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

PLAINTIFFS' UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND SUPPORTING MEMORANDUM

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Pursuant to Rule 23(e) of the Federal Rule of Civil Procedure, Plaintiffs, individually and on behalf of the nationwide Settlement Class preliminarily approved by the Court, respectfully move for final approval of the proposed Settlement (the "Final Approval Motion").[1]

Defendants Toyota Motor North America, Inc.; Toyota Motor Sales, U.S.A., Inc.; and Toyota Motor Engineering & Manufacturing North America, Inc. (collectively, "Toyota") do not oppose this motion.

I. INTRODUCTION

Plaintiffs brought this Action in March 2021 on behalf of present and former owners of approximately 1.85 million model year 2013-2018 Toyota RAV4 vehicles, (the "Class Vehicles" or "Subject Vehicles"), alleging that the vehicles have a defectively designed battery retention system. The design resulted in 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 driving conditions. Through this litigation, Plaintiffs identified for Toyota a safety Defect in the Class Vehicles and developed and proposed an appropriate remedy. *See* Declaration of Kimberly A. Justice in Support of Motion for Attorneys' Fees, Reimbursement of Expenses, and Service Awards ("Justice Decl. 1") (Doc. No. 141)[2] ¶ 144.

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[1] All capitalized terms not defined in this memorandum shall have the meaning ascribed to them in the proposed Settlement Agreement. Doc. No. 128, Ex. 1. Citations to the Settlement Agreement shall be in the form of "Agreement ¶ __."

[2] On September 23, 2024, Class Counsel filed an Unopposed Motion for Attorneys' Fees, Reimbursement of Expenses, and Service Awards and Memorandum in Support Thereof, Doc. No. 138 (the "Fee and Expense Application"), together with the Justice Declaration 1, Doc. No. 141. Plaintiffs incorporate by reference the Justice Declaration 1 and Exhibits thereto and respectfully refer the Court to those papers for a detailed description of, *inter alia*, (i) the History of the Action; (ii) the negotiations leading to the Settlement; (iii) the risks and uncertainties of continued litigation; (iv) the services Plaintiffs' Counsel provided for the Settlement Class; and (v) the efforts of the Class Representatives on behalf of the Settlement Class. Filed contemporaneously herewith

Indeed, Class Counsel made clear to Defendants as early as January 2023—seven months prior to filing a motion for class certification and almost one year prior to Toyota announcing a safety recall—that they would not settle this Action under any terms that did not include a safety recall to fix the Defect. *Id*. On November 1, 2023, Toyota announced a recall that will replace all affected battery clamp sub-assemblies and battery trays with newly designed, improved parts and add positive terminal guards at no cost to owners (the "Recall"), that mirrored the remedies proposed by Plaintiffs' experts in their declarations filed in support of Plaintiffs' August 14, 2023 Motion for Class Certification. *See* Doc. Nos. 104, 106-107, 112-114; Justice Decl. 1 ¶ 52. Plaintiffs' expert values the Recall at over $600 million. *See* Declaration of Lee M. Bowron dated September 23, 2024 ("Bowron Decl."), Exhibit O to Justice Decl. 1, ¶ 9; Justice Decl. 1 ¶ 102.

On top of that outstanding result, Plaintiffs negotiated additional comprehensive monetary and non-monetary Settlement relief for the Class: a safety inspection program to protect Class Members until the Recall can be executed Class-wide and reimbursement programs to make Class Members whole for out-of-pocket losses attributable to the alleged Defect. Justice Decl. 1 ¶ 145. This relief addresses what Plaintiffs allege is a longstanding problem in the Class 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. In the absence of settlement, the Action could have continued for years, through class certification, the completion of fact and expert discovery (including discovery of foreign Defendant Toyota Motor Corporation), summary judgment, trial, and likely appeals. As discussed below, Toyota advanced compelling defenses and there was considerable uncertainty as to whether Plaintiffs would be able to achieve a meaningful

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is the Declaration of Lead Class Counsel Kimberly A. Justice in Support of Plaintiffs' Unopposed Motion for Final Approval of Class Action Settlement ("Justice Decl. 2").

recovery, let alone a better result than the Settlement and Recall, if litigation continued. Beyond the Recall, if finally approved and implemented, the Settlement will bring additional benefits valued at up to $77.3 million to a nationwide Class of current and former owners of Class Vehicles. *See* Bowron Decl. ¶ 8; Justice Decl. 1 ¶ 102.

After three and a half years of litigation, Plaintiffs respectfully move for final approval of the proposed Settlement. If it is finally approved and implemented, the Settlement will resolve all outstanding claims in this litigation while providing robust relief and substantial benefits to the Class by way of both monetary recoveries and re-designed vehicle components. This is a tremendous result for the Class and is well within the range of other settlements that have been approved as fair, reasonable and adequate. The Settlement has also received overwhelming support from Class Members, evidenced by the fact that there are no objections to the settlement or to Class Counsels' request for fees, reimbursement of expenses or Class Representative service awards. *See* Justice Decl. 2 ¶ 5.[3] In light of the results achieved and in consideration of the Rule 23 factors and the *Reed* factors for approval of class settlements in the Fifth Circuit, Plaintiffs respectfully request the Court grant final approval of the Settlement.

