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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 SECOND SUPPLEMENTAL MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

Date: December 12, 2024
Time: 10:00 am
Judge: Judge Hernán D. Vera
Courtroom: 5B

[REDACTED VERSION OF DOCUMENT FILED UNDER SEAL]

I. INTRODUCTION

Defendant Toyota Motor Sales, U.S.A., Inc. ("Toyota" and/or "Defendant") files this Second Supplemental Memorandum of Law in Support of Motion for Final Approval of Class Action Settlement. The Court's Minute Order from the October 30, 2024 Fairness Hearing, ordered the parties to address (i) whether the expected claim rate in this case is acceptable under Fed. Rule Civ. Pro. 23(e); (ii) whether, and, if so, how the proposed settlement is analogous to other class settlements that have been approved; and (iii) how the balance between the economic benefit to the class members and attorneys' fees is consistent with *Briseño v. Henderson*, 998 F. 3d 1014, 1026 (9th Cir. 2021). *See* Dkt. No. 285.

While the Court raised issues regarding the percentage of Class Members that have participated in the proposed Settlement thus far, the participation rate is in fact consistent with the evidence Toyota previously provided to the Court during the litigation. As presented in Toyota's Opposition to the Motion for Class Certification and again in Toyota's decertification motion, 2012 to 2016 survey data estimated odor complaint rates for the relevant Toyota Camry vehicles at between [redacted] and [redacted]. *See* Declaration of Lisa R. Weddle in Support of Toyota Motor Sales, U.S.A., Inc.'s Motion to Decertify Class dated July 14, 2022 (Dkt. No. 149-2) ("Weddle Decl.") at Ex. A, pp. 9-13. Using the conservative (high) end of that range, only [redacted] of the 215,578 Subject Vehicles purportedly may experience an odor issue. The 245 claims received as of October 16, 2024 – less than five months since the Initial Notice Date – already represents [redacted] (of the survey data projection of [redacted] Subject Vehicles) that could potentially experience odor and for which Class members would be eligible to seek relief.

Additionally, it is reasonable to expect the number of submitted claims to increase with another six to eighteen months remaining in the Claims period depending on the model year Subject Vehicle. For example, if 1,000 claims are submitted, as the Court

hypothesized at the Fairness Hearing, the claims rate would exceed [redacted] of the potentially affected Subject Vehicles – a significant percentage.

Additionally, the proposed Settlement meets all of the *Staton* factors, does not present the *Bluetooth* "red flags" and is therefore analogous to other class settlements that have been approved. *See Staton v. Boeing Co*., 327 F.3d 938 (9th Cir. 2003); *In re Bluetooth Headset Prods. Liab. Litig. (Bluetooth),* 654 F.3d 935 (9th Cir. 2011). Here, two main factors demonstrate the reasonableness and value conveyed by this settlement:

First, there was an incredible risk to the class if the case proceeded to trial—a similar Toyota Camry HVAC class action in the District Court for the Southern District of Florida, *Cardenas v. Toyota Motor Sales, Inc., et al.*, received a defense verdict in 2023. However, the settlement relief addresses the alleged odor issue identified in the operative Complaint. Rather than the uncertain outcome of a trial, the parties crafted a significant settlement process that provides the relief sought for the class – reimbursement of costs associated with mitigating alleged HVAC odor.

Second, the extraordinary notice meets, if not exceeds, any requirements necessary to approve the Settlement. The Notice Administrator implemented an exceptional Notice Plan, sending 645,000 Direct Mailed Notices to the 368,000 Class Members and reached 98% of the Class approximately 3 times. *See* Supplemental Declaration of Cameron R. Azari, Esq. Regarding Implementation and Adequacy of Class Notice Plan, October 16, 2024 (Dkt. No. 279-1) ("Supp. Azari Decl.") at ¶7. Class Members have proactively sought additional information on the proposed Settlement as 19,933 unique users visited the Settlement website and 1,151 calls were made to the IVR toll-free number. *Id.* ¶¶ 21, 22. Despite this overwhelming reach to the Class, not a single Class Member objected to the Settlement and only two Class Members chose to opt-out.

