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

BRIAN WARNER, et al., individually and
on behalf of all others similarly situated,

Plaintiffs,

v.

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

Defendant.

Case No. CV 15-2171 FMO (FFMx)

**ORDER RE: JOINT MOTION FOR ENTRY
OF AN ORDER GRANTING PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT, CERTIFICATION OF
SETTLEMENT CLASS, AND APPROVAL
OF CLASS NOTICE**

Having reviewed and considered all the briefing filed with respect to the parties' Joint Motion for Entry of Order Granting Preliminary Approval of Class Action Settlement, Certification of Settlement Class, and Approval of Class Notice (Dkt. 88, "Motion") and the oral argument presented at the hearing on November 10, 2016, the court concludes as follows.

INTRODUCTION

On October 3, 2014, Ryan Burns ("Burns") filed a class action complaint against Toyota Motor Sales, U.S.A., Inc. ("Toyota" or "defendant") in Arkansas entitled, Burns v. Toyota Motor Sales, U.S.A., Inc., Case No. CV 14-2208 (W.D. Ark.) ("Related Action"), alleging, among other things, that Toyota designed, manufactured, distributed, advertised, and sold certain Tacoma vehicles, model years 2005 to 2009, that lacked adequate rust protection on the vehicles' frames resulting in premature rust corrosion. (See Dkt. 89, Toyota's Memorandum of Points and

1 Authorities in Support of Joint Motion for Entry of an Order Granting Preliminary Approval of Class
2 Action Settlement and Issuance of Related Orders (“Def. Memo”) at 2). On March 24, 2015, Brian
3 Warner (“Warner”), Kenneth MacLeod (“MacLeod”), Michael Meade (“Meade”), Michael Watson
4 (“Watson”), Dale Franquet (“Franquet”), and James Fuller (“Fuller”) filed a similar class action in
5 this court (“the Action”). (See id. at 2-3; Dkt. 1, Complaint at ¶¶ 1-2).

6 The Second Amended Complaint (“SAC”), the operative complaint in this matter, was filed
7 on November 8, 2016, and asserts 12 claims under various state consumer laws based on the
8 same allegations with respect to Toyota Tacoma vehicles, model years 2005 to 2010; Toyota
9 Tundra vehicles, model years 2007 to 2008; and Toyota Sequoia vehicles, model years 2005 to
10 2008 (“Subject Vehicles”). (See Dkt. 86, SAC at ¶¶ 1 & 97-189). The SAC also added Burns and
11 James Good (“Good”) as named plaintiffs. (See id. at ¶ 15).

12 After engaging in discovery and lengthy negotiations coordinated by the Special Master,
13 Patrick A. Juneau (“Juneau”), the parties reached a settlement on October 31, 2016. (See Dkt.
14 88-1, Plaintiffs’ Memorandum in Support of Joint Motion for Preliminary Approval of Class Action
15 Settlement, Certification of Settlement Class, and Approval of Class Notice (“Plfs. Memo”) at 1).
16 In their Motion, the parties seek an order: (1) certifying a nationwide class for settlement purposes;
17 (2) preliminarily approving the settlement; (3) approving the notice plan and authorizing notice of
18 the settlement to the class; (4) appointing a Settlement Notice Administrator and a Settlement
19 Claims Administrator; (5) setting a schedule and procedures for final approval of the proposed
20 settlement; (6) issuing a preliminary injunction; (7) appointing Warner, MacLeod, Meade, Watson,
21 Fuller, Burns, Good, and Franquet as class representatives; and (8) appointing Timothy G. Blood
22 (“Blood”) of Blood Hurst and O’Reardon LLP and Ben Barnow (“Barnow”) of Barnow and
23 Associates P.C. as class counsel. (See Dkt. 88, Motion at 2).

24 **BACKGROUND**

25 This case arises from allegations that the frames on the Subject Vehicles lack adequate
26 rust protection, resulting in premature rust corrosion that compromises the structural integrity,
27 safety, stability, and crash-worthiness of the vehicles. (See Dkt. 88-1, Plfs. Memo at 4; Dkt. 86,
28 SAC at ¶¶ 1-2 & 17-26). Plaintiffs allege that Toyota represented to plaintiffs and class members

1 that the Subject Vehicles were manufactured “us[ing] the most advanced technology available,
2 [that] helps prevent corrosion[.]”¹ (Dkt. 86, SAC at ¶ 27). Despite Toyota’s representation,
3 plaintiffs allege that the Subject Vehicles “are prone to excessive, premature rust corrosion
4 because the frames were not properly prepared and treated against rust corrosion when they were
5 manufactured.” (Id. at ¶ 1). “The function of frames include handling static and dynamic loads
6 with unintended deflection and distortion, preventing undesirable forces and twisting from driving
7 over uneven surfaces, engine torque, vehicle handling and accelerating and decelerating. [They]
8 also are the primary component that guard against sudden impacts and collisions.” (Id. at ¶ 17).
9 According to plaintiffs, the premature and excessive rust “affects the structural integrity of the
10 vehicles, rendering them unsafe to drive and a hazard on the roadways[.]” (id. at ¶ 18), because
11 rust weakens the frames “by replacing the strong iron or steel with flaky powder, ultimately leading
12 to perforations.” (Id. at ¶ 19).

13 During the litigation of this Action and the Related Action, which included motions to dismiss
14 and a motion for summary judgment, (see Dkt. 88-1, Plfs. Memo at 4-6; Dkt. 89, Def. Memo at 3-
15 4), the parties began to explore a global settlement of both cases. (See Dkt, 89, Def. Memo at 4;
16 Dkt. 88-1, Plfs. Memo at 6). The parties reached a settlement following “a seven month
17 negotiation process” assisted by Juneau. (See Dkt. 88-2, Declaration of Timothy G. Blood in
18 Support of Joint Motion for Preliminary Approval of Class Action Settlement, Certification of
19 Settlement Class, and Approval of Class Notice (“Blood Decl.”) at ¶ 4).

20 The parties have defined the settlement class as:

21 all persons, entities or organizations who, at any time as of the entry of the
22 Preliminary Approval Order, own or owned, purchase(d) or lease(d) Subject
23 Vehicles distributed for sale or lease in any of the fifty States, the District of
24 Columbia, Puerto Rico and all other United States territories and/or
25 possessions.

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28 ¹ Capitalization, emphasis, internal alteration marks, and internal quotation marks may be altered or omitted without notation in record citations.

1 (Dkt. 91, Settlement Agreement at § II.A.8). Excluded from the class are “(a) Toyota, its officers,
2 directors and employees; its affiliates and affiliates’ officers, directors and employees; its
3 distributors and distributors’ officers, directors and employees; and Toyota Dealers and Toyota
4 Dealers’ officers and directors; (b) Plaintiffs’ Counsel; (c) judicial officers and their immediate
5 family members and associated court staff assigned to this case; and (d) persons or entities who
6 or which timely and properly exclude themselves from the Class[.]” (Id.).

7 Pursuant to the settlement, Toyota has developed and will implement a “Frame Inspection
8 and Replacement Program” whereby Toyota will inspect all Subject Vehicles for rust to determine
9 whether the Subject Vehicle’s frame should be replaced. (See Dkt. 88-1, Plfs. Memo at 7; Dkt.
10 89, Def. Memo at 6). More specifically,

11 [t]he Frame Inspection and Replacement Program will provide prospective
12 coverage for replacement of frames on Subject Vehicles in accordance with
13 Rust Perforation Standard and the Inspection Protocol. The duration of
14 prospective coverage will begin following the date of Final Order and Final
15 Judgment and will be calculated by the longer of 12 years from the date of
16 First Use² of the Subject Vehicle or, if the Class Member has owned or
17 leased the vehicle beyond 12 years from date of First Use, 1 year from the
18 date of entry of the Final Order and Final Judgment.³

19 (Dkt. 91, Settlement Agreement at § III.A.1). “Pursuant to the Frame Inspection and Replacement
20 Program and the Inspection Protocol, Toyota shall offer an initial inspection of the Subject Vehicles
21 and additional inspections, as necessary.” (Id.).

