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**UNITED STATES DISTRICT COURT**

**CENTRAL DISTRICT OF CALIFORNIA**

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

Plaintiffs,

v.

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

Defendants.

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

**TOYOTA DEFENDANTS' BRIEF IN SUPPORT OF MOTION FOR FINAL APPROVAL**

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## I. INTRODUCTION

Defendants Toyota Motor Sales, U.S.A., Inc. ("Toyota") request that this Court grant final approval of this Rule 23(b)(2) injunctive-only class action Settlement and issue related relief. After nearly six years of litigation involving extensive discovery and motion practice and nearly two years of negotiations on a separate, parallel track, the Parties agreed to the Class Settlement before this Court.

This proposed Settlement more than satisfies Rule 23(e); is the product of serious, informed, non-collusive negotiations; has no obvious deficiencies; does not improperly grant preferential treatment to Plaintiffs or segments of the Class; and falls well within the reasonable range of approval. The Settlement also had a successful and robust Outreach Program that reached over 90% of the class over three times. Furthermore, the extraordinarily successful notice program puts into context the infinitesimally small number of timely objections (seven), which represents only 0.0004% of the approximately 1.8 million Class Members.[1]

The Settlement provides for injunctive relief, consistent with the allegations in the Fifth Amended Class Action Complaint, consisting of a multifaceted consumer Outreach Program[2] designed to educate Class Members about the

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[1] Unless otherwise specified, capitalized terms in this brief have the meanings assigned to them in the Settlement Agreement.

[2] The Outreach Program includes (i) a Volume Adjustment Protocol Website, which contains: (a) information about the Echo Issue, (b) detailed customer instructions related to the Volume Adjustment Protocol, the language of which has been negotiated and agreed to by the Parties, (c) an enhanced video with instructions regarding the Volume Adjustment Protocol, the script for which has been negotiated and agreed to by the Parties, and (d) a link to the Settlement website, www.ToyotaEchoSettlement.com; (ii) Communications sent directly to current owners or lessees of Subject Vehicles in the Class States, via U.S. Mail, or where available, by email, which includes: (a) information about the Echo Issue, (b) enhanced instructions for the Volume Adjustment Protocol, the language of which has been negotiated and agreed to by the Parties, (c) a QR code to the Volume Adjustment Protocol Website, and (d) a QR code to the Settlement website; (iii) a Volume Adjustment Protocol IVR phone number, where Class Members can listen to responses for commonly asked questions related to the Volume Adjustment Protocol; (iv) a social media program, which includes social media ads that target Class Members that will provide settlement-related information to Class Members including directing the Class Members to the Volume Adjustment Protocol Website; and (v) a Renewed Tech Tip, which will be available to Dealers and will

existence of the Echo Issue and how to adjust the volume settings on their cell phone and in their vehicle to eliminate the problem. The Settlement does not release the monetary claims of Class Members.

This Settlement should be granted final approval. Given the successful dissemination of Notice and the overwhelmingly positive response from the Class, the Settlement more than satisfies the requirements in Rule 23(e), including the eight factors set forth in *Staton v. Boeing Co.*, 327 F.3d 938, 959 (9th Cir. 2003), and "the [S]ettlement is not the product of collusion among the negotiating parties" as required in *In re Bluetooth Headset Prods. Liab. Litig.* ("*Bluetooth*"), 654 F.3d 935, 947 (9th Cir. 2011) (cleaned up).

In addition to these substantial benefits of the Settlement, there is a "strong judicial policy favor[ing] settlement, particularly where complex class action litigation is concerned." *Etter v. Thetford Corp.*, No. CV 14-06759, 2016 WL 11745096, at *9 (C.D. Cal. Oct. 24, 2016) (quoting *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1238 (9th Cir. 1998)). Accordingly, the Court should reject the objections, finally approve the Settlement, and dismiss the action.

## II. BACKGROUND

### A. Plaintiffs' Allegations and the Parties' Motion Practice

This action alleges violations of consumer protection statutes and breaches of warranties, among other claims, arising out of the allegedly defective Bluetooth hands-free phone system in the Subject Vehicles of the Class in the Class States (as defined in the Settlement Agreement).

Plaintiffs allege that when using the Bluetooth hands-free phone system to make or receive a call, the person on the other end of the phone call hears an echo of his or her own words. Plaintiffs primarily allege that Toyota's failure to disclose to Plaintiffs and the rest of the Class the existence of the Echo Issue violated

include the enhanced instructions and a link to the Volume Adjustment Protocol Website and enhanced video.

consumer protection statutes. While Plaintiffs believe they have meritorious claims, Toyota denies liability and the propriety of any litigation class or classes, and it is entirely possible that the Court would find against Plaintiffs. Toyota has filed multiple motions to dismiss, which are outlined in Plaintiffs' Motion for Preliminary Approval, Dkt. 145-1, at Section II, and Toyota's Memorandum of Law in Support of the Motion for Preliminary Approval, Dkt. 148, at Section II.1.

