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

15 GLENN KESSELMAN, an individual,
16 on behalf of himself and all others
17 similarly situated, *et al.*,

18 Plaintiffs,

19 vs.

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

22 Defendant.

Case No. 2:21-cv-06010-TJH-JC

HON. TERRY J. HATTER JR.

**PLAINTIFFS' MEMORANDUM
OF POINTS AND AUTHORITIES
IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Judge: Hon. Terry J. Hatter, Jr.

Place: Courtroom #9C

Hearing Date: March 3, 2025

Hearing Time: UNDER SUBMISSION

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1 **I. INTRODUCTION**

2 Plaintiffs seek preliminary approval of a class action settlement (“Settlement”)
3 with Defendant Toyota Motor Sales, U.S.A., Inc. (“Toyota”) in the above-captioned
4 matter (“Action”). In this multi-state class action, Plaintiffs allege that there is a defect
5 in certain Toyota vehicles in which, when the Toyota driver uses the Bluetooth hands-
6 free phone system to make or receive a call, the person on the other end of the phone
7 call hears an echo of his or her own words (“Echo Issue”). Toyota has not directly
8 disclosed to Class Members the existence of the Echo Issue, nor adequately described
9 or disclosed directly to Class Members the existence of a volume-adjustment
10 procedure that resolves the Echo Issue. The Settlement addresses the lack of adequate
11 and precise disclosure by providing for injunctive relief in the form of a multifaceted
12 consumer outreach program designed to provide disclosure and education to Class
13 Members regarding the Echo Issue and the volume-adjustment procedure. The
14 Settlement, if approved, will resolve Class Members’ claims for injunctive relief, but
15 will **not** release any Class Members’ claims for monetary damages.

16 The Settlement Agreement, attached hereto as Exhibit 1 (“Agreement”),¹ is the
17 product of extensive, lengthy arm’s-length negotiations between the parties and their
18 experienced and informed counsel. Prior to reaching a resolution, and through nearly
19 six years of hard-fought litigation, Class Counsel engaged in pre-trial motion practice,
20 conducted substantial discovery, retained various experts and consultants to, *inter*
21 *alia*, analyze the alleged defect, and carefully examine thousands of documents and
22 technical material produced by Toyota. Class Counsel, who possess a firm
23 understanding of the strengths and weaknesses of the claims, have concluded, based
24 upon their investigation, and taking into account the risks, uncertainties, burdens, and
25 costs of further prosecution of the claims, and the material benefits the Class Members
26 will receive from the Settlement, that a resolution on the terms set forth in the

27 _____
28 ¹ If not defined herein, capitalized terms have the meaning given in the Agreement.

1 Settlement is fair, reasonable, adequate, and in the best interests of the Class. As
2 demonstrated herein, the Settlement satisfies the criteria for preliminary approval and
3 falls within the range of reasonableness applicable at the preliminary approval stage.

4 **II. OVERVIEW OF THE LITIGATION²**

5 The case has evolved through several jurisdictions, consolidations, and amended
6 complaints, with the operative complaint being the Fifth Amended Complaint
7 (“FAC”), filed on January 6, 2025. The FAC includes plaintiffs from eleven states—
8 California, Arizona, Colorado, Missouri, Washington, Illinois, Georgia, New York,
9 Ohio, Oregon, and Minnesota—and defines a class of Toyota vehicle purchasers and
10 lessees. The FAC alleges thirteen causes of action, citing violations of state consumer
11 protection laws. These claims arise from the alleged Echo Issue in certain Toyota
12 models manufactured between 2014 and 2019, namely the Toyota 2014-2019
13 4Runner, 2015-2018 Avalon, 2015-2018 Avalon HV, 2014-2019 Highlander, 2014-
14 2019 Highlander HV, 2016-2018 Mirai, 2016-2019 Prius, 2017-2019 Prius Prime,
15 2015-2019 Prius V, 2014-2019 Sequoia, 2015-2017 Sienna, 2014-2019 Tacoma,
16 2014-2019 Tundra, 2015 Venza, and 2018-2019 Yaris (the “Subject Vehicles”).

17 The case began on July 24, 2019, when plaintiffs Terry Freeman and Andrew
18 Trout filed the original class action petition in Missouri state court (the “Missouri
19 Action”). Toyota removed the Missouri Action to federal court. In November 2020,
20 the Missouri federal court partially granted and denied Toyota’s motion to dismiss.
21 The parties engaged in a mediation in January 2021, but no settlement was reached.

22 On June 16, 2021, Glenn Kesselman filed a similar class action regarding the
23 Echo Issue in the Superior Court of the State of California, County of Los Angeles,
24 which Toyota removed on July 26, 2021. Dkt. 1. After Kesselman’s counsel filed
25

26
27 ² The factual background described herein is set forth in the Joint Declaration in
28 Support of Plaintiffs’ Motion for Preliminary Approval, Dkt. 145-2 (“Joint Decl.”).

1 similar lawsuits in other federal jurisdictions, the parties stipulated to transferring and
2 consolidating the Missouri Action and filing a First Amended Complaint. Dkt. 38.³

3 Plaintiffs filed the First Amended Complaint on December 29, 2021 (Dkt. 39),
4 which Toyota moved to dismiss on January 28, 2022 (Dkt. 59).⁴ Toyota served written
5 discovery on each Plaintiff in June and July of 2022, and Class Counsel worked
6 closely with the Plaintiffs to answer and produce documents.

7 On September 19, 2022, the Court partially granted and denied the motion to
8 dismiss. Dkt. 97. The Court found, *inter alia*, that Plaintiffs adequately alleged their
9 claims premised on affirmative misrepresentations and omissions; adequately alleged
10 materiality and knowledge; and that it could not dismiss the claims based on the
11 statutes of limitations. *Id.* The Court dismissed some claims without prejudice, struck
12 some allegations, but left intact the remaining claims in the First Amended Complaint.
13 *Id.* Following the Court's Order, Plaintiffs filed their Second Amended Complaint on
14 October 5, 2022. Dkt. 98. Toyota filed its Answer and affirmative defenses on October
15 19, 2022. Dkt. 100.

