

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT**

NED SIMERLEIN, JAMES ECKHOFF, MARICEL LOPEZ, CRAIG KAISER, JOHN F. PRENDERGAST, RAYMOND and ROSARIO ALVAREZ, KAREN EASON, JENNIFER SOWERS, JENNIFER FRANKLIN, JORDAN AMRANI, CRYSTAL GILLESPIE, MELISSA STALKER, DILLEN STEEBY, PAUL McMILLIN, JOSEPH C. HARP Jr., and JAMES and MELISSA JUGO TINNEY, individually and on behalf of all others similarly situated,

CASE NO. 3:17-CV-01091-VAB

v.

TOYOTA MOTOR CORPORATION,  
TOYOTA MOTOR NORTH AMERICA, INC.,  
TOYOTA MOTOR SALES, USA, INC.,  
TOYOTA MOTOR ENGINEERING &  
MANUFACTURING NORTH AMERICA, INC.  
and TOYOTA MOTOR MANUFACTURING,  
INDIANA, INC.

**DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS'  
UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT,  
PRELIMINARY CERTIFICATION OF SETTLEMENT CLASS, APPROVAL OF  
CLASS NOTICES, AND ORDERS ON RELATED SETTLEMENT ISSUES**

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## **INTRODUCTION**

Defendants Toyota Motor Corporation, Toyota Motor North America, Inc., Toyota Motor Sales, U.S.A., Inc., Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Manufacturing, Indiana, Inc. (collectively, “Toyota”) support Plaintiffs’ request that this Court: (i) preliminarily certify a nationwide class for settlement purposes only under the Federal Rules of Civil Procedure; (ii) preliminarily approve the Settlement, including the Settlement Agreement<sup>1</sup> and all exhibits thereto filed by Plaintiffs (ECF No. 85); (iii) approve the Notice Program and the authorization to disseminate the Notice to the Class; (iv) set a date and procedures for a Fairness Hearing on the proposed Settlement; (v) set forth procedures and deadlines for Class Members to file objections to the proposed Settlement; (vi) set forth procedures and deadlines for Class Members to appear at the Fairness Hearing; (vii) set forth procedures and deadlines for Class Members to request exclusion from the class; (viii) issue a preliminary injunction; (ix) name Class Representatives Ned Simerlein, James Eckhoff, Maricel Lopez, Craig Kaiser, John F Prendergast, James Tinney, Melissa Jugo Tinney, Crystal Gillespie, Melissa Stalker, Joseph C. Harp Jr., Jordan Amrani, Dillen Steeby, Paula McMillin, Raymond Alvarez, Rosario Alvarez, Karen Eason, Jennifer Franklin and Jennifer Sowers; (x) appoint as Class Counsel, W. Daniel “Dee” Miles III of Beasley, Allen, Crow, Methvin, Portis & Miles, P.C., Adam Levitt of DiCello Levitt & Casey LLC, and Demet Basar of Wolf Haldenstein Adler Freeman & Herz LLP; (xi) appoint Patrick A. Juneau and Thomas Juneau of Juneau David APLC as the Settlement Claims Administrator; (xii) appoint Jeanne Finegan and Heffler Claims Group to act as the Settlement Notice Administrator; and (xiii) issue related relief.

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<sup>1</sup> All capitalized terms are defined as they are in the Settlement Agreement.

For the reasons stated in Plaintiffs' motion and further discussed below, such relief is appropriate because the proposed Settlement is the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to Class Representatives or segments of the Class and falls within the reasonable range of approval.

### **I. BACKGROUND**

As a result of extensive arm's length negotiations and meaningful confirmatory discovery, Toyota and Class Counsel, acting on behalf of Class Representatives and the Class Members, have executed a Settlement Agreement to resolve this Action, and a Related Action pending in the United States District Court for the Central District of California. Both actions allege violations of various state consumer protection statutes arising out of allegedly defective power sliding doors in certain Sienna vehicles.

Under the proposed Settlement, Toyota has agreed to provide the following relief: (1) a Customer Confidence Program that will provide prospective coverage for repairs to certain door parts but only those repairs that are related to internal functional concerns of those parts that impede the closing and opening operations of the sliding door in manual and power modes, a Loaner Vehicle, if requested, to eligible Class Members whose Subject Vehicles are undergoing a repair pursuant to the Customer Confidence Program, as well as one Sienna Sliding Door Functional Inspection at no cost to Class Members within a year of the Court finally approving the proposed Settlement; and (2) reimbursement to Class Members who previously paid for reasonable out-of-pocket expenses incurred to repair a condition that is covered by the Customer Confidence Program, is not otherwise reimbursed, and is incurred prior to the Initial Notice Date. Toyota has also provided an express waiver of its challenge to personal jurisdiction under Fed. R. Civ. P. 12 for the purposes of settlement only.