II. BACKGROUND AND PROCEDURAL HISTORY

Plaintiff Murphy filed the initial class action complaint in this Court, *Murphy v. Toyota Motor Corporation, et al.,* No. 4:21-cv-00178-ALM, on March 4, 2021, alleging a defective battery retention system in the Class Vehicles that creates an unreasonable risk of harm. Doc. No. 1. Plaintiffs Flowers and Lavoot filed a similar class action, *Flowers, et al. v. Toyota Motor*

[3] The Court's April 9, 2024 Preliminary Approval Order, Doc. No. 132, sets November 14, 2024 as the deadline for the Settlement Notice Administrator to file a list of opt-outs and the results of the dissemination of the Notice with the Court. November 14, 2024 also is the deadline for the Parties to file any Supplemental Memorandum of Law in Support of the Settlement. Plaintiffs will submit a proposed Order and proposed Judgment with the November 14 filing.

Corporation, et al., No. 4:21-cv-00460-ALM, on June 17, 2021. This Court consolidated the two actions on August 2, 2021. Doc. No. 31. Plaintiffs subsequently filed a consolidated class action complaint and two amendments adding additional plaintiffs and claims. Doc Nos. 33, 46 and 75.

After the filing of the lawsuits, Toyota implemented a "Consumer Advisory" campaign in November 2021 to provide inspections of the batteries in Class Vehicles, but steadfastly declined to implement a fix to alleviate what Plaintiffs had identified as the safety risk in the design of the battery retention system. Justice Decl. 1 ¶ 13. Meanwhile, as the litigation progressed, there continued to be ongoing reports of thermal incidents involving the Class Vehicles' batteries. *Id*. at ¶ 33. In an 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 asserted 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.*, breach of express warranty, breach of implied warranty of merchantability, and violations of numerous state consumer protection statutes.

As detailed in Justice Declaration 1, Plaintiffs and their counsel have vigorously pursued this litigation since its inception, and absent this Settlement, were fully prepared to try this case. Among other things, Plaintiffs' Counsel: (i) conducted a thorough legal and factual investigation into the claims prior to filing suit; (ii) communicated extensively with Plaintiffs and other owners of Class Vehicles around the country about their experiences with the vehicles; (iii) researched and drafted detailed complaints, including the Amended Consolidated Class Action Complaint; (iv) served multiple sets of Requests for Production on each defendant and negotiated a protective order, an ESI protocol, search terms, and custodians; (v) reviewed, coded, and analyzed more than 130,000 pages of documents produced by Defendants; (vi) propounded and negotiated interrogatories and requests for admission on each Defendant; (vii) responded to requests for

production served upon Plaintiffs and prepared Plaintiffs' responses to interrogatories; (viii) prepared Plaintiffs for depositions; (ix) deposed several fact witnesses in great depth, as well as a corporate designee of Defendants; (x) engaged in third party discovery, including serving subpoenas upon dealerships, and received and reviewed substantial documents in response; (xi) engaged in extensive expert discovery, including retaining and working closely with independent automotive engineering consultants to conduct field investigations around the country of eleven Class Vehicles, most of which had experienced fires, and then monitored subsequent laboratory testing and analysis; (xii) worked with the engineering consultants as they developed proposed remedies to correct the Defect, and oversaw the production of expert reports that were submitted in connection with Plaintiffs' class certification motion on August 14, 2023; (xiii) drafted motion papers in support of class certification; (xiv) engaged in lengthy and hard-fought settlement negotiations with Defendants under the supervision of the Court-appointed Settlement Special Master, Patrick A. Juneau; and (xv) negotiated and drafted the Settlement Agreement and approval papers. Justice Decl. 1 ¶¶ 16-68, 79.

The settlement discussions in the Action were at arm's length and occurred over the course of two years. *Id*. at ¶ 40. By Order dated November 10, 2021, the Court appointed Patrick A. Juneau as a Mediator and referred the case to mediation in accordance with the Court's Mediation Plan. Doc. No. 54; *id*. at ¶ 42. On April 27, 2022, Mr. Juneau conducted a mediation session with counsel for the Parties; the Parties did not reach a resolution at that time but remained in periodic contact with Mr. Juneau. Justice Decl. 1 ¶ 45; *see also generally* Affidavit of Court-Appointed Settlement Special Master Patrick A. Juneau dated March 25, 2024 ("Juneau Aff."), attached as Ex. Q to Justice Decl. 1.

In January 2023, Plaintiffs provided Defendants with a detailed engineering analysis and settlement demand, but further settlement discussions were not fruitful. Justice Decl. 1 ¶ 46. After providing Toyota with this detailed engineering analysis, Class Counsel made it clear that Plaintiffs would not agree to any settlement structure that did not include a safety recall addressing the alleged Defect. *Id*. at ¶ 47. After many additional months of document discovery, depositions, and expert analysis, in August 2023, Plaintiffs moved for class certification and produced their expert reports. *Id*. at ¶ 36. Plaintiffs' experts specifically identified for Toyota the alleged Defect[4] and proposed design remedies. *Id*. at ¶ 37. The experts' reports were also provided to the National Highway Transportation Safety Administration ("NHTSA"), Office of Defect Investigation. *Id*. at ¶ 38. Shortly thereafter, the Parties re-engaged in settlement discussions, and on November 1, 2023, Toyota announced a safety recall affecting approximately 1.85 million 2013-2018 RAV4 vehicles. *Id*. at ¶¶ 49-50. Toyota notified all owners of Class Vehicles of the Recall by December 31, 2023. *Id*. Pursuant to the Recall, as Plaintiffs had demanded, Toyota agreed to replace all affected battery clamp sub-assemblies and battery trays with newly designed, improved parts and add positive terminal guards at no cost to owners. *Id*. In line with the recommendation of Plaintiffs'

