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16  
17 **UNITED STATES DISTRICT COURT**  
18 **CENTRAL DISTRICT OF CALIFORNIA**

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

22 Plaintiffs,

23 vs.

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

26 Defendant.

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

**DEFENDANT’S SUPPLEMENTAL  
MEMORANDUM OF LAW IN  
SUPPORT OF MOTION FOR FINAL  
APPROVAL OF CLASS ACTION  
SETTLEMENT**

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1 **I. INTRODUCTION**

2 Defendant Toyota Motor Sales, U.S.A., Inc. (“Toyota” and/or “Defendant”) files  
3 this Supplemental Memorandum of Law in Support of Motion for Final Approval of  
4 Class Action Settlement to address jurisdiction, the successful Notice Program, the  
5 infinitesimally small number of requested exclusions, and no objections received, *see*  
6 Preliminary Approval Order 15, ECF No. 273, all of which support the settlement.

7 Extraordinary notice was disseminated to the Class and achieved an unprecedented  
8 reach of approximately 98 percent of the Class with an average frequency of 3 times,  
9 readily satisfying due process and clearly surpassing even the gold standard for  
10 distributing notice. *See* Suppl. Decl. of Cameron R. Azari, Esq. Regarding  
11 Implementation and Adequacy of Class Notice Plan (“Oct. 16, 2024 Azari Decl.”) Dkt.  
12 No. 279-1, ¶ 7.

13 Given the extraordinary reach of the Notice Program, the fact that **not a single**  
14 **objection was submitted** by the September 30, 2024 deadline strongly supports granting  
15 final approval. This incredibly favorable response from the Class is likely due to the  
16 comprehensive relief offered by the settlement:

- 17
- 18 • Reimbursement for certain reasonable out-of-pocket expenses incurred on  
19 or before May 31, 2024; and
  - 20 • Up to \$100 reimbursement for certain reasonable out-of-pocket expenses  
21 incurred after May 31, 2024.

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

23 The positive response from the Class puts in context the **two Class Members who**  
24 **have opted out** of the settlement. *See* Oct. 16, 2024 Azari Decl., Dkt. No. 279-1, ¶¶ 24–  
25 26. These opt outs amount to an infinitesimally small percentage of 0.0005% of the  
26 368,000 Class Members. *See id.*; *Kearney v. Hyundai Motor Am.*, No. SACV 09-1298-  
27 JST (MLGx), 2013 WL 3287996, at \*7 (C.D. Cal. June 28, 2013) (finding that 16  
28 objections and 179 letters requesting exclusion out of 646,834 recipients of notice  
represented “infinitesimal” figures).

1 Based upon the comprehensive settlement, the successful dissemination of the  
2 Class Notice Program, the overwhelmingly positive response from the Class in support  
3 of the settlement, and the uncertainty of continuing litigation given the defense verdict  
4 that was obtained in *Cardenas v. Toyota Motor Corp.*, No. 1:18-cv-22798 (S.D. Fla. Mar.  
5 10, 2023) (involving similar allegations of defective HVAC units), this settlement should  
6 be finally approved because it more than satisfies the factors set forth in *In re Bluetooth*  
7 *Headset Products Liability Litigation*, 654 F.3d 935, 946 (9th Cir. 2011) and because it  
8 is fair, reasonable, and adequate, as required by Rule 23(e).

9 **II. REACTION TO THE CLASS ACTION SETTLEMENT IS**  
10 **OVERWHELMINGLY POSITIVE AND FAVORS FINAL APPROVAL**

11 In light of the large class size in this case, the number of opt outs and objections  
12 are *de minimis*, and the response to the settlement can only be described as  
13 overwhelmingly favorable. See *Jonsson v. USCB, Inc.*, No. 2:13-cv-08166-FMO-SH,  
14 ECF No. 83, at 11 (C.D. Cal. May 28, 2015) (“It is established that the absence of a large  
15 number of objections to a proposed class action settlement raises a strong presumption  
16 that the terms of a proposed class settlement action are favorable to the class members.”  
17 (quoting *Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 529 (C.D.  
18 Cal. 2004))).