The proposed Settlement is also nothing like that found in *Briseño*, where ***no direct notice*** was required and there was evidence of collusion. Here, 645,000 Direct Mailed Notices were sent that informed individual Class Members of the components of the

proposed Settlement. Furthermore, applying the *Bluetooth* factors as required by *Briseño*, there is no evidence of collusion, since the parties' negotiations (including with respect to Class Counsel's attorneys' fees) actively involved Settlement Special Master Patrick A. Juneau and took place on the heels of a hotly litigated period of trial preparations and on the cusp of trial.

For the reasons set forth in more detail below and those contained in Toyota's prior memoranda of law in support of final approval, this Court should enter an order granting final approval and 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.

II. THE CLAIM RATE IS ACCEPTABLE UNDER RULE 23(E) GIVEN THE LOW ODOR COMPLAINT RATES

A. A Low Percentage of Subject Vehicles Were the Subject of Odor Complaints.

The claim rate is more than acceptable under Rule 23(e) of the Federal Rules of Civil Procedure because the claim rate should be calculated not based on the total number of Subject Vehicles, but rather the number of Subject Vehicles that would have the potential for an odor issue. As Toyota presented previously to the Court, survey data indicated complaint rates between [redacted] and [redacted] for relevant Toyota Camry vehicles. *See* Weddle Decl. at Ex. A, pp. 9-13.

Here, there are 215,578 unique Subject Vehicles as defined in the Class. *See* Declaration of Cameron R. Azari, Esq. Regarding Implementation and Adequacy of Class Notice Plan, August 28, 2024 (Dkt. No. 274-7) ("Azari Decl.) at ¶11. Therefore, even assuming the highest odor complaint rate of [redacted], fewer than [redacted] Subject Vehicles would potentially have been impacted by an odor issue and would have sought to resolve the issue (by installing a charcoal filter or flushing the vehicle's evaporator) and seek reimbursement through the proposed Settlement.

Based on the low number of Subject Vehicles that could have experienced an odor issue, it is consistent that a smaller number of claims would be submitted.

B. The Number of Claims Received Thus Far Is Reasonable

At the time of the Final Approval Hearing, settlement Class Members had filed 245 claims with the Notice Administrator. *See* Supp. Azari Decl. at ¶24. While the Court's comment that the 245 claims amounted to a claim rate of 0.1%, that calculation was based on the assumption that all 215,578 Subject Vehicles would have required a charcoal filter or an evaporator flushing. But this is not the case. As noted above, the Subject Vehicles that could potentially have experienced an odor issue represents a very small percentage of the total number of Subject Vehicles—only [redacted] vehicles assuming the highest survey data complaint rate in evidence (*i.e.*, [redacted]). That is the subset of Subject Vehicles that is appropriate to use as the denominator in determining the relevant claim rate, rather than all Subject Vehicles. Adjusting the calculation accordingly, the current claim rate is approximately [redacted] and should increase from there.

Further, the claims period has not yet closed and remains open for another six or 18 months, depending on the model year of the Subject Vehicle. Class Members with model year 2014-2015 Subject Vehicles may file a claim for relevant out-of-pocket expenses occurred after the Initial Notice Date until May 31, 2026, and Class Members with model year 2012-2013 Subject Vehicles have until May 31, 2025. *See* Settlement Agreement at III.A.3.(c) and (d) (Dkt. No. 274-3) ("Settlement Agreement"). Class Members may also file claims for reimbursement of relevant out-of-pocket expenses incurred on or before the Initial Notice date until May 31, 2025. *Id.* at III.A.4.(c).