16 In late 2022/early 2023, Toyota inspected most of the Plaintiffs' vehicles at a
17 Toyota dealership and also deposed eleven Plaintiffs. On February 10, 2023, Class
18 Counsel, which had conducted some written discovery in the Missouri Action, served
19 Toyota with additional interrogatories, document requests, and a Rule 30(b)(6)

21 ³ On August 12, 2021, Kirk Coviello, filed a similar action in the Superior Court of
22 California, County of Los Angeles, Case No. 21STCV30101 (the "State Action"). The
23 State Action is currently stayed pending the outcome of this Action, and Coviello was
24 added as a plaintiff in the FAC. The Missouri Action transferred to this Court in
February 2022 and was consolidated in March 2022 (Case 22-cv-00863, Dkt. 83).

25 ⁴ On January 26, 2022, the Court stayed Kesselman's individual case pending the
26 decision in *Ngo v. BMW of N. Am.*, No. 20-56027 (9th Cir.), which bore on whether
27 Toyota would contend Kesselman's claims were subject to arbitration. Dkt. 58. On
28 February 17, 2022, following the Ninth Circuit's decision in *Ngo*, the Court lifted the
stay. Dkt. 63. Toyota did not refile its motion to compel arbitration of Kesselman. *Id.*

1 deposition notice setting forth 35 topics. Also in February 2023, counsel for Toyota
2 from King & Spalding LLP and Class Counsel began extensive (but ultimately
3 unsuccessful) settlement negotiations.

4 On March 13, 2023, Plaintiffs filed a Third Amended Complaint (Dkt. 108), and
5 Toyota filed its Answer and affirmative defenses on March 27, 2023 (Dkt. 110). On
6 March 30, 2023, Class Counsel served additional interrogatories and document
7 requests on Toyota, and an amended 30(b)(6) deposition notice. By June 2023, it was
8 clear that a settlement was not viable at the time.

9 From March 2023 to February 2024, the parties engaged in extensive discovery
10 conferences and document review. During this period, Toyota provided objections,
11 responses, and supplemental productions to Plaintiffs' discovery requests, and
12 counsel for the parties met and conferred by letter and telephone on approximately
13 thirty occasions to work through objections, address issues with document
14 productions, and address the scope of written discovery and deposition topics.

15 In light of this work, on March 5, 2024, Plaintiffs filed their Fourth Amended
16 Complaint, further refining the allegations. Dkt. 108. During this period, and as
17 outlined below, Class Counsel was also reviewing the more than 90,000 pages
18 produced by Toyota and working with consultants and potential expert witnesses. As
19 Class Counsel reviewed these documents with their consultants, they gained a more
20 complete and nuanced understanding of the Echo Issue and continued preparing for
21 litigation of class certification and merits issues. For example, as a result of their
22 review and analysis, Class Counsel determined that the Subject Vehicles have a
23 common or substantially similar head unit⁵ and, in particular, a common internal
24 component therein responsible for echo reduction that appeared to contribute to the
25 Echo Issue. Counsel also investigated the availability, or potential unavailability, of
26

27 ⁵ The "head unit" is the component of Subject Vehicles located in the dashboard that
28 contains the multimedia system, including the Bluetooth system.

1 various “fixes” to the Echo Issue. It became evident that one of the main issues for
2 consumers was a lack of disclosure of the Echo Issue itself (which is not always self-
3 evident because it is not experienced by the driver), combined with a poorly-worded
4 “Tech Tip”—which had been provided to Dealers, but not directly to the consumers—
5 that provided a relatively quick volume-adjustment procedure to alleviate the echo.
6 Through their review of Toyota’s document production and their own testing and
7 consultation with experts, Class Counsel confirmed the effectiveness of the volume
8 adjustment procedure.

9 During this period, beginning in December 2023, the parties re-engaged in
10 settlement discussions. These discussions too proved unsuccessful. At the same time,
11 the parties were working to schedule the depositions of Toyota’s identified 30(b)(6)
12 witnesses, with the deadline for Plaintiffs’ motion for class certification falling in June
13 2024. In May 2024, however, counsel for the parties reengaged in settlement
14 discussions. These settlement negotiations continued over the next several months
15 and resulted in the Settlement terms. During these negotiations, the parties only
16 discussed the terms for the Class and did not discuss the payment of attorneys’ fees,
17 costs, expenses, or Class Representative service awards. On October 18, 2024, the
18 parties notified the Court that they had reached a settlement in principle as to the
19 Class. Dkt. 133. It was only after the settlement in principle for the Class had been
20 reached that the parties began negotiating the amount of attorneys’ fees, costs, and
21 service awards that, separate and apart from the Settlement consideration, and subject
22 to Court approval, would be paid by Toyota. Class Counsel and Toyota’s Counsel
23 reached agreement in principle on those terms on December 2, 2024.

24 Finally, the Fifth Amended Complaint was filed on January 6, 2025, to conform
25 the pleadings to the evidence and facilitate the Settlement. Dkt. 139. The FAC, *inter*
26 *alia*, included allegations relating to the continued existence and ongoing nature of
27 the Echo Issue in Class Members’ vehicles; the absence and/or insufficiency of prior
28

1 notice of the Echo Issue and volume adjustment procedure by Toyota; and the desire
2 to purchase from Toyota in the future but the lack of confidence in relying on its
3 disclosures. The FAC defined eleven state classes, as people who purchased or leased
4 a Subject Vehicle within the State within the applicable statute of limitations
5 preceding the filing of the lawsuit. *Id.*

6 **III. THE PROPOSED SETTLEMENT AND SCHEDULE OF EVENTS**

7 The Settlement Class is defined as: “[A]ll individuals or legal entities who, at
8 any time as of the occurrence of the Initial Notice Date, own(ed), purchase(d), or
9 lease(d) Subject Vehicles in the States of Arizona, California, Colorado, Georgia,
10 Illinois, Minnesota, Missouri, New York, Ohio, Oregon, and Washington. Excluded
11 from the Class are: (a) Toyota, its officers, directors, employees, affiliates and
12 affiliates’ officers, directors and employees; distributors and distributors’ officers,
13 directors and employees; and Toyota Dealers and Toyota Dealers’ officers and
14 directors; (b) Plaintiffs’ Counsel; and (c) judicial officers and their immediate family
15 members and associated court staff assigned to this case.” Agreement ¶ II.A.5.