[4] As determined by one of Plaintiffs' engineering experts, the battery retention system in the Class Vehicles allows metal components to contact the positive terminal of the battery, resulting in short circuits and fires. *See* Declaration of Michael Nranian, P.E., in Support of Plaintiffs' Motion for Class Certification ("Nranian Decl.") ¶ 92, Doc. No. 114. More specifically, the battery retention system was designed in such a manner that the metal (i.e. conductive) flange of the battery hold-down bracket was placed in close proximity to the battery's exposed B+ post, terminal clamp, and wiring, creating the potential for a short circuit to occur. *Id*. at ¶ 90. In addition, the battery hold-down bracket lacks any protective non-conductive coating or guarding that would prevent a short circuit in the event the flange contacts the B+ terminal. *See* Declaration of Myles H. Kitchen in Support of Plaintiffs' Motion for Class Certification ("Kitchen Decl.") ¶ 23, Doc. No. 115. As a result, if the battery in the Class Vehicles moves, even slightly, from its original intended location outboard (toward the driver's side), a short circuit of the battery B+ power to vehicle ground can result. Nranian Decl. ¶ 90, Doc. No. 114. This can result in electrical shorting and a vehicle fire. *Id*.

experts, the Recall provides a redesigned battery retention system that will eliminate the identified Defect and make the Class Vehicles much safer. *Id*. at ¶¶ 50-52; *compare* Nranian Decl., Doc. No. 114 and Kitchen Decl., Doc. No. 115 *with* 573 Safety Recall Report (23V-734) for the Class Vehicles dated November 1, 2023 (Justice Decl.1, Ex. R).

In December 2023 and January 2024, Plaintiffs conducted confirmatory discovery regarding the Recall, including expert analysis of the proposed remedy. *Id*. at ¶ 54.

In addition to the new components to be provided per the Recall, in connection with the Settlement, Plaintiffs also negotiated for significant additional relief as requested in the Complaint. As set forth in detail below, not only did Defendants agree to conduct immediate additional inspections of Class Vehicles even before the new components are prepared and distributed with the Recall, they also agreed to reimburse out-of-pocket expenses for replacement batteries, missing or broken battery-retention components, and all out-of-pocket losses incurred in connection with a fire or other thermal event causing damage or loss of use of a Class Vehicle. Agreement ¶¶ III.A - E.

Plaintiffs filed their unopposed motion for preliminary approval of the Settlement on March 28, 2024. Doc. 126. Defendants filed a supporting response that same day. Doc. 129. On April 9, 2024, the Court issued an Order, *inter alia*, (1) granting Plaintiffs' motion for preliminary approval of the Settlement; (2) appointing Epiq Systems as the Settlement Notice Administrator; (3) appointing Patrick A. Juneau and Patrick Hron of Juneau David, APLC to serve as Settlement Claims Administrators; and (4) setting a Fairness Hearing for November 19, 2024. Doc. 132 ("Preliminary Approval Order"). The Order further provided deadlines of September 30, 2024 for Class Members to file objections to the Settlement, and October 21, 2024, for Class Members to exclude themselves (opt out) of the Settlement. *Id.*

III. THE PROPOSED SETTLEMENT WARRANTS FINAL APPROVAL

The terms of the Settlement preliminarily approved by the Court are contained in the Settlement Agreement,[5] and briefly summarized below.

A. THE SETTLEMENT CLASS

The Settlement Class is defined as:

> 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. 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 the Settlement Agreement, and once the exclusion request is finally approved by the Court.

"Subject Vehicles" means model year 2013-2018 Toyota RAV4 vehicles, which were identified as part of Recall 23V-734 submitted to NHTSA on or about November 1, 2023. Hybrid vehicles are not included in the Recall or the Settlement.

B. SETTLEMENT TERMS

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* Agreement, Sec. III.B). 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. If certain components used to secure the battery are found to be damaged or missing, they will be replaced at no cost as long as the correct size battery is installed at the time of the inspection.

- Battery Replacement Reimbursement Program (*see* Agreement, Sec. III.C). Toyota will implement a Battery Replacement Reimbursement Program that permits Class

[5] *See* Doc No. 128A (Settlement Agreement with Exhibits).

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 who already received a $32 discount pursuant to Consumer Advisory 21TG01, the Class Member may submit a claim to receive a $43 reimbursement.

- For Class Members who purchased a battery prior to the Initial Notice Date, June 25, 2024, 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 who purchase a battery at a Toyota Dealer after the Initial Notice Date, the Class Member may submit a claim to receive a $75 reimbursement.

- Class Members who have not previously received a discount pursuant to Consumer Advisory 21TG01 and purchase a battery after the Initial Notice Date from a source other than a Toyota Dealer will not be eligible for reimbursement.

