

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

ALFRED SALAS and GLORIA
ORTEGA, individually and on behalf of a
class of similarly situated individuals,

Plaintiffs,

v.

TOYOTA MOTOR SALES, U.S.A.,
INC., a California Corporation,

Defendant.

Case No. 2:15-cv-08629-HDV-E

**[PROPOSED] FINAL ORDER APPROVING
CLASS ACTION SETTLEMENT**

Hon. Hernán D. Vera

1 WHEREAS, the Court, having considered the Settlement Agreement dated March 21, 2024,
2 (the “Settlement Agreement”) between and among Plaintiffs and Defendant Toyota Motor Sales,
3 U.S.A., Inc. (“Toyota”), the Court’s April 12, 2024 Order (1) Granting Motion for Preliminary
4 Approval of Class Settlement, Certifying Class, and Directing Notice to the Class; AND (2)
5 Scheduling Fairness Hearing (Dkt. No. 273 (the “Preliminary Approval Order”), having held a
6 Fairness Hearing on October 30, 2024, and having considered all of the submissions and arguments
7 with respect to the Settlement, and otherwise being fully informed, and good cause appearing therefore
8 (all capitalized terms as defined in the Settlement Agreement);

9 **IT IS HEREBY ORDERED AS FOLLOWS:**

10 1. This Final Order Approving Class Action Settlement (“Final Order”) incorporates
11 herein and makes a part hereof the Settlement Agreement and its exhibits and the Preliminary
12 Approval Order. Unless otherwise provided herein, the terms defined in the Settlement Agreement
13 and Preliminary Approval Order shall have the same meanings for purposes of this Final Order and
14 accompanying Final Judgment.

15 2. The Court has personal jurisdiction over all parties in the Action pursuant to 28 U.S.C.
16 § 1332, including, but not limited to all Class Members, and has subject matter jurisdiction over the
17 Action, including, without limitation, jurisdiction to approve the Settlement Agreement, grant final
18 certification of the Class, settle and release all claims released in the Settlement Agreement, and
19 dismiss the Action with prejudice and enter final judgment in each Action. Venue is proper in this
20 district.

21 **I. THE SETTLEMENT CLASS**

22 3. Based on the record before the Court, including all submissions in support of the
23 settlement set forth in the Settlement Agreement (“Settlement”), objections and responses thereto and
24 all prior proceedings in the Action, as well as the Settlement Agreement itself and its related
25 documents and exhibits, the Court hereby confirms the certification of the following Class (the
26 “Class”) for settlement purposes only:

27 All individuals in California who, at any time prior to the occurrence of the Initial Notice Date
28 own(ed), purchase(d), and/or lease(d) a model year 2012 to 2015 Toyota Camry XV50

1 (“Subject Vehicle”). Excluded from the Class are: (a) Toyota, its officers, directors and
2 employees; its affiliates and affiliates’ officers, directors and employees; its distributors and
3 distributors’ officers, directors and employees; and Toyota Dealers and Toyota Dealers’
4 officers and directors; (b) Plaintiffs’ Counsel and Class Counsel; and (c) judicial officers and
5 their immediate family members and associated court staff assigned to this case. In addition,
6 persons are not Class Members once they timely and properly exclude themselves from the
7 Class as provided for in this Settlement Agreement, once the exclusion request has been
8 finally approved by the Court.

9 The Court finds that only those individuals listed on Exhibit A to this Final Order have timely
10 and properly excluded themselves from the Class and, therefore, are not bound by this Final Order or
11 the accompanying Final Judgment.

12 4. Since this Court granted preliminary approval, there have been no “material changes to
13 any of the information relevant to the application of the factors that are used to determine whether the
14 certification of a class is appropriate under Fed. R. Civ. P. 23.” *Miller v. Wise Co., Inc.*, No. ED CV17-
15 99616 JAK (PLAx), 2020 WK 1129863, at *4 (C.D. Cal. Feb. 11, 2020).

16 5. Therefore, the Court confirms, for settlement purposes and conditioned upon the entry
17 of the Final Order and Final Judgment and upon the occurrence of the Final Effective Date, that the
18 Class meets all the applicable requirements of Fed. R. Civ. P. 23(a) and (b)(3):

19 a. *Numerosity*. The Class consists of those owners and leasees at the date of the
20 Preliminary Approval Order and former owners and lessees of approximately two hundred and fifteen
21 thousand vehicles located throughout the United States and satisfies the numerosity requirement of
22 Fed. R. Civ. P. 23(a)(1). Joinder of these widely-dispersed, numerous Class Members into one suit
23 would be impracticable.

24 b. *Commonality*. There are some questions of law or fact common to the Class with regard
25 to the alleged activities of Toyota in this case. These issues are sufficient to establish commonality
26 under Fed. R. Civ. P. 23(a)(2).