16 The Settlement provides for injunctive relief only, consisting of a
17 comprehensive consumer outreach program designed to directly disclose to Class
18 Members the existence of the Echo Issue and provide clarity and education about how
19 to alleviate the issue. The Outreach Program, described in Section III of the Agreement
20 includes the following components:

21 a. A Volume Adjustment Protocol Website with (i) detailed customer
22 instructions related to the Volume Adjustment Protocol, the language of which has
23 been negotiated and agreed to by the Parties, (ii) an enhanced video instructing Class
24 Members of the Volume Adjustment Protocol, the script for which has been negotiated
25 and agreed to by the Parties, and (iii) a link to the Settlement website;

26 b. Direct contact to Direct Mail Recipients via U.S. Mail, or where
27 available, by email, which includes (i) information about the Echo Issue; (ii) enhanced
28

1 instructions for the Volume Adjustment Protocol, the language of which has been
2 negotiated and agreed to by the Parties; (iii) a QR code that shall be designed to take
3 Class Members to the Volume Adjustment Protocol Website, and (iv) a QR code
4 which will refer the Class Member to the Settlement website;

5 c. Social media program that includes social media ads targeting
6 Class Members with settlement-related information to Class Members, including
7 directing the Class Members to the Volume Adjustment Protocol Website; and

8 d. A renewed Tech Tip, which will be available to Dealers and will
9 include the enhanced instructions and a link to the Volume Adjustment Protocol
10 Website and enhanced video.

11 The Outreach Program, including access to the Volume Adjustment Protocol
12 Settlement Website, will begin on the Initial Notice Date and terminate three (3) years
13 after the Initial Notice Date.

14 Although class notice is not required for a Rule 23(b)(2) class, out of an
15 abundance of caution, certain notice has been agreed to by the Parties in conjunction
16 with the Outreach Program, including a combination of Direct Mail Outreach (by both
17 mail and email) to current owners and lessees whose contact information is reasonably
18 available, notice through the Settlement website and the Volume Adjustment Protocol
19 Website, Long Form Notice, social media notice, and a dedicated toll-free telephone
20 number. Agreement ¶ IV. The proposed Long Form Notice and Direct Mail Outreach
21 are attached to the Agreement as Exhibits 3 and 4, respectively.

22 The Class Members will only release claims for injunctive relief. Class
23 Members will not release claims for monetary damages. *Id.* ¶ VI.B. Only the Plaintiffs
24 who have executed the Settlement Agreement will release all claims. *Id.* ¶ VI.C.

25 The parties propose Cameron Azari of Epiq Solutions be appointed as
26 Settlement Outreach Administrator. A notice plan, declaration, and resume provided
27 by Azari and Epiq are attached as Exhibits 2 and 5 to the Agreement. Due in part to
28

1 the length of time expected to receive contact information for the Direct Mail
 2 Recipients, and consistent with the provisions of the Settlement, Plaintiffs propose the
 3 schedule set forth in Exhibit 1 to the Agreement, which includes, among others:

EVENT	DEADLINES
Settlement Website, Volume Adjustment Protocol Website, Toll-Free Number go live, informational press release distributed on PR Newswire, (the “Initial Notice Date”)	No later than 30 days after Preliminary Approval Order
Digital Notice to begin running, sponsored search listings acquired, and Direct Mail Outreach to begin	As soon as practicable after Initial Notice Date, but no later than 90 days after Preliminary Approval Order
Direct Outreach Notice to be Substantially Completed	No later than 155 days after Preliminary Approval Order
Plaintiffs’ Motion for Attorneys’ Fees, Expenses, and Service Awards to be Filed	No later than 155 days after Preliminary Approval Order
Objection Deadline	No later than 180 days after Preliminary Approval Order
Motion for Final Approval of Settlement to be Filed	14 days before Final Fairness Hearing
Fairness Hearing	No earlier than 208 days after Preliminary Approval Order

21 **IV. PLAINTIFFS HAVE STANDING TO SEEK INJUNCTIVE RELIEF**

22 Initially, Plaintiffs have standing to obtain injunctive relief because they have
 23 sufficiently alleged “continuing, present adverse effects” due to Toyota’s alleged
 24 unlawful conduct—*i.e.* its failure to disclose the Echo Issue. *Campbell v. Facebook,*
 25 *Inc.*, 951 F.3d 1106, 1119-20 (9th Cir. 2020).⁶ Notably, Plaintiffs allege Toyota has
 26

27 ⁶ “[T]he Supreme Court has long recognized that in cases seeking injunctive or
 28 declaratory relief, only one plaintiff need demonstrate standing to satisfy Article III.”

1 neither directly disclosed to Plaintiffs and Class Members the existence of the Echo
2 Issue (which is not readily apparent to the driver of the vehicle), nor adequately
3 described any fix or volume adjustment for the Echo Issue, nor provided any such
4 procedure to Plaintiffs and Class Members prior to or following their purchases or
5 leases of the Subject Vehicles. FAC, ¶ 12. Thus, the Echo Issue “has not been resolved
6 and is an ongoing defect that continues to cause harm to Plaintiffs and the Class
7 Members for which legal remedies are inadequate by creating a safety risk through
8 their inability to use the Class Vehicle’s hands-free Bluetooth system.” *Id.* ¶ 13.
9 Accordingly, Plaintiffs’ allegations that the Echo Issue is continuing to cause them
10 present adverse effects—and which the injunctive relief provided for in this
11 Settlement instructs them how to resolve—is alone sufficient to establish standing for
12 injunctive relief.

