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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,

vs.

TOYOTA MOTOR SALES, U.S.A., INC.

Defendant.

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

DEFENDANT'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

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I. INTRODUCTION

Defendant Toyota Motor Sales, U.S.A., Inc. ("Toyota" and/or "Defendant") and the Plaintiffs (together with Toyota, the "Parties") request that this Court find that the class action Settlement is "fair, reasonable and adequate," and finally approve it pursuant to Rule 23.[1] After extensive discovery and motion practice and litigation for about eight years, Toyota, Class Counsel, and Plaintiffs, acting on behalf of the Class Members, commenced settlement negotiations that lasted more than a year and required significant assistance from Settlement Special Master Patrick A. Juneau in reaching agreement on settlement terms as well as attorneys' fees. Ultimately, the Parties reached a compromise and agreed to the Settlement that is before this Court. On April 12, 2024, the Court preliminarily approved the class Settlement, finding that "the Settlement is fair, reasonable, and adequate" and "appears to be the result of extensive, good-faith, arm's-length negotiations that took place between the parties . . . which followed substantial discovery that was sufficient to enable counsel and the Court to make informed decisions." Order Granting Prelim. Approval 2, 6, ECF No. 273 (hereinafter, "Preliminary Approval Order").

The Settlement includes an Out-of-Pocket Reimbursement Program, which provides significant and immediate benefits to the Class of Toyota's customers, as follows:

- Reimbursement payments for certain reasonable out-of-pocket expenses incurred by Class Members ***before*** the Initial Notice Date related to installing a charcoal filter in a Subject Vehicle or having the evaporator

[1] The essential terms of the Settlement are summarized in Plaintiffs' Notice of Motion and Motion for Preliminary Approval of Class Action Settlement ("Plaintiffs' Motion for Preliminary Approval"). ECF No. 264. The Settlement Agreement, ECF No. 264-2, and Exhibits of the Motion for Preliminary Approval, ECF Nos. 264-1 and 264-3–264-6, set forth in greater detail the rights and obligations of the Parties. If there is any conflict between this Memorandum and the Settlement Agreement, the Settlement Agreement governs.

flushed on a Subject Vehicle.

- Reimbursement payments of up to $100 to each Class Member who submitted claims for out-of-pocket expenses that were incurred ***after*** the Initial Notice Date related to replacing and installing a charcoal filter in the Heating, Ventilation, and Air Conditioning ("HVAC") System of a Subject Vehicle.

This Settlement provides the class with reimbursements to address the issues directly alleged in the Second Amended Class Action Complaint, satisfies the requirements of Rule 23(e)—including the eight factors set forth in *Staton v. Boeing Co.*, 327 F.3d 938, 952 (9th Cir. 2003), and "is not the product of collusion among the negotiating parties" as required in *In re Bluetooth Headset Prods. Liab. Litig.* (Bluetooth), 654 F.3d 935, 947 (9th Cir. 2011).

As this Court is aware, "there is a strong judicial policy that favors settlements, particularly where complex class action litigation is concerned." *Briseño v. Henderson*, 998 F.3d 1014, 1031 (9th Cir. 2021) (quoting *Allen v. Bedolla*, 787 F.3d 1218, 1223 (9th Cir. 2015)); *see also In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir. 2008) (citing *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992)); *Etter v. Thetford Corp.*, No. CV 1406759-JLS (RNBX), 2016 WL 11745096, at *9 (C.D. Cal. Oct. 24, 2016) (citing *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1238 (9th Cir. 1998)). Accordingly, the Court should grant the Settlement final approval, dismiss the action, and issue a permanent injunction.[2]

[2] As was required by the Preliminary Approval Order, ECF No. 273, the Parties will file supplemental memoranda of law – on October 25, 2024 – in further support of the Settlement, which will discuss the results of the Settlement Notice Program and will respond to the objections and opt-outs.

II. BACKGROUND

A. Settlement Terms

Under the proposed Settlement, Toyota has agreed to provide an Out-of-Pocket Reimbursement Program for Class Members for eligible claims relating to certain reasonable, unreimbursed out-of-pocket expenses that were and/or are incurred by Class Members related to the HVAC Systems in their Subject Vehicles. These payments address costs incurred by Class Members both prior to and after the Initial Notice Date, as follows:

(i) Reimbursement for out-of-pocket costs incurred ***before*** the Initial Notice Date of May 31, 2024, to replace and install a charcoal filter, as well as out-of-pocket costs that Class Members may have incurred related to the evaporator – which is part of the HVAC assembly – being flushed in the Subject Vehicle; and

(ii) Reimbursement for out-of-pocket expenses incurred ***after*** the Initial Notice Date of May 31, 2024, to replace and install a charcoal filter in the Subject Vehicle; the Partes heavily negotiated this aspect of the Settlement and agreed to limit reimbursement for out-of-pocket expenses incurred ***after*** the Initial Notice Date up to $100 per Class Member Claim.