To avoid the burden, expense, risk and uncertainty of continuing to litigate the claims, and to put to rest all issues with the Class, the Action and the Related Action, Toyota without any admission of liability or wrongdoing, has executed the Settlement Agreement and supports Court approval of the proposed Settlement.

**A. Plaintiffs' Allegations and Claims**

On June 30, 2017, plaintiff Ned Simerlein filed a class action complaint against Toyota Motor Corp., Toyota Motor North America, Inc., Toyota Motor Sales, U.S.A., Inc., Toyota Motor Engineering & Manufacturing North America, Inc., and Toyota Motor Manufacturing, Indiana, Inc. (the "*Simerlein Defendants*") in this Court asserting class claims under the Connecticut Unfair Trade Practices Act ("CUTPA") and the consumer protection statutes of various other states, express and implied warranty claims, a claim under the Magnuson-Moss Warranty Act on behalf of a proposed nationwide class, and unjust enrichment, arising from the manufacture and sale of 2011-2016 Toyota Sienna vehicles equipped with power sliding rear doors, which Simerlein alleged were defective. On October 6, 2017, Simerlein, along with additional named plaintiffs James Eckhoff, Marciel Lopez, John F. Prendergast, and Craig Kaiser (together with Simerlein, the "*Simerlein Plaintiffs*") filed an amended complaint including the 2017 model year Sienna and asserting the state law claims of the additional plaintiffs.

On June 23, 2017, plaintiffs Tonya Combs, James Tinney, Melissa Jugo Tinney, Crystal Gillespie, Melissa Stalker and Joseph C. Harp Jr. (collectively, the "*Combs Plaintiffs*," with the later additions noted below) filed a class action complaint against defendants Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Inc., and Toyota Motor Engineering and Manufacturing North America, Inc. (the "*Combs Defendants*") in the United States District Court for the Central District of California. *Combs, et al. v. Toyota Motor Corporation, et al.*, Case No. 2:17-cv-04633-

VAP-AFM (C.D. Cal.) (“Related Action”)<sup>2</sup>. The *Combs* Plaintiffs asserted class claims under various states’ consumer protection statutes, express and implied warranty claims, a claim under the Magnusson-Moss Warranty Act on behalf of a proposed nationwide class, fraudulent omission, and unjust enrichment arising from the manufacture and sale of 2011-2017 Toyota Sienna minivans equipped with power sliding rear doors that the *Combs* Plaintiffs alleged were defective.

On December 7, 2018, Class Counsel filed a Second Amended Class Action Complaint in this Court that includes the 2018 model year Sienna, revises Plaintiffs’ allegations and includes several newly added putative class members who were not originally part of the Action.

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

For over one year, the parties engaged in active litigation. Among other things, Toyota challenged the pleadings in both the Action and Related Action through several months of motion practice.<sup>3</sup>

In October of 2017, the parties began to explore the option of a global settlement of all claims alleged in the Action and Related Action on a parallel track to the litigation. The parties engaged in extensive arm’s length negotiations for over a year. Class Counsel and Toyota’s counsel conducted multiple face-to-face meetings in New York on November 20, 2017, December 21, 2017, February 8, 2018, May 10, 2018, June 22, 2018, and October 2, 2018. In the initial stages of negotiations, the parties retained Patrick A. Juneau to serve as a neutral third-party mediator. The parties extensively negotiated the terms of the Settlement from May through October of 2018, including specific negotiations on attorneys’ costs and fees in November of 2018. These considerable efforts included numerous telephone conferences and other communications.

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<sup>2</sup> The Related Action is also referred to as *Combs/Franklin* in the Settlement Agreement as the Combs complaint was amended on October 6, 2017 to add four additional plaintiffs including Jennifer Franklin and remove Combs.

<sup>3</sup> On September 25, 2018, the Court denied Toyota’s motion to dismiss without prejudice to refile the motion at a later date. The motion to dismiss in the Central District of California is still pending.



Over the course of several months, the parties conducted extensive confirmatory discovery. Toyota produced over 100,000 pages of documents related to issues in the litigation, and on November 8, 2018, Toyota produced one of its engineers knowledgeable about the Sienna vehicles and parts at issue for an informal confirmatory interview by Class Counsel. The parties' confirmatory discovery addressed the factual and legal issues in the litigation, including important concepts, technical matters, and terms that are addressed by the Settlement.

### **C. Settlement Terms**

The proposed Settlement includes 2011 through 2018 model year Toyota Sienna vehicles (collectively, the "Subject Vehicles") distributed for sale or lease in any of the fifty States, the District of Columbia, Puerto Rico, and all other United States territories and/or possessions.

The Settlement "Class" includes:

[A]ll persons, entities or organizations who, at any time as of the entry of the Initial Notice Date, own or owned, purchase(d) or lease(d) Subject Vehicles distributed for sale or lease in any of the fifty States, the District of Columbia, Puerto Rico, and all other United States territories and/or possessions.<sup>4</sup>

*See* Settlement Agreement, at Section II.J.