- Unreimbursed Out-of-Pocket Repair/Replacement Expense Reimbursement Program (*see* Agreement, Sec. III.D). Toyota will implement an Out-of-Pocket Repair/Replacement Expense Reimbursement Program that permits Class Members to submit Out-of-Pocket Claims for reimbursement for (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* Agreement, Sec. III.E). Toyota will implement an Unreimbursed Out-of-Pocket Unique Thermal Expense Reimbursement Program that permits Class Members to submit Out-of-Pocket Claims for reimbursement for (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.

C. FORM AND SCOPE OF THE RELEASE

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

IV. NOTICE AND SETTLEMENT ADMINISTRATION

Per the Preliminary Approval Order, the Court appointed Epiq Systems ("Epiq") as the Notice Administrator to effectuate a program to give notice of the Settlement to over 1.85 million current and former owners of the Class Vehicles. Notice was accomplished through a combination of direct notice via email and USPS first-class mail, publication notice via the internet, social media and newspaper advertisements, and notice through the settlement website and toll-free telephone number. *See* Justice Decl. 2, Ex. A (Supplemental Declaration of Cameron R. Azari, Esq. Regarding Implementation and Adequacy of Class Notice Plan "Azari Supp. Decl.") ¶¶ 9-22.

In the ensuing months, Epiq administered notice in accordance with the Settlement Agreement and the Preliminary Approval Order. *Id*. Significantly, as of October 17, 2024, the Notice Plan's individual notice efforts reached approximately 97.9% of identified Class Members with a frequency of three times. *Id*. ¶ 7. Epiq sent 2,227,036 email Notices to all identified Class Members for whom a valid email address was available, 700,045 Postcard Notices to Class Members with an associated physical address for whom a valid email address was not available, and 1,076,888 Postcard Notices to all identified Class Members with an associated physical address for whom the Email Notice was undeliverable after multiple attempts. *Id*. ¶¶ 10-12. These notices informed Class Members that they could obtain a Long Form Notice via direct mail, on the Settlement-dedicated website, and by calling a toll-free phone number established to field Class

Member inquiries regarding the Settlement. Justice Decl. 1, Ex. P (Azari Decl.) ¶¶ 19-28. Individual Notice was further enhanced by print publication notice, a targeted online media effort, an informational release, and a settlement website. Azari Supp. Decl. ¶¶ 15-21.

By all indications, Class Members overwhelmingly support the Settlement. The Objection deadline passed on September 30, 2024, Doc. 132 at ¶ 24, and not a single Class Member objected to the Settlement. Justice Decl. 2 ¶ 5; Azari Supp. Decl. ¶ 24. Further, several Class Members reached out to Class Counsel to praise the Settlement and Recall. Justice Decl. 1 ¶ 67. Class members have a postmark deadline of October 21, 2024 to submit requests for exclusion, the date of the filing of this Final Approval Motion. Doc. No. 132 at ¶ 24. As of October 17, 2024, there were only twenty-two exclusion requests submitted – a minuscule percentage of the Class. Azari Supp. Decl. ¶ 24 and Attachment 1. In accordance with the Preliminary Approval Order, on or before November 14, 2024, the Notice Administrator will provide the Court with a final report regarding notice and requests for exclusion. Doc. No. 132 at ¶ 24.

V. THE SETTLEMENT WARRANTS FINAL APPROVAL

A. THE COURT SHOULD REAFFIRM ITS CERTIFICATION OF THE SETTLEMENT CLASS

The Court preliminarily approved the Settlement and certified the Class for settlement purposes, finding that the requirements under Rule 23(a) and Rule 23(b)(3) are satisfied, and appointed Class Representatives[6] and Class Counsel[7] and for the Class. Doc. 132 ¶¶ 3-5; *see also*

[6] 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.

[7] 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.

Doc. No. 127 (Memorandum of Law in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement) at pp. 6-11, 13 (analyzing factors in support of settlement class certification and appointment of Class Representatives and Class Counsel). Nothing has changed to alter the Court's ruling on class certification. *See Klein v. O'Neal, Inc.*, 705 F.Supp.2d 632, 668 (N.D. Tex. 2010) (reaffirming certification of class where only objection was based on facts that the court considered at preliminary certification). Accordingly, the Court should grant final certification of the Settlement Class and appoint Class Representatives and Class Counsel for the Class.

B. NOTICE TO THE SETTLEMENT CLASS SATISFIED RULE 23 AND DUE PROCESS

Before approving a class settlement, "[t]he court must direct notice in a reasonable manner to all class members who would be bound by the proposal." Fed. R. Civ. P. 23(e)(1). Where the settlement class is certified under Rule 23(b)(3), the notice must also be the "best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B). Due process does not require actual notice to all class members. *See In re Pool Prods. Distrib. Mkt. Antitrust Litig.*, 310 F.R.D. 300, 317 (E.D. La. 2015) (citing *Fidel v. Farley*, 534 F.3d 508, 514 (6th Cir. 2008)). "[A] settlement notice need only satisfy the 'broad reasonableness standards imposed by due process.'" *In re Katrina Canal Breaches Litig.*, 628 F.3d 185, 197 (5th Cir. 2010). As to the content of the notice, "under Rule 23(c)(2)(B), the notice must clearly and concisely state in plain, easily understood language, the nature of the action, the definition of the class certified, the class claims, issues, or defenses, and other items of information relating to opting out, making objections, and the consequences of the judgment." *In re Deepwater Horizon*, 739 F.3d 790, 819 (5th Cir. 2014)

