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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,

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

**DEFENDANT’S MEMORANDUM OF  
LAW IN SUPPORT OF MOTION FOR  
PRELIMINARY APPROVAL**

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Toyota Motor Sales, U.S.A., Inc. (“Toyota,” “TMS,” and/or “Defendant”)  
4 supports Plaintiffs’ request that this Court grant preliminary approval of this Rule  
5 23(b)(2) injunctive-only class action Settlement and issue related relief. For the  
6 reasons stated in Plaintiffs’ Motion for Preliminary Approval of the Class Action  
7 Settlement and those discussed below, such relief is appropriate because the proposed  
8 Settlement satisfies Rule 23(e); is the product of serious, informed, non-collusive  
9 negotiations; has no obvious deficiencies; does not improperly grant preferential  
10 treatment to Plaintiffs or segments of the Class; and falls within the reasonable range  
11 of approval.<sup>1</sup>

12 **II. BACKGROUND**

13 As a result of extensive arm’s length negotiations and meaningful discovery,  
14 Toyota, Class Counsel, and Plaintiffs, acting on behalf of the Class Members, have  
15 executed a Settlement Agreement to resolve this case (the “Action”) and claims  
16 arising out of the allegedly defective hands-free phone system in the Subject Vehicles,  
17 in which Plaintiffs assert that when the driver of the Toyota vehicle uses the hands-  
18 free phone system to make or receive a call, the person on the other end of the call  
19 purportedly hears an echo of his or her own words (the “Echo Issue”).

20 Under the proposed Settlement, Toyota has agreed to provide injunctive relief  
21 in the form of an Outreach Program, the goal of which is to educate Class Members  
22 about the existence of the Echo Issue and how to adjust the volume settings on their  
23 cell phones and in their Subject Vehicles in order to address the alleged Echo Issue.  
24 *See* Settlement Agreement, Section III.A.

25 To avoid the burden, expense, risk, and uncertainty of continuing to litigate the  
26

27 <sup>1</sup> Unless otherwise specified, capitalized terms in this brief have the meanings  
28 assigned to them in the Settlement Agreement.

1 claims and to put to rest the claims alleged by the proposed Settlement Class, Toyota,  
2 without any admission of liability or wrongdoing, supports Plaintiffs’ Motion for  
3 Preliminary Court Approval of the Proposed Settlement.

4 **1 Plaintiffs’ Allegations and the Parties’ Motion Practice**

5 The Parties have engaged in active litigation for nearly six years. On July 24,  
6 2019, Plaintiffs Terry Freeman and Andrew Trout, individually and on behalf of a  
7 putative class, filed a Class Action Petition in the Circuit Court of St. Louis County,  
8 Missouri at Clayton (the “*Freeman Action*”) against TMS, Toyota Motor North  
9 America, Inc. (“TMNA”), and Toyota Motor Engineering & Manufacturing North  
10 America, Inc. (“TEMA”) (collectively, “*Freeman Toyota Defendants*”), alleging that  
11 certain Toyota vehicles were defective and contained an Echo Issue. On September  
12 12, 2019, TMS, TMNA, and TEMA removed the *Freeman Action* to the United States  
13 District Court for the Eastern District of Missouri, and the plaintiffs later filed a first  
14 amended class action complaint (“*Freeman FAC*”).

15 The *Freeman Toyota Defendants* filed a motion to dismiss the *Freeman FAC*,  
16 and on November 30, 2020, the court issued its memorandum and order granting in  
17 part and denying in part their motion to dismiss.<sup>2</sup>

18 On June 16, 2021, plaintiff Glenn Kesselman, a resident of California,  
19 individually and on behalf of an “unknown” number of plaintiffs, filed a class action  
20 complaint in the Superior Court of the State of California, County of Los Angeles,  
21 Case No. 21STCV22797, against TMS and TMNA. The complaint raised similar  
22 allegations of an Echo Issue. TMS, TMNA, and TEMA (“*Original Kesselman*  
23 *Defendants*”) removed the Action to the United States District Court for the Central  
24 District of California, ECF No. 1, and filed a motion to dismiss the *Kesselman* class  
25 action complaint. ECF No. 14.

26 \_\_\_\_\_  
27 <sup>2</sup> On June 1, 2021, the parties stipulated to the filing of a second amended complaint  
28 in the *Freeman Action*, which replaced plaintiffs Terry Freeman and Andrew Trout  
with plaintiff Jamie Brown.

1 On August 12, 2021, Plaintiff Kirk Coviello, individually and on behalf of a  
2 putative class, filed a class action petition against TMS and TMNA in the Superior  
3 Court of California, County of Los Angeles, Case No. 21STCV30101, also alleging  
4 certain Toyota vehicles contained an Echo Issue (“*Coviello Action*”).

5 On December 2, 2021, the Court denied the Original *Kesselman* Defendants’  
6 motion to dismiss the Action. ECF No. 32.

7 On December 29, 2021, Plaintiffs filed their first amended class action  
8 complaint (“FAC”) in the Action, which (i) added fourteen named plaintiffs; (ii)  
9 defined fifteen state classes; and (iii) added twenty causes of action, including  
10 violations of the various Class State’s consumer protection statutes. ECF Nos. 39  
11 ¶¶ 7–39, 351–700.

12 On January 28, 2022, the Original *Kesselman* Defendants filed their motion to  
13 dismiss the FAC. ECF Nos. 59–60.

14 On February 22, 2022, the *Coviello* court stayed the *Coviello* Action pending  
15 the outcome of the Action and the *Freeman* Action.

16 On March 8, 2022, TMS, TMNA, and TEMA filed a Stipulation to Consolidate  
17 Actions to consolidate the Action and *Freeman* Action, ECF No. 65, which the Court  
18 approved. The Court ordered Plaintiffs to file a second amended complaint (“SAC”)  
19 and a single motion for class certification in the consolidated action. ECF No. 67.