**B. Discovery, Confirmatory Discovery, and Settlement Negotiations**

As further discussed in the Motion for Preliminary Approval, this litigation began six years ago, and settlement negotiations lasted nearly two years, proceeding in parallel with the litigation. In addition to significant motion practice, the Parties have conducted extensive discovery, including exchanging interrogatories and responses thereto and the production and review of 90,000 pages of documents from Toyota. Over the course of two and a half years, the Parties negotiated the terms of the Settlement, ultimately agreeing on the principal terms as of October 18, 2024. Only after agreeing on these terms did Class Counsel and Toyota's Counsel negotiate the terms of Attorneys' Fees, Costs, and Expenses and Class Representative service awards. The Parties reached agreement in principle on these terms on December 2, 2024.

**C. Settlement Terms**

Under the proposed Settlement, Toyota has agreed to provide injunctive-only relief in the form of an Outreach Program, which will include (1) a Volume Adjustment Protocol Website; (2) direct contact to Direct Mail Recipients via U.S. Mail, or where available, by email; (3) a Social Media program with advertisements that target Class Members; and (4) a renewed Tech Tip with instructions and a link to the Volume Adjustment Protocol Website. *See* Settlement Agreement, Dkt. 145-3, at § III.

As part of the Settlement, all Class Members will release Toyota and the Released Parties from liability for injunctive relief only. Under the Settlement,

Class Members are specifically not releasing any claims for monetary or statutory damages, personal injury, or wrongful death.

## III. THE COURT PRELIMINARILY APPROVED THE SETTLEMENT

In the Court's order granting the motion for preliminary approval of the Settlement, Dkt. 153 ("Preliminary Approval Order"), the Court analyzed the Settlement based on the requirements specified in Rule 23. The Court found that "[b]ased on the totality of the circumstances, the Court finds that the proposed consent decree is fair, adequate, and reasonable." *See* Prelim. Approval Order at 7. The Court carefully evaluated the four threshold requirements for Rule 23(a), whether the injunctive relief is appropriate to the class as a whole pursuant to Rule 23(b)(2), and whether the settlement is fundamentally fair, adequate, and reasonable; and since the Settlement was reached prior to class certification, the Court had "a heightened obligation to ensure that the class representatives did not secure a disproportionate benefit at the absent putative class members' expense," and that the Settlement was the "product of arm's-length, non-collusive, negotiated resolution." *Id.* at 4-7.

## IV. LEGAL STANDARD

Federal Rule of Civil Procedure 23 sets forth that "the claims, issues, or defenses of a certified class . . . may be settled . . . only with the court's approval." "Whether to approve a class action settlement is 'committed to the sound discretion of the trial judge[,]' who must examine the settlement for 'overall fairness.'" *Chambers v. Whirlpool Corp.*, 214 F. Supp. 3d 877, 886 (C.D. Cal. 2016) (citing *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992), *cert. denied*, 506 U.S. 953 (1992); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998)).

Before approving a class-action settlement, Rule 23 requires the Court to determine whether the proposed settlement is "fair, reasonable, and adequate." *Kearney v. Hyundai Motor Am.*, No. SACV 09-1298, 2013 WL 3287996, at *4

(C.D. Cal. June 28, 2013). To determine whether a settlement agreement meets these standards, a district court must consider the factors set out by *Staton*. *Id.* (citing *Staton*, 327 F.3d at 959).

"In addition to these factors, where 'a settlement agreement is negotiated *prior* to formal class certification,' the Court must also satisfy itself that 'the settlement is not the product of collusion among the negotiating parties.'" *Id.* (citing *Bluetooth*, 654 F.3d at 946-47). "Accordingly, the Court must look for explicit collusion and 'more subtle signs that class counsel have allowed pursuit of their own self-interests and that of certain class members to infect the negotiations.'" *Id.* (citing *Bluetooth*, 654 F.3d at 947).

## V. ARGUMENT

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

#### 1. The Court Has Original Jurisdiction Over All Claims Being Resolved as Part of the Settlement

This Court has original jurisdiction pursuant to 28 U.S.C. § 1332(d)(2) because Plaintiffs' operative Fifth Amended Class Action Complaint alleges that the amount in controversy in this class action exceeds $5,000,000, exclusive of interest and costs, and there are at least 100 Class Members in each of the State Classes. *See* Dkt. 139, ¶ 44; *see also Vasquez v. First Student, Inc.*, No. 2:14-cv-06760, 2014 WL 6837279, at *2-3 (C.D. Cal. Dec. 3, 2014). In addition, the existence of original jurisdiction authorizes this Court to exercise supplemental jurisdiction under 28 U.S.C. § 1367(a) over the remaining state law claims: "in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action . . . that they form part of the same case or controversy under Article III."