22 As part of the Frame Inspection and Replacement Program and the Inspection Protocol,
23 class members “may have their Subject Vehicles’ frames inspected by authorized Toyota Dealers
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26 ² “First Use” is defined as “the date that the Subject Vehicle is originally sold or leased.”
(Dkt. 91, Settlement Agreement at § II.A.19).

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28 ³ Salvaged vehicles or vehicles with titles marked flood-damaged are not eligible for this
benefit. (See Dkt. 91, Settlement Agreement at § III.A.1; id. at § II.A.34).

1 and, if the vehicle is located in a CRC State,⁴ for evaluation for application of the Corrosion
 2 Resistant Compounds (“CRC”).⁵ (Dkt. 91, Settlement Agreement at § III.A.3). For Subject
 3 Vehicles registered in CRC States, application of the CRC is available for a two year period for:
 4 (a) the Tundra and Sequoia Subject Vehicles; and (b) the Tacoma Subject Vehicles for which the
 5 CRC has not been previously applied and the frame was not previously replaced.⁶ (See id.).
 6 “Toyota, at its sole discretion, may periodically mail reminder notices of this benefit to Class
 7 Members after the issuance of the Final Order and Judgment. Toyota shall mail a reminder notice
 8 to Class Members in CRC States when there [are] only six (6) months remaining for the possible
 9 application of the CRC. The reminder notices shall notify the Class Members of the timing of this
 10 Frame Inspection and Replacement Program and will encourage Class Members to bring in their
 11 Subject Vehicles for an inspection, pursuant to the terms of [the] Settlement Agreement.”⁷ (Id.).

12 Inspections of the Subject Vehicles in CRC States that disclose a perforation less than ten
 13 millimeters (“mm”) will result in the frame being “cleaned and if the vehicle has not previously
 14 received CRC or a new frame, pursuant to a prior [Limited Service Campaign], CRC will be
 15 applied[.]” (Dkt. 91-1, Exh. 11 (Frame Inspection and Replacement Protocol (“Protocol”)) at § III;
 16 see also id. at § I; Dkt. 91, Settlement Agreement at § II.A.33). “If any perforation in the frame is
 17 found to be 10 mm or larger, then the frame will be replaced, as well as all applicable parts and
 18 service items incidental to frame replacement, such as cables, harnesses, pipes, clamps, tubes,
 19 hoses, spare tire carrier, spare tire carrier plate, bolts, brackets, and wires and all fluids will be

21 ⁴ CRC States, “which have high road salt use,” include Connecticut, Delaware, the District
 22 of Columbia, Illinois, Indiana, Kentucky, Massachusetts, Maryland, Maine, Michigan, Minnesota,
 23 New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Virginia, Vermont,
 Wisconsin, and West Virginia. (See Dkt. 91, Settlement Agreement at § III.A.3 n. 1).

24 ⁵ If a class member disputes the findings of the Toyota Dealer that conducted the
 25 inspection, the class member may take the Subject Vehicle to a second Toyota Dealer for another
 frame inspection. (See Dkt. 91, Settlement Agreement at § III.A.4).

26 ⁶ The timing of the availability of the CRC will depend on Toyota’s ability to obtain the
 27 applicable environmental permits. (See Dkt. 91, Settlement Agreement at § III.A.3).

28 ⁷ Toyota will provide draft reminder notices to class counsel for their review and comment.
 (See Dkt. 91, Settlement Agreement at § III.A.3).

1 replaced, as required.” (Dkt. 91-1, Exh. 11, Protocol at § IV; see also id. at § I).

2 In addition, “[w]ithout cost to Class Members and upon request from the Class Member,
3 Toyota shall arrange a complimentary Loaner Vehicle (upon proof of adequate insurance) if the
4 vehicle is required by the Toyota dealer to remain at the dealership at least overnight pursuant to
5 the Frame Inspection and Replacement Program, for up to seven (7) days, absent exceptional
6 circumstances, to eligible Class Members whose Subject Vehicles are undergoing frame
7 replacement[.]” (Dkt. 91, Settlement Agreement at § III.A.2; see also Dkt. 91-1, Exh. 11, Protocol
8 at § VI). In appropriate circumstances, where a class member demonstrates a need for a vehicle
9 similar to the Subject Vehicles, Toyota “shall use good faith efforts to satisfy that request.” (Dkt.
10 91, Settlement Agreement at § III.A.2; see also Dkt. 91-1, Exh. 11, Protocol at § VI).

11 During the Claim Period,⁸ class members may submit claims for “previously paid out-of-
12 pocket expenses for frame replacement incurred to address a condition that satisfies the Rust
13 Perforation Standard on the Subject Vehicles that were not otherwise reimbursed and that were
14 incurred prior to the Initial Notice Date.” (Dkt. 91, Settlement Agreement at § III.B.1). Claim forms
15 will be submitted to and processed by the Settlement Notice Administrator. (See id. at §§ III.B.2-
16 3). The Settlement Notice Administrator will then send timely claims to the Settlement Claims
17 Administrator, who will process the claims. (See id. at §§ III.B.4-5).

18 All the “costs and expenses associated with providing the relief and otherwise implementing
19 the relief specified in Section III of [the] Settlement Agreement shall be the sole obligation of and
20 paid by Toyota.” (Dkt. 91, Settlement Agreement at § III). Toyota will also bear the cost of
21 disseminating and implementing the notice program, which is estimated to be between \$1.75
22 million and \$2.5 million. (See id. at § IV.A). Finally, Toyota will not oppose an application for an
23 award of attorney’s fees in the amount of \$9.75 million and costs and expenses up to \$150,000.
24 (See id. at § VIII.B). Toyota will also pay for incentive awards of up to \$2,500 per class
25 representative. (See id. at § VIII.C).

26 _____
27 ⁸ The Claim Period will “run from the date of the Initial Notice Date up to and including sixty
28 (60) days after the Court’s issuance of the Final Order and Final Judgment.” (See Dkt. 91,
Settlement Agreement at § II.A.6).

LEGAL STANDARD

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2 “[I]n the context of a case in which the parties reach a settlement agreement prior to class
3 certification, courts must peruse the proposed compromise to ratify both the propriety of the
4 certification and the fairness of the settlement.” Staton v. Boeing Co., 327 F.3d 938, 952 (9th Cir.
5 2003).

I. CLASS CERTIFICATION.

6
7 At the preliminary approval stage, the court “may make either a preliminary determination
8 that the proposed class action satisfies the criteria set out in Rule 23 or render a final decision as
9 to the appropriateness of class certification.”⁹ Smith v. Wm. Wrigley Jr. Co., 2010 WL 2401149,
10 *3 (S.D. Fla. 2010) (internal citation omitted); see also Sandoval v. Roadlink USA Pac., Inc., 2011
11 WL 5443777, *2 (C.D. Cal. 2011) (citing Amchem Prods., Inc. v. Windsor, 521 U.S. 591, 620, 117
12 S.Ct. 2231, 2248 (1997)) (“Parties seeking class certification for settlement purposes must satisfy
13 the requirements of Federal Rule of Civil Procedure 23[.]”). “A court considering such a request
14 should give the Rule 23 certification factors ‘undiluted, even heightened, attention in the settlement
15 context.” Sandoval, 2011 WL 5443777, at *2 (quoting Amchem, 521 U.S. at 620, 117 S.Ct. at
16 2248). “Such attention is of vital importance, for a court asked to certify a settlement class will lack
17 the opportunity, present when a case is litigated, to adjust the class, informed by the proceedings
18 as they unfold.” Amchem, 521 U.S. at 620, 117 S.Ct. at 2248.