20 On March 25, 2022, the Court ordered that the SAC not name TMNA or  
21 TEMA, as they were dismissed from the Action. ECF No. 79. On September 19,  
22 2022, the Court granted in part and denied in part TMS’ motion to dismiss the FAC,  
23 dismissing without prejudice the plaintiffs’ equitable claims based on failure to allege  
24 that legal remedies were inadequate and denying the motion to dismiss on all other  
25 grounds. ECF No. 97.

26 On October 5, 2022, plaintiffs filed the SAC, which contained new allegations  
27 as to the newly consolidated case of *Freeman et al. v. Toyota Motor Sales, U.S.A. Inc.*  
28 ECF No. 98. The SAC removed Sharon Menzel (Florida) and Joao Sousa (New

1 Jersey) as plaintiffs and added plaintiff Jamie Brown (Missouri). *Id.* ¶¶ 7–37. The  
2 SAC also did not name TMNA or TEMA as defendants. *Id.* ¶¶ 38–42. On October 19,  
3 2022, TMS filed its answer to the SAC. ECF No. 100.

4 On March 13, 2023, and March 5, 2024, plaintiffs filed a third amended  
5 consolidated class action complaint and fourth amended consolidated class action  
6 complaint, respectively, dropping and adding additional plaintiffs to this Action. ECF  
7 Nos. 108, 127.

8 On January 6, 2025, plaintiffs filed their fifth amended complaint (the  
9 “Operative Complaint”), which limited the relief sought to injunctive relief, defined  
10 eleven state classes—including California, Arizona, Colorado, Missouri, Washington,  
11 Illinois, Georgia, New York, Ohio, Oregon, and Minnesota, and alleged thirteen  
12 causes of action, including violations of various consumer protection statutes of the  
13 Class States. ECF No. 139 ¶¶ 16–40, 319–544.

14 During the litigation, in addition to the Parties exchanging interrogatories and  
15 responses thereto, Toyota produced and Plaintiffs analyzed over 8,000 documents  
16 totaling over 90,000 pages. Toyota also conducted the deposition of 11 plaintiffs,  
17 including plaintiffs from the *Freeman* Action.

## 18 **2 Settlement Negotiations**

19 In January 2021, the Parties engaged in a Court-ordered mediation in the  
20 *Freeman* Action, but they did not reach a resolution. The Parties resumed litigation.  
21 In February 2023, the Parties re-engaged to seek potential resolution of the case;  
22 however, these efforts were also unsuccessful. In December 2023, the Parties again  
23 reopened negotiations for settlement. In early 2024, after further negotiations were  
24 unsuccessful, the Parties again returned to litigation.

25 In May 2024, the Parties discussed a Rule 23(b)(2) injunctive-only class action  
26 settlement. Over the next several months, the Parties negotiated the terms of the  
27 Settlement, ultimately agreeing on the principal terms as of October 18, 2024. Only  
28 after agreeing on these terms did Class Counsel and Toyota’s Counsel negotiate the

1 terms of Attorneys’ Fees, Costs, and Expenses and Class Representative service  
2 awards. The Parties reached agreement in principle on these terms on December 2,  
3 2024.

### 4 **3 Settlement Terms**

5 The Settlement Agreement covers all individuals or legal entities who, at any  
6 time as of the occurrence of the Initial Notice Date, own(ed), purchase(d), or lease(d)  
7 Subject Vehicles in the States of Arizona, California, Colorado, Georgia, Illinois,  
8 Minnesota, Missouri, New York, Ohio, Oregon, and Washington (the “Class”).  
9 Subject Vehicles include certain 2014–2019 4Runner, 2015–2018 Avalon, 2015–2018  
10 Avalon HV, 2014–2019 Highlander, 2014–2019 Highlander HV, 2016–2018 Mirai,  
11 2016–2019 Prius, 2017–2019 Prius Prime, 2015–2019 Prius V, 2014–2019 Sequoia,  
12 2015–2017 Sienna, 2014–2019 Tacoma, 2014–2019 Tundra, 2015 Venza, and 2018–  
13 2019 Yaris vehicles.

14 As the proposed Settlement is a mandatory Rule 23(b)(2) settlement, Class  
15 Members will not be given an opportunity to exclude themselves from the Class.  
16 *Padilla v. Whitewave Foods Co.*, No. 2:18-cv-09327-SB-JC, 2021 WL 4902398, at \*4  
17 (C.D. Cal. May 10, 2021) (“The Court therefore exercises its discretion and does not  
18 direct notice because the settlement does not alter the unnamed class members’ legal  
19 rights.” (quotation omitted)); *Chan v. Sutter Health Sacramento Sierra Region*, No.  
20 LA CV15-02004 JAK (AGRx), 2016 WL 7638111, at \*14 (C.D. Cal. June 9, 2016)  
21 (“Because notice is optional for a Rule 23(b)(2) class . . . and the Class Members’  
22 rights will not be prejudiced by the Settlement Agreement, notice is not required for  
23 purposes of the proposed Settlement Agreement.”).

24 As discussed in more detail below, the proposed injunctive-only Settlement  
25 provides a valuable Outreach Program to Class Members.

