UNITED STATES DISTRICT COURT
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, 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.	CASE NO. 3:17-CV-01091-VAB

DEFENDANTS' REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF ENTRY OF AN ORDER GRANTING FINAL APPROVAL OF THE SIENNA SLIDING DOOR CLASS ACTION SETTLEMENT

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Defendants Toyota Motor Corporation, 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. (collectively, "Toyota") submit this reply memorandum in further support of the proposed Sienna sliding door class action Settlement. Toyota respectfully requests that the Court overrule the one remaining objection and finally approve the Settlement as fair, reasonable, and adequate pursuant to Federal Rule of Civil Procedure 23.

I. PRELIMINARY STATEMENT

The reaction of the Class to the Settlement Agreement has been overwhelmingly positive. Only 68 individuals have excluded themselves from the Class and only one Class Member has objected.[1] *See* Supplemental Declaration of Jeanne C. Finegan, APR ("Supplemental Finegan Decl."), Dkt. No. 128, ¶ 3. Of course, "that some class members object is neither uncommon nor fatal to settlement approval." *Lazy Oil Co. v. Witco Corp.*, 95 F. Supp. 2d 290, 334 (W.D. Pa. 1997). It is the nature of class action litigation that a settlement may not satisfy every class member. *See In re "Agent Orange" Prod. Liab. Litig.*, 597 F. Supp. 740, 761 (E.D.N.Y. 1984), aff'd 818 F.2d 145 (2d Cir. 1987); *Mathes v. Roberts*, 85 F.R.D. 710, 715 (S.D.N.Y. 1980) ("while the objectants [sic] may have preferred a different resolution, such a preference is neither a ground for rejecting the instant proposal as unfair and inequitable nor is it evidence of the inappropriateness of the benefits to be accorded to plaintiffs").

Nearly 1.3 million Class Members were sent the Direct Mail Notice. *See* Jeanne C. Finegan Declaration, dated May 9, 2019, Dkt. No. 122-2, at ¶ 15. Yet, only 68 individuals have timely sought exclusion from the Class. *See* Supplemental Finegan Decl., ¶ 3. Therefore, the percentage of persons seeking exclusion is approximately 0.0052%.

[1] All capitalized terms shall have the meaning ascribed to them in the Settlement Agreement unless otherwise specified herein.

An even smaller percentage of Class Members – 0.00015% – have objected. *See* Jeananne Shultz Objection ("Shultz Objection"), Dkt. No. 119; Jennifer Lyons ("Lyons Objection"), Dkt. No. 120. Of these two objections, the one filed by Ms. Shultz has been withdrawn and her objection is now null and void. *See* Dkt. No. 127. The small number of exclusions and objections provides further support for *Grinnell*'s second factor[2] concerning the reaction of the Class to the Settlement and attests to the fairness, adequacy and reasonableness of the Settlement terms. *See City of Detroit v. Grinnell*, 495 F.2d 448 (2nd Cir. 1974). "If only a small number of objections are received, that fact can be viewed as indicative of the adequacy of the settlement." *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 118 (2d Cir. 2005) (quoting 4 Alba Conte & Herbert B. Newberg, NEWBERG ON CLASS ACTIONS § 11:41, at 108 (4th ed. 2002)); *see also D'Amato v. Deutsche Bank*, 236 F.3d 78, 86–87, 236 F.3d 78, 85 (2d Cir. 2001) (affirming final approval where 72 people opted-out out of a class size of 27,883).

As was discussed fully in Defendants' Memorandum of Law In Support of Final Approval of the Class Action Settlement (Dkt. No. 126), the Settlement Agreement provides substantial and immediate benefits to the Class. The proposed Settlement was designed to be multi-faceted, with: (i) a Customer Confidence Program that includes a Sienna Sliding Door Functional Inspection for those Class Members who may have a concern about their sliding door, and also provides prospective coverage for repairs to different sliding door parts, and a Loaner Vehicle, if requested, to eligible Class Members; as well as (ii) full reimbursement to Class Members who previously paid for reasonable out-of-pocket expenses incurred prior to March 1, 2019 to repair a condition that is covered by the Customer Confidence Program and was not otherwise reimbursed. *See* Settlement Agreement § III.A.-C.