19 A party seeking class certification must first demonstrate that: “(1) the class is so numerous
20 that joinder of all members is impracticable; (2) there are questions of law or fact common to the
21 class; (3) the claims or defenses of the representative parties are typical of the claims or defenses
22 of the class; and (4) the representative parties will fairly and adequately protect the interests of the
23 class.” Fed. R. Civ. P. 23(a).

24 “Second, the proposed class must satisfy at least one of the three requirements listed in
25 Rule 23(b).” Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338, 345, 131 S.Ct. 2541, 2548 (2011).
26 Rule 23(b) is satisfied if:

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28 ⁹ All “Rule” references are to the Federal Rules of Civil Procedure.

1 (1) prosecuting separate actions by or against individual class members
2 would create a risk of:

3 (A) inconsistent or varying adjudications with respect to individual
4 class members that would establish incompatible standards of
5 conduct for the party opposing the class; or

6 (B) adjudications with respect to individual class members that, as a
7 practical matter, would be dispositive of the interests of the other
8 members not parties to the individual adjudications or would
9 substantially impair or impede their ability to protect their interests;

10 (2) the party opposing the class has acted or refused to act on grounds that
11 apply generally to the class, so that final injunctive relief or corresponding
12 declaratory relief is appropriate respecting the class as a whole; or

13 (3) the court finds that the questions of law or fact common to class members
14 predominate over any questions affecting only individual members, and that
15 a class action is superior to other available methods for fairly and efficiently
16 adjudicating the controversy. The matters pertinent to these findings include:

17 (A) the class members' interests in individually controlling the
18 prosecution or defense of separate actions;

19 (B) the extent and nature of any litigation concerning the controversy
20 already begun by or against class members;

21 (C) the desirability or undesirability of concentrating the litigation of the
22 claims in the particular forum; and

23 (D) the likely difficulties in managing a class action.

24 Fed. R. Civ. P. 23(b)(1)-(3).

25 The party seeking class certification bears the burden of demonstrating that the proposed
26 class meets the requirements of Rule 23. See *Dukes*, 564 U.S. at 350, 131 S.Ct. at 2551 ("Rule
27 23 does not set forth a mere pleading standard. A party seeking class certification must
28 affirmatively demonstrate his compliance with the Rule – that is, he must be prepared to prove that

1 there are in fact sufficiently numerous parties, common questions of law or fact, etc.”). However,
2 courts need not consider the Rule 23(b)(3) considerations regarding manageability of the class
3 action, as settlement obviates the need for a manageable trial. See Morey v. Louis Vuitton N.
4 Am., Inc., 2014 WL 109194, *12 (S.D. Cal. 2014) (“[B]ecause this certification of the Class is in
5 connection with the Settlement rather than litigation, the Court need not address any issues of
6 manageability that may be presented by certification of the class proposed in the Settlement
7 Agreement.”); Rosenburg v. I.B.M., 2007 WL 128232, *3 (N.D. Cal. 2007) (discussing “the
8 elimination of the need, on account of the [s]ettlement, for the Court to consider any potential trial
9 manageability issues that might otherwise bear on the propriety of class certification”).

10 II. FAIRNESS OF CLASS ACTION SETTLEMENT.

11 Rule 23 provides that “the claims, issues, or defenses of a certified class may be settled
12 . . . only with the court’s approval.” Fed. R. Civ. P. 23(e). “The primary concern of [Rule 23(e)]
13 is the protection of th[e] class members, including the named plaintiffs, whose rights may not have
14 been given due regard by the negotiating parties.” Officers for Justice v. Civil Service Comm’n
15 of the City & Cnty. of San Francisco, 688 F.2d 615, 624 (9th Cir. 1982), cert. denied 459 U.S.
16 1217 (1983). Accordingly, a district court must determine whether a proposed class action
17 settlement is “fundamentally fair, adequate, and reasonable.” Staton, 327 F.3d at 959; see Fed.
18 R. Civ. Proc. 23(e). Whether to approve a class action settlement is “committed to the sound
19 discretion of the trial judge.” Class Plaintiffs v. City of Seattle, 955 F.2d 1268, 1276 (9th Cir.), cert.
20 denied, Hoffer v. City of Seattle, 506 U.S. 953 (1992) (internal quotation marks and citation
21 omitted).

22 “If the [settlement] proposal would bind class members, the court may approve it only after
23 a hearing and on finding that it is fair, reasonable, and adequate.” Fed. R. Civ. P. 23(e)(2).
24 “[S]ettlement approval that takes place prior to formal class certification requires a higher standard
25 of fairness [given t]he dangers of collusion between class counsel and the defendant, as well as
26 the need for additional protections when the settlement is not negotiated by a court designated
27 class representative[.]” Hanlon v. Chrysler Corp., 150 F.3d 1011, 1026 (9th Cir. 1998). As the
28 Ninth Circuit has observed, “[p]rior to formal class certification, there is an even greater potential

1 for a breach of fiduciary duty owed the class during settlement. Accordingly, such agreements
2 must withstand an even higher level of scrutiny for evidence of collusion or other conflicts of
3 interest than is ordinarily required under Rule 23(e) before securing the court’s approval as fair.”
4 In re Bluetooth Headset Prods. Liab. Litig., 654 F.3d 935, 946 (9th Cir. 2011).

5 Approval of a class action settlement requires a two-step process – a preliminary approval
6 followed by a later final approval. See West v. Circle K Stores, Inc., 2006 WL 1652598, *2 (E.D.
7 Cal. 2006) (“[A]pproval of a class action settlement takes place in two stages.”); Tijero v. Aaron
8 Bros., Inc., 2013 WL 60464, *6 (N.D. Cal. 2013) (“The decision of whether to approve a proposed
9 class action settlement entails a two-step process.”). At the preliminary approval stage, the court
10 “evaluate[s] the terms of the settlement to determine whether they are within a range of possible
11 judicial approval.” Wright v. Linkus Enters., Inc., 259 F.R.D. 468, 472 (E.D. Cal. 2009). Although
12 “[c]loser scrutiny is reserved for the final approval hearing[.]” Harris v. Vector Mktg. Corp., 2011
13 WL 1627973, *7 (N.D. Cal. 2011), “the showing at the preliminary approval stage – given the
14 amount of time, money and resources involved in, for example, sending out new class notices –
15 should be good enough for final approval.” Spann v. J.C. Penney Corp., 314 F.R.D. 312, 319
16 (C.D. Cal. 2016). “At this stage, the court may grant preliminary approval of a settlement and
17 direct notice to the class if the settlement: (1) appears to be the product of serious, informed,
18 non-collusive negotiations; (2) has no obvious deficiencies; (3) does not improperly grant
19 preferential treatment to class representatives or segments of the class; and (4) falls within the
20 range of possible approval.” Id. (internal quotation marks omitted); Harris, 2011 WL 1627973, at
21 *7 (same); Cordy v. USS-Posco Indus., 2013 WL 4028627, *3 (N.D. Cal. 2013) (“Preliminary
22 approval of a settlement and notice to the proposed class is appropriate if the proposed settlement
23 appears to be the product of serious, informed, non-collusive negotiations, has no obvious
24 deficiencies, does not improperly grant preferential treatment to class representatives or segments
25 of the class, and falls within the range of possible approval.”) (internal quotation marks omitted).

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DISCUSSION

I. CLASS CERTIFICATION.

A. Rule 23(a) Requirements.

1. **Numerosity.**

The first prerequisite of class certification requires that the class be “so numerous that joinder of all members is impractical[.]” Fed. R. Civ. P. 23(a)(1). Although impracticability does not hinge only on the number of members in the putative class, joinder is usually impracticable if a class is “large in numbers.” See Jordan v. Cnty. of Los Angeles, 669 F.2d 1311, 1319 (9th Cir.), vacated on other grounds, 459 U.S. 810 (1982) (class sizes of 39, 64, and 71 are sufficient to satisfy the numerosity requirement). “As a general matter, courts have found that numerosity is satisfied when class size exceeds 40 members, but not satisfied when membership dips below 21.” Slaven v. BP Am., Inc., 190 F.R.D. 649, 654 (C.D. Cal. 2000); see Tait v. BSH Home Appliances Corp., 289 F.R.D. 466, 473 (C.D. Cal. 2012) (“A proposed class of at least forty members presumptively satisfies the numerosity requirement.”).