Additionally, claim rates also generally increase immediately prior to a claim deadline. *See* Declaration of Patrick A. Juneau in Support of Final Settlement Approval (Dkt. No. 293-1) ("Juneau Decl.") at 12. *See also* Second Supplemental Declaration of Cameron R. Azari, Esq. Regarding Implementation and Adequacy of Class Notice Plan (Dkt. No. 293-2) at ¶8 (noting in his experience that receipt of claims tend to increase

towards the claims deadline.) As such, the claim rate likely will continue to increase. Assuming 1,000 claims are submitted[1] – this would equal a [redacted] claims rate which would exceed the claim rate of nine percent noted by the Court at the Fairness Hearing. *See* Fairness Hearing Transcript at 7:18.

III. THE PROPOSED SETTLEMENT IS ANALOGOUS TO OTHER APPROVED SETTLEMENTS

A. The Proposed Settlement Satisfies All of the *Staton* and *Bluetooth* Factors

As is the case with all class action settlements approved in the Ninth Circuit, the proposed Settlement meets all of the *Staton* factors and "is not the product of collusion among the negotiating parties" as required by *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 947 (9th Cir. 2011). A full discussion of the factors is included in Toyota's Memorandum of Law in Support of Motion for Final Approval of Class Action Settlement, Dkt. No. 275, and Supplemental Memorandum of Law in Support of Motion for Final Approval of Class Action Settlement, Dkt. No. 282. However, certain factors are analyzed below to compare this proposed Settlement to other settlements that have received final approval.

B. The Notice Program Was Comprehensive with Unprecedented Reach

The extraordinary Notice Program was fully and completely implemented, consistent with the Preliminary Approval Order. It provided interlocking methods that aimed to reach each Class Member individually and directly using reasonably available address information, and it also provided multiple alternative forms of notice through which Class Members may have learned of the settlement or obtained further information about their rights. Thus, the procedure for providing notice and the content of the Notice Program constituted the best practicable notice to Class Members. *See In re Linkedin Priv. Litig.*, 309 F.R.D. at 585–86.

[1] *See* Fairness Hearing Transcript at 7:11-14.

As of October 16, 2024, the settlement website had 19,933 unique visitor sessions, with 38,996 web pages presented. *See* Supp. Azari Decl. at ¶ 21. As of October 16, 2024, there have been 1,151 calls to the IVR toll-free number, and service agents have handed 736 incoming calls and 38 outgoing calls. *Id.* ¶ 22. Further, the Notice Program is estimated to have reached 98 percent of the Class approximately 3 times, readily satisfying due process. *Id.* ¶ 7. This reach is well beyond the reach of other class action settlements that have received final approval. *See Schneider v. Chipotle Mexican Grill, Inc.*, 336 F.R.D. 588, 596–97 (N.D. Cal. 2020) (finding proper notice where the notice "was likely viewed by approximately 72.64% of the Settlement Class" with "an average estimated frequency of 3.0 per person"); *Corzine v. Whirlpool Corp.*, No. 15-cv-05764-BLF, 2019 WL 7372275, at *5 (N.D. Cal. Dec. 31, 2019) (holding notice was adequate where it had "an approximate reach of 71.99% and an approximate average frequency of 2.99 times each").

C. The Settlement Provides Relief for the Alleged Defect at Issue, and the Class Overwhelming Supports It

The Settlement Agreement is designed to directly address the specific concerns of Class Members who may have been affected by an alleged odor issue that is the subject of this Action. Class Members are entitled to be reimbursed for the entire cost of replacing and installing a charcoal filter in a Subject Vehicle and/or having the evaporator flushed on a Subject Vehicle if those costs were incurred prior to the Initial Notice Date. Settlement Agreement at III.A.4. Class Members who choose to replace and install a charcoal filter in a Subject Vehicle or have the evaporator flushed on a Subject Vehicle after the Initial Notice Date can also seek reimbursement up to $100. *Id.* at III.A.3.