27 c. *Typicality*. The claims of Plaintiffs are typical of the claims of the Class Members they
28 seek to represent for purposes of settlement.

1 d. *Adequate Representation.* Plaintiffs’ interests do not conflict with those of absent
2 members of the Class, and Plaintiffs’ interests are co-extensive with those of absent Class Members.
3 Additionally, this Court recognizes the experience of Class Counsel and Toyota’s Counsel. Plaintiffs
4 and their counsel have prosecuted this Action vigorously on behalf of the Class. The Court finds that
5 the requirement of adequate representation of the Class has been fully met under Fed. R. Civ. P.
6 23(a)(4).

7 e. *Predominance of Common Issues.* The questions of law or fact common to the Class
8 Members, as pertains to consideration of the Settlement, predominate over any questions affecting any
9 individual Class Member.

10 f. *Superiority of the Class Action Mechanism.* The class action mechanism provides a
11 superior procedural vehicle for settlement of this matter compared to other available alternatives. Class
12 certification promotes efficiency and uniformity of judgment because the many Class Members will
13 not be forced to separately pursue claims or execute settlements in various courts around the country.

14 6. The designated Settlement class representatives are as follows: Alfred Salas and Gloria
15 Ortega (“Plaintiffs”). The Court finds that Plaintiffs have adequately represented the Class for
16 purposes of entering into and implementing the Settlement Agreement. The Court appoints Tarek H.
17 Zohdy of Capstone Law APC and Paul Kiesel of Kiesel Law LLP as Class Counsel.

18 7. In making all of the foregoing findings, the Court has exercised its discretion in
19 certifying the Class.

20 **II. NOTICE TO CLASS MEMBERS**

21 8. The record shows and the Court finds that the Notice Program has been given to the
22 Class in the manner approved by the Court in its Preliminary Approval Order (Dkt. No. 273). The
23 Court finds that such Class Notice (a) is reasonable and constitutes the best practicable notice to Class
24 Members under the circumstances; (b) constitutes notice that was reasonably calculated, under the
25 circumstances, to apprise Class Members of the pendency of the Action and the terms of the Settlement
26 Agreement, their right to exclude themselves from the Class or to object to all or any part of the
27 Settlement, their right to appear at the Fairness Hearing (either on their own or through counsel hired
28 at their own expense) and the binding effect of the orders and Final Order and Final Judgment in the

1 Action, whether favorable or unfavorable, on all persons who do not exclude themselves from the
2 Class; (c) constitutes due, adequate, and sufficient notice to all persons entitled to receive notice; and
3 (d) fully satisfied the requirements of the United States Constitution (including the Due Process
4 Clause), Fed. R. Civ. P. 23 and any other applicable law as well as complying with the Federal Judicial
5 Center’s illustrative class action notices.

6 9. The Court further finds that Toyota, through the Settlement Notice Administrator,
7 provided notice of the Settlement to the appropriate state and federal government officials pursuant to
8 28 U.S.C. § 1715. Furthermore, the Court has given the appropriate state and federal government
9 officials the requisite ninety (90) day time period to comment or object to the Settlement before
10 entering its Final Order and Final Judgment.

11 **III. FINAL APPROVAL OF SETTLEMENT AGREEMENT**

12 10. The Court finds that the Settlement Agreement resulted from extensive arm’s length
13 good faith negotiations between Plaintiffs and Toyota, through experienced counsel, with the
14 assistance and oversight of Settlement Special Master Patrick A. Juneau.

15 11. Pursuant to Fed. R. Civ. P. 23(e), the Court hereby finally approves in all respects the
16 Settlement as set forth in the Settlement Agreement and finds that the Settlement, the Settlement
17 Agreement, and all other parts of the Settlement are, in all respects, fair, reasonable, and adequate, and
18 in the best interest of the Class and are in full compliance with all applicable requirements of the
19 Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause),
20 the Class Action Fairness Act, and any other applicable law. The Court hereby declares that the
21 Settlement Agreement is binding on all Class Members, except those identified on Exhibit A, and it is
22 to be preclusive in the Action. The decisions of the Settlement Notice Administrator relating to the
23 review, processing, determination and payment of Claims submitted pursuant to the Settlement
24 Agreement are final and not appealable.

25 12. Although Rule 23 imposes strict procedural requirements on the approval of a class
26 settlement, a district court’s only role in reviewing the substance of that settlement is to ensure that it
27 is “fair, adequate, and free from collusion.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026–27 (9th
28

1 Cir.1998) (holding that district court should have broad discretion because it “is exposed to the
2 litigants, and their strategies, positions and proof”).

3 13. A number of factors guide the district court in making that determination, including:

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

9 *Lane v. Facebook, Inc.*, 9 F.3d 811, 818 (9th Cir. 2012) (citing *Hanlon*, 150 F.3d at 1026); *Nat’l Rural*
10 *Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 525 (C.D. Cal. 2004).