See Settlement Agreement Section III, ECF No. 264-2.

Additional details on the Settlement Terms, including the relief, are included in the Settlement Agreement and Plaintiffs' Motion for Preliminary Approval. *See generally id.*; Plaintiffs' Motion for Preliminary Approval, ECF No. 264.

B. Plaintiffs' Allegations and the Parties' Motion Practice

The Action alleges violations of consumer protection statutes and breaches of warranties, among other claims, arising out of allegedly defective HVAC Systems in certain 2012–2015 Toyota Camry Vehicles. Plaintiffs allege there is a defect in the

HVAC Systems that causes emissions of noxious and foul odors from debris and contamination in the HVAC Systems.

While Plaintiffs believe they have meritorious claims, Toyota denies liability and the propriety of any litigation class, and it is entirely possible that the Court could find against Plaintiffs. The Parties have filed multiple motions on a wide range of topics, which are outlined in Plaintiffs' Motion for Preliminary Approval. Section II.B, ECF No. 264. Specifically, the Parties have filed multiple motions *in limine* and oppositions thereto and proposed *voir dire* questions, jury instructions, witness and exhibit lists, and other pretrial documents in preparation for trial, which had been set for February 27, 2024. *See* Zohdy Decl. ¶ 23, ECF No. 264-1.

C. Discovery, Confirmatory Discovery, and Settlement Negotiations

In their Motion for Preliminary Approval, Plaintiffs' Counsel discussed their extensive investigation regarding the facts and the law relevant to the claims and defenses in this case, including the formal and confirmatory discovery exchanged between the Parties. ECF No. 264.

The Parties engaged in some settlement discussions in 2023 but did not reach a resolution. Subsequently, after the Final Pretrial Conference on February 6, 2024, the Parties began extensive settlement negotiations. In that time, numerous conference calls and emails were made between Class Counsel and Toyota's counsel on an often-daily basis. After agreeing to the substantive terms of the Settlement, counsel for each of the Parties attended an in-person mediation with Settlement Special Master Patrick Juneau to negotiate attorneys' fees, litigation costs and expenses, and Plaintiffs' service awards. *See* Juneau Aff., ECF No. 264-5.

III. THE COURT PRELIMINARILY APPROVED THE SETTLEMENT

In the Court's Preliminary Approval Order, the Court vetted the Settlement based on the requirements specified in Rule 23(e) and granted preliminary approval. ECF No. 273. The Court carefully evaluated the Rule 23 factors, including numerosity, commonality, typicality, adequacy, predominance, and superiority and

found that "the Settlement is fair, reasonable, and adequate" and "is the result of informed, good-faith, arm's length negotiations between the Parties and their capable and experienced counsel and is not the result of collusion." *See id.* at 2–5.

The Court also noted that the Notice Program and methodology "(a) meet the requirements of due process and Federal Rules of Civil Procedure 23(c) and (e); (b) constitutes the best notice practicable under the circumstances to all persons entitled to notice; and (c) satisfies the Constitutional requirements regarding notice." *Id.* at 8. The Settlement Notice Administrator has filed declarations which describe the current status of Class Notice, *see* ECF No. 264-6 and ECF No. 274-7, and will file an updated declaration with the full results of Class Notice, a list of the opt-outs, and the objections received by the Court-ordered date of October 25, 2024. Pursuant to the Settlement Notice Administrator's declaration, the Notice Plan has reached approximately 97 percent of the identified class members with a frequency of three times. ECF No. 274-7, ¶¶10, 36. The results of the dissemination of notice and Class Members' reaction to the Settlement will be discussed in detail in Toyota's Supplemental Brief in Support of Final Approval, which is to be filed on or before October 25, 2024. Prelim. Approval Order 15, ECF No. 273.

IV. LEGAL STANDARD

Federal Rule of Civil Procedure 23(e), as amended, sets forth that "the claims, issues, or defenses of a certified class . . . may be settled . . . only with the court's approval." Whether to approve a class action settlement is "committed to the sound discretion of the trial judge because he is exposed to the litigants, and their strategies, positions, and proof." *Glass v UBS Fin. Servs., Inc.*, 331 Fed. Appx. 452, 455 (9th Cir. 2009) (quoting *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 458 (9th Cir. 2000)); *see also Staton*, 327 F.3d at 953; *Chambers v. Whirlpool Corp.*, 214 F. Supp. 3d 877, 886 (C.D. Cal. 2016) (citing *Class Plaintiffs*, 955 F.2d at 1291; *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998), *overruled on other grounds by*

Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338 (2011)), *rev'd on other grounds*, 980 F.3d 645 (9th Cir. 2020).