As is discussed in more detail below, the proposed Settlement provides for a Customer Confidence Program that will offer prospective coverage for repairs to certain sliding door parts related to internal functional concerns that impede the closing and opening operations of the sliding door. *See* Settlement Agreement, at Section III.A. The Customer Confidence Program also provides Class Members with concerns about their Subject Vehicle's sliding door with one

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<sup>4</sup> Excluded from the Class are: (a) Toyota, its officers, directors and employees; its affiliates and affiliates' officers, directors and employees; its distributors and distributors' officers, directors and employees; and Toyota Dealers and Toyota Dealers' officers and directors; (b) Plaintiffs' Counsel; (c) judicial officers and their immediate family members and associated court staff assigned to this case; and (d) persons or entities that timely and properly exclude themselves from the Class as provided in this Settlement Agreement. *See* Settlement Agreement, at Section II.A.

inspection at their request and at no cost to them for the first year following the date of entry of the Final Order and Final Approval. *See id.* Additionally, the proposed Settlement reimburses Class Members who previously paid for out-of-pocket expenses incurred to repair a condition that is covered by the Customer Confidence Program, is not otherwise reimbursed and is incurred prior to the Initial Notice Date. *See id.*

### **1. Customer Confidence Program**

For Class Members who still own or lease their Subject Vehicles, the Customer Confidence Program will provide prospective coverage for repairs to the following sliding door parts but only those repairs that are related to internal functional concerns that impede the closing and opening operations of the sliding door in manual and power modes:

- (i) Sliding Door Cable Sub-Assembly for All Subject Vehicles. The duration of prospective coverage for the sliding door cable sub-assembly will begin following the date of Final Order and Final Judgment and run for ten (10) years from the date of First Use of the Subject Vehicle.
- (ii) Sliding Door Center Hinge Assembly for All Subject Vehicles. The duration of prospective coverage for the sliding door center hinge assembly will begin following the date of Final Order and Final Judgment and run for ten (10) years from the date of First Use of the Subject Vehicle.
- (iii) Fuel Door Pin and Fuel Door Hinge for All Subject Vehicles. The duration of prospective coverage for the fuel door pin and hinge will begin following the date of Final Order and Final Judgment and run for ten (10) years from the date of First Use of the Subject Vehicle.

- (iv) Sliding Door Front Lock Assembly. For model year 2017–2018 Subject Vehicles and for certain model year 2016 Subject Vehicles to which the current Warranty Enhancement Program ZH4 does not apply, the duration of prospective coverage for the sliding door front lock assembly will begin following the date of Final Order and Final Judgment and run for ten (10) years from the date of First Use. For model year 2011–2015 Subject Vehicles and for certain model year 2016 Subject Vehicles to which the Warranty Enhancement Program ZH4 applies, the current Warranty Enhancement Program ZH4, which is applicable for nine years from the Subject Vehicle’s date of First Use, will be extended by one additional year.
- (v) Sliding Door Rear Lock Assembly. For model year 2016–2018 Subject Vehicles and for certain model year 2015 Subject Vehicles to which the current Warranty Enhancement Program ZH5 does not apply, the duration of prospective coverage for the sliding door front lock assembly will begin following the date of Final Order and Final Judgment and run for ten (10) years from the date of First Use. For model year 2011–2014 Subject Vehicles and for certain model year 2015 Subject Vehicles to which the Warranty Enhancement Program ZH5 applies, the current Warranty Enhancement Program ZH5, which is applicable for nine years from the Subject Vehicle’s date of First Use, will be extended by one additional year.
- (vi) G04 Recall Remedy Kit for Model Year 2011–2016 Subject Vehicles. The G04 Recall Remedy Kit is subject to a one-year replacement part warranty under the terms of the G04 Recall. Pursuant to this Agreement’s Customer Confidence Program, this one-year warranty will be extended an additional one year – for a total of two years – from the date the G04 Recall Remedy was or is performed. If

the G04 Recall Remedy was performed more than one year prior to the date of entry of the Final Order and Final Judgment, then the Customer Confidence Program will provide an additional one year of coverage for the G04 Recall Remedy Kit from the date of entry of the Final Order and Final Judgment.

*See* Settlement Agreement, at Section III.A.

Toyota will also provide a Loaner Vehicle to eligible Class Members whose Subject Vehicles are undergoing a repair pursuant to the Customer Confidence Program.<sup>5</sup> *See id.* The Customer Confidence Program is transferable with the Subject Vehicle; however, Salvaged vehicles, inoperable vehicles and vehicles with titles marked flood-damaged are not eligible for this benefit. *See id.*

Pursuant to the Customer Confidence Program, Class Members who have a concern about their Subject Vehicles' sliding doors may have their Subject Vehicles' sliding doors inspected by an authorized Toyota Dealer at no cost to them, pursuant to the terms of the Settlement Agreement. Each Subject Vehicle is eligible for one such Sienna Sliding Door Functional Inspection within one year from the date of entry of the Final Order and Final Judgment. Pursuant to this paragraph and upon a Class Member's request to an authorized Toyota Dealer to inspect a Subject Vehicle's sliding doors, the Toyota Dealer will inspect the Subject Vehicle's sliding doors based on an Inspection Protocol that is detailed in Section III.A.3. of the Settlement Agreement.