#### 2. The Court Has Personal Jurisdiction Over All Class Members

This Court has personal jurisdiction over Plaintiffs, who are parties to this

class action and have agreed to serve as representatives for the Settlement Class. Furthermore, as this Settlement is a Rule 23(b)(2) injunctive-only settlement, due process is satisfied for absent Class Members' interest as they are adequately represented by the Class Representatives. *See Crawford v. Honig*, 37 F.3d 485, 487 (9th Cir. 1994). Plaintiffs' Memorandum of Law in Support of the Motion for Final Approval further discusses personal jurisdiction.

**B. Notice Exceeded the Requirements of Rule 23(b)(2) and (e) and Due Process**

As the Settlement Agreement releases only the rights of the Class to seek injunctive relief pursuant to Federal Rule of Civil Procedure 23(b)(2) and requires no release of any monetary remedies or statutory damages by any member of the Class or the Plaintiffs, the Parties agree that notice to Settlement Class Members and opt-out rights are not necessary. *See Padilla v. Whitewave Foods Co.*, No. 2:18-CV-09327, 2021 WL 4902398, at *4 (C.D. Cal. May 10, 2021) ("The Court therefore exercises its discretion and does not direct notice because the settlement does not alter the unnamed class members' legal rights." (quotation omitted)); *Chan v. Sutter Health Sacramento Sierra Region*, No. LA CV15-02004, 2016 WL 7638111, at *14 (C.D. Cal. June 9, 2016) ("Because notice is optional for a Rule 23(b)(2) class . . . and the Class Members' rights will not be prejudiced by the Settlement Agreement, notice is not required for purposes of the proposed Settlement Agreement."). However, out of an abundance of caution, certain notice has been agreed to by the Parties in conjunction with the Outreach Program.

Pursuant to the Settlement Agreement (Dkt. 145-3) and the Court's Preliminary Approval Order (Dkt. 153), the Class Notice Outreach Program was accomplished through a combination of Direct Mail Outreach (by both mail and email), notice through the Settlement website and the Volume Adjustment Protocol Website, Long Form Notice, a Volume Adjustment Protocol IVR phone number, a social media program, and a renewed Tech Tip. *See* Settlement Agreement (Dkt.

145-3, at 22); *see generally* Decl. of Cameron R. Azari, Esq. Regarding Implementation and Adequacy of Notice Program ("Implementation Declaration") (Dkt. 168-1) and Suppl. Decl. of Cameron R. Azari, Esq. Regarding Implementation and Adequacy of Notice Program (Dkt. 182-1). The multi-faceted Outreach Program was immensely successful as it reached in excess of 90% of the identified Class with a frequency of three times. *See* Dkt. 168-1, ¶ 10.

**C. The Settlement Is "Fair, Reasonable, and Adequate" Under the Criteria Discussed in Rule 23(e) and Applied in the Ninth Circuit**

Federal Rule of Civil Procedure 23(e) requires a two-step process to approve the settlement of a class action. "[I]f preliminary approval is granted, class members are notified and invited to make any objections. Upon reviewing the results of that notification, a court makes a final determination as to whether an agreement is 'fundamentally fair, adequate, and reasonable.'" *See Jimenez v. Allstate Ins. Co.*, No. LA CV10-08486, 2021 WL 4316961, at *4 (C.D. Cal. Sep. 16, 2021) (citing *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 525 (C.D. Cal. 2004)).

The claims of a certified class may be settled only with court approval, and the Court may approve a settlement "only after a hearing and only on finding that it is fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2).

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

1. the strength of plaintiffs' case;
2. the risk, expense, complexity, and likely duration of further litigation;
3. the risk of maintaining class action status throughout the trial;
4. the amount offered in settlement;
5. the extent of discovery completed, and the stage of the proceedings;
6. the experience and views of counsel;

7. the presence of a governmental participant; and

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

327 F.3d at 959.

These factors are "by no means an exhaustive list of relevant considerations," and "[t]he relative degree of importance to be attached to any particular factor will depend upon . . . the unique facts and circumstances" of each case. *Officers for Just. v. Civ. Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982); *Staton*, 327 F.3d at 959.

**D. The Strength of Plaintiff's Case, and the Risk, Expense, Complexity, and Duration of Further Litigation**

The potential weaknesses in Plaintiffs' case and the enormous complexity, expense, and likely duration of further motion and discovery practice and a trial of this litigation weigh in favor of a finding that the Settlement is fair, reasonable, and adequate. *See Adoma v. Univ. of Phx., Inc.*, 913 F. Supp. 2d 964, 975 (E.D. Cal. 2012) ("When assessing the strength of plaintiff's case," a court assesses "objectively the strengths and weaknesses inherent in the litigation and the impact of those considerations on the parties' decisions to reach [a settlement agreement]." (quotation omitted)). If this class action were to proceed, it would undoubtedly be a costly and lengthy process for all Parties. "In assessing the risk, expense, complexity, and likely duration of further litigation, the court evaluates the time and cost required." *Id.* at 976.

As the Court has already seen and ruled on in several instances, this litigation involves 1.8 million Class Members and multiple legal claims and defenses. If the Settlement is not approved, litigation would likely continue for years, with large associated costs.