Before approving a class action settlement, Rule 23 of the Federal Rules of Civil Procedure requires the Court to determine whether the proposed settlement is "fair, reasonable, and adequate." *See Staton*, 327 F.3d at 959; *Kearney v. Hyundai Motor Am.*, No. SACV 09-1298-JST (MLGx), 2013 WL 3287996, at *4 (C.D. Cal. June 28, 2013) (citing Fed. R. Civ. P. 23(e)(2)). To determine whether a settlement agreement meets these standards, a district court sitting in the Ninth Circuit must consider the factors set out by *Staton* and *Bluetooth*. *See Staton*, 327 F.3d at 959 ("To determine whether a settlement agreement meets these standards, a district court must consider a number of factors, including: the strength of plaintiffs' case; the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class action status throughout the trial; the amount offered in settlement; the extent of discovery completed, and the stage of the proceedings; the experience and views of counsel; the presence of a governmental participant; and the reaction of the class members to the proposed settlement."); *Bluetooth*, 654 F.3d at 946 (same).

V. ARGUMENT

A. This Court Has Jurisdiction to Consider and Rule on the Settlement

(1) The Court Has 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. 273, p. 2; *Serrano v. 180 Connect, Inc.*, 478 F.3d 1018, 1020-21 (9th Cir. 2007) (noting that, pursuant to 28 U.S.C.A. § 1332(d), the Class Action Fairness Act provides federal courts original jurisdiction over class actions in which (1) the class consists of at least 100 proposed members; (2) the matter in controversy is greater than $5,000,000 after aggregating the claims of the proposed class members,

exclusive of interest and costs; and (3) any member of a class of plaintiffs is a citizen of a state different from any defendant); *Vasquez v. First Student, Inc.*, No. 2:14-cv-06760-ODW(Ex), 2014 WL 6837279, at *2 (C.D. Cal. Dec. 3, 2014) (same).

(2) 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 for the Settlement Class. As will be discussed more fully in Toyota's Supplemental Brief in Support of Final Approval, the Court also has personal jurisdiction over absent Class Members because 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 Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811–14 (1985) (finding that the district court obtains personal jurisdiction over the absentee class members by providing proper notice of the impending class action and providing absentees with an opportunity to be heard or an opportunity to exclude themselves from the class).

(3) Notice Satisfied the Requirements of Rule 23(c) and (e) and Due Process

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 Simpao v. Gov't of Guam*, 369 Fed. Appx. 837, 838–39 (9th Cir. 2010) (citing Fed. R. Civ. P. 23(c)(2)(B)); *Beltran v. Olam Spices & Vegetables, Inc.*, No. 1:18-CV-01676-NONE-SAB, 2021 WL 1105246, at *4 (E.D. Cal. Mar. 23, 2021) (citing Fed. R. Civ. P. 23(e)(1)).

Here, and pursuant to the Court's Preliminary Approval Order, ECF No. 273, Class Notice is being 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, and social media notice. *See* Settlement Agreement 17–

18, ECF No. 264-2. The Settlement Notice Administrator will file the results of the dissemination of the Settlement Notice Program with the Court by October 25, 2024. Prelim. Approval Order 15, ECF No. 273. The Parties will provide the Court with the results of the Settlement Notice Program, including any objections and opt-outs, in their Supplemental Briefs in Support of Final Approval, which will also be filed by the Court-ordered deadline of October 25, 2024. *Id.*

B. The Settlement is "Fair, Reasonable, and Adequate" Under the Criteria Discussed in Rule 23(e) and Applied in the Ninth 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).[3]

The 2018 Committee Notes recognized that, prior to the December 1, 2018 amendment (the "Amendment"), each circuit had developed its own list of factors to be considered in determining whether a proposed class action settlement was fair, reasonable, and adequate. *See id.* at Advisory Committee Note to 2018 amendment. According to the Committee Notes, the Amendment is not intended to displace any such circuit factors, but rather is intended to direct the parties to present the settlement to the court in terms of a shorter list of core concerns by focusing on the primary procedural considerations and substantive qualities that should always matter to the approval decision. *See id.*

[3] Effective December 1, 2018, Rule 23(e)(2) was amended to provide that the Court may approve the Settlement only after a hearing and only on finding that it is fair, reasonable, and adequate after considering whether: (A) the class representatives and class counsel have adequately represented the class; (B) the proposal was negotiated at arm's length; (C) the relief provided for the class is adequate, taking into account: (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.

When evaluating the fairness of a settlement, courts in the Ninth Circuit generally weigh the *Staton* factors, many of which overlap with the requirements set forth in the Amendment to Rule 23(e)(2):

i. the strength of plaintiffs' case;

ii. the risk, expense, complexity, and likely duration of further litigation;

iii. the risk of maintaining class action status throughout the trial;

iv. the amount offered in settlement;

v. the extent of discovery completed, and the stage of the proceedings;

vi. the experience and views of counsel;

vii. the presence of a governmental participant; and

viii. the reaction of the class members to the proposed settlement.