19 **A. No Objections Have Been Filed, and the Number of Class Members**  
20 **Requesting Exclusion Is Extremely Small**

21 The Court should approve the settlement because a “low number of opt-outs and  
22 objections in comparison to class size is typically a factor that supports settlement  
23 approval.” See *In re LinkedIn User Priv. Litig.*, 309 F.R.D. 573, 589 (N.D. Cal. 2015)  
24 (citing *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998) (“[T]he fact that  
25 the overwhelming majority of the class willingly approved the offer and stayed in the  
26 class presents at least some objective positive commentary as to its fairness.”), *overruled*  
27 *on other grounds by Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011)).  
28

1 Here, of the approximately 645,000 Direct Mailed Notices that were mailed and  
2 emailed to the 368,000 Class Members, only two individuals have timely sought  
3 exclusion from the Class, and none have filed objections. See Oct. 16, 2024 Azari Decl,  
4 Dkt. No. 279-1, ¶¶ 9–13, 24. Therefore, the percentage of Class Members seeking  
5 exclusion is approximately 0.0005%—an incredibly low percentage, which favors final  
6 approval. See *Kearney*, 2013 WL 3287996, at \*7 (J. Staton) (finding 0.0025% objections  
7 and 0.0277% opt outs “infinitesimal”); see also *Sebastian v. Sprint/United Mgmt. Co.*,  
8 No. 8:18-cv-00757-JLS-KES, 2019 WL 13037010, at \*4, \*10 (C.D. Cal. Dec. 5, 2019)  
9 (granting final approval to a class in which 0.67% of the class had submitted opt-out  
10 requests).

11 **III. NOTICE SATISFIED THE REQUIREMENTS OF RULE 23(c) AND (e)**  
12 **AND DUE PROCESS**

13 The extraordinary Notice Program was fully and completely implemented,  
14 consistent with the Preliminary Approval Order, and is estimated to have reached 98  
15 percent of the Class approximately 3 times, readily satisfying due process. Oct. 16, 2024  
16 Azari Decl., Dkt. No. 279-1, ¶ 7. This reach is well beyond the reach of other class  
17 action settlements that have received final approval. See *Schneider v. Chipotle Mexican*  
18 *Grill, Inc.*, 336 F.R.D. 588, 596–97 (N.D. Cal. 2020) (finding proper notice where the  
19 notice “was likely viewed by approximately 72.64% of the Settlement Class” with “an  
20 average estimated frequency of 3.0 per person”); *Corzine v. Whirlpool Corp.*, No. 15-cv-  
21 05764-BLF, 2019 WL 7372275, at \*5 (N.D. Cal. Dec. 31, 2019) (holding notice was  
22 adequate where it had “an approximate reach of 71.99% and an approximate average  
23 frequency of 2.99 times each”).

24 Courts have approved notice plans in settlements that have employed similar  
25 notice methods to those used here. See, e.g., *McCrary v. Elations Co., LLC*, No. 13-0242  
26 JGB (SPx), 2016 WL 769703, at \*7, \*7 n.5 (C.D. Cal. Feb. 25, 2016) (granting final  
27 approval where notice plan included email, mail, a website, and publication notice); *In*  
28 *re LinkedIn User Priv. Litig.*, 309 F.R.D. at 586 (finding that class members received



1 sufficient notice where the notice plan included “direct email notice, a settlement  
2 website, and a toll-free telephone number”); *Roberts v. Electrolux Home Prods., Inc.*,  
3 No. SAV12-1644-CAS(VBKx), 2014 WL 4568632, at \*2–3 (C.D. Cal. Sept. 11, 2014)  
4 (finding that class members received sufficient notice where a notice plan included direct  
5 notice; publication notice in magazines; internet banner notices; a settlement website  
6 with copies of the notice, claim form, FAQs, “long form” notice, and relevant pleadings;  
7 and a toll-free number); *Lerma v. Schiff Nutrition Int’l, Inc.*, No. 11cv1056-MDD, 2015  
8 WL 11216701, at \*2–3 (S.D. Cal. Nov. 3, 2015) (concluding that class notice, which  
9 comprised of consumer and internet publications, a toll-free number, and an  
10 informational website, “constituted the best notice practicable under the circumstances”).

11 The favorable response from the Class, along with the lack of a single objection  
12 and the very small number of Class Members who have opted out of the settlement,  
13 weighs heavily in favor of final approval of the settlement.

14 • **Individual Direct Mailed Notice**

15 The Direct Mailed Notice—including Email Notice and Postcard Notice—  
16 informed potential Class Members of the proposed settlement, including potential  
17 remedies and the web address for the informative settlement website. On May 31, 2024,  
18 the Notice Administrator sent 464,927 Email Notices to all identified Class Members for  
19 whom a valid email address was available (some Class Members had multiple email  
20 addresses associated with their name, and an Email Notice was sent to each valid email  
21 address).<sup>1</sup> Oct. 16, 2024 Azari Decl., Dkt. No. 279-1, ¶ 10.