11 14. Fed. R. Civ. P. 23(e) provides further guidance as to the requisite considerations in
12 evaluating whether a proposed settlement is fair, reasonable and adequate. It states that a court must
13 consider whether:

- 14 (A) Plaintiffs and Class Counsel have adequately represented the class;
- 15 (B) the proposal was negotiated at arm’s length;
- 16 (C) the relief provided for the class is adequate, taking into account:
 - 17 (i) the costs, risks, and delay of trial and appeal;
 - 18 (ii) the effectiveness of any proposed method of distributing relief to the class,
19 including the method of processing class-member claims;
 - 20 (iii) the terms of any proposed award of attorney’s fees, including timing of
21 payment; and
 - 22 (iv) any agreement required to be identified under Rule 23(e)(3);[2] and
- 23 (D) the proposal treats class members equitably relative to each other.

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

25 15. The Parties are hereby directed to implement and consummate the Settlement according
26 to the terms and provisions of the Settlement Agreement. In addition, the Parties are authorized to
27 agree to and adopt such amendments and modifications to the Settlement Agreement as (a) shall be
28 consistent in all material respects with this Final Order Approving Class Action Settlement, and (b)
do not limit the rights of the Class.

1 16. The Court has considered all objections, timely and proper or otherwise, to the
2 Settlement and denies and overrules all of them as without merit.

3 **IV. DISMISSAL OF CLAIMS, RELEASE, AND INJUNCTION**

4 17. The Action is hereby dismissed with prejudice on the merits and without costs to any
5 party, except as otherwise provided herein or in the Settlement Agreement.

6 18. Upon entry of this Final Order and the Final Judgment, Plaintiffs, and each member of
7 the Class (except those listed on Exhibit A), on behalf of themselves and any other legal or natural
8 persons who may claim by, through or under them, including their executors, administrators, heirs,
9 assigns, predecessors and successors, agree to fully, finally, and forever release, relinquish, acquit,
10 discharge and hold harmless the Released Parties from any and all federal, California and/or political
11 subdivision of California claims, demands, suits, petitions, liabilities, causes of action, rights, losses
12 and damages and relief of any kind and/or type regarding the subject matter of the Action, including,
13 but not limited to, injunctive or declaratory relief, compensatory, exemplary, punitive, restitutionary
14 damages, civil penalties, and expert or attorneys' fees and costs, whether past, present, or future,
15 mature, or not yet mature, known or unknown, suspected or unsuspected, contingent or non-
16 contingent, derivative, vicarious or direct, asserted or un-asserted, based on federal, California or
17 political subdivision of California law, statute, ordinance, rule, regulation, code, contract, tort, fraud
18 or misrepresentation, common law, violations of California's deceptive, unlawful, or unfair business
19 or trade practices, false, misleading or fraudulent advertising, consumer fraud or consumer protection
20 statutes, or other laws, unjust enrichment, any breaches of express, implied or any other warranties,
21 violations of California Civil Code Sections 1750, *et seq.* ("the Consumer Legal Remedies Act"), the
22 Song-Beverly Consumer Protection Act (including, but not limited to, California Civil Code Sections
23 1791, *et seq.*), California Business and Professions Code Sections 17200, *et seq.* ("the Unfair
24 Competition Law"), California Business and Professions Code Sections 17500, *et seq.* ("the False
25 Advertising Law"), the Racketeer Influenced and Corrupt Organizations Act at 18 U.S.C. Sections
26 1962, *et seq.*, or the Magnuson-Moss Warranty Act at 15 U.S.C. Sections 2301, *et seq.*, or any other
27 source, or any federal, California and/or political subdivision of California claim of any kind, in law
28 or equity, arising from, related to, connected with, and/or in any way involving the Action, the Subject

1 Vehicles' HVAC System, and/or associated parts that are, or could have been, defined, alleged, or
2 described in the Class Action Complaint, the Action, or any subsequent amendments of the Class
3 Action Complaint ("Released Claims").

4 19. Notwithstanding the foregoing, Plaintiffs and Class Members are not releasing and are
5 expressly reserving all rights relating to claims against Excluded Parties.