13 Alternatively, Plaintiffs and Class Members face a threat of imminent or actual
14 harm arising from their inability to rely on Toyota’s representations in the future. *See,*
15 *e.g.*, FAC ¶¶ 12-15, 104-105. That harm is sufficient to confer standing, and Toyota’s
16 relief of disclosing the Echo Issue and volume-adjustment protocol remedies that
17 harm by restoring confidence to rely on Toyota’s future representations. *See Davidson*
18 *v. Kimberly-Clark Corp.*, 889 F.3d 956, 962, 967 (9th Cir. 2018) (plaintiff who
19 purchased flushable wipes, used them, then “never again purchased flushable
20 wipes” had “properly alleged that she faces a threat of imminent or actual harm by
21 not being able to rely on [defendant’s] labels in the future, and that this harm is
22 sufficient to confer standing to seek injunctive relief”) (citing *Lilly v. Jamba Juice*
23 *Co.*, 2015 U.S. Dist. LEXIS 34498 (N.D. Cal. Mar. 18, 2015) (finding plaintiff who
24 previously purchased smoothie products had standing to seek injunctive relief in form

25 _____
26 *Olean Wholesale Grocery Coop., Inc. v. Bumble Bee Foods LLC*, 31 F.4th 651, 682
27 n.32 (9th Cir. 2022) (citing cases). The Ninth Circuit has “likewise applied this rule
28 where a class sought injunctive or equitable relief.” *Id.* (citing *Bates v. United Parcel*
Serv., Inc., 511 F.3d 974, 985 (9th Cir. 2007) (en banc).

1 of labeling changes and approving injunction-only settlement in which defendant
2 made labeling changes for a class of “all persons in California who bought one of the
3 following [smoothie] products”); *see also In re Ring LLC Priv. Litig.*, 2023 U.S. Dist.
4 LEXIS 235407 (C.D. Cal. Dec. 20, 2023) (approving injunction-only settlement
5 involving additional disclosures by defendant for class of all persons who purchased
6 defendant’s device during Class Period).

7 **V. THE SETTLEMENT SHOULD BE PRELIMINARILY APPROVED**

8 To preliminarily approve a class action settlement agreement, the court “must
9 determine if it ‘will likely be able to’ both (1) ‘certify the class for purposes of the
10 judgment on proposal’ under Rule 23(a) and 23(b), and (2) ‘approve the proposal
11 under Rule 23(e)(2).” *Weiner v. Ocwen Fin. Corp.*, 2024 U.S. Dist. LEXIS 52697, *9
12 (E.D. Cal. Mar. 22, 2024) (quoting Fed. R. Civ. P. 23(e)(1)(B)). Moreover, the Court
13 need only find that a settlement falls within “the range of reasonableness.” Alba Conte
14 et al., *Newberg on Class Actions* § 11.25, at 11-91 (4th ed. 2002). *See also Manual for*
15 *Complex Litigation (Fourth)* § 21.632 (2004) (preliminary approval is “initial
16 evaluation” of fairness of proposed settlement based on written submissions and
17 informal presentation from settling parties). Indeed, public policy “strong[ly] . . .
18 favors settlements, particularly where complex class action litigation is concerned.”
19 *Pilkington v. Cardinal Health, Inc.*, 516 F.3d 1095, 1101 (9th Cir. 2008); *see also*
20 *Hanlon*, 150 F.3d at 1027 (in exercising discretion to approve settlement, court should
21 give “proper deference to the private consensual decision of the parties”).

22 Here, the Settlement Class should be certified and the Settlement preliminarily
23 approved.

24 **A. The Settlement Class Should Be Certified**

25 In deciding whether to preliminarily certify a class for settlement purposes only,
26 the Court must consider the Rule 23(a) factors and at least one subsection of Rule
27 23(b)—except that the Court need not consider the manageability of a potential trial,
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1 since the settlement, if approved, would obviate the need for a trial. *Amchem Prods.,*
2 *Inc. v. Windsor*, 521 U.S. 591, 620 (1997); *Wang v. Chinese Daily News, Inc.*, 737
3 F.3d 538, 542-44 (9th Cir. 2013).

4 **1. Rule 23(a) is Satisfied**

5 **a. The Settlement Class is Too Numerous to Permit Joinder**

6 “Numerosity, the first prerequisite of class certification, requires that the class
7 be ‘so numerous that joinder of all members is impractical.’” *Arnott v. U.S.*
8 *Citizenship & Immigr. Servs.*, 290 F.R.D. 579, 585 (C.D. Cal. 2012) (quoting Fed. R.
9 Civ. P. 23(a)(1)). “A proposed class of at least forty members presumptively satisfies
10 the numerosity requirement.” *Id.* (citations omitted). Here, more than 1.8 million
11 Subject Vehicles have been sold in the eleven Class States, making joinder
12 impracticable. Joint Decl. ¶ 10. The numerosity requirement is thus satisfied.

13 **b. This Action Presents Common Questions of Law or Fact**

14 Commonality under Rule 23(a)(2) requires that “there are questions of law or
15 fact common to the class.” Commonality is satisfied where the claims of the class
16 “‘depend upon a common contention . . . capable of classwide resolution—which
17 means that determination of its truth or falsity will resolve an issue that is central to
18 the validity of each one of the claims in one stroke.’” *Lee v. Great Am. Life Ins. Co.*,
19 2024 U.S. Dist. LEXIS 149997, *7-8 (C.D. Cal. Aug. 20, 2024) (quoting *Wal-Mart*
20 *Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011)). Here, commonality is satisfied as
21 the core factual and legal questions at issue—including the nature of the Echo Issue,
22 when Toyota learned of the Echo Issue, Toyota’s sales of the Subject Vehicles, and
23 whether Toyota disclosed or should have disclosed the Echo Issue and the volume
24 adjustment procedure—are common to the Class. Answering these questions will
25 generate common answers and resolve central issues in this litigation.