Staton, 327 F.3d at 959.

These factors are not an exhaustive list of relevant considerations, and "[t]he relative degree of importance to be attached to any particular factor will depend upon . . . the unique circumstances of each individual case." *In re Volkswagen "Clean Diesel" Mktg., Sales Pracs., & Prods. Liab. Litig.*, 895 F.3d 597, 611 (9th Cir. 2018) (quoting *Officers for Just. v. Civ. Serv. Comm'n of S.F.*, 688 F.2d 615, 625 (9th Cir. 1982)); *see also Staton*, 327 F.3d at 960 (noting that "the settlement taken as a whole, rather than the individual component parts" determines fairness) (quoting *Hanlon*, 150 F.3d at 1026). "Deciding whether a settlement is fair is ultimately 'an amalgam of delicate balancing, gross approximations and rough justice.' " *In re Volkswagen*, 895 F.3d at 611 (quoting *Officers for Just.*, 688 F.2d at 625).

C. The Weaknesses of the Plaintiffs' Case, and the Risk, Expense, Complexity, and Duration of Further Litigation Weigh in Favor of Final Approval

The unpredictability of trials generally weighs in favor of a finding that a settlement is fair, adequate, and reasonable. *See Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 964 (9th Cir. 2009) ("[T]he very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation . . . induce[s] consensual settlements." (quoting *Officers for Just.*, 688 F.2d at 625)). The weaknesses of the Plaintiffs' case and the enormous complexity, expense, and likely duration of this litigation weigh in favor of a finding that the Settlement is fair, reasonable, and adequate. *See Lane v. Facebook, Inc.*, 696 F.3d 811, 820, 825 (9th Cir. 2012) (upholding settlement approval in which "unclear factual issues undermined the strength of the plaintiffs' case," "the complex nature of the plaintiffs' claims increased the risk and expense of further litigation," and counsel "reasonably concluded that the immediate benefits represented by Settlement outweighed the possibility—perhaps remote—of obtaining a better result at trial" made up part of the district court's decision); *Adoma v. Univ. of Phx., Inc.*, 913 F. Supp. 2d 964, 975 (E.D. Cal. 2012) (In evaluating the strength of a case, a court assesses "objectively the strengths and weaknesses inherent in the litigation and the impact of those considerations on the parties' decisions to reach [a settlement agreement]."). If this class action were to proceed to trial, it would undoubtedly be a costly and risky process for both Parties, which favors settlement. *See Rodriguez*, 563 F.3d at 966 (holding that the case being "complex" and likely "expensive and lengthy to try," the remaining "number of serious hurdles," and the "[i]nevitable appeals" that "would likely prolong the litigation, and any recovery by class members, for years" appropriately supported the district court's approval of the settlement); *Adoma*, 913 F. Supp. 2d at 976 ("In assessing the risk, expense, complexity, and likely duration of further litigation, the court evaluates the time and cost required.").

As the Court has already seen and ruled on, this litigation involves over two hundred thousand Class Members and multiple legal claims and defenses. If this case were to proceed as a litigation class, it would require an enormous outlay of additional time, money, and energy from Plaintiffs and Toyota.

The proposed Settlement, which guarantees Class Members considerable relief, provides significant advantages over "rolling the dice" and proceeding to trial with an unknown outcome. *See, e.g.*, *In re Toyota Motor Corp. Unintended Acceleration Mktg., Sales Pracs., & Prods. Liab. Litig.*, No. 8:10ML 02151 JVS (FMOx), 2013 WL 12327929, at *14, *20 (C.D. Cal. July 24, 2013) (approving class settlement and noting, "[s]imply put, Plaintiffs might eventually recover more with continued litigation, but they also might recover nothing").

"In most situations, unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results." *Moreno v. JCT Logistics, Inc.*, No. EDVC 17-2489 JGB (KKx), 2023 WL 9319048, at *5 (C.D. Cal. Apr. 28, 2023) (quoting *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 526 (C.D. Cal. 2004), and noting the "long, complex, and expensive process" to litigate the case's merits, including the possibility of class decertification); *see also Barbosa v. Cargill Meat Sols. Corp.*, 297 F.R.D. 431, 446 (E.D. Cal. 2013) (similar). Moreover, courts encourage settlements in class actions where possible. *See Allen*, 787 F.3d at 1223 (acknowledging the Ninth Circuit's repeated affirmation of the strong judicial policy favoring settlements, particularly in complex class actions); *see also Barbosa*, 297 F.R.D. at 446 (quoting *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976) ("It hardly seems necessary to point out that there is an overriding public interest in settling and quieting litigation. This is particularly true in class action suits which are now an ever increasing burden to so many federal courts and which present serious problems of management and expense.")).