[2] Toyota respectfully refers this Court to its Memorandum in Support of Final Approval of the Class Action Settlement (Dkt. No. 126), which discusses the *Grinnell* factors in detail.

In sum, this Court should overrule the one remaining objection and finally approve the Settlement as fair, reasonable, and adequate pursuant to Federal Rule of Civil Procedure 23.

II. THE SMALL NUMBER OF REQUESTS FOR EXCLUSION AND THE SINGLE OBJECTION STRONGLY WEIGH IN FAVOR OF FINAL APPROVAL.

The second of the nine *Grinnell* factors considers the reaction of the class to a proposed settlement. *See Grinnell*, 495 at 463. The reaction of the Class in this case overwhelmingly favors approving the proposed Settlement as "the absence of substantial opposition is indicative of class approval." *Wal-Mart Stores, Inc.*, 396 F.3d at 118 (noting eighteen objections out of five million individuals notified of settlement and stating that "[i]f only a small number of objections are received, that fact can be viewed as indicative of the adequacy of the settlement.") (quoting 4 NEWBERG § 11.41). In fact, the Second Circuit has upheld final approval of a class action settlement where there were proportionally more objections and opt-outs than there are in this case (i.e., 18 objections out of a class of 27,883). *See D'Amato*, 236 F.3d at 86–87 (noting 72 people requested exclusion from the settlement); *see also Edwards v. North Am. Power and Gas LLC*, No. 3:14-CV-01714, 2018 WL 3715273 at *10-11 (D. Conn. Aug. 3, 2018) (J. Bolden) (approving settlement where there were 17 opt outs out of a class of 491,126, which is the same percentage of opt outs in the Action, and no objections); *Sykes v. Harris*, No. 09 Civ. 8486 (DC), 2016 WL 3030156, at *12 (S.D.N.Y. May 24, 2016) (approving settlement where "a miniscule number" of plaintiffs — 38 individuals out of a potential 215,000 class members — requested exclusions); *Charron v. Pinnacle Grp. N.Y. LLC*, 874 F. Supp. 2d at 197 (S.D.N.Y. 2012) (approving settlement where "fewer than 1% of the tenants who received notice opted out of the lawsuit, and an even smaller percentage objected.")."'The fact that the vast majority of [C]lass [M]embers neither objected nor opted out is a strong indication' of fairness." *Willix v. Healthfirst, Inc.*, No. 07 CIV.

1143 ENV RER, 2011 WL 754862, at *4 (E.D.N.Y. Feb. 18, 2011) (quoting *Wright v. Stern*, 553 F. Supp. 2d 337, 344–45 (S.D.N.Y. 2008).

III. THE LYONS OBJECTION IS SHOULD BE OVERRULED.[3]

A. The Out-of-Pocket Claims Process is Reasonable and Designed to Identify Class Members With Valid Claims While Deterring Impermissible Claims.

Objector Lyons argues that the "Out-of-Pocket Claims Process is unduly burdensome to members of the Class and does not provide adequate review of any [C]laims that may be denied." *See* Lyons Objection, Dkt. No. 120, at p. 7. Ms. Lyons maintains that there should be less required documentation, a longer period to file claims, and/or Toyota should automatically send checks to Class Members who had repairs at Toyota dealerships. *See id.*, at p. 8. On the contrary, the Claims Form submission process is streamlined and can be completed and submitted online along with information and supporting documents that will ensure that the person submitting the form is an actual Class Member who is properly owed a reimbursement. *See Hamilton v. SunTrust Mortg. Inc.*, No. 13-60749-CIV, 2014 WL 5419507, at *7 (S.D. Fla. Oct. 24, 2014) ("Filing a claim form is a reasonable administrative requirement which generally does not impose an undue burden on members of a settlement class."); *see also Saccoccio v. JP Morgan Chase Bank, N.A.*, 297 F.R.D. 696 (S.D. Fla. 2014) ("There is nothing inherently suspect about requiring class members to submit claim forms in order to receive payment.").