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c. Class Representatives’ Claims are Typical of the Class

Rule 23(a)(3) requires that “the claims and defenses of the representative parties are typical of the claims or defenses of the class.” Typicality does not require total identity between representative plaintiffs and class members. *Armstrong v. Davis*, 275 F.3d 849, 868 (9th Cir. 2001). Rather, typicality is “satisfied when each class member’s claim arises from the same course of events, and each class member makes similar legal arguments to prove the defendant’s liability.” *Id.* Here, typicality is satisfied as the claims of Plaintiffs and the Class all stem from Toyota’s alleged failure to disclose the known Echo Issue and volume-adjustment procedure for the Subject Vehicles. The Plaintiffs’ claims also share the same legal theories as the Class Members in their respective states.

d. Class Representatives and Class Counsel are Adequate

Rule 23(a)(4) requires that the representative plaintiffs will “fairly and adequately” protect the interests of the class. The two-prong test for determining adequacy is whether: (1) “the representative plaintiffs and their counsel have any conflicts of interest with other class members” and (2) “the representative plaintiffs and their counsel prosecute the action vigorously on behalf of the class[.]” *Staton v. Boeing Co.*, 327 F.3d 938, 957 (9th Cir. 2003). Rule 23(a)(4) is satisfied here because there are no conflicts of interest between the Plaintiffs and the Class, and Plaintiffs have retained competent counsel to represent them and the Class. Class Counsel are well-qualified and regularly engage in consumer class litigation and other complex litigation similar to this Action and have dedicated substantial resources to its prosecution. *See* Joint Decl. ¶¶ 6-12. Moreover, Plaintiffs and Class Counsel have vigorously and competently represented the Class Members’ interests in the Action. As addressed herein, in pursuing this action on behalf of the Class, Plaintiffs and Class Counsel have engaged in, *inter alia*, substantial investigation, motion practice, and

1 discovery, including, *inter alia*, review of Toyota’s extensive and highly technical
2 document production, vehicle inspections, and depositions. *Id.*

3 **2. The Requirements of Rule 23(b)(2) are Satisfied**

4 Rule 23(b)(2) is satisfied where “the party opposing the class has acted or
5 refused to act on grounds that apply generally to the class, so that final injunctive
6 relief or corresponding declaratory relief is appropriate respecting the class as a
7 whole.” Fed. R. Civ. P. 23(b)(2). Under Rule 23(b)(2), it “is sufficient if class
8 members complain of a pattern or practice that is generally applicable to the class as
9 a whole.” *Walters v. Reno*, 145 F.3d 1032, 1047 (9th Cir. 1998).

10 Here, Rule 23(b)(2) is satisfied. Plaintiffs complain of the same practice, in
11 which Toyota allegedly failed to disclose the known Echo Issue and volume
12 adjustment procedure, which is generally applicable to the Class as a whole. And the
13 Settlement’s injunctive relief remedies the claims of Plaintiffs and the Class by
14 alerting users to the existence of the Echo Issue and providing clarification and
15 disclosure of the Volume Adjustment Protocol, which alleviates an ongoing issue in
16 the Subject Vehicles and restores confidence to rely on Toyota’s future
17 representations. *See, e.g.*, FAC ¶¶ 12-15, 104-105; *Davidson*, 889 F.3d 956, *Lilly*,
18 2015 U.S. Dist. LEXIS 34498; *In re Ring*, 2023 U.S. Dist. LEXIS 235407.

19 **3. Appointment of Class Counsel**

20 Fed. R. Civ. P. 23(g)(1) provides that a court certifying a class “must appoint
21 class counsel.” In doing so, the Court must consider: (i) the work counsel has done in
22 identifying or investigating potential claims; (ii) counsel’s experience in handling
23 class actions, other complex litigation, and the types of claims asserted; (iii) counsel’s
24 knowledge of the applicable law; and (iv) the resources that counsel will commit to
25 representing the class. Fed. R. Civ. P. 23(g)(1)(A)(i)-(iv). Here, as described above,
26 Class Counsel thoroughly investigated and prosecuted this Action. Further, Class
27 Counsel have extensive experience handling class actions and other complex
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1 litigation, and have obtained and possess the requisite knowledge of the law relating
2 to this Action. Class Counsel also possess sufficient resources, of which they have
3 employed, to adequately represent the Class. This Court should therefore appoint Mike
4 Arias, Craig Momita, and M. Anthony Jenkins of Arias Sanguinetti Wang & Team
5 LLP, and Kevin Green, Thomas Rosenfeld, and Daniel Levy of Goldenberg Heller &
6 Antognoli, P.C., as Class Counsel.

7 **B. The Settlement is Fair, Reasonable, and Adequate**

8 In determining whether a proposed class action settlement may be approved as
9 “fair, reasonable, and adequate” under Rule 23(e)(2), the Court must consider
10 whether: (A) the class representatives and class counsel have adequately represented
11 the class; (B) the proposal was negotiated at arm’s length; (C) the relief provided for
12 the class is adequate, taking into account: (i) the costs, risks, and delay of trial and
13 appeal; (ii) the effectiveness of any proposed method of distributing relief to the class,
14 including the method of processing class-member claims; (iii) the terms of any
15 proposed award of attorney’s fees, including timing of payment; and (iv) any
16 agreement required to be identified under Rule 23(e)(3); and (D) the proposal treats
17 class members equitably relative to each other. Fed. R. Civ. P. 23(e)(2)(A)-(D).