As such, and in contrast to this risk, uncertainty, and possible duration, it is beneficial to Class Members that, through this Settlement, they will be able to receive "immediate recovery by way of the compromise to the mere possibility of relief in the future, after protracted and expensive litigation." *See Chambers*, 214 F. Supp. 3d at 888 (quoting *Nat'l Rural Telecomms.*, 221 F.R.D. at 526); *Knapp v. Art.com, Inc.*, 283 F. Supp. 3d 823, 832 (N.D. Cal. 2017) (stating the relief provided by settlement is "preferable to lengthy and expensive litigation with uncertain results").

This factor weighs in favor of final approval, as the Settlement would avoid all of the lengthy, costly, and uncertain aspects of further litigation, particularly trial. *See, e.g.*, *S.C. v. Buddi US LLC*, No. SACV 20-01370-CJC (KESx), 2024 WL 1459808, at *7 (C.D. Cal. Apr. 1, 2024) ("[E]ven if Plaintiff and the class could secure a better result than the Settlement represents at trial, any result obtained after additional litigation or trial would take significantly longer and there is a risk that Plaintiff could have received much less, or nothing at all. . . . The Settlement eliminates these costs and risks by ensuring [c]lass [m]embers a recovery that is certain and immediate." (internal quotation marks omitted)); *Fitzhenry-Russell v. Keurig Dr. Pepper Inc.*, No. 17-cv-00564-NC, 2019 U.S. Dist. LEXIS 232301, at *12 (C.D. Cal. Apr. 10, 2019) (finding that even when a settlement was reached on the eve of trial, the probable length of trial, significant costs to try the case, and "strong possibility of expensive and time-consuming post-trial motion practice or appeals" weighed in favor of approval).

D. The Risk of Maintaining Class Action Status Through Trial

This litigation was hard-fought throughout almost nine years, and among other defenses, Toyota's position was that the class should be decertified. It filed a Motion to Decertify Class on July 14, 2022. ECF. No. 151. The Motion to Decertify Class was partially granted on March 31, 2023, but only to the extent Toyota sought modification of the class to omit the equitable relief claims; it was denied in all other respects. ECF. No. 166. Toyota intended to keep pursuing class decertification,

which can occur at any time, as even Plaintiffs acknowledged in their Motion for Preliminary Approval. *See* 29, ECF No. 264 (citing *Ms. L v. U.S. Immigr. & Customs Enf't*, 330 F.R.D. 284, 287 (S.D. Cal. 2019)). Since the class was originally certified, Toyota has been successful in narrowing it. *See* ECF No. 220.

Moving forward, extensive trial preparation would be necessary, which would be hard-fought, zealously contested, time consuming, uncertain, and expensive. *See, e.g.*, *Flo & Eddie, Inc. v. Sirius XM Radio, Inc.*, No. CV13-5693 PSG (GJSx), 2017 WL 4685536, at *4 (C.D. Cal. May 8, 2017) (granting final approval where "a trial on the hotly disputed scope of damages, as well as a possible appeal, would only push recovery further down the road" and "the risk that Defendant may prove successful in attacking class certification" weighed in favor of a settlement reached on the eve of trial). If Plaintiffs were successful and reached a final adverse determination against Toyota, Toyota intended to appeal the class certification ruling, among other rulings, further drawing out the litigation process. In light of certification and trial risks and the certainty that comes with the Settlement relief, this factor weighs in favor of the Settlement. *See, e.g.*, *Lane*, 696 F.3d at 820 (upholding final approval of a settlement in which district court found the risk of decertification weighed in favor of approval); *Rodriguez*, 563 F.3d at 966 (holding that the possibility of decertifying a class at any time weighed in favor of settlement); *Spann v. J.C. Penney Corp.*, 211 F. Supp. 3d 1244, 1256 (C.D. Cal. 2016) ("[T]he risk that the court could de-certify the class, either by way of a motion to de-certify or on its own motion…weighs in favor of granting final approval.").

E. The Amount Offered in Settlement Is Sufficiently Fair, Adequate and Reasonable

The proposed Settlement is fair, reasonable, and adequate, particularly given the significant consideration offered. The proposed Settlement provides that Toyota will reimburse Class Members who file timely and valid claims for certain costs incurred related to the HVAC Systems in their Subject Vehicles. *See* Settlement

Agreement Section III.A, ECF No. 264-2. Toyota has agreed to provide funds sufficient to pay eligible Out-of-Pocket Claims, as directed by the Settlement Claims Administrator. *See id.* The proposed Settlement thus provides plenary relief that allows Class Members who have incurred costs to address issues with their Subject Vehicles' HVAC Systems to be reimbursed for those costs – both retrospectively and prospectively (the latter up to $100). *See id.* In granting preliminary approval of the Settlement, the Court noted the Settlement consideration, with reimbursement for both former and future expenses incurred in repairing the HVAC system, and "conclude[d] that the proposed settlement between the parties is sufficiently fair, adequate, and reasonable." Prelim. Approval Order 7–8, ECF No. 273.