The Settlement, which guarantees that Class Members receive substantial injunctive-related relief, provides significant advantages over "rolling the dice" and proceeding to final adjudication on the merits—after which the Class might achieve nothing. *See, e.g.*, *In re Toyota Motor Corp. Unintended Acceleration Mktg., Sales*

*Pracs., & Prods. Liab. Litig.*, No. 8:10ML 02151, 2013 WL 12327929, at *14, *20 (C.D. Cal. July 24, 2013) (approving class settlement noting, "[s]imply put, Plaintiffs might eventually recover more with continued litigation, but they also might recover nothing").

"Generally, 'unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results.'" *Barbosa v. Cargill Meat Sols. Corp.*, 297 F.R.D. 431, 446 (E.D. Cal. 2013) (citing *Nat'l Rural Telecomms. Coop.*, 221 F.R.D. at 526). Moreover, settlement is encouraged in class actions where possible. *See id.* (citing *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976) ("It hardly seems necessary to point out that there is an overriding public interest in settling and quieting litigation. This is particularly true in class action suits which are now an ever increasing burden to so many federal courts and which present serious problems of management and expense.")).

Given the risk, uncertainty, and possible length of further litigation, this Settlement benefits Class Members by providing "immediate recovery by way of the compromise to the mere possibility of relief in the future, after protracted and expensive litigation." *See Whirlpool Corp.*, 214 F. Supp. 3d at 888 (quoting *Nat'l Rural Telecomms. Coop.*, 221 F.R.D. at 526); *Knapp v. Art.com, Inc.*, 283 F. Supp. 3d 823, 832 (N.D. Cal. 2017) (stating the relief provided by settlement is "preferable to lengthy and expensive litigation with uncertain results" (quotation omitted)); *see also, e.g.*, *Williams v. Costco Wholesale Corp.*, No. 02cv2003, 2010 WL 2721452, at *3 (S.D. Cal. July 7, 2010) ("Given these risks, the Court agrees that the actual recovery through settlement confers substantial benefits on the class that outweigh the potential recovery through full adjudication."); *Bond v. Ferguson Enters.*, No. 1:09-cv-01662, 2011 WL 284962, at *7 (E.D. Cal. Jan. 25, 2011) ("Even if Plaintiffs were to prevail, they would be required to expend considerable additional time and resources potentially outweighing any additional recovery

obtained through successful litigation.").

**E. The Risk of Maintaining Class Action Status Through Trial**

If the litigation were to continue, Toyota would strenuously argue that a litigation class could not be certified here, and, even if a litigation class were certified, Toyota would appeal the decision pursuant to Federal Rule of Civil Procedure 23(f). The risk of maintaining class action status is magnified as 11 separate state classes are involved in this litigation. *See In re Pharm. Indus. Average Wholesale Price Litig.*, 252 F.R.D. 83, 94 (D. Mass. 2008) ("While numerous courts have talked-the-talk that grouping of multiple state laws is lawful and possible, very few courts have walked the grouping walk.").

Further, if Plaintiffs were to obtain class certification of a litigation class and defeat a motion for summary judgment, then trial preparation would be necessary to continue to prosecute this litigation, which would be hard-fought, zealously contested, time consuming, uncertain, and expensive. *See Manner v. Gucci Am., Inc.*, No. 15-cv-00045, 2016 WL 1045961, at *6 (S.D. Cal. Mar. 16, 2016) (approving the settlement where continued litigation would be "expensive, complex, and time consuming"); *In re DJ Orthopedics, Inc. Sec. Litig.*, No. 01-CV-2238, 2004 WL 1445101, at *3 (S.D. Cal. June 21, 2004) (finding settlement to be "a more favorable path because the ultimate results of continued litigation are both uncertain and costly"). The Court also noted in the Preliminary Approval Order that"[t]he Toyota Plaintiffs argued that, if litigation were to continue, there would be contested motions, a trial, and, possibly, an appeal, and a risk that they might not be able to prove damages." Dkt. 153, at 7. In light of these risks and the certainty that comes with the Settlement relief, this factor weighs in favor of the Settlement.

**F. The Amount Offered in Settlement**

The Settlement is fair, reasonable, and adequate, particularly since the comprehensive Outreach Program addresses the exact issues raised in Plaintiffs' Fifth Amended Class Action Complaint. As the Court stated in the Preliminary

Approval Order, "[t]he key to a Rule 23(b)(2) class is the indivisible nature of the requested injunctive remedy – the notion that the conduct is such that it can be enjoined unlawful only as to all of the class members or as to none of them." Dkt 153, at 6 (citing *Parsons v. Ryan*, 754 F.3d 657, 687 (9th Cir. 2014)).

The Court identified that, "[t]he comprehensive outreach program will provide all of the class members with information to allow them to minimize and/or eliminate the echo problem volume adjustments." *Id.* at 7. The Court therefore determined that "[b]ecause the named class representatives alleged that Toyota Sales failed to disclose the echo problem and volume adjustment procedure to all of the class members, and because a single injunction would provide relief by minimizing and/or eliminating the echo problem for the entire putative class, this case can, properly, be certified under Rule 23(b)(2)." *Id.* (citing *Jennings v. Rodriguez*, 138 S. Ct. 830, 852 (2018)).