18 In addition, “each circuit has developed its own vocabulary for expressing these
19 concerns,” thus it is appropriate for this Court to consider the factors set forth by the
20 Ninth Circuit. Fed. R. Civ. P. 23(e), Advisory Committee’s Note to 2018 Amendment.
21 These factors are: “(1) the strength of the plaintiff’s case; (2) the risk, expense,
22 complexity, and likely duration of further litigation; (3) the risk of maintaining class
23 action status throughout the trial; (4) the amount offered in settlement; (5) the extent
24 of discovery completed and the stage of the proceedings; (6) the experience and views
25 of counsel; (7) the presence of a governmental participant; and (8) the reaction of the
26 class members of the proposed settlement.” *Perez v. Bodycote Thermal Processing,*
27 *Inc.*, 2024 U.S. Dist. LEXIS 151884, *12-13 (C.D. Cal. Aug. 23, 2024) (citing
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1 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998)) (the “*Hanlon*
2 factors”). Many *Hanlon* factors overlap with Rule 23(e)(2)’s factors, but a district
3 court should consider both when evaluating a proposed settlement. *Id.* at *13 (citing
4 *Kim v. Allison*, 8 F.4th 1170, 1178 (9th Cir. 2021)).

5 Here, the proposed settlement between the parties is fair, adequate, and
6 reasonable to warrant preliminary approval. The Settlement provides meaningful
7 injunctive relief to the Class, including the disclosure of the existence of the Echo
8 Issue, plus clarification and disclosure of the Volume Adjustment Protocol, without
9 requiring Class Members to release claims for monetary damages. *See Campbell*, 951
10 F.3d at 1123. As set forth above, that relief provides remedies to the actual and
11 imminent harms described in the FAC. Further, there is a sufficient “record supporting
12 the conclusion that the proposed settlement will likely earn final approval after notice
13 and an opportunity to object.” Fed. R. Civ. P. 23(e)(1), Advisory Committee’s Note
14 to 2018 Amendment. Ultimately, the *Hanlon* factors and Rule 23(e)(2) are satisfied
15 and preliminary approval of the Settlement Agreement is warranted.

16 **1. The *Hanlon* Factors Support Approval of the Settlement**

17 Plaintiffs continue to believe this case is strong and that Toyota would be held
18 liable if the case proceeded to trial. But they also recognize the risk, expense, and time
19 involved to reach trial or obtain a final judgment for classwide damages.

20 First, Toyota would vigorously contest class certification in this Court and on a
21 Rule 23(f) interlocutory appeal. *See, e.g.*, Dkt. 130 at 162. And while damage classes
22 are often certified under Rule 23(b)(3) in auto-defect cases, it is by no means
23 guaranteed. *See, e.g., Hamm v. Mercedes-Benz U.S.*, 2021 U.S. Dist. LEXIS 65098,
24 *35 (N.D. Cal. Apr. 2, 2021) (denying class certification for 23(b)(3) damages class
25 in case alleging omission of auto-defect based on lack of predominance); *Kondash v.*
26 *Kia Motors Am., Inc.*, 347 F.R.D. 197, 211 (S.D. Ohio 2020) (denying class
27 certification for lack of predominance).

1 Second, recent auto-defect cases that proceeded to trial on the merits reveal
2 potential risk in obtaining damages for the Class—even if liability were established.
3 For example, in January 2024, *Nuwer et al. v. FCA US LLC*, Case Number 0:20-cv-
4 60432 (S.D. Fla.) proceeded to trial. This was a class action against Fiat Chrysler
5 alleging its vehicles contained faulty automatic head restraints. The jury found the
6 company violated Florida’s consumer fraud statute by not disclosing a known defect
7 and was therefore liable; however, the jury also determined class members were not
8 owed any monetary damages. *Nuwer* came on the heels of the 2023 verdict in
9 *Cardenas et al. v. Toyota Motor Corp. et al.*, Case Number 1:18-cv-22798 (S.D. Fla.),
10 where a jury ruled in favor of Toyota in a class action alleging certain Camry models
11 had defective air conditioning units that caused mold to grow in the car’s AC systems.

12 Third, Counsels’ investigation showed Toyota’s volume-adjustment procedure
13 effectively addresses the Echo Issue. Given that fact, and in light of the recent no-
14 damage jury verdicts and Toyota’s continued denial of wrongdoing and affirmative
15 defenses, Plaintiffs faced real risks of not recovering damages for the Class.

16 Finally, regardless of the eventual outcome, continuing to pursue litigation
17 would involve significant expense relating to complex and technical issues regarding
18 the Echo Issue and classwide damages, both necessitating costly expert services and
19 testimony. And further litigation would last several more years, as Toyota would
20 undoubtedly appeal any judgment.

21 Accordingly, the first three *Hanlon* factors weigh in favor of preliminary
22 approval. *See also Larsen v. Trader Joe's Co.*, 2014 U.S. Dist. LEXIS 95538, *12
23 (N.D. Cal. July 11, 2014) (“In the absence of settlement now, the parties would incur
24 significant additional costs in discovery, including depositions, . . . a survey of
25 [defendant’s] customers regarding the materiality of the alleged misrepresentations,
26 and expert discovery addressing the use of synthetic versus natural ingredients.
27 Moreover, settlement is favored where, as here, significant procedural hurdles remain,
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1 including class certification and an anticipated appeal.”) (citing *Rodriguez v. West*
2 *Publ'g Corp.*, 563 F.3d 948, 966 (9th Cir. 2009).

3 The relief offered in the Settlement also supports approval. There is no
4 “particular formula by which th[e] outcome must be tested.” *Rodriguez*, 563 F.3d at
5 965. “In most situations, unless the settlement is clearly inadequate, its acceptance and
6 approval are preferable to lengthy and expensive litigation with uncertain results.”
7 *Nat’l Rural Telecomm’s Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 526 (C.D. Cal.
8 2004) (quotation marks and citation omitted). Further, injunctive-relief settlements are
9 often approved, particularly as here where class members do not release claims for
10 monetary damages, in cases where classwide damages are uncertain, and where a
11 defendant makes relevant new disclosures. *See, e.g., Campbell*, 951 F.3d at 1119-20
12 (approving settlement providing for injunctive-only relief in form of additional
13 disclosures without release of claims for monetary damages); *In re Ring*, 2023 U.S.
14 Dist. LEXIS 235407 (same); *Padilla v. Whitewave Foods Co.*, 2021 U.S. Dist. LEXIS
15 207319 (C.D. Cal. May 10, 2021) (same); *Lilly.*, 2015 U.S. Dist. LEXIS 34498 (same).