Here, the members of the class are so numerous that joinder of all members is impracticable. According to the parties, there are approximately 1.5 million Subject Vehicles. (See Dkt. 88-2, Blood Decl. at ¶ 4; Dkt. 89, Def. Memo at 5). The large number of vehicles leaves no doubt that the class exceeds 40 members.

2. **Commonality.**

The commonality requirement is satisfied if “there are common questions of law or fact common to the class[.]” Fed. R. Civ. P. 23(a)(2). Commonality requires plaintiffs to demonstrate that their claims “depend upon a common contention . . . [whose] truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.” Dukes, 564 U.S. at 350, 131 S.Ct. at 2551; see also Wolin v. Jaguar Land Rover N. Am., LLC, 617 F.3d 1168, 1172 (9th Cir. 2010) (The commonality requirement demands that “class members’ situations share a common issue of law or fact, and are sufficiently parallel to insure a vigorous and full presentation of all claims for relief.”) (internal quotation marks omitted). “The plaintiff[s] must demonstrate the capacity of classwide proceedings to generate common answers to common questions of law or

1 fact that are apt to drive the resolution of the litigation.” Mazza v. Am. Honda Motor Co., 666 F.3d
2 581, 588 (9th Cir. 2012) (internal quotation marks omitted). “This does not, however, mean that
3 every question of law or fact must be common to the class; all that Rule 23(a)(2) requires is a
4 single significant question of law or fact.” Abdullah v. U.S. Sec. Assocs., Inc., 731 F.3d 952, 957
5 (9th Cir. 2013), cert. denied, 135 S.Ct. 53 (2014) (emphasis and internal quotation marks
6 omitted); see Mazza, 666 F.3d at 589 (characterizing commonality as a “limited burden[,]” stating
7 that it “only requires a single significant question of law or fact”). Proof of commonality under Rule
8 23(a) is “less rigorous” than the related preponderance standard under Rule 23(b)(3). See Mazza,
9 666 F.3d at 589. “The existence of shared legal issues with divergent factual predicates is
10 sufficient, as is a common core of salient facts coupled with disparate legal remedies within the
11 class.” Hanlon, 150 F.3d at 1019.

12 Here, the litigation involves common class-wide issues that would drive the resolution of
13 plaintiffs’ claims. The common questions include: whether the Subject Vehicles are prone to
14 excessive, premature rust corrosion because the frames were not properly prepared and treated
15 against rust corrosion when they were manufactured, (see Dkt. 86, SAC at ¶ 1); whether Toyota
16 knew or should have known of the defect; whether Toyota misrepresented the standard, quality,
17 and characteristics of the Subject Vehicles; whether Toyota’s misrepresentations regarding the
18 standard, quality, and characteristics of the Subject Vehicles were likely to mislead reasonable
19 consumers; whether Toyota’s omission that the frames on the Subject Vehicles lacked adequate
20 rust corrosion protection was a material fact that a reasonable consumer would be expected to
21 rely on when deciding whether to purchase a vehicle; whether plaintiffs and class members have
22 been damaged; and whether plaintiffs and class members are entitled to equitable relief. (See id.
23 at ¶¶ 20 & 92; see also Dkt. 88-1, Plfs. Memo at 26); Wolin, 617 F.3d at 1172 (“Appellants’
24 complaints set forth more than one issue that is common to the class, including: 1) whether the
25 [vehicles’] alignment geometry was defective; 2) whether [defendant] was aware of th[e] defect;
26 3) whether [defendant] concealed the nature of the defect; 4) whether [defendant’s] conduct
27 violated [state consumer protection laws]; and 5) whether [defendant] was obligated to pay for or
28 repair the alleged defect pursuant to the express or implied terms of its warranties. These

1 common core questions are sufficient to satisfy the commonality test.”).

2 3. Typicality.

3 “Typicality refers to the nature of the claim or defense of the class representative, and not
4 to the specific facts from which it arose or the relief sought.” Ellis v. Costco Wholesale Corp., 657
5 F.3d 970, 984 (9th Cir. 2011) (internal quotation marks and citation omitted). To demonstrate
6 typicality, plaintiffs’ claims must be “reasonably co-extensive with those of absent class
7 members[,]” although “they need not be substantially identical.” Hanon, 150 F.3d at 1020; see
8 Ellis, 657 F.3d at 984 (“Plaintiffs must show that the named parties’ claims are typical of the
9 class.”). “The test of typicality is whether other members have the same or similar injury, whether
10 the action is based on conduct which is not unique to the named plaintiffs, and whether other class
11 members have been injured by the same course of conduct.” Ellis, 657 F.3d at 984 (internal
12 quotation marks and citation omitted).

13 Here, the claims of the representative plaintiffs are typical of the claims of the class.
14 Plaintiffs’ claims arise from the same nucleus of facts and are based on the same legal theory, i.e.,
15 that the Subject Vehicles have a defect that Toyota failed to disclose. (See, e.g., Dkt. 86, SAC
16 at ¶¶ 1, 18 & 27-28). Additionally, the court is not aware of any facts that would subject the class
17 representatives “to unique defenses which threaten to become the focus of the litigation.” Hanon
18 v. Dataproducts Corp., 976 F.2d 497, 508 (9th Cir. 1992).

19 4. Adequacy of Representation.

20 “The named Plaintiffs must fairly and adequately protect the interests of the class.” Ellis,
21 657 F.3d at 985 (citing Fed. R. Civ. P. 23(a)(4)). “To determine whether named plaintiffs will
22 adequately represent a class, courts must resolve two questions: (1) do the named plaintiffs and
23 their counsel have any conflicts of interest with other class members and (2) will the named
24 plaintiffs and their counsel prosecute the action vigorously on behalf of the class?” Id. (internal
25 quotation marks and citation omitted). “Adequate representation depends on, among other
26 factors, an absence of antagonism between representatives and absentees, and a sharing of
27 interest between representatives and absentees.” Id.

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1 The proposed class representatives do not appear to have any conflicts of interest with the
2 absent class members, as they have no individual claims separate from the class claims. As
3 plaintiff Warner states: “My interests are aligned with those of the Class. Throughout my
4 involvement with this case, I have sought to maximize the benefits recovered by the Class. . . .
5 I am not aware of any interest that is antagonistic with or which conflicts with the interests of the
6 Class.” (See Dkt 88-4, Declaration of Brian Warner (“Warner Decl.”) at ¶ 9). The other proposed
7 class representatives made similar representations. (See Dkt. 88-5, Declaration of Kenneth
8 MacLeod (“McLeod Decl.”) at ¶ 6; Dkt. 88-6, Declaration of Michael Meade (“Meade Decl.”) at ¶
9 8; Dkt. 88-7, Declaration of Michael Watson (“Watson Decl.”) at ¶ 6; Dkt. 88-8, Declaration of
10 James Fuller (“Fuller Decl.”) at ¶ 7; Dkt. 88-9, Declaration of Dale Franquet (“Franquet Decl.”) at
11 ¶ 6; Dkt. 88-10, Declaration of Ryan Burns (“Burns Decl.”) at ¶ 12; Dkt. 88-11, Declaration of
12 James Michael Good (“Good Decl.”) at ¶ 15). Indeed, all of the class representatives understand
13 their duties “to put the Class’s interests ahead of [their] own individual interests and to act in the
14 best interests of the Class.” (Dkt. 88-1, Warner Decl. at ¶ 8; see Dkt. 88-5, McLeod Decl. at ¶ 5;
15 Dkt. 88-6, Meade Decl. at ¶ 7; Dkt. 88-7, Watson Decl. at ¶ 5; Dkt. 88-8, Fuller Decl. at ¶ 6; Dkt.
16 88-9, Franquet Decl. at ¶ 5; Dkt. 88-10, Burns Decl. at ¶ 11; Dkt. 88-11, Good Decl. at ¶ 14). “The
17 adequacy-of-representation requirement is met here because Plaintiffs have the same interests
18 as the absent Class Members[.] Further, there is no apparent conflict of interest between the
19 named Plaintiffs’ claims and those of the other Class Members’ – particularly because the named
20 Plaintiffs have no separate and individual claims apart from the Class.” Barbosa v. Cargill Meat
21 Solutions Corp, 297 F.R.D. 431, 442 (E.D. Cal. 2013).