#### 26 **a Outreach Program**

27 As per the Settlement Agreement, Toyota agrees to provide an Outreach  
28 Program, which is designed to educate Class Members about the existence of the Echo

1 Issue and how to adjust the volume settings on their cell phones and in their Subject  
2 Vehicles to address the alleged Echo Issue. *See* Settlement Agreement Section  
3 III.A.1, Dkt. No. 145-3. The Outreach Program is designed to significantly increase  
4 understanding of the Volume Adjustment Protocol via outreach efforts beyond those  
5 currently used by Toyota. *Id.* The multifaceted Outreach Program will include the  
6 following items:

- 7 a. A Volume Adjustment Protocol Website, which shall contain (i) detailed  
8 customer instructions related to the Volume Adjustment Protocol, the  
9 language of which has been negotiated and agreed upon by the Parties, (ii)  
10 an enhanced video instructing Class Members of the Volume Adjustment  
11 Protocol, the script for which has been negotiated and agreed upon by the  
12 Parties, and (iii) a link to the Settlement website, *see id.* Section III.A.1.a;
- 13 b. Direct contact to current owners and lessees of Subject Vehicles in Class  
14 States via U.S. Mail, or, where available, by email, which includes  
15 (i) information about the Echo Issue, (ii) enhanced instructions for the  
16 Volume Adjustment Protocol, the language of which has been negotiated  
17 and agreed upon by the Parties, (iii) a QR code that shall be designed to take  
18 Class Members to the Volume Adjustment Protocol Website, and (iv) a QR  
19 code that will refer Class Members to the Settlement website, *see id.* Section  
20 III.A.1.b;
- 21 c. A social media program, which will include social media advertisements that  
22 target Class Members and provides settlement-related information to Class  
23 Members, including directing the Class Members to the Volume Adjustment  
24 Protocol Website, *see id.* Section III.A.1.c; and
- 25 d. A renewed Tech Tip, which will be available to Dealers and will include the  
26 enhanced instructions and a link to the Volume Adjustment Protocol  
27 Website and enhanced video, *see id.* Section III.A.1.d.

28 The Outreach Program, including access to the Volume Adjustment Protocol

1 Settlement Website, shall begin on the Initial Notice Date and shall terminate three (3)  
2 years after the Initial Notice Date. *See id.* Section III.A.2.

3 **III. FAIRNESS, REASONABLENESS, AND ADEQUACY OF**  
4 **PROPOSED SETTLEMENT**

5 The Ninth Circuit has long recognized a strong judicial policy favoring  
6 settlement, particularly of complex class actions, and has “long deferred to the private  
7 consensual decision of the parties.” *See Spann v. J.C. Penney Corp.*, 314 F.R.D. 312,  
8 323–24 (C.D. Cal. 2016) (quoting *Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 965  
9 (9th Cir. 2009)); *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir.  
10 1992). The Ninth Circuit has emphasized that:

11 [T]he court’s intrusion upon what is otherwise a private consensual agreement  
12 negotiated between the parties to a lawsuit must be limited to the extent necessary to  
13 reach a reasoned judgment that the agreement is not the product of fraud or  
14 overreaching by, or collusion between, the negotiating parties, and that the settlement,  
15 taken as a whole, is fair, reasonable and adequate to all concerned.

16 *Rodriguez*, 563 F.3d at 968. “Preliminary approval is thus appropriate if ‘the  
17 proposed settlement appears to be the product of serious, informed, noncollusive  
18 negotiations, has no obvious deficiencies, does not improperly grant preferential  
19 treatment to class representatives or segments of the class, and falls within the range  
20 of possible approval.’” *Uschold v. NSMG Shared Servs., LLC*, 333 F.R.D. 157, 169  
21 (N.D. Cal. 2019) (quoting *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078,  
22 1079 (N.D. Cal. 2007)). “At the preliminary approval stage, ‘the settlement need only  
23 be potentially fair.’” *Id.* (quoting *Acosta v. Trans Union, LLC*, 243 F.R.D. 377, 386  
24 (C.D. Cal. 2007)). “[C]loser scrutiny is reserved for the final approval hearing[.]”  
25 *Kim v. Sheraton Operating Corp.*, No. CV 17-9247 FMO (ASx), 2021 WL 3598578,  
26 at \*4 (C.D. Cal. June 23, 2021) (quoting *Harris v. Vector Mktg. Corp.*, No. C-08-5198  
27 EMC, 2011 WL 1627973, at \*7 (N.D. Cal. Apr. 29, 2011)).

28 “The Ninth Circuit does not follow the approach of other circuits that requires

1 district courts to ‘specifically weigh[] the merits of the class’s case against the  
2 settlement amount and quantif[y] the expected value of fully litigating the matter.’”  
3 *Spann*, 314 F.R.D. at 323–24 (citing *Rodriguez*, 563 F.3d at 965). Instead, courts in  
4 the Ninth Circuit “examine[] whether the settlement is ‘the product of an arms-length,  
5 non-collusive, negotiated resolution.’” *Id.* at 324 (quotation omitted). “When it is,  
6 courts afford the parties the presumption that the settlement is fair and reasonable.”  
7 *Id.* (citing *In re Heritage Bond Litig.*, No. 02-ML-1475 DT, 2005 WL 1594403, at \*9  
8 (C.D. Cal. June 10, 2005).

9 “The central concern in reviewing a proposed class-action settlement is that it  
10 be fair, reasonable, and adequate.” Fed. R. Civ. P. 23(e)(2) advisory committee’s  
11 notes to 2018 amendment. In December 2018, Congress and the Supreme Court  
12 amended Rule 23(e) to set forth specific factors a court should consider when  
13 determining whether a settlement is “fair, reasonable, and adequate,” including  
14 whether:

- 15 A. the class representatives and class counsel have adequately represented  
16 the class;
- 17 B. the proposal was negotiated at arm’s length;
- 18 C. the relief provided for the class is adequate, taking into account: (i) the  
19 costs, risks, and delay of trial and appeal; (ii) the effectiveness of any  
20 proposed method of distributing relief to the class, including the method  
21 of processing class-member claims; (iii) the terms of any proposed award  
22 of attorney’s fees, including timing of payment; and (iv) any agreement  
23 required to be identified under Rule 23(e)(3); and
- 24 D. the proposal treats class members equitably relative to each other.