The Claim Form here is only two-pages long and requests that Class Members attest to very basic information, such as the Class Member's name, address and Subject Vehicle information as well as providing limited documentation about the repair that is being submitted for reimbursement. Claim forms requiring similar types of information have been approved in

[3] We understand from Class Counsel that Ms. Lyons may withdraw her objection. However, in light of the fact that her objection is currently pending, we have responded to those points in her objection that relate to Toyota.

various other class action settlements and are not unduly burdensome. *See Hashw v. Dep't Stores Nat'l Bank*, 182 F. Supp. 3d 935, 948–49 (D. Minn. 2016) (finding there was "no infirmity in the form" requiring name, address, cell phone number, and type of credit-card account he or she had, as well as to sign an affirmation that the information on the form was true and correct, as "both the affirmation and the provision of cell phone numbers were designed to ensure that each person submitting a claim actually was a member of the settlement class…."). Additionally, since the Claim Forms are publicly available on the Settlement website, "anyone in the United States could [ ] obtain[] and submit[] a form." *Id.*

In response to Ms. Lyons's argument that less documentation should be required, the Claim Form simply requests that Class Members provide invoices or receipts that support their claim for reimbursement. Requiring minimal documentation – especially in those cases where a Class Member has his or her Subject Vehicle serviced and repaired at a location other than a Toyota Dealer – is necessary to guard against fraudulent claims and is not unduly burdensome. *In re WorldCom, Inc. Sec. Litig.*, No. 02 CIV 3288 (DLC), 2004 WL 2591402, at *12 (S.D.N.Y. Nov. 12, 2004) (overruling an objection arguing the claim form was too lengthy and complex, the court held "[t]he information that claimants are required to submit is necessary in order for a fair distribution of the settlement proceeds"); *see also Saccoccio*, 297 F.R.D. at 698 (holding objectors "cannot derail a settlement because the members of the class are being asked to provide a tiny fraction of the information they would be required to prove at trial in a claims form").

Accordingly, far from being an overly burdensome activity, the Claims Process "strike[s] a proper balance between, on the one hand, avoiding fraudulent claims and keeping administrative costs low, and on the other hand, allowing as many class members as possible to claim benefits." *Hamilton*, 2014 WL 5419507, at *7*; see also Hall v. Bank of Am., N.A.*, No. 1:12-CV-22700-FAM,

2014 WL 7184039, at *6 (S.D. Fla. Dec. 17, 2014) (noting that the claims process is needed "to ensure that only aggrieved individuals receive monetary relief and to reduce the risk of fraud, waste, and abuse that might arise from sending unsolicited checks to unverified addresses and recipients").

Additionally, giving Class Members sixty (60) days after the Court's issuance of the Final Order and Final Judgment (or a minimum of 155 days from the Initial Notice Date) to submit a Claim Form is a very reasonable amount of time and courts have consistently approved settlements where the claims period has been of a similar or shorter duration. *See In re Honest Mktg. Litig.*, No. 16-CV-01125, 2017 WL 8780329, at *2 (S.D.N.Y. Dec. 8, 2017) (granting final approval of settlement agreement with 105-day claims period where Objectors claimed period was too short); *Karic v. Major Auto. Companies, Inc.*, No. 09-5708, 2015 WL 9433847, at *4 (E.D.N.Y. Dec. 22, 2015), adopted sub nom., *Karic v. The Major Auto. Companies, Inc.*, No. 09-5708, 2016 WL 323673 (E.D.N.Y. Jan. 26, 2016) (preliminarily approving settlement giving class members 60 days to return a claim form, object, or opt out of settlement), finally approved, 2016 WL 1745037 (E.D.N.Y. Apr. 27, 2016).

With respect to Ms. Lyons's argument that the claims review process is inadequate, the Claim Forms are reviewed and analyzed by two extremely experienced third-party Settlement Claims Administrators who are more than capable of guarding against any abuses as they have served as court-appointed Special Masters or Administrators to oversee and distribute billions of dollars in settlement funds to hundreds of thousands of class members in numerous large, high-profile, complex and multi-party federal and state mass and class action cases. *See* Patrick A. Juneau Declaration ("Juneau Decl."), Dkt. No. 87, at ¶5 (*see* Juneau Decl. generally for specific case experience). Additionally, Claim Forms that are deemed deficient and denied by the

Settlement Claims Administrator may be reviewed by Class Counsel and Toyota's Counsel and resolved in favor of reimbursement. *See* Settlement Agreement § III.B.3-4; *see also Saccoccio*, 297 F.R.D. at 696-97 (rejecting objectors' argument that claims review process was unfair and noting that the settlement administrator—not defendants—had discretion to audit and deny claims). For this reason, Ms. Lyons's argument that the process is inadequate should be rejected.