It is clear that the Class overwhelmingly supports the relief provided in this settlement. Ninety-eight percent of the Class was reached an average of three times, yet not a single objection was filed. Supp. Azari Decl. at ¶24. Further, only two requests for exclusion were received. *Id.* Out of approximately 368,000 Class Members, this

amounts to an exclusion rate of 0.005%.[2] *See* Defendant's Supplemental Memorandum of Law in Further Support of Class Action Settlement a section II.A (Dkt. No. 282). This overwhelmingly favorable response from the Class weighs heavily in favor of final approval of the settlement. *See Kearney v. Hyundai Motor Am.*, No. SACV 09-1298-JST (MLGx), 2013 WL 3287996, at *7 (C.D. Cal. June 28, 2013) (finding 0.0025% objections and 0.0277% opt outs "infinitesimal"); *see also Sebastian v. Sprint/United Mgmt. Co*., No. 8:18-cv-00757-JLS-KES, 2019 WL 13037010, at *4, *10 (C.D. Cal. Dec. 5, 2019) (granting final approval to a class in which 0.67% of the class had submitted opt-out requests).

D. Settlement Is Fair, Reasonable, and Adequate Given the Significant Risks to the Class in Proceeding to Trial

It is well accepted that the unpredictability of trials generally weighs in favor of finding that a settlement is fair, adequate and reasonable. *See Rodriguez v. W. Publ'g Corp*., 563 F.3d 948, 964 (9th Cir. 2009). The particular procedural history of this case weighs in favor of approving settlement here. *See* Juneau Decl. at ¶7.

This case has been strongly litigated, with considerable success by Toyota. The Court granted (in part) Toyota's motion to dismiss on September 27, 2016. *See* Dkt. No. 38. While Plaintiffs filed a Second Amended Complaint, on September 29, 2017 the Court granted part of Toyota's Motion for Summary Judgment, dismissing implied warranty claims. *See* Dkt. No. 81. Following certification of a California-only class, on March 31, 2023, the Court granted Toyota's partial motion for summary judgment, dismissing Plaintiff's unjust enrichment and California Unfair Competition Law claims, as well as dismissing Plaintiff's claims for equitable relief under California's Consumer Legal Remedies Act. *See* Dkt. No. 166. The Court also granted in part Toyota's motion to decertify, excluding any equitable claims from the Class. *Id.* On January 10, 2024, the

[2] Through the data acquisition process, 215,578 unique VINs for 2012-2015 Model Year Toyota Camrys were identified. After de-duplication, those VINs were associated with 368,356 current or former owners who were individuals and not otherwise excluded from the Class definition. *See* Azari Decl., ¶11-12. As such, while there are approximately 215,000 Subject Vehicles, there are approximately 368,000 Class Members. *See also* Juneau Decl. at ¶11.

Court partially granted Toyota's motion to narrow the class, excluding Class Members who claims would require individual assessment to address Toyota's defense that certain claims were time-barred. *See* Dkt. No. 220.

Thus, there was a clear risk to the Class if the case proceeded to trial that they would lose or be subject to unfavorable appellate rulings. *See* Juneau Decl. at ¶7. This risk was underscored by Toyota's success in similar proceedings outside the instant class action—in Florida, the same claims at issue here were tried and resulted in a defense verdict in March 2023, *Cardenas v. Toyota Motor Corp*., Case No. 18-cv-22798 (S.D. Fla.); and in another action in California, plaintiffs were denied certification in an action making similar allegations of an alleged HVAC odor defect, *Stockinger v. Toyota Motor Sales, U.S.A., Inc.*, 2:17-cv-00035-VAP-KS (C.D. Cal.). The proposed Settlement—which guarantees Class Members relief—has significant benefits to "rolling the dice" and proceeding to trial, with the very real possibility of recovering nothing. *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").