25 Fed. R. Civ. P. 23(e)(2); *see also Briseño v. Henderson*, 998 F.3d 1014, 1023  
26 (9th Cir. 2021) (applying 2018 version of Rule 23(e)(2)). “In evaluating the fairness  
27 of a proposed class action settlement, the Court may consider some or all of the  
28 following factors: (1) the strength of the plaintiffs’ case, (2) the risk, expense,

1 complexity, and likely duration of further litigation, (3) the risk of maintaining class  
2 action status throughout the trial, (4) the amount offered in settlement, (5) the extent  
3 of discovery completed and the stage of the proceedings, (6) the experience and views  
4 of counsel, (7) the presence of a governmental participant, and (8) the reaction of the  
5 class members to the proposed settlement.”<sup>3</sup> *Marshall v. Northrop Grumman Corp.*,  
6 469 F. Supp. 3d 942, 948 (C.D. Cal. 2020) (citing *Campbell v. Facebook, Inc.*, 951  
7 F.3d 1106, 1121 (9th Cir. 2020)).

8 The Settlement Agreement “does not disclose grounds to doubt its  
9 fairness[,] . . . such as unduly preferential treatment of class representatives or of  
10 segments of the class, or excessive compensation for attorneys, and appears to fall  
11 within the range of possible approval[.]” *Spann*, 314 F.R.D. at 323 (quoting *In re*  
12 *Vitamins Antitrust Litig.*, MDL 1285, 2001 WL 856292, at \*4 (D.D.C. July 25,  
13 2001)); *see also, e.g., In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 458–59 (9th  
14 Cir. 2000), *as amended* (June 19, 2000).

15 Here, there has been no collusion or fraud leading to, or taking part in, the  
16 settlement negotiations between the Parties.<sup>4</sup> To the contrary, as laid out above, the  
17 Parties have been engaged in substantial and periodic arm’s length negotiations since  
18 early 2021, which have included numerous video conference meetings, e-mails, and  
19 telephone conferences.

20 Additionally, Attorneys’ Fees, Costs, and Expenses and service awards for the  
21 Class Representatives were not discussed or negotiated until all other material  
22 settlement terms had been agreed upon, *see* Settlement Agreement Section VII.A,

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23 <sup>3</sup> Factors 7 and 8 will be addressed in the Motion for Final Approval after notice has  
24 been issued.

25 <sup>4</sup> “[A] collusion analysis is generally not applicable ‘where, as here, the settlement is  
26 for injunctive relief purposes only and class members do not release any monetary  
27 claims.’” *In re Ring LLC*, No. CV 19-10899-MWF (RAOx), 2023 WL 9687346, at \*5  
28 (C.D. Cal. Dec. 20, 2023) (quoting *Moreno v. S.F. Bay Area Rapid Transit Dist.*, No.  
17-cv-02911-JSC, 2019 WL 343472, at \*3 n.2 (N.D. Cal. Jan. 28, 2019)).

1 eliminating the possibility of a trade-off between compensation for the Settlement  
2 Class and compensation for Class Counsel or Class Representatives.

3 Finally, the Parties are represented by highly experienced counsel who  
4 investigated and considered their own and the opposing party’s positions and who  
5 measured the terms of the Settlement against the risks of continued litigation. Thus,  
6 the negotiations were not “the product of fraud or overreaching by, or collusion  
7 between, the negotiating parties.” *See Spann*, 314 F.R.D. at 323.

8 **IV. THE SETTLEMENT IS A FAIR, REASONABLE, AND ADEQUATE**  
9 **OUTCOME FOR CLASS MEMBERS**

10 **1 Recovery for Class Members**

11 Consistent with Rule 23(e), the proposed Settlement is fair, reasonable, and  
12 adequate, particularly when measured against the allegations in this case. Plaintiffs  
13 have alleged that the hands-free phone system in the Subject Vehicles is defective,  
14 such that when the driver of the Toyota vehicle uses the hands-free phone system to  
15 make or receive a call, the person on the other end of the call hears an echo of his or  
16 her own words. While TMS denies the allegations, Toyota has agreed to provide an  
17 Outreach Program, which educates Class Members about the existence of the Echo  
18 Issue and how to adjust the volume settings on their cell phones and in their Subject  
19 Vehicles to address the purported issue. The proposed Settlement thus provides the  
20 injunctive relief necessary to address the allegations of the Operative Complaint.  
21 *Campbell*, 951 F.3d at 1123 (affirming the district court’s conclusion that a settlement  
22 providing only injunctive relief was fair and reasonable because “it provide[d]  
23 information to users about Facebook’s message monitoring practices” in return for a  
24 release of nonmonetary claims).

25 **2 The Weaknesses of Plaintiffs’ Case; Case’s Risk, Expense, and**  
26 **Complexity; Extent of Discovery Completed; and Duration of**  
27 **Further Litigation**

28 The unpredictability of trials generally weighs in favor of a finding that a

1 settlement is fair, adequate, and reasonable. *See Rodriguez*, 563 F.3d at 964 (“[T]he  
2 very uncertainty of outcome in litigation and avoidance of wasteful and expensive  
3 litigation . . . induce[s] consensual settlements.” (quoting *Officers for Just. v. Civ.*  
4 *Serv. Comm’n*, 688 F.2d 615, 625 (9th Cir. 1982))). Based on the procedural history to  
5 date and what is expected to occur in the future, Toyota posits that the weaknesses of  
6 Plaintiffs’ case and the enormous complexity, expense, and likely duration of this  
7 litigation overwhelmingly weigh in favor of a finding that the Settlement is fair,  
8 reasonable, and adequate. *See Lane v. Facebook, Inc.*, 696 F.3d 811, 820, 825 (9th  
9 Cir. 2012) (upholding settlement approval in which “unclear factual issues  
10 undermined the strength of the plaintiffs’ case,” “the complex nature of the plaintiffs’  
11 claims increased the risk and expense of further litigation,” and counsel “reasonably  
12 concluded that the immediate benefits represented by the Settlement outweighed the  
13 possibility—perhaps remote—of obtaining a better result at trial” (quotations  
14 omitted)); *Adoma v. Univ. of Phx., Inc.*, 913 F. Supp. 2d 964, 975 (E.D. Cal. 2012) (In  
15 evaluating the strength of a case, a court assesses “objectively the strengths and  
16 weaknesses inherent in the litigation and the impact of those considerations on the  
17 parties’ decisions to reach” a settlement agreement. (quotation omitted)).

