate State official [were] served." *See* Oct. 21, 2024 Azari Decl., ¶ 8; 28 U.S.C. § 1715(d). At this time, there have been no substantive requests or responses from state and federal officials on this matter.

III. ARGUMENT

As this Court is aware, there is a strong judicial policy that favors settlements, particularly in the class action context. *Marcus v. J.C. Penney Co., Inc.*, No. 6:13-CV-736, 2017 WL 6590976,

at *3 (E.D. Tex. Dec. 18, 2017), *report and recommendation adopted*, No. 6:13cv736, 2018 WL 307024 (E.D. Tex. Jan. 4, 2018); *see also Jones v. Singing River Health Servs. Found.*, 742 F. App'x 846, 850 (5th Cir. 2018) (noting that settlements are generally favored for disputes).

A. The Court Has Original Jurisdiction Over All Claims Being Resolved As Part of the Settlement.

In the Preliminary Approval Order, this Court found that the Court has jurisdiction over the subject matter and Parties to these proceedings. *See* ECF No. 132, at 2; *Spegele v. USAA Life Ins. Co.*, No. 5:17-cv-967-OLG, 2021 WL 4935978, at *3 (W.D. Tex. Aug. 26, 2021) (noting that the court had subject matter jurisdiction over the matter under 28 U.S.C. § 1332(d)(2), under which a district court has original jurisdiction over any civil action where the amount in controversy exceeds $5,000,000, the class consists of at least 100 members, and any member of that class is a citizen of a state different from any defendant); *Jones v. Singing River Health Servs. Found.*, 865 F.3d 285, 292 n.3 (5th Cir. 2017) (same).

B. The Court Has Personal Jurisdiction Over All Class Members.

This Court has personal jurisdiction over Plaintiffs, who are parties to this class action and have agreed to serve as representatives of the Settlement Class. The Court also has personal jurisdiction over absent Class Members because, as stated above, due-process compliant notice has been provided to the Class. 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, e.g.*, *Salim v. JPay, Inc.*, No. 4:18-cv-00730, 2019 WL 1614624, at *3 (E.D. Tex. Apr. 16, 2019) (Mazzant, J.) (holding that the settlement notice program met the requirements of Rule 23(e) and the Due Process Clause of the Constitution where the notice "constitute[d] the best practicable Notice to the Settlement Class . . . [and are] reasonably calculated to apprise settlement class members of the pendency of the action, the terms

of the proposed settlement, and their rights under the proposed settlement, including but not limited to, their rights to object to or exclude themselves from the proposed Settlement and other rights under the terms of the Settlement Agreement"); *Jallo*, 2017 WL 914291, at *3 (Mazzant, J.) (same).

C. Notice Disseminated to the Class Was the Best Practicable and Satisfied Rule 23(c) and (e).

Under Rule 23(e)(1) and 23(c)(2)(B), the Court must direct the best notice practicable under the circumstances in a reasonable manner to all Class Members who would be bound by the proposed Settlement. *See In re Oil Spill by Oil Rig Deepwater Horizon in Gulf of Mexico, on Apr. 20, 2010*, 910 F. Supp. 2d 891, 913 (E.D. La. 2012), *aff'd*, *In re Deepwater Horizon*, 739 F.3d 790 (5th Cir. 2014).

Here, and pursuant to the Court's Preliminary Approval Order, ECF No. 132, Class Notice was accomplished through a combination of Direct Mail Notice (via email and U.S. first class mail), Publication Notice, notice through the Settlement website, Long Form Notice, social media notice, and other applicable notice. *See* Settlement Agreement 25–28, ECF No. 135-1. The Settlement Notice Administrator will file the final results of the dissemination of the Settlement Notice Program with the Court by November 14, 2024.

D. The Settlement Is "Fair, Reasonable, and Adequate" Under the Criteria Discussed in Rule 23(e) and Applied in the Fifth 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). "A presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arm's length negotiations between experienced, capable counsel after meaningful discovery." *Slipchenko v. Brunel Energy, Inc.*, No. H-11-1465, 2015

WL 338358, at *7 (S.D. Tex. Jan. 23, 2015) (quotation omitted); *see also DeHoyos*, 240 F.R.D. at 285–86 (citing *Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir. 1977)).

The following Rule 23(e)(2) factors must be considered in order to determine whether the Settlement is fair, reasonable, and adequate:

A. the class representatives and class counsel have adequately represented the class;

B. the proposal was negotiated at arms-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.

Prior to the 2018 amendments, courts in the Fifth Circuit generally assessed the factors laid out in *Reed*, 703 F.3d 170, to determine fairness, reasonableness, and adequacy:

1. the existence of fraud or collusion behind the settlement;

2. the complexity, expense, and likely duration of the litigation;

3. the stage of the proceedings and the amount of discovery completed;

4. the probability of plaintiffs' success on the merits;

5. the range of possible recovery; and

6. the opinions of the class counsel, class representatives, and absent class members.