B. The Out-Of-Pocket-Claims Process Deadline By Which Expenses Must Have Been Incurred Is Reasonable.

Ms. Lyons argues that the Initial Notice Date (March 1, 2019) by which out-of-pocket expenses must be incurred to be reimbursed is unreasonable. However, limiting reimbursements to costs incurred prior to the Initial Notice Date is necessary to: (i) protect all Parties; and (ii) encourage Class Members to participate in the Settlement as soon as practicable and not seek to possibly game the system by obtaining the benefits of the Settlement before the Settlement's Customer Confidence Program has been launched. *See In re Ford Motor Co. Spark Plug & Three Valve Engine Prod. Liab. Litig.*, No. 1:12-MD-2316, 2016 WL 6909078, at *3–4 (N.D. Ohio 2016) (overruling an objection stating "[the Objector] requests an open-ended claims process that would never end. While such a process may be attractive to [the Objector], it is not realistic to expect a manufacturer [ ] to act as a guarantor of its products until the end of time….In short, [the Objector]'s objection does not affect the overall fairness of the Settlement.").

Additionally, if Ms. Lyons does not like the requirements of the Claim Process or any other term of the Settlement Agreement, then the appropriate course of action was for her to opt out of the Settlement. *See Eisen v. Porsche Cars N. Am., Inc.*, No. 2:11-CV-09405-CAS, 2014 WL 439006, *8 (C.D. Cal. Jan. 30, 2014) ("Federal courts routinely hold that the opt-out remedy is sufficient to protect class members who are unhappy with the negotiated class action settlement terms.").

C. The Class Has Been Properly Notified About The Proposed Settlement And The Customer Confidence Program.

Ms. Lyons also contends that Toyota should be required to provide reminder notices to Class Members of the precise dates of the Customer Confidence Program. *See* Dkt. No. 120. However, the Notice in this case sufficiently explains when the Customer Confidence Program will commence and there is no need for reminder notices to be sent out. Specifically, the Settlement Notice Administrator has informed the Court that an estimated 97 percent of Class Members were reached by the Notice Program's media program, on average, more than five times, which includes the mailing of nearly 1.3 million Direct Mail Notices to Class Members. *See* Finegan Declaration, Dkt. No. 122-2, ¶ 15. This Court has also approved the Notice Program and found that "the distribution of these Notices, [ ] as well as the distribution of Publication Notice, the creation of an Internet Website, and the use of Internet Banner Notifications and social media, as contemplated by the Agreement—meets the requirements of Federal Rule of Civil Procedure 23(c) and due process, fairly apprises the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings, and is the best notice practicable under the circumstances and shall constitute due and sufficient notice to all persons entitled thereto." *See* Ruling and Order on Motion for Preliminary Approval, Dkt. 107, at p. 30. As set forth in the contemporaneously filed Declaration of Brad Wyatt, although it is not required, as part of the Customer Confidence Program, Toyota will be sending communications to Class Members about the availability of the Customer Confidence Program that is specific to their Subject Vehicle. *See* Brad Wyatt Declaration, at ¶¶ 6-7.

While Toyota has no obligation to implement the Customer Confidence Program until the occurrence of the Final Effective Date but can do so at its sole discretion per the Settlement Agreement terms, Toyota is actively working on, and intends to, pre-implement the Customer

Confidence Program prior to the Final Effective Date. *See* Brad Wyatt Declaration, at ¶ 4. Ms. Lyons makes a conclusory and completely unsupported statement that as of March 21, 2019 "Toyota had apparently done very little to train or encourage their Dealers to provide cost-free repairs…" However, the documents that she attaches to her declaration in support of her objection completely undermines her argument that Toyota Dealers have not been trained about the proposed Settlement. In those documents, the Toyota Dealer directed her to the Settlement website where she could get more information about the benefits provided to Class Members. It appears that Ms. Lyons's complaint may be directed at the fact that the dealership was not going to "repair the sliding door issue free of charge," at the time of her request, but as noted above and in the Settlement Agreement, Toyota has no obligation to do so prior to the Final Effective Date. *See* Settlement Agreement, §III.