Toyota, at its sole discretion, may, after consultation with Class Counsel, implement the Customer Confidence Program following issuance of the Preliminary Approval Order and in advance of the occurrence of the Final Effective Date.

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<sup>5</sup> In appropriate circumstances, where the Class Member has a demonstrated need for a Loaner Vehicle similar to the Subject Vehicle, Toyota, through its dealers, shall use good faith efforts to satisfy the request.

## **2. Out-Of-Pocket Expense Claim Reimbursement**

Additionally, eligible Class Members may submit Claims for previously paid out-of-pocket expenses incurred to repair a condition that is covered by the Customer Confidence Program that were not otherwise reimbursed and were incurred prior to the Initial Notice Date. *See* Settlement Agreement, at Section III.B. Out-of-pocket expenses that are the result of damage, post-collision issues, and/or misuse/abuse will not be eligible for reimbursement. *See id.* A Class Member will be eligible for such reimbursement provided that the Class Member: (a) complete and timely submit Claim Forms, with supporting documentation, to the Settlement Claims Administrator within the Claim Period; (b) have Claims that are eligible for reimbursement; and (c) do not opt out of the Settlement. *See id.* In no event shall a Class Member be entitled to submit more than one Claim Form per Subject Vehicle for the claims at issue. *See id.*

Eligible Class Members may submit Claims during the Claim Period, which shall run from the Initial Notice Date up to and including sixty (60) days after the Court's issuance of the Final Order and Final Judgment, which will occur after the Fairness Hearing to be scheduled by the Court. *See id.*

## **3. Claims Process**

The parties have agreed that Jeanne Finegan of Heffler Claims Group LLC shall serve as Settlement Notice Administrator, subject to approval by the Court. *See* Settlement Agreement, at Section II.MM. Also subject to court approval, the parties have agreed that Settlement Claims Administrator Patrick A. Juneau and Thomas Juneau of Juneau David, APLC will serve as the Settlement Claims Administrator, subject to approval by the Court. *See id.*, at Section II.LL.

The Settlement Notice Administrator will receive the Claims and the Settlement Claims Administrator shall administer the review and processing of Claims to determine whether Claim Forms submitted by Class Members are complete and timely. *See id.*, at Section III.B.

If a submitted Claim Form is deficient, the Settlement Claims Administrator shall direct the Settlement Notice Administrator to mail (and email if an email address is provided) a notice deficiency letter to the Class Member, requesting that the Class Member address the deficiencies and resubmit the Claim Form within sixty (60) days of the date of the letter from the Settlement Claims Administrator. If the Class Member fails to address the deficiencies identified by the Settlement Claims Administrator, that Claim shall be processed only to the extent feasible or, if it cannot feasibly be processed at all, be denied without further processing. *See id.*

The Settlement Claims Administrator shall use its best efforts to complete its review of timely submitted Claim Forms within ninety (90) days of receipt. The Settlement Claims Administrator's review period for submitted Claims shall not be required to commence any earlier than sixty (60) days after the occurrence of the Final Effective Date. *See id.*

The Settlement Claims Administrator shall use its best efforts to pay approved Claims within ninety (90) days after receipt of the Claim; provided, however, that this date occurs after the issuance of the Final Order and Final Judgment approving the Settlement. If the Claim is rejected for payment, in whole or in part, the Settlement Claims Administrator shall notify Class Counsel and Toyota's Counsel of said rejection of Class Member's Claim and the reason(s) why. The decision of the Settlement Claims Administrator shall be final; provided, however, that Class Counsel and Toyota's Counsel may meet and confer to resolve these denied Claims. If Class Counsel and Toyota jointly recommend payment of the Claims or payment of a reduced claim amount, then Toyota's Counsel shall inform the Settlement Claims Administrator, who shall instruct Toyota to pay said Claims. If Class Counsel and Toyota's Counsel disagree, they shall notify the Settlement Claims Administrator who shall make a final determination as to whether the Claim shall be paid. *See id.*

#### 4. Other Terms

In consideration of the benefits provided in the Settlement, Class Members who do not exclude themselves from the Class will release Toyota from liability for the claims alleged in the Action and Related Action. *See* Settlement Agreement, at Section VII. Claims for personal injury, wrongful death or actual physical property damage arising from an accident involving a Subject Vehicle are excluded from the release. *See id.*