18 If this class action were to proceed, the Parties would engage in substantial  
19 motion practice for class certification and summary judgment. In fact, even if a defect  
20 were to be shown by Plaintiffs, Toyota would still have significant arguments for  
21 summary judgment and class certification. *See, e.g., Smith v. Ford Motor Co.*, 749 F.  
22 Supp. 2d 980, 991–92 (N.D. Cal. 2010) (granting defendant’s motion for summary  
23 judgment and finding alleged ignition-lock defect not a safety risk), *aff’d*, 462 F.  
24 App’x 660 (9th Cir. 2011). Even if Plaintiffs were to win class certification, they  
25 would risk decertification, which can occur at any time. *See Ms. L. v. U.S. Immigr. &*  
26 *Customs Enf’t*, 330 F.R.D. 284, 287 (S.D. Cal. 2019) (“[C]ourts retain discretion to  
27 revisit class certification throughout the legal proceedings.”).

28 If Plaintiffs were to survive class certification and summary judgment, there is

1 still no guarantee that they would recover anything at trial. *See In re Portal Software,*  
2 *Inc. Sec. Litig.*, No. C-03-5138 VRW, 2007 WL 4171201, at \*3 (N.D. Cal. Nov. 26,  
3 2007) (recognizing that “inherent risks of proceeding to . . . trial and appeal also  
4 support the settlement”). In light of the substantial risks of continued litigation,  
5 including the risk of maintaining class certification, the significant relief secured for  
6 the Class by the proposed Settlement should be viewed as a fair, reasonable, and  
7 adequate compromise of the issues in dispute. *See Rodriguez*, 563 F.3d at 966  
8 (holding that the case being “complex” and likely “expensive and lengthy to try,” the  
9 remaining “number of serious hurdles,” and the “[i]nevitable appeals” that “would  
10 likely prolong the litigation, and any recovery by class members, for years”  
11 appropriately supported the district court’s approval of the settlement); *Adoma*, 913 F.  
12 Supp. 2d at 976 (“In assessing the risk, expense, complexity, and likely duration of  
13 further litigation, the court evaluates the time and cost required.”).

14 In addition to significant motion practice, the Parties have conducted extensive  
15 discovery, including exchanging interrogatories and responses thereto and the  
16 production and review of 90,000 pages of documents from Toyota alone. Toyota also  
17 conducted the deposition of 11 plaintiffs, including plaintiffs from the *Freeman*  
18 Action. Through these efforts, the Parties arrived at a compromise based on a full  
19 understanding of the legal and factual issues surrounding the case, which weighs in  
20 favor of preliminary approval. This support is particularly compelling given that the  
21 Ninth Circuit has affirmed settlement approvals even in the absence of formal  
22 discovery. *See In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d at 459 (noting that “[i]n  
23 the context of class action settlements, formal discovery is not a necessary ticket to the  
24 bargaining table where the parties have sufficient information to make an informed  
25 decision about settlement” (quotation omitted)).

26 The proposed Settlement, which guarantees Class Members considerable relief,  
27 provides significant advantages over “rolling the dice” and proceeding to trial with an  
28 unknown outcome. *See, e.g., In re Toyota Motor Corp. Unintended Acceleration*

1 *Mktg., Sales Pracs., & Prods. Liab. Litig.*, No. 8:10ML 02151 JVS (FMOx), 2013 WL  
2 12327929, at \*20 (C.D. Cal. July 24, 2013) (approving class settlement and noting,  
3 “[s]imply put, Plaintiffs might eventually recover more with continued litigation, but  
4 they also might recover nothing”). “In most situations, unless the settlement is clearly  
5 inadequate, its acceptance and approval are preferable to lengthy and expensive  
6 litigation with uncertain results.” *Moreno v. JCT Logistics, Inc.*, No. EDVC 17-2489  
7 JGB (KKx), 2023 WL 9319048, at \*5 (C.D. Cal. Apr. 28, 2023) (noting the “long,  
8 complex, and expensive process” to litigate the case’s merits, including the possibility  
9 of class decertification (quotation omitted)).

10 **3 Equitable Method of Allocating Relief to Class Members and**  
11 **Effectiveness of Distributing Relief**

12 The Outreach Program, as injunctive relief, “treats class members equitably  
13 relative to each other.” Fed. R. Civ. P. 23(e)(2)(D). “Matters of concern [for this  
14 factor] could include whether the apportionment of relief among class members takes  
15 appropriate account of differences among their claims, and whether the scope of the  
16 release may affect class members in different ways that bear on the apportionment of  
17 relief.” *Id.*, advisory committee’s notes. Here, the Settlement treats all Class Members  
18 the same. The Outreach Program’s goal is to educate owners and lessees of the  
19 Subject Vehicles about the existence of the Echo Issue and how to adjust the volume  
20 settings on their cell phones and in their Subject Vehicles in order to address the  
21 alleged Echo Issue. This goal will be achieved through the multi-faceted Outreach  
22 Program, which includes (i) a Volume Adjustment Protocol Website, (ii) direct  
23 contact via mail or e-mail to Direct Mail Recipients, (iii) a social media program, and  
24 (iv) a renewed Tech Tip. These extensive and diverse methods to distribute the relief  
25 are designed to maximize receipt by all Class Members.

26 Moreover, as all Class Members will have access to the Outreach Program and  
27 as there is no monetary component to this Settlement, there is no risk that certain  
28 Class Members will recover disproportionately relative to another. *See Hart v.*

1 *Colvin*, No. 15-cv-00623-JST, 2016 WL 6611002, at \*9 (N.D. Cal. Nov. 9,  
2 2016) (“When . . . the settlement provides for only injunctive relief . . . there is no  
3 potential for the named plaintiffs to benefit at the expense of the rest of the class.”  
4 (quotation omitted)). As a result, the Settlement treats all Class Members equitably,  
5 further supporting preliminary approval of the Settlement.