22 Additionally, the court is satisfied that plaintiffs’ counsel are competent and willing to
23 prosecute this action vigorously. Plaintiffs’ counsel request, and the Settlement Agreement
24 provides, that the court appoint as class counsel Blood of Blood Hurst and O’Reardon LLP and
25 Barnow of Barnow and Associates P.C. (See Dkt. 88, Motion at 2; Dkt. 88-1, Plfs. Memo at 1; Dkt.
26 91, Settlement Agreement at § II.A.9). Blood states that he has “significant experience leading
27 consumer protection class action lawsuits, including consumer protection actions involving
28 automobiles[, and has] been appointed lead counsel by numerous state and federal courts,

1 including in complex and multi-district litigation involving false advertising claims brought on behalf
2 of consumers.” (Dkt. 88-2, Blood Decl. at ¶ 58; see also id. at Exh. A (Blood Hurst & O’Reardon
3 LLP Firm Resume)). Blood adds that Barnow “also has significant experience leading consumer
4 protection class action lawsuits, including class actions [Blood has] litigated with him.” (Dkt. 88-2,
5 Blood Decl. at ¶ 59; see also id. at Exh. B (Barnow and Associates Firm Resume)). Based on
6 Blood’s representations and the firms’ resumes, and having observed counsel’s diligence in
7 litigating this case, the court finds that plaintiffs’ counsel are competent, and that the adequacy of
8 representation requirement is satisfied. See Barbosa, 297 F.R.D. at 443 (“There is no challenge
9 to the competency of the Class Counsel, and the Court finds that Plaintiffs are represented by
10 experienced and competent counsel who have litigated numerous class action cases.”); Avilez v.
11 Pinkerton Gov’t Servs., Inc., 286 F.R.D. 450, 457 (C.D. Cal. 2012) vacated and remanded on
12 other grounds, 595 Fed. Appx. 579 (9th Cir. 2015) (“Defendants do not dispute and the evidence
13 confirms that, as detailed in their declarations, Plaintiff’s counsel are experienced class action
14 litigators who have litigated many . . . class actions and have been certified as class counsel in
15 numerous other class actions[.]”).

16 B. Rule 23(b) Requirements.

17 Certification under Rule 23(b)(3) is proper “whenever the actual interests of the parties can
18 be served best by settling their differences in a single action.” Hanlon, 150 F.3d at 1022 (internal
19 quotation marks omitted). The rule requires two different inquiries, specifically a determination as
20 to whether (1) “questions of law or fact common to class members predominate over any
21 questions affecting only individual members[;]” and (2) “a class action is superior to other available
22 methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3); see
23 Spann, 314 F.R.D. at 321-22.

24 1. **Predominance.**

25 “The Rule 23(b)(3) predominance inquiry tests whether proposed classes are sufficiently
26 cohesive to warrant adjudication by representation.” Amchem, 521 U.S. at 623, 117 S.Ct. at 2249.
27 “Rule 23(b)(3) focuses on the relationship between the common and individual issues. When
28 common questions present a significant aspect of the case and they can be resolved for all

1 members of the class in a single adjudication, there is clear justification for handling the dispute
2 on a representative rather than on an individual basis.” Hanlon, 150 F.3d at 1022 (internal
3 quotation marks and citations omitted); see In re Wells Fargo Home Mortg. Overtime Pay Litig.,
4 571 F.3d 953, 959 (9th Cir. 2009) (“[T]he main concern in the predominance inquiry . . . [is] the
5 balance between individual and common issues.”). Additionally, the class damages must be
6 sufficiently traceable to plaintiffs’ liability case. See Comcast Corp. v. Behrend, 133 S.Ct. 1426,
7 1433 (2013).

8 As an initial matter, courts often find predominance in automobile defect class actions. See,
9 e.g., Wolin, 617 F.3d at 1173 (“Common issues predominate such as whether [defendant] was
10 aware of the existence of the alleged defect, whether [defendant] had a duty to disclose its
11 knowledge and whether it violated consumer protection laws when it failed to do so.”); Keegan v.
12 American Honda Motor Co., Inc., 284 F.R.D. 504, 532-34 (C.D. Cal. 2012) (finding that plaintiffs
13 satisfied the predominance requirement as to their CLRA, UCL, and warranty claims because of
14 common questions regarding “the nature of the design defect in question, the likely effect of the
15 defect on class vehicles, its likely impact on vehicle safety, what Honda knew or did not know, and
16 what it disclosed or did not disclose to consumers”); Chamberlan v. Ford Motor Co., 223 F.R.D.
17 524, 526-27 (N.D. Cal. 2004) (“[C]ommon questions include whether the design of the plastic
18 intake manifold was defective, whether Ford was aware of the alleged design defects, whether
19 Ford had a duty to disclose its knowledge, whether it failed to do so, whether the facts that Ford
20 allegedly failed to disclose were material, and whether the alleged failure to disclose violated the
21 CLRA. Common questions thus predominate over individual questions in this case.”).

22 Here, plaintiffs have demonstrated that “[a] common nucleus of facts and potential legal
23 remedies dominates this litigation.” Hanlon, 150 F.3d at 1022. As discussed above, see supra
24 at § I.A.2., there are many common questions regarding the existence of a manufacturing defect
25 in the Subject Vehicles and Toyota’s knowledge of this defect. (See Dkt. 86, SAC at ¶¶ 1, 20 &
26 92; Dkt. 88-1, Plfs. Memo at 31). The answers to these questions, which would drive the
27 resolution of this litigation, do not depend on the individual facts or circumstances of an individual
28 plaintiff’s purchase or lease of the Subject Vehicles. The Subject Vehicles either have a defect

1 or they do not; Toyota knew or should have known about the defect or it did not; and Toyota
2 withheld or omitted material information from consumers or it did not. Additionally, the relief
3 sought applies to all class members and is traceable to plaintiffs' liability case. (See Dkt. 88-1,
4 Plfs. Memo at 31); Comcast, 133 S.Ct. at 1433. In short, there are several common questions that
5 predominate over all others in this litigation.

6 2. **Superiority.**

7 "The superiority inquiry under Rule 23(b)(3) requires determination of whether the
8 objectives of the particular class action procedure will be achieved in the particular case" and
9 "necessarily involves a comparative evaluation of alternative mechanisms of dispute resolution."
10 Hanlon, 150 F.3d at 1023. Rule 23(b)(3) provides a list of four non-exhaustive factors relevant to
11 superiority. See Fed. R. Civ. P. 23(b)(3)(A)-(D).