When evaluating the sufficiency of a settlement, the Court must consider the settlement as a whole and not its individual components. *See Radcliffe v. Hernandez*, 794 Fed. Appx. 605, 607 (9th Cir. 2019) (citing *Staton*, 327 F.3d at 960); *Officers for Just.*, 688 F.2d at 628; *Campbell v. Facebook, Inc.*, 951 F.3d 1106, 1123 (9th Cir. 2020) ("[T]he relief provided to the class cannot be assessed in a vacuum.").

Further, "the provisions of a class action settlement must be viewed in terms of a range of probabilities, not mere possibilities." *Officers for Just.*, 688 F.3d at 630. The Court's essential function is to assess whether the Settlement falls within the range of reasonableness. *See Burnell v. Swift Transp. Co. of Ariz., LLC*, No. EDCV10-00809-VAP (OPx), 2022 WL 1479506, at *5 (C.D. Cal. Apr. 28, 2022) (granting final approval where the settlement was "on the low end of" the plaintiffs' claims estimate but "within the range of reasonableness"); *Gagnier v. Siteone Landscape Supply LLC*, No. SACV 21-01834-CJC (DFMx), 2023 WL 8116831, at *8 (C.D. Cal. June 6, 2023) (similar). "[T]he very essence of a settlement is compromise, a yielding of absolutes and an abandoning of highest hopes." *Chambers*, 214 F. Supp. 3d at 889 (quoting *Linney*, 151 F.3d at 1242). Considering the significant benefits provided to the Class Members and the allegations provided

in the Second Amended Class Action Complaint, this factor also weighs in favor of granting final approval.

F. The Extent of Discovery Completed and The Stage of the Proceedings Militates in Favor of Final Approval

Having settled this case at the eve of trial, the Parties had completed significant amount of work on this case that included, but is not limited to: (i) Toyota's production of approximately 99,125 documents, (ii) depositions of 13 fact and expert witnesses, (iii) fully briefing and opposing dispositive motions and motions for class certification, (iv) filing of multiple motions *in limine* and oppositions thereto by both Parties, (v) proposed *voir dire* questions, (vi) proposed jury instructions, (vii) witness and exhibit lists, and (viii) other pretrial documents in preparation for trial, which had been set for February 27, 2024. *See, e.g.*, Settlement Agreement 8, ECF No. 264-2; Zohdy Decl. ¶ 23, ECF No. 264-1. The Court also noted in the Preliminary Approval Order that the Settlement "followed substantial discovery that was sufficient to enable counsel and the Court to make informed decisions." Prelim. Approval Order 7, ECF No. 273.

The Parties had also previously engaged in settlement discussions, which were unsuccessful, and they restarted discussions in May 2023, eventually reaching a settlement in principle shortly before trial was to begin, nearly a year after a second round of settlement discussions began and after numerous video conferences, telephone conferences, and email discussions. This second round of negotiations occurred with the assistance and oversight of court-appointed Mediator and Settlement Special Master, Patrick A. Juneau. Prelim. Approval Order2, 6, ECF No. 273.

As such, the Parties here clearly "entered the settlement discussions with a substantial understanding of the factual and legal issues from which they could advocate for their respective positions," supporting final approval. *Chambers*, 214 F. Supp. 3d at 889; *see also Campbell*, 951 F.3d at 1122 (noting that the case

proceeding to "nearly the close of discovery before settling" weighed in favor of final approval); *Nat'l Rural Telecomms.*, 221 F.R.D. at 526–28 (holding that the settlement "reached on the eve of trial," after the parties "exhaustively examined the factual and legal bases" of the claims based on review of completed discovery, "strongly militates in favor of settlement").

Therefore, the proposed Settlement should be "presumed fair" as it follows "sufficient discovery and genuine arms-length negotiation." *Nat'l Rural Telecomms.*, 221 F.R.D. at 528; *Linney v. Cellular Alaska P'ship*, Case Nos. C-96-3008 DLJ, C-97-0203 DLJ, C-97-0425 DLJ, C-97-0457 DLJ, 1997 WL 450064, at *5 (N.D. Cal. July 18, 1997) ("The involvement of experienced class action counsel and the fact that the settlement agreement was reached in arm's length negotiations, after relevant discovery had taken place create a presumption that the agreement is fair."), *aff'd*, 151 F.3d 1234 (9th Cir. 1998); *Gomez v. USF Reddaway Inc.*, No. LA CV16-05572, 2020 WL 10964603, at *4 (C.D. Cal. Sept. 21, 2020) ("[C]ourts often consider whether the settlement is the product of good faith, arms-length negotiations.").