#### 6 **4 Release of Claims**

7 Courts also consider whether a class action settlement contains an overly broad  
8 release of liability. *See Hesse v. Sprint Corp.*, 598 F.3d 581, 590 (9th Cir. 2010) (“A  
9 settlement agreement may preclude a party from bringing a related claim in the future  
10 even though the claim was not presented and might not have been presentable in the  
11 class action, but only where the released claim is based on the identical factual  
12 predicate as that underlying the claims in the settled class action.” (quotation  
13 omitted)). Here, the release agreed to by the Class is precisely tailored to address the  
14 allegations in the Operative Complaint. Specifically, Class Members are only  
15 releasing Toyota from:

16 [A]ny and all any and all injunctive relief, including claims, demands, suits,  
17 petitions, liabilities, causes of action, rights, losses, and relief of any kind and/or type  
18 for injunctive relief regarding the subject matter of the Action or the Related Action,  
19 including, whether past, present, or future, mature, or not yet mature, known or  
20 unknown, suspected or unsuspected, contingent or non-contingent, derivative,  
21 vicarious or direct, asserted or un-asserted, including, but not limited to, alleged  
22 defects in the use, programming, and/or implementation of the hands-free phone  
23 system in the Subject Vehicles[.]

24 Settlement Agreement Section VII.B.

25 Additionally, Plaintiffs—and *only* Plaintiffs (*i.e.*, not absent Class Members)—  
26 additionally release Toyota from compensatory, exemplary, statutory, punitive, and  
27 restitutionary damages, as well as civil penalties and expert or attorneys’ fees and  
28 costs. *Id.* Section VII.C.1. Importantly, the release carves out certain claims: “Class

1 Representatives and the other Class Members are not releasing claims for personal  
2 injury or wrongful death.” *Id.* Section VII.E.

3 The release is properly targeted to the subject matter of the Action and  
4 explicitly carves out claims of a distinctly different type from the claims asserted in  
5 the Action. For these reasons, the release adequately balances fairness to absent Class  
6 Members and recovery for Plaintiffs. *See, e.g., Spann*, 314 F.R.D. at 327–28 (quoting  
7 *Fraser v. Asus Comput. Int’l*, No. C12-00652 WHA, 2012 WL 6680142, at \*4 (N.D.  
8 Cal. Dec. 21, 2012) (recognizing defendant’s “legitimate business interest in ‘buying  
9 peace’ and moving on to its next challenge” as well as the need to prioritize  
10 “[f]airness to absent class member[s]”)).

11 **V. NOTICE PROGRAM AND NOTIFICATION PROCEDURES**

12 In a Rule 23(b)(2) action for injunctive relief, “there is **no requirement for**  
13 **individualized notice** beyond that required by due process.” *Frank v. United*  
14 *Airlines, Inc.*, 216 F.3d 845, 851 (9th Cir. 2000) (emphasis added). “Due process  
15 requires notice ‘reasonably calculated, under all of the circumstances, to apprise  
16 interested parties of the pendency of the action and afford them an opportunity to  
17 present their objections.’” *Ashok Babu v. Wilkins*, No. 22-15275, 2023 WL 6532647,  
18 at \*1 (9th Cir. Oct. 6, 2023) (quoting *Mendoza v. Tucson Sch. Dist. No. 1*, 623 F.2d  
19 1338, 1351 (9th Cir. 1980)).

20 To effectuate the goal of the Outreach Program, the proposed Settlement  
21 provides for a Notice Program that will be implemented through a combination of  
22 direct mailed notices, social media and online display advertising in the Class States, a  
23 Settlement website, a Volume Workaround Protocol Website, a press release, Long  
24 Form Notice, and other applicable notice. Settlement Agreement Section IV;  
25 Settlement Agreement, Ex. 2. The proposed Settlement Outreach Administrator, Epiq  
26 Solutions, has served as an expert and has been directly responsible for the design and  
27 implementation of numerous notice programs, including some of the largest and most  
28 complex programs ever implemented in the United States. *See Decl. of Cameron R.*

1 Azari, Esq., Settlement Agreement, Ex. 5, ECF No. 145-3, p. 117. Courts have  
2 recognized and approved numerous notice plans developed by Epiq, and those  
3 decisions have invariably withstood appellate and collateral review. *Id.* ¶ 7.  
4 Furthermore, Cameron Azari, Esq. has over 24 years of experience in the design and  
5 implementation of legal notice and claims administration programs and is a nationally  
6 recognized expert in the creation of class action notice campaigns. *See id.* ¶¶ 2, 7.

7 The proposed Settlement Notice Administrator estimates that the Notice  
8 Program will reach 90% of the Direct Mail Recipients over three (3) times. *See id.*  
9 ¶ 12. Thus, the Notice Program contemplated by the Settlement Agreement is amply  
10 sufficient, especially given that notice for a Rule 23(b)(2) settlement is purely  
11 discretionary. *See Padilla*, 2021 WL 4902398, at \*4 (declining to direct notice where  
12 the unnamed class members’ legal rights were not altered); *Chan*, 2016 WL 7638111,  
13 at \*14 (“Because notice is optional for a Rule 23(b)(2) class . . . and the Class  
14 Members’ rights will not be prejudiced by the Settlement Agreement, notice is not  
15 required for purposes of the proposed Settlement Agreement.”). Furthermore, Toyota  
16 will pay the costs of disseminating the notice and otherwise implementing the notice  
17 as specified in Section IV of the Settlement Agreement.