The parties are also seeking to appoint Patrick A. Juneau and Thomas R. Juneau, Sr. as the Settlement Claims Administrators. Patrick A. Juneau is a charter member of the Academy of Court Appointed Masters and is highly respected nationwide and has an abundance of experience and expertise not only in serving as claims administrator but in serving as a court-appointed Special Master or Administrator to oversee and distribute billions of dollars in settlement funds to hundreds of thousands of class members, having served in that capacity in numerous large, high-profile, complex and multi-party federal and state mass and class action cases. Thomas R. Juneau, Sr. has been selected for membership in the Academy of Court-Appointed Masters and is an elected fellow of the Louisiana Bar Foundation. He has also been appointed as Special Master in several complex class actions. For these reasons, the parties believe that Patrick A. Juneau and Thomas R. Juneau, Sr. are more than well-equipped to serve as Settlement Claims Administrator here.

To compensate the law firms that worked on this Action and the Related Action, Class Counsel is seeking from the Court an award of attorneys' fees in the amount of \$6,500,000.00 and for reimbursement of their out-of-pocket costs and expenses in an amount not to exceed \$500,000.00. As a part of the expenses, Class Counsel may petition the Court for Class Representative service awards of up to \$2,500.00 per Class Representative. *See id.*, at Section VIII.

Toyota does not oppose the request for attorneys' fees, costs and expenses – including service awards – in these amounts.

The Class will be notified about the Settlement using the Notice Program discussed in Section IV of the Settlement Agreement and as further discussed below.

**II. FAIRNESS, REASONABLENESS, AND ADEQUACY OF THE PROPOSED SETTLEMENT.**

Preliminary approval is appropriate where “the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representative or segments of the class and falls within the reasonable range of approval.” *O'Connor v. AR Resources, Inc.*, 3:08 cv 1703, 2010 WL 1279023, at \*3 (D. Conn. Mar. 30, 2010) (citation omitted); *Amchem Prod., Inc. v. Windsor*, 521 U.S. 591, 620 (1997); *Edwards v. N. Am. Power & Gas, LLC*, No. 3:14-CV-01714, 2018 WL 1582509, \*7 (D. Conn. March 30, 2018) (J. Bolden); *see also* 4 NEWBERG ON CLASS ACTIONS § 13:13 (5th ed.) (“The general test—holding that a settlement will be preliminarily approved if it ‘is neither illegal nor collusive and is within the range of possible approval’—contains both procedural and substantive elements. The procedural element focuses on the nature of the settlement negotiations and the possibility of collusion, while the substantive element focuses on the terms of the agreement itself.”).

**A. The Settlement is the Product of Arm’s Length Negotiations.**

Compromise and settlement of class actions is favored. *See Wal-Mart Stores v. Visa U.S.A.*, 396 F.3d 96, 116 (2d Cir. 2005) (emphasizing the “strong judicial policy in favor of settlements, particularly in the class action context”) (quotation omitted); *Macedonia Church v. Lancaster Hotel, LP*, No. 05-0153 TLM, 2011 WL 2360138, at \*9 (D. Conn. June 9, 2011) (“Federal courts strongly favor and encourage settlements, particularly in class actions and other complex matters,



where the inherent costs, delays, and risks of continued litigation might otherwise overwhelm any potential benefit the class could hope to obtain.”); *see also* Herbert B. Newberg & Alba Conte, *NEWBERG ON CLASS ACTIONS* (“Newberg”), § 11.41 (4th ed. 2002) (“The compromise of complex litigation is encouraged by the courts and favored by public policy.”).

Under newly revised Rule 23(e)(2), the Court can approve a proposed settlement if the Court finds that: (A) the class representatives and class counsel have adequately represented the class; (B) the proposal was negotiated at arm’s length; (C) the relief provided for the class is adequate;<sup>6</sup> and (D) the proposal treats class members equitably relative to each other. As is discussed more fully below, given the scope and breadth of the relief which has been negotiated at arm’s length here, the proposed Settlement will likely earn final approval after notice and the opportunity for Class Members to be heard. As is also supported by the Settlement Notice Administrator, Jeanne Finegan’s Declaration, as well as the content of the Direct Mail Notice, Publication Notice and Long Form Notice – all of which are attached as exhibits to the Settlement Agreement – the Notice Program here is robust, reaching ninety-four (94) percent of the Class with an average frequency of four (4) times. *See* Jeanne Finegan Declaration, attached as Exhibit H to the Settlement Agreement, at ¶4. Where a settlement is achieved through arm’s-length negotiations by experienced counsel and there is no evidence of fraud or collusion, “[courts] should be hesitant to substitute [their] judgment for that of the parties who negotiated the settlement.” *In re EVCI Career Colleges Holding Corp. Sec. Litig.*, No. 05-10240, 2007 WL 2230177, at \*4 (S.D.N.Y. July 27, 2007); *see also* *Macedonia Church*, 2011 WL 2360138, at \*11

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<sup>6</sup> To determine whether the relief provided is adequate, the Court should take into account the costs, risks, and delay of trial and appeal, the effectiveness of any the proposed method of distributing relief to the class, including the method of processing class-member claims, if required; the terms of any proposed award of attorney’s fees, including timing of payment; and any agreement required to be identified under Rule 23(e)(3). *See* Fed. R. Civ. Proc. 23(e)(2)(C)(a-d).