See Garcia v. Matson, No. 21-51151, 2022 WL 6935303, at *3 (5th Cir. Oct. 12, 2022) (noting the *Reed* factors inform whether the settlement is adequate). Today, "[b]ecause the Rule 23 and case-law factors overlap, courts in this circuit often combine them in analyzing class settlements." *ODonnell v. Harris Cnty.*, No. H-16-1414, 2019 WL 6219933, at *9 (S.D. Tex. Nov. 21, 2019).

1. The Opinions of Absent Class Members Favors Final Approval.

In light of the large class size in this case, the number of opt outs are *de minimis* and, along with zero objections, the response to the Settlement can only be described as overwhelmingly favorable. *See Jones*, 865 F.3d at 299–300 (declining to reverse final approval on the basis of objections from 6.66% of the class, noting that "[a] settlement can be fair notwithstanding a large number of class members who oppose it" (quoting *Cotton*, 559 F.2d at 1331)).

The Court should approve the Settlement because a "lack of objections is indicative of the adequacy of the Settlement." *See Armstrong*, 2024 WL 1123034, at *5 (noting there were no objections). Here, of the approximately 4.5 million Direct Mail Notices that have been sent and emailed, only 22 individuals have timely sought exclusion from the Class as of October 17, 2024. *See* Oct. 21, 2024 Azari Decl., ¶¶ 9–13, 24. Therefore, the percentage of persons seeking exclusion is approximately 0.0007% of the Direct Notices sent, an incredibly low percentage which favors approval. *See Vaughn v. Am. Honda Motor Co.*, 627 F. Supp. 2d 738, 748 (E.D. Tex. 2007) (granting final approval in another automobile case where 0.05% of the class opted out and 82 class members objected); *Grigson v. Farmers Grp., Inc.*, No. 1:17-cv-00088-LY, 2020 WL 13598801, at *3 (W.D. Tex. May 22, 2020) (finding the reaction from the class for the 780,000 policies class "very positive," which supported final approval where 189 class members opted out

and 11 class members submitted objections); *Garcia*, 2022 WL 6935303, at *3 (affirming final approval despite 415 opt outs out of 8,000 class members).

2. The Proposed Settlement Was Achieved After Extensive, Arm's-Length Negotiations.

A presumption that the Settlement did not involve fraud or collusion should apply because there is no evidence suggesting any fraud or collusion. *See Cunningham v. Kitchen Collection, LLC*, No. 4:17-CV-770, 2019 WL 2865080, at *2 (E.D. Tex. July 3, 2019) (Mazzant, J.); *see also Welsh*, 2018 WL 7283639, at *12 ("Courts may presume that a proposed settlement is fair and reasonable, and lacking fraud or collusion, when it is the result of arm's-length negotiations. The Court may likewise presume that no fraud or collusion occurred between opposing counsel in the absence of any evidence to the contrary." (citations omitted)).

The arm's-length nature of the negotiations is demonstrated by the negotiations' timeline, the multiple attempts made before reaching agreement, and the involvement of a neutral mediator. The Settlement was reached after two years of negotiations involving multiple in-person meetings, even more video and telephone conferences, and extensive email correspondence between the Parties. The Parties first attempted to mediate their claims on April 27, 2022 but were unable to reach agreement and continued negotiations while litigating the case. After another year doing so, negotiations re-intensified in mid-2023. Thereafter in November 2023, Toyota announced a recall on the Class Vehicles. Following confirmatory discovery and expert analysis related to the recall, the Parties engaged in another mediation on March 7, 2024 and reached agreement. An independent third-party, Patrick Juneau, was involved from the initial stages of negotiations, first acting as third-party mediator appointed by the Court in November 2021 and later serving as Settlement Special Master. *See* ECF 135-1.