18 The Notice Program in greater particularity includes the following:

19 **Direct Mailed Outreach.** The Settlement Notice Administrator will send the  
20 Direct Mailed Outreach, substantially in the form attached to the Settlement  
21 Agreement as Exhibit 4, by e-mail or by U.S. Mail, to current owners and/or lessees of  
22 the approximately 1.8 million Subject Vehicles in Class States. *Id.* Section IV.C.1. It  
23 includes information relating to the Settlement and how to obtain the Volume  
24 Adjustment Protocol instructions via the Settlement website and/or the Volume  
25 Adjustment Protocol Website. *Id.*

26 **Settlement Website and Volume Adjustment Protocol Website.** The  
27 Settlement Notice Administrator will establish a Settlement website that will inform  
28 Class Members of the terms of the Settlement Agreement, their rights, deadlines, and

1 related information. *Id.* Section IV.D. The Settlement website will also feature a  
2 prominent link to the Volume Adjustment Protocol Website. *Id.* The Volume  
3 Adjustment Protocol website will contain (i) detailed customer instructions related to  
4 the Volume Adjustment Protocol, (ii) an enhanced video instructing Class Members  
5 of the Volume Adjustment Protocol, and (iii) a link to the Settlement website. *Id.*  
6 Section III.A.1.a.

7 **Long Form Notice.** The Long Form Notice will be available on the Settlement  
8 website, will be in a form substantially similar to the document attached to the  
9 Settlement Agreement as Exhibit 3, and will: (a) contain a plain and concise  
10 description of the nature of the Action, the history of the litigation of the Action and  
11 the Related Action, the preliminary certification of the Rule 23(b)(2) Class for  
12 settlement purposes, and the material terms of the proposed Settlement Agreement; (b)  
13 inform Class Members of their right to object to the Settlement Agreement and appear  
14 at the Fairness Hearing; and (c) inform Class Members of Class Counsel’s request for  
15 Attorneys’ Fees and Expenses and individual awards to the Class Representatives,  
16 explaining that Toyota will pay these amounts. *Id.* Section IV.E. The Long Form  
17 Notice will also inform Class Members of the binding effect of a class judgment on  
18 Class Members. *Id.*, Ex. 3.

19 **Class Action Fairness Act Notice.** The Settlement Notice Administrator will  
20 send to each appropriate State and Federal official the materials specified in 28 U.S.C.  
21 § 1715 and will otherwise comply with its terms. *Id.* Section IV.H. The identities of  
22 such officials and the content of the materials will be mutually agreeable to the Parties  
23 and in all respects comport with statutory obligations. *See id.*

24 Thus, the Notice Program provides interlocking methods that not only aim to  
25 reach certain Class Members individually and directly but also provides multiple  
26 alternative forms of notice through which Class Members may learn of the Settlement  
27 or obtain further information about their rights. The procedure for providing notice  
28 and the content of the Notice Program constitute the best practicable notice to Class

1 Members, therefore exceeding the notice required for a Rule 23(b)(2) settlement. *See*  
2 *id.* Section IV.

3 **VI. THE COURT SHOULD ISSUE A PRELIMINARY INJUNCTION**  
4 **PENDING FINAL APPROVAL OF THE PROPOSED SETTLEMENT.**

5 Pursuant to the “necessary in aid of” exception to the Anti-Injunction Act, 28  
6 U.S.C. § 2283, and the All Writs Act, 28 U.S.C. § 1651(a), this Court may: (i) issue a  
7 preliminary injunction and stay all other actions, pending final approval by the Court;  
8 and (ii) issue a preliminary injunction enjoining potential Class Members, pending the  
9 Court’s determination of whether the Settlement Agreement should be given final  
10 approval, from challenging in any action or proceeding any matter covered by this  
11 Settlement Agreement, except for proceedings in this Court to determine whether the  
12 Settlement Agreement will be given final approval. *See Hartranft v. TVI, Inc.*, No.  
13 SACV 15-01081-CJC-DFM, 2019 WL 1746137, at \*6 (C.D. Cal. Apr. 18, 2019)  
14 (enjoining Settlement Class Members from commencing, pursuing, or maintaining  
15 released claims in any court or tribunal pending final approval of the settlement);  
16 *Jacobs v. CSAA Inter-Ins.*, No. C 07-00362 MHP, 2009 WL 1201996, at \*2 (N.D. Cal.  
17 May 1, 2009) (“A district court may enjoin state proceedings which affect the rights of  
18 class members, where the court is supervising a settlement of a class action that is so  
19 far advanced that it is equivalent to a res over which the court requires control and  
20 where it would be intolerable to have conflicting orders from different courts.”).

21 The Court may issue an injunction once the litigation reaches the settlement  
22 stage in order to “effectuate the settlement.” *See Hartranft*, 2019 WL 1746137, at \*6.  
23 Federal courts have often recognized that injunctions against filed parallel actions may  
24 be particularly appropriate in the context of complex litigation, which “makes special  
25 demands on the court that may justify an injunction otherwise prohibited.” *See In re*  
26 *Diet Drugs*, 282 F.3d 220, 235 (3d Cir. 2002) (affirming issuance of an injunction  
27 after conditional certification and before the fairness hearing); *see also Klein v.*  
28 *O’Neal, Inc.*, 705 F. Supp. 2d 632, 685 (N.D. Tex. 2010) (“The court holds that the

1 injunctive relief is consistent with the settlement agreement and necessary to protect  
2 the integrity and enforcement of this complex class settlement.”); *Liles v. Del Campo*,  
3 350 F.3d 742, 746 (8th Cir. 2003) (same); *Lucas v. Kmart Corp.*, 234 F.R.D. 688, 697  
4 (D. Colo. 2006) (same). Moreover, within the context of complex litigation, “[t]he  
5 threat to the federal court’s jurisdiction posed by parallel state actions is particularly  
6 significant where there are conditional class certifications and impending settlements  
7 in federal actions.” *In re Diet Drugs*, 282 F.3d at 236 (citing *Carlough v. Amchem*  
8 *Prods., Inc.*, 10 F.3d 189, 203 (3d Cir. 1993)).