(cleaned up). The notice is not required to inform absent class members of "every material fact that has taken place prior to the notice." *Id.*

The Notice approved by the Court provided Class Members all information required by Rule 23(c)(2)(B) including, inter alia: (i) the nature of the Action; (ii) the definition of the Settlement Class; (iii) the Settlement Class's claims, issues, and defenses; (iv) the Settlement's terms; (v) the considerations that caused Plaintiffs and Class Counsel to conclude that the Settlement was fair, reasonable, and adequate; (vi) the procedures for requesting exclusion from the Settlement Class or objecting to the Settlement; (vii) the procedures for entering an appearance through an attorney; (viii) the procedures for submitting a Claim Form; (ix) the binding effect of a class judgment; (x) the date, time, and place of the Fairness Hearing; and (xi) how to obtain additional information regarding the Settlement. *See* Fed. R. Civ. P. 23(c)(2)(B). Moreover, as discussed *supra*, Sec. IV., the Notice Administrator, implemented the Notice Program by providing direct notice through U.S. mail and e-mail, establishing a dedicated settlement website and toll-free phone number, and publishing notice in traditional and social media. Accordingly, the Notice satisfies Rule 23 and comports with due process.

C. ALL FACTORS FAVOR FINAL APPROVAL OF THE SETTLEMENT

Because the settlement of class action disputes "minimize[s] the litigation expenses of the parties and reduce[s] the strain that litigation imposes upon already scarce judicial resources," *Jenkins v. Trustmark Nat'l Bank*, 300 F.R.D. 291, 301 (S.D. Miss. 2014), the Fifth Circuit has long recognized a strong public policy favoring settlements of class actions. *See Cotton v. Hinton*, 559 F.2d 1326, 1331 (5th Cir. 1977) ("Particularly in class action suits, there is an overriding public interest in favor of settlement."); *Parker v. Anderson*, 667 F.2d 1204, 1209 (5th Cir. 1982) (same); *In re Deepwater Horizon*, 739 F.3d 790, 807 (5th Cir. 2014) (same). In class action litigation, Rule 23 requires the court to determine whether a class action settlement is "fair, reasonable, and

adequate." Fed. R. Civ. P. 23(e)(2). Rule 23 outlines four factors that district courts must consider, specifically whether:

> (A) the class representatives and class counsel have adequately represented the class;
> (B) the proposal was negotiated at arm's length;
> (C) the relief provided for the class is adequate, taking into account: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney's fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3); and
> (D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2).

Further, courts in this Circuit apply a six-factor test ("*Reed* factors"), to determine the appropriateness of a proposed settlement:

> (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.

Reed v. Gen. Motors Corp., 703 F.2d 170, 172 (5th Cir. 1983) (citation omitted).[8] "Because the Rule 23 and *Reed* factors overlap, "courts in this circuit often combine them in analyzing class settlements." *C.C. & L.C. v. Baylor Scott & White Health*, No. 4:18-CV-828-SDJ, 2022 WL 4477316, at *2 (E.D. Tex. Sept. 26, 2022). As explained below, all relevant factors are met here.

[8] The factors set forth in Rule 23(e)(2), added by amendment effective December 1, 2018, were not intended to "displace any factor" used by the Courts of Appeal to assess final settlement approval, but rather to focus on core concerns to guide the approval decision. *See* Fed. R. Civ. P. 23, 2018 Advisory Committee Notes. The factors in amended Rule 23(e)(2) are wholly consistent with the Fifth Circuit's *Reed* factors and each are addressed herein.

1. Plaintiffs and Class Counsel Have Adequately Represented the Class

Over the course of this litigation, the Plaintiffs and Class Counsel dedicated substantial time and efforts on behalf of the Class. Class Counsel fully investigated the facts and underlying events relating to the alleged Defect, Plaintiffs produced documents to Toyota, prepared answers to interrogatories and prepared for Plaintiffs' depositions; Class Counsel conducted substantial discovery, including document discovery, interrogatories, requests for admission, and depositions, engaged in third party discovery, and retained independent automotive engineering consultants to inspect numerous Class Vehicles around the country, analyze the alleged Defect, and develop remedies to correct it. In other words, "counsel performed diligently and skillfully, achieving a speedy and fair settlement, distinguished by the use of informal discovery and cooperative investigation to provide the information necessary to analyze the case and reach a resolution." *Cruson v. Jackson Nat'l Life Ins. Co.*, No. 4:16-CV-912-ALM, 2021 WL 3702483, at *4 (E.D. Tex. June 4, 2021).