(stating “the Court gives weight to the Parties’ judgment that the settlement is fair and reasonable”).

“The central question raised by the proposed settlement of a class action is whether the compromise is fair, reasonable and adequate. There are weighty justifications, such as the reduction of litigation and related expenses, for the general policy favoring the settlement of litigation.” *Weinberger v. Kendrick*, 698 F.2d 61, 73 (2d Cir. 1982) (citation omitted).

Here, there has been no collusion or fraud leading to, or taking part in, the settlement negotiations between the parties. To the contrary, the parties have been engaged in arm’s length negotiations for over one year, which in some instances have involved the participation of Patrick A. Juneau as a neutral third-party mediator, and have held no fewer than six face-to-face meetings and numerous e-mails and telephone conferences. Toyota has produced over 100,000 pages of documentary evidence. Toyota also produced one of its engineers with knowledge about the Sienna sliding doors and its parts for an informal confirmatory interview and made him available for hours of questioning by Class Counsel.

The parties are represented by highly experienced counsel who investigated and considered their own and the opposing parties positions, measured the terms of the Settlement against the risks of continued litigation, and thus “the proceedings were free of collusion and undue pressure.” *D’Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001).

**III. The Settlement Is Likely To Be Approved And Is A Fair And Reasonable Outcome For Class Members**

**A. Recovery for Class Members**

The proposed Settlement is fair, reasonable and adequate, particularly when measured against the allegations in this case. Plaintiffs have alleged the power sliding doors of the Subject Vehicles are defective. The proposed Settlement entitles all Class Members to benefit from the

Customer Confidence Program providing prospective coverage for certain repairs to certain sliding door parts, a Loaner Vehicle to eligible Class members whose Subject Vehicles are undergoing repairs that are covered by the Customer Confidence Program, a Sienna Sliding Door Functional Inspection, and reimbursement of out-of-pocket expenses incurred to repair a condition that is covered by the Customer Confidence Program. *See* Settlement Agreement, at Section III.A. – B.

The Settlement thus provides plenary relief that allows Class Members to submit claims for compensation of alleged expenses incurred to repair certain sliding door parts and/or provides prospective relief. *See id.*, at Section III. Class Members who have a concern about their Subject Vehicle’s sliding doors are afforded the opportunity to have their Subject Vehicles’ sliding doors inspected by an authorized Toyota Dealer within one year from the date of entry of Final Order and Final Judgment at no cost to them. *See id.*, at Section III.A. The reimbursement of previously paid out-of-pocket expenses incurred to repair a condition that is covered by the Customer Confidence Program that were not otherwise reimbursed and that were incurred prior to the Initial Notice Date addresses claims of Class Members who previously paid for such repairs. *See id.*, at Section III.B. The combination of these measures provides relief beyond the warranties provided upon purchase. Moreover, by providing prospective relief, the Settlement accomplishes something rarely achieved via litigation: an actual prospective solution to the underlying issue alleged in the Action and Related Action that allows Class Members to allay any possible concerns they may have of potential harm before it even occurs. Since Toyota contests the allegations of defective sliding doors, Plaintiffs would have been required to prove the defect and associated consumer fraud allegations in litigation before they could have obtained any comparable relief.

#### **B. Release of Claims**

Courts also consider whether a class action settlement contains an overly broad release of liability. *See, e.g., Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 109 (2d Cir. 2005).

Here, Class Representatives and Settlement Class Members who do not exclude themselves from the Settlement release Toyota from all claims “regarding the subject matter of the Action and the Related Action. . . . or any claim of any kind or any claim of any kind arising from, related to, connected with, and/or in any way involving the Action, the Related Action, the Subject Vehicles’ sliding doors, and/or associated parts that are, or could have been, defined, alleged, or described in the Complaint, the Action, the Related Action or any amendments of the Action or the Related Action.” *See* Settlement at VII.B.

Importantly, the release carves out certain claims: “Class Representatives and the other Class Members are not releasing claims for personal injury, wrongful death or actual physical property damage arising from an accident involving a Subject Vehicle.” Thus, the release is properly targeted to the subject matter of the class action lawsuits that are being settled, and explicitly carves out claims of a distinctly different type from the claims asserted in those lawsuits and is not covered by the Settlement. *See id.*

The release also includes a provision where Class Representatives release any unknown claims that existed up to the date of the Settlement, including a waiver of rights protected by California Civil Code § 1542 (“§ 1542”), which preserves unknown claims. *See* Settlement at VII.H.; *see also* CAL. CIV. CODE § 1542 (“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”).