12 The first factor considers "the class members' interests in individually controlling the
13 prosecution or defense of separate actions." Fed. R. Civ. P. 23(b)(3)(A). "This factor weighs
14 against class certification where each class member has suffered sizeable damages or has an
15 emotional stake in the litigation." Barbosa, 297 F.R.D. at 444. Here, plaintiffs do not assert claims
16 for emotional distress damages, nor is there any indication that the amount of damages any
17 individual class member could recover is significant or substantially greater than the potential
18 recovery of any other class member. (See, generally, Dkt. 86, SAC). The alternative method of
19 resolution is individual claims for a relatively modest amount of damages, and such claims would
20 likely never be brought, as "litigation costs would dwarf potential recovery." Hanlon, 150 F.3d at
21 1023; see Leyva v. Medline Indus., Inc., 716 F.3d 510, 515 (9th Cir. 2013) ("In light of the small
22 size of the putative class members' potential individual monetary recovery, class certification may
23 be the only feasible means for them to adjudicate their claims. Thus, class certification is also the
24 superior method of adjudication."); Bruno v. Quten Research Inst., LLC, 280 F.R.D. 524, 537 (C.D.
25 Cal. 2011) ("Given the small size of each class member's claim, class treatment is not merely the
26 superior, but the only manner in which to ensure fair and efficient adjudication of the present
27 action."). As plaintiffs note, given the issues involved in this litigation, "the expert costs alone
28 would dwarf any individual recovery." (Dkt. 88-1, Plfs. Memo at 34). In short, "there is no

1 evidence that Class members have any interest in controlling prosecution of their claims
2 separately nor would they likely have the resources to do so.” Munoz v. PHH Corp., 2013 WL
3 2146925, *26 (E.D. Cal. 2013).

4 The second factor to consider is “the extent and nature of any litigation concerning the
5 controversy already begun by or against class members.” Fed. R. Civ. P. 23(b)(3)(B). There is
6 no indication that any class member is involved in any other litigation concerning the claims in this
7 case. (See Dkt. 88-1, Plfs. Memo at 34).

8 The third factor is “the desirability or undesirability of concentrating the litigation of the
9 claims in the particular forum[.]” Fed. R. Civ. P. 23(b)(3)(C), and the fourth factor is “the likely
10 difficulties in managing a class action.” Fed. R. Civ. P. 23(b)(3)(D). As noted above, “[i]n the
11 context of settlement . . . the third and fourth factors are rendered moot and are irrelevant.”
12 Barbosa, 297 F.R.D. at 444; see Amchem, 521 U.S. at 620, 117 S.Ct. at 2248 (“Confronted with
13 a request for settlement-only class certification, a district court need not inquire whether the case,
14 if tried, would present intractable management problems, for the proposal is that there be no trial.”)
15 (internal citation omitted).

16 The only factor in play here weighs in favor of class treatment. Further, the filing of
17 separate suits by several thousand class members “would create an unnecessary burden on
18 judicial resources.” Barbosa, 297 F.R.D. at 445. Under the circumstances, the court finds that
19 the superiority requirement is satisfied.

20 II. FAIRNESS, REASONABLENESS, AND ADEQUACY OF THE PROPOSED 21 SETTLEMENT.

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

23 “This circuit has long deferred to the private consensual decision of the parties.” Rodriguez
24 v. W. Publ’g Corp., 563 F.3d 948, 965 (9th Cir. 2009). The Ninth Circuit has “emphasized” that
25 “the court’s intrusion upon what is otherwise a private consensual agreement negotiated between
26 the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that
27 the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating
28 parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all

1 concerned.” Id. (internal quotation marks omitted). When the settlement is “the product of an
2 arms-length, non-collusive, negotiated resolution[,]” id., courts afford the parties the presumption
3 that the settlement is fair and reasonable. See Spann, 314 F.R.D. at 324 (“A presumption of
4 correctness is said to attach to a class settlement reached in arm’s-length negotiations between
5 experienced capable counsel after meaningful discovery.”) (internal citation omitted); In re Netflix
6 Privacy Litig., 2013 WL 1120801, *4 (N.D. Cal. 2013) (“Courts have afforded a presumption of
7 fairness and reasonableness of a settlement agreement where that agreement was the product
8 of non-collusive arms’ length negotiations conducted by capable and experienced counsel.”).

9 Here, there is no evidence of collusion or fraud leading to, or taking part in, the settlement
10 negotiations between the parties. On the contrary, in this Action and the Related Action, Toyota
11 filed “multiple motions to dismiss, moved for summary judgment, preemptively moved to deny
12 class certification, moved to stay discovery, opposed two motions to compel, and initially
13 aggressively withheld discovery.” (Dkt. 88-2, Blood Decl. at ¶ 3; see id. at ¶¶ 17-18, 21-25 & 28-
14 33 (describing procedural and substantive history with respect to Toyota’s pretrial motions)). With
15 respect to discovery, plaintiffs’ counsel “engaged in a hard-fought and contested discovery
16 process with Toyota, obtained and then analyzed approximately 2.5 million pages of documents
17 produced by Toyota, subpoenaed five third parties, and analyzed the documents obtained from
18 th[ose] entities.” (Id. at ¶ 34).

19 Moreover, throughout the litigation, plaintiffs’ counsel communicated with three consulting
20 experts for guidance on technical issues relating to metallurgy and vehicle safety and structural
21 integrity engineering issues. (See Dkt. 88-2, Blood Decl. at ¶ 42). Counsel also interviewed
22 Toyota’s National Manager of Quality Operations regarding, among other things, pre- and post-
23 launch vehicle testing and quality assurance practices, rust corrosion and perforation root cause
24 analyses, frame manufacturing and phosphate coating practices, and consumer complaints. (See
25 id. at ¶ 43). Additionally, the work of Toyota’s experts was provided to plaintiffs’ engineering
26 expert, and plaintiffs’ counsel interviewed Toyota’s engineering experts about their analyses and
27 the engineering justification for the frame replacement standard. (See id. at ¶ 45).

28

1 In March 2016, the parties began settlement discussions. (See Dkt. 88-2, Blood Decl. at
2 ¶ 47). According to plaintiffs' counsel, when negotiations began, they "had a clear view of the
3 strengths and weaknesses of their case and were in a strong position to make an informed
4 decision regarding the reasonableness of a potential settlement." (Dkt. 88-1, Plfs. Memo at 19-
5 20). The parties "engaged in extensive arm's length negotiations, including numerous mediation
6 sessions . . . before Settlement Special Master Patrick A. Juneau[.]" (Dkt. 89, Def. Memo at 4; see
7 also Dkt. 88-2, Blood Decl. at ¶ 48 (describing settlement negotiations as "hard-fought")). The
8 parties had nine face-to-face meetings in various parts of the country. (See Dkt. 88-2, Blood Decl.
9 at ¶ 48; Dkt. 89, Def. Memo at 4). During the discussions, the parties drafted, negotiated, and
10 exchanged many revisions of the Settlement Agreement and related exhibits. (See Dkt. 88-2,
11 Blood Decl. at ¶ 5). After more than "seven months of hard-fought negotiations," the parties
12 reached agreement on all the substantive terms of the settlement on October 18, 2016. (See id.
13 at ¶¶ 48 & 55). Subsequently, the parties negotiated attorney's fees and costs, and plaintiffs'
14 incentive awards. (See id. at ¶ 55; see also Dkt. 89, Def. Memo at 4).

15 Based on the evidence and record before the court, the court is persuaded that the parties
16 thoroughly investigated and considered their own and the opposing parties' positions. The parties
17 clearly had a sound basis for measuring the terms of the settlement against the risks of continued
18 litigation, and there is no evidence that the settlement is "the product of fraud or overreaching by,
19 or collusion between, the negotiating parties[.]" Rodriguez, 563 F.3d at 965 (quoting Officers for
20 Justice, 688 F.2d at 625).

21 B. The Amount Offered In Settlement Falls Within a Range of Possible Judicial
22 Approval and is a Fair and Reasonable Outcome for Class Members.

23 1. **Recovery for Class Members.**

24 The settlement is fair, reasonable, and adequate, particularly when viewed in light of the
25 litigation risks in this case. As described above, the benefits to the class members include: free
26 frame inspections for each Subject Vehicle for up to 12 years from first use, or for up to one year
27 from the entry of final judgment, whichever is longer; application of CRC for certain vehicles in
28 CRC States; and free frame replacement for frames exhibiting a perforation of 10 mm or more.