G. The Experience and Views of Counsel Also Support Final Approval

The Court previously found in preliminarily approving the settlement that the negotiations took place between "counsel who are experienced in similar litigation along with the assistance of the Settlement Special Master." Prelim. Approval Order ¶ 6, ECF No. 273. The Court considered the application for Class Counsel and appointed Tarek H. Zohdy of Capstone Law APC and Paul Kiesel of Kiesel Law LLP as Class Counsel. The Court also previously acknowledged that the Settlement resulted from "extensive, good-faith, arm's-length negotiations" between the Parties' "capable and experienced counsel." *See id. at* 2, 6.

As stated in *Rodriguez*, and in language equally applicable here, the Parties' "competent counsel are better positioned than courts to produce a settlement that

fairly reflects each party's expected outcome in litigation." 563 F.3d at 967; *see also Chambers*, 214 F. Supp. 3d at 889 (citing *Nat'l Rural Telecomms.*, 221 F.R.D. at 528). As such, great weight should be accorded to the judgment of "counsel who are experienced in similar litigation," who have completed significant work on the case and who have weighed the benefits of the Settlement against the risks of continued litigation. Prelim Approval Order ¶ 6, ECF No. 273. Just as this Court found that the experience and views of counsel supported preliminary approval, so too should it weigh in favor of final approval. *See id.* at 6; *Rodriguez*, 563 F.3d at 965 ("This circuit has long deferred to the private consensual decision of the parties.").

H. The Presence of a Governmental Participant

There is no government participant in this case, so this factor does not apply. *See Anderson v. Sherwin-Williams Co.*, No. CV 17-2459 FMO (SHKx), 2020 WL 13584180, at *6 (C.D. Cal. Oct. 23, 2020); *Ahmed v. HSBC Bank USA*, No. CV 15-2057 FMO (SPx), 2019 WL 13027266, at *5 (C.D. Cal. Dec. 30, 2019).

VI. THE SETTLEMENT IS NOT A PRODUCT OF COLLUSION.

Where the Court finds "the case was extremely hard-fought, and settled at an advanced procedural stage, after multiple mediations" and lack of collusion between counsel, a settlement agreement is reasonable. *Campbell*, 951 F.3d at 1125; *see also Nat'l Rural Telecomms.*, 221 F.R.D. at 527–28 (C.D. Cal. 2004) ("A settlement following sufficient discovery and genuine arms-length negotiation is presumed fair," because these conditions "suggest[] that the Parties arrived at a compromise based on a full understanding of the legal and factual issues surrounding the case."). Here, there can be no question that the Settlement was not a product of collusion, and instead was the result of hard-fought, arm's-length negotiations.

Since the filing of this case, almost 9 years ago, the Parties have undertaken extensive discovery, including producing and reviewing almost 100,000 documents, retaining experts that have already submitted expert reports, and taking and defending multiple fact and expert depositions. *See* Settlement Agreement 8, ECF

No. 264-2. After expending an incredible amount of time and resources to move this action towards a trial date, the Parties were able to reach a Settlement Agreement that provides substantial consideration to the Class, including an Out-of-Pocket Expenses Reimbursement Program. *Id.* at 11.

In granting preliminary approval, the Court carefully scrutinized the Settlement and found that "with the assistance and oversight of Settlement Special Master Patrick A. Juneau," the parties were able to engage in "substantial discovery that was sufficient to enable counsel and the Court to make informed decisions." *See* Prelim. Approval Order 6, ECF No. 273 (*citing Manual for Complex Litigation (Third)* § 30.42 (West 1995) ("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.")).

Since the Settlement Special Master's appointment, the Parties have had numerous communications with him regarding the negotiations, terms, timing, and related issues. *See* Pls.' Prelim. Approval Mot. 9, ECF No. 264. As such, the assistance of an impartial mediator strongly suggests the absence of collusion. *See, e.g.*, *Morales v. Steveco, Inc.*, No. 1:09-cv-00704 AWI JLT, 2011 WL 5511767, at *11 (E.D. Cal. Nov. 10, 2011). As a result of the aforementioned, the Court rightfully determined that "there are no indications that the settlement is the product of fraud or overreaching by, or collusion between, the negotiating parties." Prelim. Approval Order 6, ECF No. 273.