9 Where, as here, substantial negotiations have progressed to the point of  
10 settlement, competing actions, if they are filed and/or allowed to proceed, would  
11 jeopardize the realization of this settlement, interfere with this Court’s ability to  
12 manage the settlement, and potentially confuse Class Members. *See Jacobs*, 2009 WL  
13 1201996, at \*3.

14 Courts may issue an injunction pursuant to the “necessary in aid of” exception  
15 to the Anti-Injunction Act. 28 U.S.C. § 2283. This exception allows a federal court to  
16 effectively prevent its jurisdiction over a settlement from being undermined by  
17 pending parallel litigation in state courts. *See Stratton v. Glacier Ins. Adm’rs, Inc.*,  
18 No. 1:02-CV-06213 OWW DLB, 2007 WL 274423, at \*1 (E.D. Cal. Jan. 29, 2007)  
19 (enjoining the parties from proceeding in related state court litigation after preliminary  
20 approval of a settlement and until a final judgment was entered in the federal case);  
21 *Simerlein v. Toyota Motor Corp.*, No. 3:17-cv-1091 (VAB), 2019 WL 1435055, at  
22 \*17 (D. Conn. Jan. 14, 2019) (“[I]njunctive relief under the All Writs Act may be  
23 necessary or appropriate to ‘prevent third parties from thwarting the court’s ability to  
24 reach and resolve the merits of the federal suit before it’ . . . [and] these injunctions  
25 may be issued after a settlement has been reached but prior to final court approval, to  
26 prevent third parties’ filing (or threat of filing) parallel state court actions from  
27 jeopardizing the settlement.” (quoting *In re Baldwin United Corp.*, 770 F.2d 328,  
28 335–39 (2d Cir. 1985)); *Standard Microsystems Corp. v. Tex. Instruments Inc.*, 916 F.2d

1 58, 60 (2d Cir. 1990) (finding an exception to the Anti-Injunction Act exists where a  
2 federal court is on the verge of settling a complex matter and state court proceedings  
3 could undermine its ability to achieve that objective).

4 Federal courts have issued similar injunctions in other class action settlements.  
5 *See, e.g., In re ZF-TRW Airbag Control Units Prods. Liab. Litig.*, No. LA ML19-  
6 02905 JAK (MRWx), 2023 WL 6194109, at \*26 (C.D. Cal. July 21, 2023); *Victorino*  
7 *v. FCA US LLC*, No. 16cv1617-GPC(JLB), 2023 WL 3296155, at \*15 (S.D. Cal. May  
8 5, 2023); *Dack v. Volkswagen Grp. of Am., Inc.*, No. 4:20-CV-00615-RK, 2024 WL  
9 698797, at \*5 (W.D. Mo. Jan. 18, 2024); *Calhoun v. Invention Submission Corp.*, No.  
10 2:18-cv-01022, 2022 WL 20561728 at \*6, (W.D. Pa. Aug. 24, 2022); *Morris v. PHH*  
11 *Mortg. Corp.*, No. 20-60633-CIV-SMITH, 2022 WL 18859412, at \*10 (S.D. Fla. Dec.  
12 22, 2022); *In re Diet Drugs*, 282 F.3d at 235; *In re Linerboard Antitrust Litig.*, 361 F.  
13 App’x 392, 395 (3d Cir. 2010).

14 This Court also has the authority to issue the requested injunction under the All  
15 Writs Act, 28 U.S.C. § 1651(a). The All Writs Act permits this Court to issue “all  
16 writs necessary or appropriate in aid of [its] jurisdiction[ ] and agreeable to the usages  
17 and principles of law.” 28 U.S.C. § 1651(a); *see also Jacobs*, 2009 WL 1201996, at  
18 \*2. The Act permits a federal district court to protect its jurisdiction by enjoining  
19 parallel actions by class members that would interfere with the court’s ability to  
20 oversee a class action settlement. *See Jacobs*, 2009 WL 1201996, at \*2 (invoking the  
21 “in aid of jurisdiction” exception to “enjoin named and absent members who have  
22 been given the opportunity to opt out of a class from participating in separate class  
23 actions”). The Court may issue an injunction as soon as “the litigation reaches the  
24 settlement stage” in order to “effectuate a final settlement.” *In re Mex. Money*  
25 *Transfer Litig.*, No. 98-C-2407, 1999 WL 1011788, at \*3 (N.D. Ill. Oct. 19, 1999).

26 The rights and interests of Class Members and the jurisdiction of the Court will  
27 be impaired if, pending final approval of the Settlement, parallel actions alleging  
28 virtually identical claims to those asserted in the instant action were allowed to be

1 filed and then to proceed. To avoid confusing Class Members and prejudicing  
2 Toyota, and to protect the rights and interests of Class Members, as well as the  
3 Court’s own jurisdiction, the Court should issue a preliminary injunction pending final  
4 approval of the Settlement, enjoining Class Members and their representatives from  
5 pursuing claims that are similar to those alleged in the Action. The notice plan and  
6 notice materials will be disseminated to the Class and will discuss the terms of the  
7 proposed Settlement and their rights as Class Members. Accordingly, this Court  
8 should issue a preliminary injunction to permit Class Members to review the notice  
9 materials and assess their options without any distractions engendered by the filing  
10 and prosecution of competing actions.

11 **VII. CONCLUSION**

12 The proposed Rule 23(b)(2) Class Settlement is in the best interests of the Class  
13 Members and represents a fair, reasonable, and adequate way to resolve the  
14 controversy, as measured by all the applicable standards.

15  
16 Dated: January 31, 2025

**KING & SPALDING LLP**

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**CERTIFICATE OF COMPLIANCE**

The undersigned, counsel of record for Defendants Toyota Motor Sales, Inc. certifies that this brief contains 6,731 words, which complies with the word limit of L.R. 11-6.1.

/s/ Alexander G. Calfo  
Alexander G. Calfo