However, the fact that the preceding sections contain language that explicitly carves out claims for personal injury and physical property damage arising from an accident indicates that such claims are not intended to be within the scope of the Section 1542 waiver. For these reasons, the release adequately balances fairness to absent Class Members and recovery for Plaintiffs. *See*

Wal-Mart Stores, Inc. v. Visa U.S.A., Inc., 396 F.3d 96, 106 (2d Cir. 2005) (“Broad class action settlements are common, since defendants and their cohorts would otherwise face nearly limitless liability from related lawsuits in jurisdictions throughout the country. Practically speaking, ‘[c]lass action settlements simply will not occur if the parties cannot set definitive limits on defendants’ liability.’) (quoting *Stephenson v. Dow Chem. Co.*, 273 F.3d 249, 254 (2d Cir. 2001), aff’d in part by an equally divided court and vacated in part, 539 U.S. 111, 123 S. Ct. 2161, 156 L. Ed. 2d 106 (2003)).

#### **IV. PROPOSED CLASS NOTICE AND NOTIFICATION PROCEDURES**

Upon a settlement of a certified class, “[t]he court must direct notice in a reasonable manner to all class members who would be bound by the proposal...” Fed. R. Civ. P. 23(e)(1)(B). Federal Rule of Civil Procedure 23(c)(2) prescribes the “best notice that is practicable under the circumstances, including individual notice” of particular information. Fed. R. Civ. P. 23(c)(2)(B) (enumerating notice requirements for classes certified under Rule 23(b)(3)). Under Rule 23(c)(3), the notice must clearly and concisely state in plain, easily understood language: (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members. *Accord Kemp-Delisser v. Saint Francis Hosp. & Med. Ctr.*, No. 3:15-CV-1113 (VAB), 2016 WL 10033380, at \*4 (D. Conn. July 12, 2016) (J. Bolden). Notice should be disseminated here, given the arguments above, as it is “likely that the court will be able to approve the proposal after notice to the class and a final approval hearing.” *See* Fed. R. Civ. P. 23 (e)(1) Advisory Committee’s note to 2018 amendments.

Here, the Settlement provides for Class Notice to be accomplished through a combination of Direct Mail Notice, Publication Notice, notice through a Settlement website, Long Form Notice, social media notice, and other applicable notice. *See* Settlement Agreement, at Section IV. The Settlement Notice Administrator estimates that the Notice Program will reach ninety-four (94) percent of the Class with an average frequency of four (4) times. *See* Declaration of Jeanne Finegan, attached as Exhibit H to the Settlement Agreement, at ¶4. This surpasses even the rarely achieved “Gold Standard” goal of reaching 90 percent of the class, an average frequency of 3 times. The notice program thus goes well beyond other notice programs that have been approved. *See Edwards*, 2018 WL 1582509, \*7 (D. Conn. March 30, 2018) (J. Bolden) (finding notice sufficient where a short form notice was distributed through mail, a long form notice that will be available on a settlement website, and a telephone number was available for class members who did not choose to use the internet); *Macedonia Church*, 2011 WL 2360138, at \*12 (“Notice to Class Members provided the best notice as practicable under the circumstances, as it was sent individually to all Class Members who were identified by the reasonable efforts of Class Counsel.”). Toyota will pay the costs of disseminating the notice and otherwise implementing the notice specified in Section IV of the Settlement Agreement. *See* Settlement Agreement, at Section IV.A.1.

The Notice Program in greater particularity is as follows:

**Direct Mail Notice.** The Settlement Notice Administrator shall send a Direct Mail Notice, substantially in the form attached as Exhibit B to the Settlement Agreement, by U.S. Mail, postage prepaid, to the current and former registered owners of Subject Vehicles, as identified by data to be forwarded to the Settlement Notice Administrator by IHS Automotive, Driven by Polk a/k/a IHS Markit. The Direct Mail Notice shall inform potential Class Members on how to obtain the

Long Form Notice via the Settlement website, via regular mail or via a toll-free telephone number. In addition, the Settlement Notice Administrator shall: (a) re-mail any notices returned by the United States Postal Service with a forwarding address no later than the deadline found in the Preliminary Approval Order; and (b) by itself or using one or more address research firms, as soon as practicable following receipt of any returned notices that do not include a forwarding address, research such returned mail for better addresses and promptly mail copies of the applicable notice to any better addresses so found. *See* Settlement Agreement, at Section IV.B. In addition to the Direct Mail Notice which will be substantially in the form attached as Exhibit B to the Settlement Agreement, Toyota reserves the right to include as part of the Direct Mail Notice, a Customer Letter from Toyota – the content of which will be agreed to by the parties and approved by the Court. The Customer Letter will provide Class Members with specific direction and information on when and how to receive the benefits of the Customer Confidence Program. *See id.*

**Publication Notice.** The Settlement Notice Administrator shall also cause the publication of the Publication Notice as described in the Declaration of the Settlement Notice Administrator, and in such additional newspapers, magazines and/or other media outlets. The form of the Publication Notice agreed upon by the parties is in the form substantially similar to the one attached to the Agreement as Exhibit G. *See* Settlement Agreement, at Section IV.C.