VII. THIS COURT SHOULD ISSUE A PERMANENT INJUNCTION.

"District courts often grant permanent injunctions at the final approval stage where, as here, oversight of a comprehensive settlement may be impeded by parallel state actions." *In re: ZF-TRW Airbag Control Units Prods. Liab. Litig.*, No. LA-ML 19-2905 JAK (MRWx), 2023 WL 9227002, at *17 (C.D. Cal. Nov. 28, 2023). 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.[4]

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. *Hanlon*, 150 F.3d at 1025; *Keith v. Volpe*, 118 F.3d 1386, 1390 (9th Cir. 1997); *In re Linerboard Antitrust Litig.*, 361 Fed. Appx. 392, 396 (3d Cir. 2010). The Ninth Circuit and other courts within this circuit have also held that injunctions are appropriate where parallel state actions would interfere with the court's exclusive jurisdiction. *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). Other circuits faced with similar circumstances have also affirmed injunctions of state court proceedings. *See, e.g.*, *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

[4] In the Preliminary Approval Order, the Court found that issuance of a preliminary injunction was necessary and appropriate in aid of the Court's continuing jurisdiction and authority over the Action. Dkt. No. 273, ¶ 35. The Court also stated that "[u]pon final approval of the settlement, all Class Members who do not timely and validly exclude themselves from the Class shall be forever enjoined and barred from asserting any of the matters, claims or causes of action released pursuant to the Settlement Agreement against any of the Released Parties, and any such Class Member shall be deemed to have forever released any and all such matters, claims, and causes of action as provided for in the Settlement Agreement." *Id.*

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).

Where, as here, substantial negotiations have progressed to the point of settlement, competing actions, if they are filed and/or allowed to proceed, would jeopardize the realization of this Settlement, interfere with this Court's ability to manage the Settlement, and potentially confuse Class Members. *See Jacobs v. CSAA Inter-Ins*., No. C07-00362 MHP, 2009 WL 1201996, at *2 (N.D. Cal. May 1, 2009) ("A district court may enjoin state proceedings which affect the rights of class members, where the court is supervising a settlement of a class action that is so far advanced that it is equivalent to a res over which the court requires control and where it would be intolerable to have conflicting orders from different courts."). To protect its jurisdiction, the Court may issue an injunction once the litigation reaches the settlement stage in order to "effectuate the settlement." *See Hartranft v. TVI, Inc.*, No. SACV 15-01081-CJC-DFM, 2019 WL 1746137, at *6 (C.D. Cal. Apr. 18, 2019).

The Court also has the power to issue an injunction pursuant to two exceptions under the Anti-Injunction Act. The "necessary in aid of" exception to the Anti-Injunction Act allows a federal court to grant an injunction to effectively prevent its jurisdiction over a settlement from being undermined by pending parallel litigation in state courts. *Hanlon*, 150 F.3d at 1025 ("[A] federal court may intervene and enjoin state court proceedings in three narrow circumstances, one of which includes when it is necessary to protect the court's jurisdiction."). Additionally, the Anti-Injunction Act permits courts to issue injunctions where it is necessary "to protect or effectuate [a court's] judgment[]," such as where a court has finally approved a class action settlement. *See McCormick v. Am. Equity Inv. Life Ins. Co*., No. 2:05–cv–06735–CAS(MANx), 2016 WL 850821, at *5 (C.D. Cal. Feb. 29, 2016); *Rotandi v.*

Miles Indus. Ltd., No. C11-02146 EDL, 2014 WL 12642117, at *3 (N.D. Cal. Jan. 15, 2014) (enjoining all class members who did not opt out from the settlement "from commencing or prosecuting any new action . . . against a Released Rarty relating to or arising out of the subject matter of the Action" under the All Writs Act and the Anti-Injunction Act).

Here, the rights and interests of the Class Members and the jurisdiction of this Court will be impaired if Class Members who have not opted out of the Settlement Class proceed with other actions alleging substantially similar claims to those asserted in this litigation and/or those claims that are resolved and/or released pursuant to the Settlement Agreement. Additionally, the fact that Class Members have been afforded an opportunity to opt out of the Settlement justifies the issuance of an injunction to aid the Court in its management of the Settlement. *See In re: ZF-TRW Airbag Control Units*, 2023 WL 9227002, at *17 (finding an injunction appropriate where "class members were given an opportunity to opt out of the settlement").

VIII. CONCLUSION

Toyota respectfully requests that the Court: (i) enter an Order granting final approval, pursuant to Federal Rule of Civil Procedure 23(e), as amended, 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: August 30, 2024

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CERTIFICATE OF SERVICE

I hereby certify that on August 30, 2024, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the Electronic Mail Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on August 30, 2024.

John P. Hooper
John P. Hooper

Certificate of Compliance.

The undersigned, counsel of record for Defendant Toyota Motor Sales, U.S.A., Inc., certifies that this brief contains 6,813 words, which complies with the word limit of L.R. 11-6.1.

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