D. Ms. Lyons's Desire To Change The Terms Of A Negotiated Settlement Is Unsupported.

Objector Lyons seeks to improperly change the negotiated terms of the proposed Settlement by requesting that Toyota "certify" the number of inspections and possibly extend the one-year no-cost Sienna Sliding Door Functional Inspection period. However, she does not provide a concrete reason for why the current relief is unfair, unreasonable or inadequate. *See Mba v. World Airways, Inc.*, 369 F. App'x 194, 197 (2d Cir. 2010) ("[T]he district judge generally should not dictate the terms of a settlement agreement in a class action. Rather, 'he should approve or disapprove a proposed agreement as it is placed before him and should not take it upon himself to modify its terms."); *Messier v. Southbury Training School*, No. 3:94-CV-1706, Dkt. No. 1055, p. 11 (D. Conn. 2010) (finding objections requesting "additions or modifications to the terms of the settlement agreement are untenable because the Court does not have the power or authority to make changes or additions to the parties' agreement.").

IV. CONCLUSION

For the foregoing reasons and the arguments made in the Memorandum of Law in Support for Entry of an Order Granting Final Approval of Class Action Settlement, Toyota respectfully requests that the Court overrule the one remaining objection, finally approve the Settlement as fair, reasonable, and adequate pursuant to Federal Rule of Civil Procedure 23, and issue related relief including a permanent injunction.

Dated: May 24, 2019

Respectfully submitted,
KING & SPALDING LLP

/s/ John P. Hooper

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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, 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.	CASE NO. 3:17-CV-01091-VAB **DECLARATION OF BRAD WYATT IN SUPPORT OF FINAL APPROVAL OF CLASS ACTION SETTLEMENT PURSUANT TO 28 U.S.C. § 1746**

I, Brad Wyatt, pursuant to 28 U.S.C. § 1746(2), under penalty of perjury, do hereby declare that the following statements are true and correct:

1. I am employed by Toyota Motor North America, Inc. ("Toyota") and my job title is: Senior Manager, Vehicle Safety & Compliance Liaison Office ("VSCLO"). I have been in this position with the VSCLO for approximately four months, since February 2019. My job responsibilities are to provide management oversight of the team that ensures Toyota's compliance with certain vehicle safety regulations and to act as a key interface with the National Highway Transportation Safety Administration on vehicle safety and compliance related issues. Additionally, I have knowledge about the steps Toyota is undertaking to launch the Customer Confidence Program in this action.

2. Prior to becoming Senior Manager of VSCLO, my job title was: Customer Quality Services Manager. My job responsibilities at that time were to manage the investigation and resolution activities of product quality concerns within the North American market.

3. I respectfully submit this Declaration in support of Toyota's Reply Memorandum of Points and Authorities in Support of Plaintiffs' Motion for Entry of an Order Granting Final Approval of Class Action Settlement and Issuance of Related Orders.

4. It is my understanding, based on my prior job responsibilities and documents and information provided to me, that Section III of the Settlement Agreement allows Toyota at its sole discretion to pre-implement the Customer Confidence Program before the occurrence of the Final Effective Date as defined in the Settlement Agreement.

5. Based on my work activity, including documents that I have assisted in preparing, and information provided to me as part of my job responsibilities and/or by persons I work with and/or oversee, Toyota intends to pre-implement the various components of the Customer Confidence Program in advance of the Final Effective Date.

6. As part of my job responsibilities, I, along with individuals in other units of Toyota, have been actively involved in preparing to launch the various components of the Customer Confidence Program in advance of the Final Effective Date.

7. To launch the Customer Confidence Program, I, in addition to others in several different units at Toyota, are in the process of drafting, obtaining approval and finalizing several types of communications to dealers, technicians and customers/Class Members for each of the sliding door parts covered by the Customer Confidence Program, including but not limited to:

- Separate communications for each of the sliding door parts covered by the Customer Confidence Program, that inform dealers about the launch of the

Customer Confidence Program for that sliding door part, including but not limited to a dealer letter, policy bulletin, and FAQs for each such part;

- Technical service bulletins for each of the sliding door parts covered by the Customer Confidence Program; and
- Communications to customers/Class Members about the availability of the Customer Confidence Program that is specific to their Subject Vehicle.

Executed on this 20 day of May, 2019

Brad Wyatt