16 Here, the Settlement provides Class Members with immediate, tangible benefits
17 by giving them, through the comprehensive Outreach Program, detailed information
18 about the existence and nature of the Echo Issue and how to alleviate the effects of the
19 Echo Issue. Agreement ¶ III. As set forth above, one of the main issues in this case is
20 a lack of disclosure of the Echo Issue itself. Toyota has never directly disclosed the
21 existence of the Echo Issue to customers, and because the echo is heard by the person
22 on the other end of the call, many Class Members may not even be aware that their
23 vehicle has the Echo Issue (unless the person on the other end of their call tells them).
24 Moreover, Toyota has not yet adequately described or disclosed directly to Class
25 Members the existence of a volume-adjustment procedure that resolves the Echo Issue.

26 The Settlement addresses the lack of adequate and precise disclosure by
27 providing for injunctive relief in the form of the multifaceted consumer outreach
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1 program designed to provide disclosure and education directly to Class Members
2 regarding the Echo Issue and the volume-adjustment procedure. In addition to
3 disclosing the Echo Issue to Class Members and giving them a solution to this ongoing
4 problem, the Settlement restores Class Members' confidence to rely on Toyota's
5 statements about products in the future.

6 Additionally, the Settlement preserves Class Members' ability to seek damages
7 should they desire because it does not release such claims. That carveout adds to the
8 benefits received by the Class and supports approval. *See Campbell*, 951 F.3d at 1123
9 (“[T]he relief provided to the class cannot be assessed in a vacuum. Rather, the
10 settlement's benefits must be considered by comparison to what the class actually gave
11 up by settling”); *Moreno v. S.F. Bay Area Rapid Transit Dist.*, 2019 U.S. Dist. LEXIS
12 13309, *13-14 (N.D. Cal. Jan. 28, 2019) (“[T]he case was only certified for injunctive
13 relief purposes and class members are free to bring individual damages claims.”).

14 Finally, the extent of discovery completed, stage of proceedings, and experience
15 and views of counsel all support approval. By the time the Parties reached the
16 Settlement, they had engaged in significant pre-trial motion practice, conducted
17 extensive discovery, and spent considerable time and resources consulting with
18 experts. Joint Decl. ¶¶ 7-11. Plaintiffs' Counsel, who have extensive experience in
19 prosecuting complex class actions, including consumer protection class actions, were
20 informed of the facts, claims, and defenses in the case and the risks of proceeding to
21 trial and appeal, and endorse the Settlement without reservation. *Id.* ¶¶ 6-12; *see also*
22 *supra* at pp. 2-6, 15-17; *Rodriguez*, 563 F.3d at 967 (“[P]arties represented by
23 competent counsel are better positioned than courts to produce a settlement that fairly
24 reflects each party's expected outcome in litigation[.]”); *Knight v. Red Door Salons,*
25 *Inc.*, 2009 U.S. Dist. LEXIS 11149, *11 (N.D. Cal. Feb. 2, 2009) (“[R]ecommendations
26 of plaintiffs' counsel should be given a presumption of reasonableness.”).⁷

27 _____
28 ⁷ The seventh *Hanlon* factor (presence of a governmental participant) is inapplicable

1 Accordingly, the *Hanlon* factors weigh in favor of approval.

2 **2. The Rule 23(e)(2) Factors Support Approval of the Settlement**

3 The Settlement is procedurally fair under Rule 23(e)(2)(A) and (B). As set forth
4 above, the Plaintiffs' interests are aligned with the Class Members' interests, they have
5 vigorously prosecuted the case, and they are represented by counsel with extensive
6 experience who have forcefully litigated this matter. *See supra*, §§ V.A.1.d, V.B.1.

7 Furthermore, the Settlement is the result of extensive arms-length negotiations
8 that occurred after thorough investigation. Settlement discussions included a failed
9 mediation in January 2021; extensive settlement discussions between counsel for the
10 Parties between February and July of 2023 that eventually failed; additional failed
11 negotiations in late 2023/early 2024; and hard-fought negotiations between counsel
12 for the Parties regarding relief for the Class between May 2024 and October 2024,
13 which resulted in this Settlement. Joint Decl. ¶ 11. And the preservation of Class
14 Members' right to seek monetary damages was a key term negotiated during this time.
15 *Id.* The Settlement was reached after a thorough investigation into the claims by Class
16 Counsel and after the parties engaged in substantial discovery and motion practice, as
17 demonstrated above. This allowed Class Counsel to have a proper understanding of
18 the strengths and weaknesses of the case and to balance the benefits of settlement
19 against the risks of further litigation when engaging in negotiations. Finally, counsel
20 for the Parties did not begin discussing terms relating to attorneys' fees, costs, and
21 service awards until after they had reached a settlement in principle for the Class,
22 ultimately reaching agreement on those terms on December 2, 2024. *Id.* Further, those
23 amounts are subject to Court approval and will not affect whether the Settlement
24 becomes effective. Agreement ¶ VII.H. Nothing during these negotiations or in the
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28 as there are no governmental participants. The eighth factor (reaction of class members) is premature at this stage.

1 substance of the proposed Settlement presents any reason to doubt the Settlement’s
2 fairness or suggests any collusion, of which there was none.

3 The relief itself is also substantively adequate under Rule 23(e)(2)(C). The
4 considerations identified in Rule 23(e)(2)(C)(i) (the costs, risks, and delay of trial and
5 appeal) overlap with the *Hanlon* factors and are satisfied for the reasons discussed
6 above. *See supra*, § V.B.1.