**Internet Website.** The Settlement Notice Administrator shall also establish a Settlement website that will inform Class Members of the terms of this Settlement Agreement, their rights, dates and deadlines and related information. The website shall include, in .pdf format, materials agreed upon by the parties and/or required by the Court, including, but not limited to, the Settlement Agreement, the Publication Notice, Frequently Asked Questions and Answers, Class

Counsel's fee award application, and Court documents that may be of interest to most Class Members. *See* Settlement Agreement, at Section IV.D.

**Long Form Notice.** The Long Form Notice shall be in a form substantially similar to the document attached to this Settlement Agreement as Exhibit E, and shall contain (1) a plain and concise description of the nature of the Action and the Related Action, the history of the litigation of the claims, the preliminary certification of the Class for settlement purposes, and the Settlement Agreement, including information on the identity of Class Members, how the Settlement Agreement would provide relief to the Class and Class Members, what claims are released under the Settlement Agreement and other relevant terms and conditions; (2) shall inform Class Members that they have the right to opt out of the Settlement, including the deadlines and procedures for exercising this right; (3) shall inform Class Members of their right to object to the Settlement Agreement and appear at the Fairness Hearing, again with the deadlines and procedures for exercising these rights; (4) shall inform Class Members about the amounts being sought by Class Counsel as Attorneys' Fees and Expenses and individual awards to the Class Representatives, and shall explain that Toyota will pay the fees and expenses awarded to Class Counsel and individual awards to the Class Representatives in addition to amounts being made available for relief to Class Members by this Settlement Agreement, (5) shall inform Class Members that they may appear in the lawsuit either on their own or through a lawyer, at the Class Member's expense, (6) shall inform the Class Member that the Court will exclude from the Class any Class Member who requests exclusion along with the time and manner for requesting exclusion, and (7) shall inform Class Members of the binding effect of a class judgment on Class Members. *See* Settlement Agreement, at Section IV.D.



The Long Form Notice shall be available on the Settlement website. The Settlement Notice Administrator shall send via first-class mail, the Long Form Notice to those persons who request it in writing or through a dedicated toll-free telephone number that the Settlement Notice Administrator shall establish that will provide Settlement-related information to Class Members. *See id.*

**Internet Banner Notifications.** The Settlement Notice Administrator shall, pursuant to the parties' agreement, establish banner notifications on the internet and a social media program that will provide Settlement-related information to Class Members and shall utilize additional internet-based notice efforts as to be agreed to by the parties. *See* Settlement Agreement, at Section IV.F.

**Class Action Fairness Act Notice.** The Settlement Notice Administrator shall send to each appropriate State and Federal official, the materials specified in 28 U.S.C. § 1715, and shall otherwise comply with its terms. The identities of such officials and the content of the materials shall be mutually agreeable to the parties and in all respects comport with statutory obligations. *See* Settlement Agreement, at Section IV.H.

Thus, the Notice Program provides interlocking methods that both aim to reach each class member individually and directly using reasonably available address information but also provides multiple alternative forms of notice through which Class Members may learn of the Settlement or obtain further information about their rights. The program follows well-recognized and established procedures for class action notice. Thus, the procedure for providing notice and the content of the class notice constitute the best practicable notice to Class Members. *See id.*

## V. **CONCLUSION**

Defendants share Plaintiffs' belief that the Settlement is in the best interests of the parties and represents a fair, reasonable, and adequate way to resolve the controversy, as measured by all

the applicable standards. The Court should grant preliminary approval to the Settlement, approve the dissemination of class notice, and establish the requested deadlines for exclusions, opt outs and objections.

Dated: December 11, 2018

Respectfully submitted,  
**KING & SPALDING LLP**

*/s/ John P. Hooper*

John P. Hooper (pro hac vice admission pending)  
1185 Avenue of the Americas, FL 34  
New York, NY 10036  
Telephone: (212) 556-2000  
Facsimile: (212) 556-2222  
jhooper @kslaw.com

Kevin M. Smith (ct24774)  
WIGGIN AND DANA, LLP  
One Century Tower  
265 Church Street  
New Haven, CT 06510  
Telephone: (203) 498-4579  
Facsimile: (203) 782-2889  
ksmith@wiggin.com

*Attorneys for Defendants Toyota Motor Corporation,  
Toyota Motor North America, Inc., Toyota Motor Sales,  
U.S.A., Inc., Toyota Motor Engineering &  
Manufacturing North America, Inc., Toyota Motor  
Manufacturing, Indiana, Inc.*