1 (See Dkt. 91, Settlement Agreement at § III.A; see also Dkt. 91-1, Exh. 11, Protocol). Also, if a
2 Subject Vehicle is required to be kept overnight for a frame inspection or frame replacement,
3 Toyota will provide a loaner vehicle, at no cost, to the class member. (See Dkt. 91, Settlement
4 Agreement at § III.A.2). Finally, class members who previously paid for a frame replacement to
5 address a condition that satisfies the Protocol's criteria will be reimbursed for their out-of-pocket
6 expenses. (See id. at § III.B).

7 Plaintiffs characterize the settlement as “a complete and total success for the Class,
8 achieving the very purpose of filing this lawsuit – frame inspections for all Subject Vehicles and
9 frame replacements for all that merit it.” (Dkt. 88-1, Plfs. Memo at 14). According to plaintiffs, the
10 settlement “makes available over \$3.4 billion worth of benefits to the Class, including about \$90
11 million worth of frame inspections (\$60 x 1.5 million vehicles) and \$3.375 billion in frame repairs
12 (222,500 vehicles x \$15,000)[.]”¹⁰ (Dkt. 88-2, Blood Decl. at ¶ 8). The settlement thus confers an
13 excellent recovery for plaintiffs and the class members. See, e.g. In re Mego Fin. Corp. Sec. Litig.,
14 213 F.3d 454, 459 (9th Cir. 2000) (ruling that “the [s]ettlement amount of almost \$2 million was
15 roughly one-sixth of the potential recovery, which, given the difficulties in proving the case, [was]
16 fair and adequate”); Rodriguez, 563 F.3d at 964 (affirming settlement approval where the
17 settlement represented 30% of the damages estimated by the class expert); Linney Cellular
18 Alaska P'ship, 151 F.3d 1234, 1242 (9th Cir. 1998) (“The fact that a proposed settlement may only
19 amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed
20 settlement is grossly inadequate and should be disapproved.”) (internal quotation marks and
21 citation omitted).

22 The settlement here is even more compelling given the substantial litigation risks in this
23 case. Nationwide class certification under the laws of multiple states can be very difficult for
24 plaintiffs' counsel. See, e.g., Mazza, 666 F.3d at 590-94; In re Pharm. Indus. Average Wholesale

25
26 ¹⁰ The number of expected frame replacements is based on the rate of frame replacements
27 from prior inspections of the vehicles at issue, (see Dkt. 88-2, Blood Decl. at ¶ 8), i.e., Toyota's
28 2014 limited service campaign (“LSC”) for model year 2005-2008 Tacoma vehicles registered in
certain cold weather states, as well as a second LSC in 2015. (See id. at ¶¶ 14-15; Dkt. 88-1,
Plfs. Memo at 8; Dkt. 86, SAC at ¶¶ 35-43).

1 Price Litig., 252 F.R.D. 83, 94 (D. Mass. 2008) (noting that “[w]hile numerous courts have talked-
2 the-talk that grouping of multiple state laws is lawful and possible, very few courts have walked
3 the grouping walk”). Moreover, as plaintiffs acknowledge, “significant risk exists, as shown by the
4 Court’s ruling on Toyota’s motion to dismiss.” (See Dkt. 88-1, Plfs. Memo at 17; see also Dkt. 61,
5 Court’s Order of March 8, 2016 (dismissing plaintiffs’ First Amendment Complaint with leave to
6 amend)). Plaintiffs also recognize that should they “prosecute these claims against Toyota to
7 conclusion any recovery would come years in the future, and at the very real risk that Class
8 Members may receive nothing.” (Dkt. 88-1, Plfs. Memo at 18). In short, the risks of continued
9 litigation are formidable, and the court takes these real risks into account. Weighed against those
10 risks, and coupled with the delays associated with continued litigation, the settlement’s benefits
11 to the class easily fall within the range of reasonableness.

12 2. Release of Claims.

13 Beyond the value of the settlement, potential recovery at trial, and inherent risks in
14 continued litigation, courts also consider whether a class action settlement contains an overly
15 broad release of liability. See Newberg on Class Actions § 13:15, at p. 326 (5th ed. 2014)
16 (“Beyond the value of the settlement, courts have rejected preliminary approval when the
17 proposed settlement contains obvious substantive defects such as . . . overly broad releases of
18 liability.”); see, e.g., Fraser v. Asus Computer Int’l, 2012 WL 6680142, *3 (N.D. Cal. 2012)
19 (denying preliminary approval of proposed settlement that provided defendant a “nationwide
20 blanket release” in exchange for payment “only on a claims-made basis,” without the
21 establishment of a settlement fund or any other benefit to the class).

22 Here, plaintiffs and class members who do not exclude themselves from the settlement
23 release “any and all claims . . . regarding the subject matter of the Action and the Related Action
24 . . . whether past, present, or future, mature, or not yet mature, known or unknown, suspected or
25 unsuspected, contingent or non-contingent, derivative or direct, asserted or un-asserted, . . .
26 arising from, related to, connected with, and/or in any way involving the Action, the Related Action,
27 the Subject Vehicles’ frames and/or associated parts that are, or could have been, defined, alleged
28 or described in the Second Amended Complaint, the Action, the Related Action or any

1 amendments of the Action or the Related Action.” (See Dkt. 91, Settlement Agreement at § VII.B).
2 The release does not extinguish “claims for personal injury, wrongful death or actual physical
3 property damages arising from an accident involving a Subject Vehicle.” (Id.). Also, the provision
4 regarding unknown harm includes a waiver of rights protected by California Civil Code § 1542 (“§
5 1542”), which preserves unknown claims. (See id. at § VII.H); see also Cal. Civ. Code § 1542 (“A
6 general release does not extend to claims which the creditor does not know or suspect to exist in
7 his or her favor at the time of executing the release, which if known by him or her must have
8 materially affected his or her settlement with the debtor.”). Finally, the release “constitutes an
9 essential and material term of the Agreement and shall be included in any Final Judgment and
10 Final Order entered by the Court.” (Dkt. 91, Settlement Agreement at § VII.O).

11 The carving out of claims for personal injury, wrongful death, and property damage arising
12 from an accident indicates that such claims are not unknown, and are not within – nor intended
13 to be within – the scope of the § 1542 waiver. For these reasons, and with the above-described
14 understanding of the release, i.e., that neither the general release nor the § 1542 waiver applies
15 to claims of personal injury, wrongful death, and property damage arising from an accident, the
16 court finds that the release adequately balances fairness to absent class members with
17 defendant’s business interests in ending this litigation with finality. See Fraser, 2012 WL 6680142,
18 at *4 (recognizing defendant’s “legitimate business interest in ‘buying peace’ and moving on to its
19 next challenge” as well as the need to prioritize “[f]airness to absent class member[s]”).

20 C. The Settlement Agreement Does Not Improperly Grant Preferential Treatment to the
21 Class Representatives.

22 “Incentive awards are payments to class representatives for their service to the class in
23 bringing the lawsuit.” Radcliffe v. Experian Info. Solutions Inc., 715 F.3d 1157, 1163 (9th Cir.
24 2013). The Ninth Circuit has instructed “district courts to scrutinize carefully the awards so that
25 they do not undermine the adequacy of the class representatives.” Id. The court must examine
26 whether there is a “significant disparity between the incentive awards and the payments to the rest
27 of the class members” such that it creates a conflict of interest. See id. at 1165. “In deciding
28 whether [an incentive] award is warranted, relevant factors include the actions the plaintiff has

1 taken to protect the interests of the class, the degree to which the class has benefitted from those
2 actions, and the amount of time and effort the plaintiff expended in pursuing the litigation.” Cook
3 v. Niedert, 142 F.3d 1004, 1016 (7th Cir. 1998).