22 On May 31, 2024, the Notice Administrator also sent 149,937 Postcard Notices to  
23 identified Class Members with an associated physical address for whom a valid email  
24 address was not available. *Id.* ¶ 12. Subsequently on July 12, 2024, the Notice  
25

26 \_\_\_\_\_  
27 <sup>1</sup> For any Email Notice for which a bounce code was received indicating that the message  
28 was undeliverable for reasons such as an inactive or disabled account, the recipient’s  
mailbox was full, technical autoreplies, etc., at least two additional attempts were made  
to deliver the Email Notice. Oct. 16, 2024 Azari Decl., Dkt. No. 279-1, ¶ 11.



1 Administrator sent “22,859 Postcard Notices to all identified Class Members with an  
2 associated physical address for whom the Email Notice was undeliverable after multiple  
3 attempts and to Class Members included in data for the State of New Hampshire  
4 (representing 17 Postcard Notices).”<sup>2</sup> *Id.* The Postcard Notices were sent via the United  
5 States Postal Service first-class mail, which has been deemed the best notice practicable  
6 under the circumstances. *Id.*; *see also Smith v. Bimbo Bakeries USA, Inc.*, No. 2:12-CV-  
7 01689-CAS (PJW), 2015 WL 12724072, at \*1 (C.D. Cal. Jan. 29, 2015) (finding  
8 distribution of notice “by first-class mail . . . the best notice practicable under the  
9 circumstances.”); *Schuchardt v. Law Off. of Rory W. Clark*, 314 F.R.D. 673, 680 (N.D.  
10 Cal. 2016) (finding notice by U.S. Mail “was the best form of notice available under  
11 circumstances”).

12 • **Website and Toll-Free IVR Telephone Number**

13 Pursuant to the terms of the Settlement Agreement, the Settlement Notice  
14 Administrator created a dedicated website and an Interactive Voice Response (“IVR”)  
15 telephone number as part of the Notice Program. *See* ECF No. 262-2, at 18, 20. Persons  
16 who visit the website can, among other things, (i) review important documents, including  
17 the Long Form Notice; (ii) review responses to frequently asked questions, (iii) submit  
18 out-of-pocket claims for reimbursement; (iv) confirm whether they are a Class Member;  
19 (v) find the number for the IVR; and (vi) find the address for the Settlement Notice  
20 Administrator for Claim submission purposes. Oct. 16, 2024 Azari Decl., Dkt. No. 279-  
21 1, 21–22. As of October 16, 2024, the website had 19,933 unique visitors. *Id.* ¶ 21. As  
22 of October 16, 2024, there have been 1,151 calls to the IVR toll-free number, and service  
23 agents have handed 736 incoming calls and 38 outgoing calls. *Id.* ¶ 22.

24 • **Notice Has Been Published and Disseminated on Other Media**

25 In addition to the notice described above, the Settlement Notice Administrator has  
26 placed notice on other electronic media. The Notice Program included targeted digital  
27 \_\_\_\_\_

28 <sup>2</sup> As of October 16, 2024, the Notice Administrator had remailed 5,401 Postcard Notices  
of the 11,711 Postcard Notices that were returned as undeliverable. *Id.* ¶ 13.

1 advertising on the selected advertising network *Google Display Network*, which  
2 represents thousands of digital properties across all major content categories; digital  
3 notices were placed on the social media sites Facebook and Instagram; sponsored search  
4 listings were acquired on the three most frequently visited internet search engines:  
5 *Google, Yahoo!*, and *Bing*; and a party-neutral Informational Release was issued broadly  
6 over PR Newswire’s California newswire, which resulted in 495 stories/postings  
7 regarding the settlement. *See* Oct. 16, 2024 Azari Decl., Dkt. No. 279-1, ¶¶ 15–19.  
8 Additionally, a CLRA Publication Notice ran as a 1/4 page ad unit in the May 31, 2024  
9 issue of USA Today: “San Francisco,” in the June 7, 2024 issue of USA Today: “Los  
10 Angeles;” and in the June 14, 2024 and June 21, 2024 issues of USA Today: “Phoenix.”  
11 *See id.* ¶ 20.

12 • **Extensive Notice Was Provided in Spanish**

13 Pursuant to the Preliminary Approval Order, the Direct Mailed Notice (both email  
14 and postcard) included a statement in Spanish directing recipients to the settlement  
15 website. ECF No. 273 ¶ 9; Oct. 16, 2024 Azari Declaration, Dkt. No. 279-1, ¶ 15. Once  
16 at the settlement website, Class Members can click on the Spanish language tab on the  
17 home page that provides Class Members with Spanish-language information and  
18 documents about the settlement. Oct. 16, 2024 Azari Decl., Dkt. No. 279-1, ¶ 21; *see*  
19 *also* <https://www.toyotacaliforniahvacssettlement.com/es/Home> (Spanish-version of  
20 settlement website). These Spanish-language documents and information include, for  
21 example:

- 22 • Frequently Asked Questions;
- 23 • Notices, including the Long Form Notice;
- 24 • Claim Form;
- 25 • The ability to file a claim and/or check their VIN; and
- 26 • The ability to contact the Settlement Notice Administrator.