When determining the sufficiency of the relief, "the provisions of a class action settlement must be viewed in terms of a range of probabilities, not mere possibilities." *Officers for Just.*, 688 F.2d at 628-30 ("It is the complete package taken as a whole, rather than the individual component parts, that must be examined for overall fairness."); *see also Sebastian v. Sprint/United Mgmt. Co.*, No. 8:18-cv-00757, 2019 WL 13037010, at *4 (C.D. Cal. Dec. 5, 2019) (same).

The Court's essential function is to assess "whether the settlement falls below the lowest point in the range of reasonableness." *Long v. HSBC USA Inc.*, No. 14 Civ. 6233, 2015 WL 5444651, at *5 (S.D.N.Y. Sep. 11, 2015) (quotation omitted). "[T]he very essence of a settlement is compromise, a yielding of absolutes and an abandoning of highest hopes." *Whirlpool Corp.*, 214 F. Supp. 3d at 889 (quoting *Linney*, 151 F.3d at 1242). Considering the significant multi-faceted Outreach Program provided to the Class Members and the allegations provided in the Fifth Amended Class Action Complaint, this factor also weighs in favor of granting final approval.

**G. The Extent of Discovery Completed and the Stage of the Proceedings**

The Settlement here should be "presumed fair" as it followed "sufficient discovery and genuine arms-length negotiation." *Id.* at 889 (citing *Nat'l Rural Telecomms. Coop.*, 221 F.R.D. at 528); *Linney v. Cellular Alaska P'ship*, No. C-96-3008, 1997 WL 450064, at *5 (N.D. Cal. July 18, 1997), *aff'd*, 151 F.3d at 1234 ("The involvement of experienced class action counsel and the fact that the settlement agreement was reached in arm's length negotiations, after relevant discovery had taken place create a presumption that the agreement is fair.").

As discussed more in Plaintiffs' Motion for Preliminary Approval and Toyota's Memorandum in Support of Preliminary Approval, even after the settlement discussions began, the Parties engaged in extensive discovery conferences and document review, as Toyota produced more than 90,000 pages. *See* Dkt. 145-1, at 11; Dkt. 148, at 10. Toyota also deposed 11 Plaintiffs. Dkt. 148, at 10.

As such, the Parties here clearly "entered the settlement discussions with a substantial understanding of the factual and legal issues from which they could advocate for their respective positions." *Whirlpool Corp.*, 214 F. Supp. 3d at 889; *see also Nat'l Rural Telecomms. Coop.*, 221 F.R.D. at 527-28 (finding that the parties' understanding of the factual and legal issues through completion of discovery "strongly militates in favor of the Court's approval of the settlement"); *Sarkisov v. StoneMor Partners L.P.*, No. 13-cv-04834, 2015 WL 5769621, at *3 (N.D. Cal. Sep. 30, 2015) (finally approving settlement where "the discovery done in the case was appropriate, and plaintiff's counsel has detailed a sufficiently robust investigation into class and liability issues"). Thus, this factor also supports approval of the Settlement.

**H. The Experience and Views of Counsel**

The Parties are represented by counsel who investigated and considered their

own and the opposing parties' positions and measured the terms of the Settlement against the risks of continued litigation. As stated in *Whirlpool Corp.*, and in language equally applicable here, at this stage, the Parties' counsel "are most closely acquainted with the facts of the underlying litigation . . . [and] are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in the litigation." 214 F. Supp. 3d at 889 (quoting *Nat'l Rural Telecomms. Coop.*, 221 F.R.D. at 528). As such, great weight should be accorded to Class Counsel's judgment in recommending this Settlement for final approval. *Id.*; *see also Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009) ("This circuit has long deferred to the private consensual decision of the parties.").

**I. The Presence of a Governmental Participant**

There is no government participant in this case. Therefore, this factor is inapplicable. *See Wren v. RGIS Inventory Specialists*, No. C-06-05778, 2011 WL 1230826, at *10 (N.D. Cal. Apr. 1, 2011) (finding this factor inapplicable given lack of governmental entity involved).

**VI. SETTLEMENT IS NOT A PRODUCT OF COLLUSION**

"A settlement following sufficient discovery and genuine arms-length negotiation is presumed fair" because these conditions "suggest[] . . . that the parties arrived at a compromise based on a full understanding of the legal and factual issues surrounding the case." *Nat'l Rural Telecomms. Coop.*, 221 F.R.D. at 527-28 (citations omitted). Here, there can be no question that the Settlement was not a product of collusion, and instead was the result of hard-fought, arm's length negotiation. In granting preliminary approval, the Court found that "the proposed settlement was reached through settlement discussions after the Court ruled on various motions and after the parties gave full consideration to their respective legal and factual risks following thorough investigations into the subject Toyota vehicles." Dkt. 153, at 7. The Court therefore found that "the proposed settlement was, indeed, 'the product of an arms-length, non-collusive, negotiated

resolution[.]'" *Id.* Simply put, "the risk of collusion among counsel is so small that it is effectively non-existent." *Wade v. Kroger Co.*, No. 3:01CV-699, 2008 WL 4999171, at *3 (W.D. Ky. Nov. 20, 2008).