IV. THE SETTLEMENT IS CONSISTENT WITH THE NINTH CIRCUIT'S DECISION IN *BRISEÑO*

In *Briseño v. Henderson*, 998 F. 3d 1014, 1026 (9th Cir. 2021), the Ninth Circuit found that "the parties did more than just check every *Bluetooth* box; their settlement presented a Murderers' Row of provisions out of left field that seemingly favor class counsel and the defendant at the expense of the class members." *Id.* Specifically, the Court cited to the *Bluetooth* factors and the three "red flags"—(1) whether plaintiffs' counsel will receive a disproportionate distribution of the settlement; (2) the existence of a "clear sailing agreement", which would require additional scrutiny over the relationship between attorney's fees and benefit to the class; and (3) whether a reduction in the

amount of attorney's fees would revert to the class or the defendant.[3] *Id* at 1026-27. The Court was deeply troubled by several aspects of the settlement (which did not require direct notice to class members), including the parties' assessment of settlement value and the comparative value of the attorney's fees being requested. Ultimately, in applying the *Bluetooth* factors, the Court reversed the district court's approval of the settlement and remanded.

While the Court in *Briseño* expressed clear concerns about the settlement that had been reached between the parties, it also stressed that nothing in its opinion "suggests that courts should unnecessarily meddle in class settlements negotiated by the parties…Far from it. Nor do we seek to make any of the identified signs of collusion an independent basis for withholding settlement approval. Disproportionate fee awards, clear sailing agreements, and kicker clauses all may be elements of a good deal." *Id.* at 1027. Rather, the Court was emphasizing the duty of District Court's to scrutinize the factors as prescribed by *Bluetooth*. *Id.*

The proposed Settlement here is clearly distinguishable from the purported settlement in *Briseño*. While direct notice was not even required in the *Briseño* settlement, the Notice Program here had extraordinary reach directly to settlement Class Members, and resulted in no appealable objections. *See* section III.B. and C. *supra*. Further, the proposed Settlement provides impacted Class Members with the relief that directly addresses their concern (reimbursement of expenses to address the odor issues alleged in the operative Complaint) and is why the Class have overwhelmingly approved the proposed Settlement. *See* section III.C. *supra*.

Finally, as previously addressed, there is no evidence of the type of collusion that was considered by *Bluetooth*. *See* Defendant's Memorandum of Law in Support of Motion for Final Approval at Section V (Dkt. No. 275); Plaintiffs' Memorandum of Points and Authorities in Support of Motion for Final Approval of Class Action

[3] Toyota is not addressing factors (1) and (3) as they deal with Class Counsel's attorneys' fees request.

Settlement at Section IV.B.7 (Dkt. No. 274-1); *see also* Juneau Decl. at ¶¶7-10. While there is a clear-sailing provision in this case, this factor simply requires a higher level of scrutiny by the Court. *Briseño* at 1026-27. Even under close scrutiny, as the Court noted in its Order (1) Granting Motion For Preliminary Approval Of Class Settlement, Certifying Settlement Class, And Directing Notice To The Class; And (2) Scheduling A Fairness Hearing, there is no indication of collusion between the parties. *See* Dkt. No. 273 at 6. Quite the opposite – the parties were actively preparing for trial in this Action just before the Parties re-engaged in settlement discussions. Additionally, the settlement was negotiated at arm's length by experienced counsel with active involvement by Settlement Special Master Patrick A. Juneau over the course of multiple mediations including a mediation on attorneys' fees. *See* Juneau Decl. at ¶¶6-10.

V. CONCLUSION

For the foregoing reasons, as well as the arguments made in Defendant's Memorandum of Law in Support of Motion for Final Approval of Class Settlement (Dkt. No. 275) and Defendant's Supplemental Memorandum of Law in Support of Motion for Final Approval of Class Action Settlement (Dkt. No. 282), 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: December 5, 2024

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CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Defendant Toyota Motor Sales, U.S.A., Inc., certifies that this brief contains 3,220 words, which complies with the word limit of L.R. 11-6.1.

/s/John P. Hooper
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