6 20. By not excluding themselves from the Action and to the fullest extent they may
7 lawfully waive such rights, Plaintiffs and Class Members are deemed to acknowledge and waive
8 Section 1542 of the Civil Code of the State of California and any law of any state or territory that is
9 equivalent to Section 1542. Section 1542 provides that:

10 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE**
11 **CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST**
12 **IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH**
13 **IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR**
14 **HER SETTLEMENT WITH THE DEBTOR OR RELEASE PARTY.**

15 Plaintiffs and Class Members expressly waive and relinquish any and all rights and benefits that they
16 may have under, or that may be conferred upon them by, the provisions of Section 1542 of the Civil
17 Code of the State of California, or any other law of any state or territory that is similar, comparable or
18 equivalent to Section 1542, to the fullest extent they may lawfully waive such
19 rights. Notwithstanding Class Members' express waiver of any rights conferred under Section 1542
20 of the Civil Code of the State of California with respect to the Released Claims, the release of the
21 Class Members' claims is limited to claims arising from and related to the facts alleged in the Action,
22 the Class Action Complaint, or any amendments of the Class Action Complaint pertaining to the
23 Subject Vehicles' HVAC Systems.

24 21. The Court orders that the Settlement Agreement shall be the exclusive remedy for all
25 claims released in the Settlement for all Class Members not listed on Exhibit A.

26 22. Therefore, except for those listed on Exhibit A, all Class Members and their
27 representatives are hereby permanently barred and enjoined from, either directly, through their
28 representatives, or in any other capacity instituting, commencing, filing, maintaining, continuing, or

1 prosecuting against any of the Released Parties (as that term is defined in the Settlement Agreement)
2 any action or proceeding in any court or tribunal asserting any of the matters, claims, or causes of
3 action described. In addition, all Class Members and all persons in active concert or participation with
4 Class Members are permanently barred and enjoined from organizing Class Members who have not
5 been excluded from the Class into a separate class for purposes of pursuing, as a purported class action,
6 any lawsuit based on or relating to the claims and causes of action in the Second Amended Class
7 Action Complaint in the Action, or the facts and circumstances relating thereto or the release in the
8 Settlement Agreement. Pursuant to 28 U.S.C. §§ 1651(a) and 2283, the Court finds that issuance of
9 this permanent injunction is necessary and appropriate in aid of its continuing jurisdiction and
10 authority over the Settlement and the Action.

11 **V. OTHER PROVISIONS**

12 23. Without affecting the finality of this Final Order or the accompanying Final Judgment,
13 the Court retains continuing and exclusive jurisdiction over the Action and all matters relating to the
14 administration, consummation, enforcement, and interpretation of the Settlement Agreement and of
15 this Final Order and the accompanying Final Judgment, to protect and effectuate this Final Order and
16 the accompanying Final Judgment, and for any other necessary purpose. The Parties, Plaintiffs, and
17 each Class Member not listed on Exhibit A are hereby deemed to have irrevocably submitted to the
18 exclusive jurisdiction of this Court, for the purpose of any suit, action, proceeding, or dispute arising
19 out of or relating to the Settlement Agreement or the applicability of the Settlement Agreement,
20 including the exhibits thereto, and only for such purposes.

21 24. In the event that the Final Effective Date does not occur, certification of the Class shall
22 be automatically vacated and this Final Order and the accompanying Final Judgment, and other orders
23 entered in connection with the Settlement and releases delivered in connection with the Settlement,
24 shall be vacated and rendered null and void as provided by the Settlement Agreement.

25 25. Without further order of the Court, the Parties may agree to reasonably necessary
26 extensions of time to carry out any of the provisions of the Settlement Agreement. Likewise, the Parties
27 may, without further order of the Court, agree to and adopt such amendments to the Settlement
28

1 Agreement (including exhibits) as are consistent with this Final Order and the accompanying Final
2 Judgment and do not limit the rights of Class Members under the Settlement Agreement.

3 26. Nothing in this Final Order or the accompanying Final Judgment shall preclude any
4 action in this Court to enforce the terms of the Settlement Agreement.

5 27. Neither this Final Order nor the accompanying Final Judgment (nor any document
6 related to the Settlement Agreement) is or shall be construed as an admission by the Parties. Neither
7 the Settlement Agreement (or its exhibits), this Final Order, the accompanying Final Judgment, or any
8 document related to the Settlement Agreement shall be offered in any proceeding as evidence against
9 any of the Parties of any fact or legal claim; provided, however, that Toyota and the Released Parties
10 may file any and all such documents in support of any defense that the Settlement Agreement, this
11 Final Order, the accompanying Final Judgment, and any other related document is binding on and
12 shall have res judicata, collateral estoppel, and/or preclusive effect in any pending or future lawsuit by
13 any person who is subject to the release described above in Paragraph 18 asserting a released claim
14 against any of the Released Parties.

15 28. A copy of this Final Order shall be filed in, and applies to, the Action.

16

17 SO ORDERED this ____ day of _____ 2024.

18

19

20

21

22

23

24

25

26

27

28

Hon. Hernán D. Vera
United States District Court

EXHIBIT “A”



Exclusion Report

Salas et al. v. Toyota Motor Sales, U.S.A., Inc.

Number	First Name	Last Name
1	Jason	Ibey
2	Marian	Jones