## VII. THE REACTION OF THE CLASS TO THE PROPOSED SETTLEMENT IS OVERWHELMINGLY FAVORABLE

Under the Court's Order setting deadlines for settlement approval, Class Members had until January 14, 2026, to object to the proposed Settlement. Dkt. 155. As of the date of this memorandum of law, the Court, Class Counsel, and/or Toyota's counsel have only received seven[3] timely objections. [4] *See* Dkt. Nos. 156 (McMillen), 160 (Hribernick), 173 (Petersen), 174 (Miller), 176 (Rexroad), 177 (Efros), and 179 (Allen).[5] "[T]he absence of a large number of objections to a proposed class action settlement raises a strong presumption that the terms of a proposed class settlement action are favorable to the class members." *Nat'l Rural*

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[3] The Weise objection (Dkt. 181) is procedurally deficient: the postmark date of January 20, 2026, is six days after the January 14, 2026 deadline, and the objector failed to mail a copy to Toyota's counsel as required. *See* Dkt. 145-3, 155. Even on the merits, Mr. Weise's objection fails. His complaint that the Settlement provides only injunctive relief ignores that the Settlement expressly preserves Class Members' monetary damages claims. *See Campbell v. Facebook, Inc.*, 951 F.3d 1106, 1123 (9th Cir. 2020) ("[T]he relief provided to the class cannot be assessed in a vacuum" but "must be considered by comparison to what the class actually gave up by settling"). His complaints about the Volume Adjustment Protocol are speculative and unfounded, particularly compared to the pre-Settlement status quo where many Class Members were entirely unaware of the Echo Issue or its solution.

[4] Several of the objections have deficiencies. However, each of the objections are addressed here despite those failures to comply with the requirements of the Settlement Agreement. *See* Dkt. 160 (Hribernick objection fails to include the Subject Vehicle VIN, the state in which the Subject Vehicle was purchased/leased, the date of the purchase/lease, and the date of the signature.); Dkt. 156 (McMillen objection failed to date the signature.); Dkt. 175 (Miller objection fails to provide the exact date of purchase/lease.); Dkt. 173 (Petersen objection fails to provide the date of signature.); Dkt. 176 (Rexroad objection fails to provide the full VIN and number of times that he has previously objected to a class action settlement.); and Dkt. 177 (Efros objection fails to provide the exact date of purchase and the date of the signature.).

[5] On January 26, 2026 – twelve days after the objection deadline – counsel for the Parties received a letter from Jill Wilcox indicating that she is "not filing an objection to the settlement at this time." Because Ms. Wilcox's submission is untimely and, by her own admission, does not constitute an objection, the Court need not consider it.

*Telecomms. Coop.*, 221 F.R.D. at 529. This principle has been repeatedly affirmed across California federal district courts. *See, e.g.*, *Schneider v. Chipotle Mexican Grill, Inc.*, 336 F.R.D. 588, 598 (N.D. Cal. 2020); *Hartless v. Clorox Co.*, 273 F.R.D. 630, 641 (S.D. Cal. 2011).

The Ninth Circuit has approved settlements where objection rates were minimal compared to class size. In *Rodriguez*, the court affirmed final approval where there were 54 objections out of 376,301 notices sent, finding that this favorable reaction supported approval. *See* 563 F.3d at 957, 967. Similarly, in *In re LinkedIn User Privacy Litigation*, 309 F.R.D. 573, 589 (N.D. Cal. 2015), the Northern District of California approved a settlement where six objections were filed out of approximately 798,000 class members, noting that "[a] low number of opt-outs and objections in comparison to class size is typically a factor that supports settlement approval." Both of these cases had a much larger representation of objections than the instant case, given that only 7 objections were received out of 1.8 million Class Members.

As none of the objections identifies any deficiency in the Settlement that would warrant its rejection, they should each be overruled.[6]

**A. <u>The Settlement Provides Meaningful Relief Consistent with Rule 23(b)(2) Standards</u>**

Objectors Hribernick, Miller, McMillen, and Rexroad contend that the Settlement provides insufficient benefit to the Class.[7] *See* Dkt. Nos. 156, 160, 174, 176. However, these objections fail to account for the legal standards governing approval of Rule 23(b)(2) class action settlements. Unlike Rule 23(b)(3) classes, which are typically certified for damages claims, Rule 23(b)(2) classes are

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[6] Objections challenging the requested attorneys' fees and service awards are being addressed by Class Counsel.