As the Court recognized in its Preliminary Approval Order, these efforts reflect that the Settlement "is the product of informed, good-faith, arm's-length negotiations between the Parties and their capable and experienced counsel that were overseen by the Court-appointed mediator." ECF No. 132, at 5–8; *see also Jones*, 865 F.3d at 295 ("The involvement of an experienced and well-known mediator is . . . a strong indicator of procedural fairness." (quotation omitted)); *Celeste*, 2022 WL 17736350, at *4 (noting that the settlement arose after a full-day mediation with a substantially experienced mediator and holding the settlement arose from arm's-length negotiations); *C.C. & L.C. v. Baylor Scott & White Health*, No. 4:18-CV-828-SDJ, 2022 WL 4477316, at *3 (E.D. Tex. Sept. 26, 2022) (reasoning that two unsuccessful mediations before reaching the settlement and the presence of a mediator confirmed that the settlement was the product of arm's-length negotiations). The Parties' arm's-length negotiations without fraud or collusion support final approval of the Settlement. *See, e.g.*, *Klein v. O'Neal, Inc.*, 705 F. Supp. 2d 632, 650, 653 (N.D. Tex. 2010) (stating that "courts are to adhere to a strong presumption that an arms-length class action settlement is fair" and that "several years of pretrial proceedings, motion practice, and forceful negotiations" supported the finding that the settlement was not the product of collusion"); *Jones*, 865 F.3d at 295–96 (affirming the district court's collusion reasoning where appellants did not point to any evidence suggesting collusion (citing *Ayers v. Thompson*, 358 F.3d 356, 369 (5th Cir. 2004))).

3. The Complexity, Expense, and Likely Duration of Further Litigation Support Settlement.

"[T]he prospect of ongoing litigation threatens to impose high costs of time and money on the parties," which strengthens "the reasonableness of approving a mutually-agreeable settlement." *See Klein*, 705 F. Supp. 2d at 651 (citing *Ayers*, 358 F.3d at 369). Although there has been significant litigation practice since the case was filed in March 2021, the largest milestones—class

certification briefing, summary judgment, and trial—have not yet happened. In this very technical class action covering 2013–2018 RAV4 vehicles, all such phases and the rest of the typical litigation process are expected to be enormously complex, expensive, and time consuming. In contrast, the Settlement provides substantial and immediate relief for the Class, "freeing class members and defendants alike from the burdens and uncertainty inherent in additional litigation." *See id.* at 653 (noting that "the fact that it ha[d] taken this long for the litigation to proceed to the point of a possible settlement sp[oke] to the nature and scope of the issues," and "[t]he efforts required to prove the class plaintiffs' claims at trial would unquestionably be extremely complex and expensive, even if such efforts were guaranteed to be successful (which, of course, they [we]re not)"); *see also Free v. Allstate Indem. Co.*, No. 9:20-CV-00190, 2023 WL 11909777, at *3 (E.D. Tex. Aug. 3, 2023) (granting final approval where the settlement "ha[d] the benefit of providing substantial benefits to Class Members now, without further litigation, under circumstances where the liability issues are still vigorously contested among the Parties").

Because "[s]ettling now 'avoids the risks and burdens of potentially protracted litigation' requiring the plaintiff class to incur further expenses without the guarantee of any recovery," this "factor supports approving the [S]ettlement." *See Slipchenko*, 2015 WL 338358, at *2 (quoting *Ayers*, 358 F.3d at 369).

4. The Current Stage of Proceedings and Discovery Completed Thus Far Weigh in Favor of Settlement.

The Parties have ample information to evaluate the merits of the claims, and the stage of proceedings and discovery completed therefore militate in favor of final approval of the Settlement. *See C.C. & L.C.*, 2022 WL 4477316, at *3 ("The key issue . . . is whether 'the parties and the district court possess ample information with which to evaluate the merits of the competing positions.'" (quoting *Ayers*, 358 F.3d at 369)).

As part of formal discovery, Toyota has produced over 130,000 documents, drafted and responded to multiple rounds of discovery requests—including on technical topics, and participated in at least five depositions, all of which led to the Settlement reached. The Parties also engaged in additional confirmatory discovery related to the Recall Remedy announced in November 2023. This information exchanged allowed the Parties to assess the strength of the claims and reach a fair Settlement. *See, e.g.*, *id.* at *4 (holding that the "meaningful discovery" in which the parties engaged demonstrated "they possessed sufficient information to gauge the strengths and weaknesses of their respective claims and defenses," weighing in favor of settlement approval); *Celeste*, 2022 WL 17736350, at *6 (finding the stage of proceedings and discovery efforts factor weighed in favor of final approval where only pre-suit investigation had occurred but the parties' extensive negotiations alongside an experienced mediator "enabled the parties to develop a full understanding of the legal and factual issues surrounding the case before agreeing to the proposed settlement" (citation omitted)); *In re Heartland Payment Sys.*, 851 F. Supp. 2d at 1064 (finding that confirmatory discovery alone provided the parties with sufficient information for counsel to assess the settlement against the probability of the success of their claims, favoring approval); ECF No. 135-1.