In addition to the substantial benefits outlined in the Settlement Agreement, through this litigation, Plaintiffs identified for Toyota a safety Defect in the Class Vehicles and developed and proposed an appropriate remedy. *See* Justice Decl. 1 ¶ 144. Plaintiffs and Class Counsel made clear that they would not settle this Action under any terms that did not include a safety recall. *Id*. Importantly, the Recall provides the precise changes to the Class Vehicles that Plaintiffs sought—*i.e.*, a redesigned battery retention system that will eliminate the identified Defect and make the Class Vehicles much safer. *Id*. at ¶¶ 50-52. The Recall provides relief to Class Members above and beyond the Settlement Agreement, further demonstrating Plaintiffs' and Class Counsel's diligent representation of Class Members. The Rule 23(e)(2)(A) factor clearly supports final approval of the Settlement.

2. The Settlement was Reached at Arms' Length with No Fraud or Collusion

The Settlement is the product of well-informed and good faith negotiations between the parties, conducted at arm's length and over the course of many months, and facilitated by Court-appointed mediator Patrick A. Juneau. *See* Justice Decl. 1 ¶¶ 45, 60; Juneau Aff. ¶¶ 7-9. A court may "presume that no fraud or collusion occurred between opposing counsel in the absence of any evidence to the contrary." *C.C. & L.C. v. Baylor Scott & White Health*, 2022 WL 447316 at *3. The use of a mediator "further weigh[s] in favor of a finding that the Settlement was fairly negotiated." *In re Oil Spill by Oil Rig Deepwater Horizon in Gulf of Mexico*, 910 F.Supp.2d 891, 931 (E.D. La. 2012). The Parties reached agreement on the benefits provided to the Class before negotiating attorney fees, costs and expenses, and service awards, avoiding any "threat of the issue tainting the fairness of the settlement negotiations." *In re Chinese-Manufactured Drywall Prods. Liab. Litig.*, 424 F.Supp.3d 456, 486 (E.D. La. 2020); *see also* Justice Decl. 1 ¶¶ 55-56; Juneau Aff. ¶¶ 8-9. The Parties accepted mediator Juneau's recommendation for Plaintiffs' Counsel's attorney fees and negotiated upper limits on costs and expenses and service awards. SA, Sec. VIII.A-C; Justice Decl. 1 ¶¶ 56-57; Juneau Aff. ¶ 9. The record thus demonstrates the zealous advocacy that the parties practiced throughout this litigation, and there is no indication that the settlement is the product of fraud or collusion. The first *Reed* factor and Rule 23(e)(2)(B) support final approval of the Settlement.

3. The Settlement is Adequate Considering the Costs, Delays and Risks of Continued Litigation

Courts considering the second *Reed* factor recognize that where "the prospect of ongoing litigation threatens to impose high costs of time and money on the parties, the reasonableness of approving a mutually-agreeable settlement is strengthened." *In re Heartland Payment Sys., Inc. Customer Data Sec. Breach Litig.*, 851 F.Supp.2d 1040, 1064 (S.D. Tex. 2012). This case has been

ongoing for more than three years, and despite Plaintiffs' progress, several complex, expensive, and time-consuming stages of litigation remain, including class certification, additional fact and expert discovery—including from foreign-based Defendant Toyota Motor Corporation—evidentiary motions, summary judgment, and a jury trial. Settlement spares the parties delay and substantial expense, expediting relief to Class Members and releasing Defendants from uncertainty over costs of litigation and potential liability. The second *Reed* factor and Rule 23(e)(2)(C) support final approval of the Settlement.

4. The Stage of the Proceedings, the Amount of Discovery Completed, and Plaintiffs and Class Counsel's Investigation, Support Final Approval of the Settlement

Courts in this Circuit are also required to consider the stage of the proceedings, and the amount of discovery completed when determining the adequacy of a class action settlement. *See* Reed, 703 F.2d at 172. The key issue is whether the parties have obtained "sufficient information about the strengths and weaknesses of their respective cases to make a reasoned judgment about the desirability of settling the case on the terms proposed." *In re OCA, Inc. Sec. & Derivative Litig.*, No. 05 Civ. 2165, 2009 WL 512081, at *12 (E.D. La. Mar. 2, 2009); *see Ayers*, 358 F.3d at 369 (noting the third *Reed* factor considers whether "the parties and the district court possess ample information with which to evaluate the merits of the competing positions"). The Court "should consider all information which has been available to the parties." *DeHoyos v. Allstate Corp.*, 240 F.R.D. 269, 292 (W.D. Tex. 2007).

Here, Plaintiffs and Class Counsel 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.* This investigation began even before the lawsuit was filed, with pre-suit investigation of the alleged Defect. *See generally* Doc. No. 106 at 13-14 (Pls.' Mem. in Supp. of Mot. To Certify Class). The Parties engaged in formal discovery for over 20 months. They

exchanged hundreds of thousands of pages of documents, served and responded to numerous interrogatories and requests for admission. Plaintiffs also served subpoenas upon third parties, deposed five representatives of Toyota, including a 30(b)(6) designee, conducted inspections of eleven Class Vehicles, and used five expert consultants. Finally, Plaintiffs filed a comprehensive motion for class certification and served multiple expert reports. In light of this, the third *Reed* factor supports final approval of the Settlement.