27 *See id.* ¶¶ 14, 21.

28 Additionally, the toll-free telephone number, which continues to be available for

1 the case, is available in Spanish. *Id.* ¶ 22. The Press Release was also entirely translated  
2 into Spanish, and targeted digital advertising on *Google Display Network* was  
3 disseminated in Spanish as well. *Id.* ¶¶ 15, 19.

4 Finally, a Claim Form and Long Form Notice (“Claim Package”) in Spanish was  
5 mailed to all persons who requested one via the toll-free telephone number or by mail.  
6 *Id.* ¶ 14.

7 • **Notice Has Successfully Informed Class Members of the Settlement**

8 The Notice Program provided interlocking methods that aimed to reach each Class  
9 Member individually and directly using reasonably available address information, and it  
10 also provided multiple alternative forms of notice through which Class Members may  
11 have learned of the settlement or obtained further information about their rights. The  
12 Notice Program followed well-recognized and established procedures for class action  
13 notice. Thus, the procedure for providing notice and the content of the Notice Program  
14 constituted the best practicable notice to Class Members. *See In re LinkedIn Priv. Litig.*,  
15 309 F.R.D. at 585–86. The Notice Administrator has informed the Court that Notice  
16 reached an estimated 98 percent of the Class on average three times. Oct. 16, 2024 Azari  
17 Decl., Dkt. No. 279-1, ¶ 7.

18 Here, the methods of dissemination and contents of the notice more than satisfy  
19 Rule 23’s notice requirements that the notice should be “reasonably calculated, under all  
20 the circumstances, to apprise interested parties of the pendency of the class action and  
21 afford them an opportunity to present their objections.” *Keegan v. Am. Honda Motor*  
22 *Co., Inc.*, CV 10-09508 MMM (AJWx), 2014 WL 12551213, at \*6 (C.D. Cal. Jan. 21,  
23 2014) (quoting *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950)).

24 • **The Notices Provided Class Members with the Required Information**  
25 **in a Comprehensive, Clear, and Readily Understandable Format**

26 The Notice Program provided all reasonably identifiable Class Members with a  
27 clear and succinct description of the Class and the terms of the preliminarily approved  
28 settlement in plain, easily understood language that complies with the Federal Judicial

1 Center’s illustrative notices. See Oct. 16, 2024 Azari Decl., Dkt. No. 279-1, ¶ 27;  
2 *Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004) (“Notice is  
3 satisfactory if it generally describes the terms of the settlement in sufficient detail to alert  
4 those with adverse viewpoints to investigate and to come forward and be heard.”  
5 (quotation omitted)); see also Federal Judicial Center’s illustrative notices at  
6 www.FJC.gov. As a result, Class Notice “clearly . . . inform[s] Class Members of the  
7 relevant aspects of the litigation and the settlement” and their rights under the settlement.  
8 See *Dalton v. Lee Publ’ns, Inc.*, No. 08-CV-1072 GPC NLS, 2015 WL 11582842, at \*6  
9 (S.D. Cal. Mar. 6, 2015).

10 **IV. THIS COURT HAS JURISDICTION TO CONSIDER AND RULE ON THE**  
11 **SETTLEMENT**

12 **A. This Court Has Personal Jurisdiction Over All Class Members**

13 As indicated in Toyota’s Memorandum of Law in Support of Motion for Final  
14 Approval of Class Action Settlement (ECF No. 275), the extraordinary notice provided  
15 to the Class, combined with the opportunity to object and appear at the Fairness Hearing,  
16 fully satisfies due process in order for the Court to obtain personal jurisdiction over a  
17 Rule 23(b)(3) class. See *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811–12 (1985)  
18 (finding that a district court obtains personal jurisdiction over absentee class members by  
19 providing proper notice of an impending class action and providing absentees with an  
20 opportunity to be heard or an opportunity to exclude themselves from the class). Pursuant  
21 to the Court’s Preliminary Approval Order (ECF No. 273), Class Notice was  
22 accomplished through a combination of Direct Mailed Notice (via email and U.S. first  
23 class mail), Publication Notice, notice through the settlement website, Long Form Notice,  
24 and social media notice. See Settlement Agreement, Section IV, ECF No. 264-2; see  
25 generally Oct. 16, 2024 Azari Decl., Dkt. No. 279-1 (describing the Notice Program  
26 accomplished).