The discovery completed and stage of litigation prove the Parties had ample information to evaluate the claims, and this factor therefore weighs in favor of granting final approval.

5. The Probability of Plaintiffs' Success on the Merits Favors Settlement.

The fairness, reasonableness, and adequacy of the Settlement terms are further demonstrated by the uncertainty of success on the merits should the case proceed to trial. When there has been no showing of fraud or collusion, the probability of success is the most important factor in evaluating a proposed settlement. *See Smith v. Crystian*, 91 F. App'x 952, 955 n.3 (5th

Cir. 2004) (*per curiam*) (citing *Parker v. Anderson*, 667 F.2d 1204, 1209 (5th Cir. 1982)). Although this factor requires the court to "compare the terms of the settlement with the rewards the class would have been likely to receive following a successful trial," *DeHoyos*, 240 F.R.D. at 287, the court must not "try the case in the settlement hearings." *Reed*, 703 F.2d at 172.

Here, success on the merits for the Class is not guaranteed. As explained above, the claims are hotly contested and difficult to prove. The Parties have engaged in significant discovery both during the litigation and during the negotiation of the Settlement. Furthermore, if this case continued in litigation, Toyota believes that it has valid and complete defenses to the claims asserted against it in the Action and denies that it committed any violations of law, engaged in any unlawful act or conduct, and denies that there is any basis for liability for any of the claims that have been, are, or might have been alleged in the Action. Opting to proceed through trial and possibly beyond would result in an even more costly battle that is avoided through final approval of the Settlement, which has fair, reasonable, and adequate terms, particularly when measured against the allegations in this case.

Plaintiffs have alleged the battery assembly units in the Subject Vehicles are defective. In November 2023, a Recall Remedy was announced in order to address the battery assembly units. The proposed Settlement entitles all Class Members to benefit from the Customer Support Program, which includes an Inspection Program, allowing Class Members to bring in their Subject Vehicle to a Toyota Dealer to be inspected and (i) confirm whether the Subject Vehicle's battery is the correct size and (ii) if certain components used to secure the battery in place are found to be damaged or missing during this inspection, such components will be replaced at no cost to the Class Member, as long as the correct size battery is installed at the time of the inspection. Additionally, as part of the Customer Support Program, Class Members will be able to seek, in

accordance with the Settlement requirements, various reimbursements related to (i) the battery, (ii) repair/replacement of battery assembly unit parts, and (iii) unique thermal event expenses. *See* Settlement Agreement, Section III, ECF No. 135-1. The Customer Support Program thus provides plenary relief for Class Members, which weighs in favor of final approval of the Settlement.

6. The Settlement Is Within the Range of Possible Recovery.

The range and certainty of recovery factor also weighs in favor of finally approving the proposed Settlement. In evaluating this factor, the Court must "establish the range of possible damages that could be recovered at trial." *C.C. & L.C.*, 2022 WL 4477316, at *4 (quoting *Maher v. Zapata Corp.*, 714 F.2d 436, 460 (5th Cir. 1983)). After establishing the range of possible damages that could be recovered at trial, the Court then determines "whether the settlement is pegged at a point in the range that is fair to the plaintiff settlors" in light of "the likelihood of prevailing at trial and other relevant factors." *Maher*, 714 F.2d at 460. "The court must be assured that the settlement secures an adequate advantage for the class in return for the surrender of litigation rights against the defendants." *In re Katrina*, 628 F.3d at 195 (citation omitted).

As explained in the discussion of the above factors, Plaintiffs would face considerable risks in proceeding to trial and possibly beyond, with no assurance as to the amounts, if any, they will be able to recover. To the contrary, the Settlement relief provides fair, reasonable, and adequate relief as the proposed Settlement entitles all Class Members to benefit from the Customer Support Program. This Settlement provides the Class with an inspection program and reimbursements to address the issues directly alleged in the Amended Consolidated Complaint, including, for example, an Inspection Program, replacement and unreimbursed out-of-pocket reimbursement programs, and a unique thermal expense reimbursement program.

Specifically, the Inspection Program allows Class Members to have their Subject Vehicles' inspected by an authorized Toyota Dealer at no cost to them. *See* Settlement Agreement, Section III.B, ECF No. 1350-1. The Battery Replacement Reimbursement Program provides that a Class Member may submit a claim for a partial reimbursement for the cost of replacing a Group 26R battery with a Group 35 battery in a Subject Vehicle. *Id*. at Section III.C. The Unreimbursed Out-of-Pocket Repair/Replacement Expense Reimbursement Program allows Class Members to submit claims for reimbursement for unreimbursed repairs or parts replacements of the battery hold-down assembly of the Subject Vehicle and related reasonable rental and/or towing expenses that were incurred prior to the Initial Notice Date. *Id*. at Section III.D. The Unreimbursed Out-of-Pocket Unique Thermal Expense Reimbursement Program allows Class Members to submit claims for reimbursement for unreimbursed out-of-pocket damages to the Subject Vehicle and/or property damage caused by certain specific thermal events. *Id*. at Section III.E.