[7] While Objector McMillen states that "the alleged program can be dealt with by using the Volume Adjustment Protocol listed on the Court-Approved Legal Class Settlement Notice," he nonetheless objected as he believes the case to be frivolous because the Settlement relief addresses the alleged problem. *See* Dkt. 156.

appropriate where "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." Fed. R. Civ. P. 23(b)(2). The Settlement here provides precisely such relief: a comprehensive notification and education program ensuring that Class Members are informed of the Volume Adjustment Protocol to address the hands-free Echo Issue.

In evaluating class action settlements, the Ninth Circuit instructs courts to weigh the proposed settlement against the realistic range of outcomes if the litigation were to proceed. *See Officers for Just.*, 688 F.2d at 624-25, 629-30; *Staton*, 327 F.3d at 959 ("[T]he very essence of a settlement is compromise, a yielding of absolutes and an abandoning of highest hopes." (quotation omitted)). Settlement is "the preferred means of dispute resolution," *Officers for Just.*, 688 F.2d at 625, and courts should give "proper deference to the private consensual decision of the parties," *Hanlon*, 150 F.3d at 1027. Here, the Settlement provides guaranteed programmatic relief without the substantial risks, delays, and expense of continued litigation. Several objectors themselves acknowledge the modest nature of the underlying claims, which only reinforces that the Settlement represents a reasonable resolution proportionate to the alleged harm.

Objector Allen, by contrast, requests that Toyota be required to "replac[e] the radio/head unit at no cost to affected owners." Dkt. 179. This objection essentially seeks relief beyond what the claims in this litigation could realistically support. A settlement need not provide the maximum conceivable relief; rather, it must be "fair, reasonable, and adequate" in light of the strength of plaintiffs' claims and the risks of continued litigation. Fed. R. Civ. P. 23(e)(2); *see also Hanlon*, 150 F.3d at 1027 (affirming settlement where "it [was] possible . . . that the settlement could have been butter" but that "[did] not mean the settlement presented was not fair, reasonable or adequate" because "[s]ettlement is the offspring of compromise").

The Court should not reject a reasonable settlement because one Class Member believes a better outcome was theoretically possible.

**B. Objections to the Underlying Claims Support, Rather Than Undermine, Settlement Approval**

Objectors Petersen, Miller, McMillen, and Hribernick question whether the underlying claims warranted litigation at all. Dkt. Nos. 156, 160, 173 174. These objections are not properly directed at the Settlement itself. The question before the Court is whether the proposed Settlement is fair, reasonable, and adequate – not whether the litigation should have been brought in the first place. Indeed, the Settlement reflects a compromise that allows both parties to avoid the continued expense and uncertainty of litigation. To the extent these objectors believe the claims lack merit, that concern supports rather than undermines approval of a Settlement that resolves the matter on reasonable terms without further expenditure of judicial and party resources.

**C. The Objection Procedures Comply with Federal Rules and Serve Legitimate Purposes**

Objectors Rexroad and Efros raise procedural objection concerns. Objector Rexroad principally challenges the requirement that objectors disclose their history of prior class action objections, and Objector Efros similarly "object[s] to the demand that these details be provided." Dkt. Nos. 176, 177. Rexroad contends this requirement "is clearly 'designed to discourage objections'" and cites *Lackawanna Chiropractic P.C. v. Tivity Health Support, LLC*, 2019 U.S. Dist. LEXIS 148756 (W.D.N.Y. Aug. 29, 2019), for the proposition that such requirements are improper.

These objections lack merit. The disclosure requirement for prior objection history derives directly from the Class Action Fairness Act of 2005, which amended Federal Rule of Civil Procedure 23(e)(5)(A) to require that any objection "state whether it applies only to the objector, to a specific subset of the class, or to the entire class, and also state with specificity the grounds for the objection." Courts

routinely require disclosure of prior objection history to assist in identifying serial objectors who may seek to extract payments in exchange for withdrawing meritless objections. *See* Fed. R. Civ. P. 23(e)(5)(B) (requiring court approval for payment to objectors); *see also, e.g.*, *Retta v. Millenium Prods., Inc.*, No. CV15-1801, 2017 WL 5479637, at *7 (C.D. Cal. Aug. 22, 2017) (noting that one objector had objected in at least nine other class actions and that "[c]ourts in the Ninth Circuit have routinely discounted objections from such 'professional' objectors"). The requirement serves legitimate judicial administration purposes and does not impermissibly burden Class Members' rights to object.

Objector Rexroad also criticizes the method by which objections were to be submitted, noting that some objectors were advised their mailings violated Local Rule 83-2.5. However, all seven timely objections and one untimely objection have been docketed and are addressed by the Parties in their documents to support the Motion.

The seven timely objections received from a class of 1.8 million Class Members represent a minimal objection rate that itself supports approval. *See Retta*, 2017 WL 5479637, at *7 (granting settlement final approval where four objections were filed out of the 173,000 claim forms submitted, representing "a miniscule percentage of the participating class"). None of the objections identify any deficiency in the Settlement that would warrant its rejection. Accordingly, Toyota respectfully requests that the Court overrule the objections and grant final approval of the Settlement.