1 **V. THE CLASS ACTION FAIRNESS ACT NOTICE FAVORS FINAL**  
2 **APPROVAL**

3 Notice under the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1715, has been  
4 satisfied. In a class action settlement, CAFA requires that “[n]ot later than 10 days after  
5 a proposed settlement of a class action is filed in court, each defendant that is  
6 participating in the proposed settlement shall serve [notice of the proposed settlement]  
7 upon the appropriate State official of each State in which a class member resides and the  
8 appropriate Federal official[.]” *Id.* § 1715(b). A court is precluded from granting final  
9 approval of a class action settlement until CAFA notice requirements are met. *Id.*  
10 § 1715(d) (“An order giving final approval of a proposed settlement may not be issued  
11 earlier than 90 days after the later of the dates on which the appropriate Federal official  
12 and the appropriate State official are served with the notice required under [28 U.S.C.  
13 § 1715(b)]”).

14 The Notice Administrator timely and properly caused the required CAFA Notice  
15 to be sent on March 28, 2024 (Oct. 16, 2024 Azari Decl., Dkt. No. 279-1, ¶ 8; Decl. of  
16 Kyle S. Bingham on Implementation of CAFA Notice ¶¶ 5–9, ECF No. 274-7), and, as  
17 such, more than 90 days have passed from “the dates on which the appropriate Federal  
18 official and the appropriate State official [were] served.” 28 U.S.C. § 1715(d); *see also*  
19 *Rubin-Knudsen v. Arthur Gallagher & Co.*, No. EDCV18-6227 JGB (SPx), 2021 WL  
20 4924765, at \*4 (C.D. Cal. Mar. 19, 2021) (holding the granting of final approval in  
21 abeyance until the 90-day CAFA notice period expires). At this time, there have been  
22 no substantive requests or responses from state or federal officials on this matter.

23 **VI. THIS COURT SHOULD ISSUE A PERMANENT INJUNCTION**

24 As argued in Toyota’s Memorandum of Law in Support of Motion for Final  
25 Approval of Class Action Settlement filed on August 30, 2024, ECF No. 275, assuming  
26 the Court grants final approval of the settlement, this Court should issue a permanent  
27 injunction pursuant to the All Writs Act, 28 U.S.C. § 1651(a), and the exceptions to the  
28 Anti-Injunction Act, 28 U.S.C. § 2283, to address concerns of copycat lawsuits filed in

1 other jurisdictions that would hinder this Court’s jurisdiction and its ability to effectively  
2 manage the settlement process. To protect its jurisdiction, the Court may issue an  
3 injunction once the litigation reaches the settlement stage in order to “effectuate the  
4 settlement.” *See Hartranft v. TVI, Inc.*, No. SACV 15-01081-CJC-DFM, 2019 WL  
5 1746137, at \*6 (C.D. Cal. Apr. 18, 2019).

6 Here, the rights and interests of the Class Members and the jurisdiction of this  
7 Court will be impaired if Class Members who have not opted out of the Settlement Class  
8 proceed with other actions alleging substantially similar claims to those asserted in this  
9 litigation and/or those claims that are resolved and/or released pursuant to the Settlement  
10 Agreement. Additionally, the fact that Class Members have been afforded an opportunity  
11 to opt out of the settlement justifies the issuance of an injunction to aid the Court in its  
12 management of the settlement. *See In re: ZF-TRW Airbag Control Units Prods. Liab.*  
13 *Litig.*, No. LA ML 19-2905 JAK (MRWx), 2023 WL 9227002, at \*17 (C.D. Cal. Nov.  
14 28, 2024) (finding an injunction appropriate where “class members were given an  
15 opportunity to opt out of the settlement”).

16 **VII. CONCLUSION**

17 For the foregoing reasons and the arguments made in Toyota’s Memorandum of  
18 Law in Support of Motion for Final Approval of Class Settlement, Toyota respectfully  
19 requests that the Court: (i) enter an Order granting final approval, pursuant to Federal  
20 Rule of Civil Procedure 23(e), as amended, to the Parties’ proposed class action  
21 settlement; (ii) issue a permanent injunction pursuant to the All Writs Act, 28 U.S.C.  
22 § 1651(a) and the exceptions to the Anti-Injunction Act, 28 U.S.C. § 2283; and (iii)  
23 provide such other and further relief as the Court deems reasonable and just.

24 Dated: October 25, 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 3,316 words, which complies with the word limit of L.R. 11-6.1.

*John P. Hooper* \_\_\_\_\_  
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