5. The Settlement is Reasonable Considering the Probability of Plaintiffs' Success on the Merits

The Fifth Circuit recognizes that "absent fraud or collusion, the most important factor is the probability of the plaintiffs' success on the merits." *Parker v. Anderson*, 667 F.2d 1204, 1209 (5th Cir. 1982). While the court must "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, it must avoid "trying the case in the settlement hearings." *Reed*, 703 F.2d at 172. This fourth *Reed* factor is satisfied in cases where plaintiffs face "considerable hurdles in succeeding on the merits, and the Settlement Agreement provides a fair and reasonable recovery." *Cunningham v. Kitchen Collection, LLC*, No. 4:17-CV-770, 2019 WL 2865080 at *2 (E.D. Tex. Jul. 3, 2019). Though Plaintiffs maintain they have a strong case on the merits, they would have to navigate many complex and time-consuming steps to prevail in litigation, as discussed *supra*, Sec. III.C.3, and recognize that there are always uncertainties with trial. Plaintiffs are cognizant of the risks and costs of proceeding in litigation and have opted for the certainty of a settlement that provides the Class an outstanding result and immediate relief. The fourth *Reed* factor supports final approval of the Settlement.

6. The Settlement is within a Reasonable Range of Recovery

In evaluating whether the recovery in a case is reasonable, courts in this Circuit consider a "range of possible damages that could be recovered at trial." *Maher v. Zapata Corp*., 714 F.2d 436, 460 (5th Cir. 1983) (quotations omitted). After establishing the range of possible damages, the Court needs to evaluate whether the settlement is "pegged at a [fair] point in the range" in light of the "likelihood of prevailing at trial and other factors." *Id*. (quotations omitted). The Settlement aims to make Class Members whole for the economic damages caused by the Defect, providing nearly a full recovery to Class Members. This is an outstanding result. In addition to the Recall, which will replace the battery retention system in the Class Vehicles with improved parts, if finally approved, the Settlement will bring additional benefits valued at up to $77.3 million[9] to current and former owners of nearly 1.85 million Class Vehicles. To recap, the additional relief is as follows:

- *Inspection and Recall Programs*. After Class Counsel's determined pursuit of this litigation, and the production of Plaintiffs' experts' engineering reports to Toyota, Toyota implemented a Recall to remedy the alleged Defect in the Class Vehicles. Justice Decl. 1 ¶¶ 48-51. Based on the cost of the replacement parts and the labor necessary to install the re-designed battery clamp sub-assemblies, battery trays and positive terminal covers, Plaintiffs' actuarial expert has calculated the monetary

[9] Plaintiffs' actuarial expert has valued the total Settlement relief at $75.8 million. Bowron Decl. ¶ 8. Because courts in this Circuit permit the cost of notice and administration to be included in a settlement valuation, we add the Settlement notice and administration costs to date of approximately $1.5 million to this figure for a total Settlement value of $77.3 million. *See, e.g., In re Heartland Payment Sys., Inc. Customer Data Sec. Breach Litig.*, 851 F. Supp. 2d 1040, 1078 (S.D. Tex. Mar. 20, 2012) (appropriate to include cost of notice and settlement administration in valuing settlement for purpose of determining attorneys' fees) (citations omitted); Declaration of Lee M. Bowron dated September 23, 2024 ("Bowron Decl."), attached as Exhibit O to the Justice Decl. 1, ¶ 9.

value of the Recall to the Class to exceed $600 million. Bowron Decl. ¶ 7.[10] Further, the value of the Class Vehicle safety inspections negotiated by Class Counsel exceeds $67 million. *See* Bowron Decl. ¶¶ 9, 26.[11]

- *Battery Replacement Reimbursement*. The value of the battery reimbursement program is estimated to be approximately $5 million. Bowron Decl. ¶ 29.[12]

- *Reimbursement of Out-Of-Pocket Costs*. Toyota has agreed to reimburse Class Members for out-of-pocket costs incurred if they previously paid to replace components of the battery retention system before the replacement parts were provided under the Recall. Agreement ¶ III.D. The value of this relief is estimated to be $1.1 million. Bowron Decl. ¶ 31.[13]

- *Payment for Claims Relating to Fires and Damages*. Under the Settlement, Toyota has agreed to pay Class Members for out-of-pocket losses, unreimbursed by insurance, relating to fires or other thermal events caused by the Defect. Agreement

[10] Based upon the participation rates in the Consumer Advisory, the historical completion rates of similar safety related recalls, and Class Counsel's prior experience, it is likely that the Recall and Settlement completion rates will be lower than 100%. Justice Decl. 1 ¶ 103. Regardless whether one considers total potential value conferred or value based on projected completion rates, the benefit conferred is tremendous. Even if the completion rate is in the range of 60% to 80%, the monetary value of the Recall actually conferred on the Class would be between $389.9 million and $519.9 million. *See* Bowron Decl. ¶¶ 7,9; Justice Decl. 1 ¶ 104.

[11] Even if the completion rate is 70%, the monetary value of the safety inspections is still approximately $47 million. Justice Decl. 1 ¶ 105.

[12] Even if the completion rate is 70%, the monetary value of the battery reimbursements is still approximately $3.5 million. Justice Decl. 1 ¶ 106.

[13] Even if the completion rate is 70%, the monetary value of the out-of-pocket reimbursements is still approximately $770,000. Justice Decl. 1 ¶ 107.