## VIII. THIS COURT SHOULD ISSUE A PERMANENT INJUNCTION

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

injunction pursuant to the All Writs Act, 28 U.S.C. § 1651(a), and the exceptions to the Anti-Injunction Act, 28 U.S.C. § 2283, to address concerns of copycat lawsuits filed in other jurisdictions that would hinder this Court's jurisdiction and its ability to effectively manage the settlement process.

The All Writs Act permits a federal district court to protect its jurisdiction by enjoining parallel actions by class members that would interfere with the court's ability to oversee a class action settlement. *See Hanlon*, 150 F.3d at 1025 (citing *Keith v. Volpe*, 118 F.3d 1386, 1390 (9th Cir. 1997)); *In re Linerboard Antitrust Litig.*, 361 F. App'x 392, 395-96 (3d Cir. 2010). The Ninth Circuit and other courts within this circuit have also held that injunctions are appropriate where parallel state actions would interfere with the court's exclusive jurisdiction. *See, e.g.*, *Flanagan v. Arnaiz*, 143 F.3d 540, 545-46 (9th Cir. 1998) (affirming an injunction of state court proceedings because "hav[ing] a state court construing what the federal court meant in the judgment . . . would potentially frustrate the federal district court's purpose); *In re Volkswagen "Clean Diesel" Mktg., Sales Pracs., & Prods. Liab. Litig.*, No. 15-md-02672, 2023 WL 2600450, at *2 (N.D. Cal. Mar. 22, 2023) (enjoining a state court action in which a class member alleged that she opted out of a class action settlement finalized in federal court). Other circuits faced with similar circumstances have also affirmed injunctions of state court proceedings. *See, e.g.*, *Lorillard Tobacco Co. v. Chester, Willcox & Saxbe*, 589 F.3d 835, 846, 851 (6th Cir. 2009) (affirming an All Writs Act injunction of state court proceedings in which a class member's claims implicated provisions of a finalized class action settlement agreement under the exclusive jurisdiction of the federal district court); *In re Diet Drugs*, 282 F.3d 220, 233-39 (3d Cir. 2002) (holding that the district court's permanent injunction was a proper exercise of its power under the All Writs Act).

Where, as here, substantial negotiations have progressed to the point of settlement, competing actions, if they are filed and/or allowed to proceed, would

jeopardize the realization of this Settlement, interfere with this Court's ability to manage the Settlement, and potentially confuse Class Members. *See Jacobs v. CSAA Inter-Ins.*, No. C 07-00362, 2009 WL 1201996, at *2 (N.D. Cal. May 1, 2009) ("A district court may enjoin state proceedings which affect the rights of class members, where the court is supervising a settlement of a class action that is so far advanced that it is equivalent to a res over which the court requires control and where it would be intolerable to have conflicting orders from different courts."). To protect its jurisdiction, the Court may issue an injunction once the litigation reaches the settlement stage in order to "effectuate the settlement." *See Hartranft v. TVI, Inc.*, No. SACV 15-01081, 2019 WL 1746137, at *6 (C.D. Cal. Apr. 18, 2019).

The Court also has the power to issue an injunction pursuant to two exceptions under the Anti-Injunction Act. The "necessary in aid of" exception to the Anti-Injunction Act allows a federal court to grant an injunction to effectively prevent its jurisdiction over a settlement from being undermined by pending parallel litigation in state courts. *See Hanlon*, 150 F.3d at 1025 ("[A] federal court may intervene and enjoin state court proceedings in three narrow circumstances, one of which includes when it is necessary to protect the court's jurisdiction."). Additionally, the Anti-Injunction Act permits courts to issue injunctions where it is necessary "to protect or effectuate [a court's] judgment[]," such as where a court has finally approved a class action settlement. *See McCormick v. Am. Equity Inv. Life Ins. Co.*, No. 2:05–cv–06735, 2016 WL 850821, at *5 (C.D. Cal. Feb. 29, 2016); *Rotandi v. Miles Indus. Ltd.*, No. C11-02146, 2014 WL 12642117, at *3 (N.D. Cal. Jan. 15, 2014) (enjoining all class members who did not opt out from the settlement "from commencing or prosecuting any new action . . . against a Released Rarty relating to or arising out of the subject matter of the Action" under the All Writs Act and the Anti-Injunction Act).

Here, the rights and interests of the Class Members and the jurisdiction of

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

## CONCLUSION

Toyota respectfully requests that the Court: (i) enter an Order granting final approval, pursuant to Federal Rule of Civil Procedure 23(b)(2), 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: February 2, 2026

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**CERTIFICATE OF SERVICE**

I hereby certify that on February 2, 2026, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the Electronic Mail Notice List.

I certify that on February 2, 2026, I also served or caused to be served a copy of the foregoing via First Class U.S. mail or by other means on the following:

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I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on February 2, 2026.

*/s/ John P. Hooper*
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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 6,845 words, which complies with the word limit of L.R. 11-6.1.

*/s/ John P. Hooper*
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