7 Moreover, the Rule 23(e)(2)(C)(ii) factor is moot here because where a
8 settlement “provides only injunctive relief that applies generally and equally . . . there
9 is no need for the Court to examine a method of distribution.” *Kouri v. Fed. Express*
10 *Corp.*, 2023 U.S. Dist. LEXIS 245408, *14-15 (C.D. Cal. July 25, 2023).
11 Nevertheless, as set forth more fully in § VI below, the Settlement’s Outreach Program
12 provides comprehensive notice to Class Members via multiple means. This factor
13 therefore supports approval.

14 Under Rule 23(e)(2)(C)(iii), the Settlement is adequate, taking into account the
15 terms of proposed attorney’s fees, including timing of payment. Plaintiffs’ Counsel
16 will petition the Court for an award of attorneys’ fees not to exceed \$2,850,000, plus
17 reasonable litigation expenses not to exceed \$300,000. The fee amount reflects an
18 approximately 1.5 multiplier of Plaintiffs’ Counsel’s unaudited lodestar invested in
19 the case, which multiplier courts have found reasonable, particularly given the
20 significant time devoted to this action and its purely contingent basis. *See Vizcaino v.*
21 *Microsoft Corp.*, 290 F.3d 1043, 1051 (9th Cir. 2002) (upholding a lodestar multiplier
22 cross-check showing a multiplier of 3.65); *Indep. Living Ctr. of S. Cal., Inc. v.*
23 *Figueroa*, 856 F. App’x 97, 101 (9th Cir. 2021) (awarding firm multiplier of 2.0);
24 *Police Ret. Sys. of St. Louis v. Granite Constr. Inc.*, 2022 U.S. Dist. LEXIS 47749,
25 *34 (N.D. Cal. Mar. 17, 2022) (finding multiplier range of 1.53-1.65 “track[s] the
26 acceptable range commonly applied in our circuit”) (citing cases). Plaintiffs’ Counsel
27 will provide detailed information in support of its application in its motion for
28

1 attorneys' fees and expenses. Any attorneys' fee awarded by the Court is to be paid
2 within 30 days of the Settlement's Final Effective Date. Agreement VII.G.

3 Under Rule 23(e)(2)(C)(iv), there are no agreements besides the Settlement
4 Agreement made in connection with the Settlement.

5 Finally, under Rule 23(e)(2)(D), the proposed Settlement treats class members
6 equitably relative to each other. The Settlement provides Class Members with the
7 same injunctive relief via the Outreach Program. Agreement ¶ III. And while the
8 Settlement provides that Class Counsel may petition the Court for service awards,⁸
9 such awards are regularly awarded based on the work performed by the plaintiffs. *See*
10 *Sypherd v. Lazy Dog Rests., LLC*, 2023 U.S. Dist. LEXIS 23257, *15-16 (C.D. Cal.
11 Feb. 10, 2023) (citing *Rodriguez*, 563 F.3d at 958)).

12 Accordingly, the Rule 23(e)(2) factors weigh in favor of approval.

13 **VI. NOTICE IS NOT REQUIRED BUT IS BEING PROVIDED**

14 Under Rule 23(c)(2)(A), “the court may direct appropriate notice to the class”
15 of a 23(b)(2) settlement, and the more strict notice requirements of a 23(b)(3) damages
16 settlement do not apply. Courts often determine notice to Class Members in (b)(2)
17 settlements is unnecessary as there are no opt-out rights. *See Wal-Mart*, 564 U.S. at
18 361-62 (Rule 23 “provides no opportunity for (b)(1) or (b)(2) class members to opt
19 out, and does not even oblige the District Court to afford them notice of the action.”);
20 *Padilla v. Whitewave Foods Co.*, 2021 U.S. Dist. LEXIS 207319, *13 (C.D. Cal. May
21 10, 2021) (“The Court therefore exercises its discretion and does not direct notice
22 because the settlement does not alter the unnamed class members’ legal rights.”);

23 _____
24 ⁸ Plaintiffs’ fee motion will include a request for service awards in the total amount of
25 \$95,000, as compensation for Plaintiffs’ time and effort serving as plaintiffs. Plaintiffs
26 have spent substantial time on this action, including assisting with the investigation
27 and drafting of the complaints, meeting with counsel on many occasions, responding
28 to Toyota’s interrogatories and document requests, staying generally informed of the
Action, having their vehicles inspected by Toyota, and preparing for and having their
depositions taken by Toyota.

1 *Chan v. Sutter Health Sacramento Sierra Region*, 2016 U.S. Dist. LEXIS 192338, *38
2 (C.D. Cal. June 9, 2016) (same).

3 Nonetheless, here the Settlement provides extensive Notice under the Outreach
4 Program, including mail and email notice to the Direct Mail Recipients (current
5 registered owners/lessees whose contact information is reasonably available via DMV
6 records), plus notice to all Class Members via Long Form Notice, social media notice,
7 Settlement website, and toll-free number. Agreement ¶ IV; *see also* Agreement Exs.
8 2 and 5. Although not required, the Notice Program and methodology as described in
9 the Settlement Agreement and in the Declaration of the Settlement Outreach
10 Administrator: (a) meet of Rule 23(c)'s and (e)'s requirements; (b) constitute the best
11 notice practicable under the circumstances to all persons entitled to notice; and (c)
12 satisfy the Constitutional requirements regarding notice.

13 **VII. CONCLUSION**

14 For the foregoing reasons, Plaintiffs respectfully request that the Court grant
15 Plaintiffs' Motion and enter the proposed Order provisionally certifying the proposed
16 Settlement Class, preliminarily approving the Settlement, appointing Class
17 Representatives and Class Counsel, approving the proposed form and manner of notice
18 and the Settlement Administrator, setting a date for the Final Approval Hearing, and
19 for such further relief as the Court deems just and proper.

20
21 Dated: January 31, 2025

Respectfully submitted,

22 GOLDENBERG HELLER
23 & ANTOGNOLI, P.C.

24 By: /s/ Kevin P. Green
25 Thomas P. Rosenfeld
26 Kevin P. Green
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CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Plaintiffs certifies that this brief contains 6,987 words, which complies with the word limit of L.R. 11-6.1.

/s/ Kevin P. Green
Kevin P. Green