Class Members are given immediate recovery by way of the compromise as opposed to the mere possibility of relief in the future, after lengthy and expensive litigation. Given the clear indication that the Settlement relief falls within the range of possible outcomes, the Settlement should be approved. *See C.C. & L.C.*, 2022 WL 4477316, at *4 (finding that the settlement was fair, reasonable, and adequate where the class members obtained complete prospective and retrospective relief of their claims as well as payment of attorney's fees and costs).

IV. THIS COURT SHOULD ISSUE A PERMANENT INJUNCTION

Assuming the Court grants final approval of the Settlement, this 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, to address concerns of copycat lawsuits filed in other jurisdictions that would hinder this Court's jurisdiction and its ability effectively manage the

settlement process. *See Matson v. NIBCO Inc.*, No. 5-19-CV-00717-RBF, 2021 WL 4895915, at *15 (W.D. Tex. Oct. 20, 2021) (finding the issuance of a permanent injunction pursuant to 28 U.S.C. §§ 1651(a) and 2283 "necessary and appropriate in aid of its continuing jurisdiction and authority over the Settlement Agreement and the Litigation"), *aff'd*, *Garcia*, 2022 WL 6935303.

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 DeHoyos*, 240 F.R.D. at 310–11 (affirming that the issuance of an injunction pursuant to the All Writs Act as "necessary and appropriate in aid of the Court's jurisdiction over the action and to protect and effectuate the Court's review of the settlement."). Courts within the Fifth Circuit have held that injunctions are appropriate where parallel state actions would interfere with the court's exclusive jurisdiction. *See, e.g.*, *In re Corrugated Container Antitrust Litig.*, 659 F.2d 1332, 1335 (5th Cir. 1981) (affirming an injunction of state court proceedings where the "multidistrict action which are sought to be protected are those approving settlements" and "the further litigation of the appellant's cause of action" is within the jurisdiction of the federal court). Other district courts in other circuits faced with similar circumstances across the country have also affirmed injunctions of state court proceedings. *See, e.g.*, *Flanagan v. Arnaiz*, 143 F.3d 540, 544–45 (9th Cir. 1998) (affirming an injunction of state court proceedings because "hav[ing] a state court construing what the federal court meant in the judgment . . . would potentially frustrate the federal district court's purpose); *In re Volkswagen "Clean Diesel" Mktg., Sales Pracs., & Prods. Liab. Litig.*, No. 15-md-02672-CRB, 2023 WL 2600450, at *2 (N.D. Cal. Mar. 22, 2023) (enjoining a state court action in which a class member alleged that she opted out of a class action settlement finalized in federal court); *Lorillard Tobacco Co. v. Chester, Willcox & Saxbe*, 589 F.3d 835, 846, 851 (6th Cir. 2009) (affirming an All Writs Act injunction of state court proceedings in

which a class member's claims implicated provisions of a finalized class action settlement agreement under the exclusive jurisdiction of the federal district court); *Battle v. Liberty Nat'l Life Ins. Co.*, 877 F.2d 877, 882 (11th Cir. 1989) (affirming an All Writs Act injunction of state court proceedings that challenged the propriety of the federal district court's judgment in a class action).

V. CONCLUSION

Toyota shares Plaintiffs' belief that the Settlement is in the best interests of the Parties and represents a fair, reasonable, and adequate way to resolve the controversy, as measured by all the applicable standards. Toyota respectfully requests that the Court: (i) enter an Order granting final approval, pursuant to Federal Rule of Civil Procedure 23(e), to the Parties' proposed class action Settlement; (ii) 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; and (iii) provide such other and further relief as the Court deems reasonable and just.

Dated: October 21, 2024

Respectfully submitted,

/s/ *John P. Hooper*

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CERTIFICATE OF SERVICE

I hereby certify that on October 21, 2024, the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system, which will send a notice of electronic filing to CM/ECF participants in this case.

/s/ John P. Hooper
John P. Hooper

CERTIFICATE OF CONFERENCE

Pursuant to Local Rule CV-7(h), counsel for Defendants met and conferred with counsel for Plaintiffs regarding Plaintiffs' Motion (ECF No. 145) Plaintiffs' Motion is unopposed.

/s/ John P. Hooper
John P. Hooper