¶ III.E. The monetary value of this relief is estimated to be $2.3 million. *See* Bowron Decl. ¶ 33.[14]

This result provides a significant, meaningful, recovery for the Class, and readily satisfies the criteria for approval. *See, e.g., Celeste Neely v. Intrusion Inc.*, No. 4:21-cv-307-sdj, 2022 WL 17736350 at *13 (E.D. Tex. Dec. 16, 2022) (approving settlement that offered 7.61% of potential recovery). As discussed *supra*, Sec. III.C.3, Plaintiffs face substantial risks in proceeding with this litigation despite having a strong case on the merits. In light of these risks, the Settlement sits squarely within the range of possible recovery. If it is finally approved and implemented, the Settlement will provide robust relief and substantial benefits to the Class by way of both monetary recoveries and re-designed vehicle components. Thus, the Settlement provides the best relief that Plaintiffs and the Class could have hoped to achieve at trial, *without* imposing further costs on the parties or the judicial system or facing the risks of continued litigation. The fifth *Reed* factor supports final approval of the Settlement.

7. Class Counsel, Class Representatives, and Class Members Support the Settlement

Class Counsel and named Plaintiffs all support the Settlement. *See Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir. 1977) ("[T]he trial judge, absent fraud, collusion, or the like, should be hesitant to substitute its own judgment for that of counsel."); *see also* Justice Decl. 1 ¶ 66. Notice procedures were adequate and "provided class members ample time to object to the settlement if they wished to do so." *Neely*, 2022 WL 17736350 at *8. Class Member feedback to the Settlement has been overwhelmingly positive. Justice Decl. 1 ¶ 67. No class member has objected to the

[14] Even if the completion rate is 70%, the monetary value of the fire reimbursements is still approximately $1.6 million. Justice Decl. 1 ¶ 108.

Settlement, Class Counsel's fee and expense request, or to the requested Class Representative service awards. Justice Decl. 2 ¶ 5. "Receipt of few or no objections can be viewed as indicative of the adequacy of the settlement." *Erica P. John Fund, Inc. v. Halliburton Co*., No. 3:02-CV-1152-M, 2018 WL 1942227, at *5 (N.D. Tex. Apr. 25, 2018) (quotation omitted). The final *Reed* factor favors approving the proposed settlement.

8. The Settlement Treats Class Members Equitably Relative to Each Other

Finally, the Settlement distributes relief to Class Members on an equitable basis and in an efficient manner. The ultimate effect of the Settlement is to make all Class Members whole: they all will have 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; *see also In re Enron Corp. Sec., Derivative & ERISA Litig.*, No. CIV.A. H-01-3624, 2008 WL 4178151, at *2 (S.D. Tex. Sept. 8, 2008) ("Generally courts will find 'reasonable' a plan of distribution that reimburses class members based on the type and extent of their damages.") The Settlement Agreement also provides a straightforward claims process overseen by the Court-appointed Settlement Claims Administrator, further demonstrating the efficiency and equity of class-wide settlement to resolve this litigation. The Rule 23(e)(2)(D) factor clearly supports final approval of the Settlement.

9. The Requested Attorneys' Fees and Expenses and Class Representative Service Awards are Fair and Reasonable

On September 23, 2024, Class Counsel filed an unopposed Motion for Attorneys' Fees, Reimbursement of Expenses, and Service Awards. Doc. No. 138. The Fee and Expense Application seeks an order (1) awarding Plaintiffs' Counsel's attorneys' fees in the amount of $13,250,000; (2) reimbursing Plaintiffs' Counsel $306,811.17 for reasonable and necessary litigation expenses

incurred, and (3) awarding each Class Representative a service award of $5,000 for their respective contributions to the case, all to be paid by the Defendants. *Id.*; *see also* Agreement § VIII. As set forth therein, and in the Justice Declaration 1, the Fee and Expense application is fair and reasonable for several reasons. First, the Parties agreed on all the substantive and material terms of the Settlement before they reached agreement on a reasonable fee request with the assistance of an experienced mediator. Doc. No. 138 at pp. 13, 25; Justice Decl. 1 ¶ 55; Juneau Aff. ¶ 8. Second, the requested fees will be paid directly by Toyota and will not reduce the monetary relief to the Class. Justice Decl. 1 ¶ 58; Agreement ¶ IV.E.1.4. Third, the Fee and Expense application is consistent with (and even lower than) attorneys' fee awards in comparable cases. Doc. No. 138 at p. 25. Fourth, approval of the requested attorneys' fee award is separate from approval of the Settlement, and neither Plaintiffs nor Plaintiffs' Counsel may terminate the Settlement based on this Court's or any appellate court's ruling with respect to the award of attorneys' fees or litigation expenses. Agreement § VIII. Finally, there have been no objections to the Fee and Expense Application. Justice Decl. 2 ¶ 5. Accordingly, this factor also supports final approval of the Settlement. *See* Fed. R. Civ. P. 23(e)(2)(C)(iii).

VI. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant final approval of the proposed Settlement and grant final certification of the Settlement Class for settlement purposes.

October 21, 2024

Respectfully Submitted,

/s/ Bruce W. Steckler

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Class Counsel

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on October 21, 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 Final Approval of Proposed Class Action Settlement. Defendants do not oppose the relief sought in this Final Approval Motion.

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