4 The Settlement Agreement provides that class counsel may petition the court for incentive
5 awards of up to \$2,500 per class representative “for bringing the Action and the Related Action
6 and for their time in connection with the Action and Related Action.” (Dkt. 91, Settlement
7 Agreement at § VIII.C). It further provides that the incentive payments “are intended to be
8 considered by the Court separately from the Court’s consideration of the fairness, reasonableness,
9 and adequacy of the settlement.” (Id. at § VIII.E). The court’s denial of any incentive award “shall
10 [not] affect whether the Final Order and Final Judgment are final or constitute grounds for
11 cancellation or termination of the settlement.”¹¹ (Id.).

12 Here, there is no doubt that the settlement does not improperly grant preferential treatment
13 to the class representatives. As an initial matter, the \$2,500 incentive award per class member
14 is presumptively reasonable. See Dyer v. Wells Fargo Bank, N.A., 303 F.R.D. 326, 335 (N.D. Cal.
15 2014) (finding an incentive award of \$5,000 presumptively reasonable). Further, the record
16 reflects that the class representatives have taken on substantial responsibility in litigating this
17 case, and the class has benefitted from the time and effort they spent doing so. (See, e.g., Dkt.
18 88-4, Warner Decl. at ¶¶ 10-13 (describing “substantial time and effort instituting, monitoring and
19 participating in this litigation” including communicating with counsel, assisting in answering
20 interrogatories, providing documents, reviewing documents and the settlement); Dkt. 88-5,
21 MacCleod Decl. at ¶¶ 7-9 (similar); Dkt. 88-6, Meade Decl. at ¶¶ 9-11 (similar); Dkt. 88-7, Watson
22 Decl. at ¶¶ 8-10 (similar); Dkt. 88-8, Fuller Decl. at ¶¶ 8-10 (similar); Dkt. 88-9, Franquet Decl. at
23 ¶¶ 11-14 (similar); Dkt. 88-10, Burns Decl. at ¶¶ 13-15 (similar); Dkt. 88-11, Good Decl. at ¶¶ 16-

24
25 ¹¹ The named plaintiffs acknowledge that the “requested incentive awards are to be
26 considered by the Court separately from whether the settlement is fair, reasonable, and adequate,
27 and that if the Court declines to award the requested incentive awards, that determination will not
28 affect the validity or finality of the settlement.” (Dkt. 88-1, Warner Decl. at ¶ 14; see also Dkt. 88-5,
McLeod Decl. at ¶ 10; Dkt. 88-6, Meade Decl. at ¶ 12; Dkt. 88-7, Watson Decl. at ¶ 11; Dkt. 88-8,
Fuller Decl. at ¶ 11; Dkt. 88-9, Franquet Decl. at ¶ 15; Dkt. 88-10, Burns Decl. at ¶ 16; Dkt. 88-11,
Good Decl. at ¶ 19).

1 18 (similar)).

2 Plaintiffs state that they have reviewed the settlement and “believe that the benefits
3 provided by the settlement represent an excellent result for the settlement class.” (Dkt. 88-4,
4 Warner Decl. at ¶ 12; see also Dkt. 88-5, MacCleod Decl. at ¶ 8 (same); Dkt. 88-6, Meade Decl.
5 at ¶ 10 (similar); Dkt. 88-7, Watson Decl. at ¶ 9 (same); Dkt. 88-8, Fuller Decl. at ¶ 9 (similar); Dkt.
6 88-9, Franquet Decl. at ¶ 13 (same); Dkt. 88-10, Burns Decl. at ¶ 14 (same); Dkt. 88-11, Good
7 Decl. at ¶ 17 (same)). The court agrees. In short, because the parties agree that the settlement
8 shall remain in force regardless of any incentive awards and the amount of the awards are
9 presumptively reasonable, the court is persuaded that there is no conflict of interest between the
10 named plaintiffs and absent class members.

11 D. Proposed Class Notice and Notification Procedures.

12 Upon a settlement of a certified class, “[t]he court must direct notice in a reasonable
13 manner to all class members who would be bound by the proposal.” Fed. R. Civ. P. 23(e)(1).
14 Federal Rule of Civil Procedure 23(c)(2) requires the “best notice that is practicable under the
15 circumstances, including individual notice” of particular information. See Fed. R. Civ. P.
16 23(c)(2)(B) (enumerating notice requirements for classes certified under Rule 23(b)(3)).

17 A class action settlement notice “is satisfactory if it generally describes the terms of the
18 settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come
19 forward and be heard.” Churchill Vill., LLC v. Gen. Elec., 361 F.3d 566, 575 (9th Cir.), cert.
20 denied, 543 U.S. 818 (2004) (internal quotation marks omitted). “The standard for the adequacy
21 of a settlement notice in a class action under either the Due Process Clause or the Federal Rules
22 is measured by reasonableness.” Wal-Mart Stores, Inc. v. Visa U.S.A., Inc., 396 F.3d 96, 113 (2d
23 Cir.), cert. denied, 544 U.S. 1044 (2005). Settlement notices must “fairly apprise the prospective
24 members of the class of the terms of the proposed settlement and of the options that are open to
25 them in connection with the proceedings.” Weinberger v. Kendrick, 698 F.2d 61, 70 (2d Cir. 1982),
26 cert. denied, 464 U.S. 818 (1983) (internal quotation marks and brackets omitted); see Trotsky v.
27 Los Angeles Fed. Sav. & Loan Ass’n., 48 Cal.App.3d 134, 151-52 (1975) (same); Wershba v.
28 Apple Computer, Inc., 91 Cal.App.4th 224, 252 (2001) (“As a general rule, class notice must strike

1 a balance between thoroughness and the need to avoid unduly complicating the content of the
2 notice and confusing class members.”). The notice should provide sufficient information to allow
3 class members to decide whether they should accept the benefits of the settlement, opt out and
4 pursue their own remedies, or object to its terms. See Wershba, 91 Cal.App.4th at 251-52.
5 “[N]otice is adequate if it may be understood by the average class member.” 4 Newberg on Class
6 Actions § 11:53, at p. 167 (4th ed. 2013).

7 Here, the parties have selected, subject to court approval, Jeanne Finegan (“Finegan”) of
8 Heffler Claims Group (“Heffler”) as the Settlement Notice Administrator. (See Dkt. 91, Settlement
9 Agreement at § II.A.36). The notice program that Heffler has developed utilizes a combination of
10 individual notice to known class members in the form of Direct Mail Notice, (see Dkt. 91-1, Exh.
11 9, Declaration of Jeanne C. Finegan (“Finegan Decl.”) at ¶¶ 15-16), a schedule of publication
12 notices in territorial newspapers and magazines such as People Magazine and Sports Illustrated,
13 (see id. at ¶¶ 15, 25 & 28-29), banner ads on the internet and social media platforms such as
14 Facebook, Instagram, and Twitter, (see id. at ¶¶ 15, 32-36 & 38-39), and a multimedia news
15 release. (See id. at ¶¶ 15 & 43). Most publication notices will be in English with a Spanish
16 language sub-headline. (See id. at ¶¶ 15, 26, 28 & 33). Also, a website will be established to
17 enable class members to get information about the settlement and review the Long Form Notice,
18 Claim Form, Opt-Out Form, Settlement Agreement, relevant court orders, and plaintiffs’ motion
19 for attorney’s fees, expenses, and incentive awards. (See id. at ¶¶ 45-46). Finally, Heffler will
20 establish and maintain a 24-hour toll-free telephone line where class members can obtain
21 information. (See id. at ¶ 47). Heffler anticipates that the notices will reach 95% of potential class
22 members with an average frequency of five times each. (See id. at ¶ 4).

23 The Direct Mail Notice, which will be sent via U.S. Mail to class members identified by R.L.
24 Polk & Co., (see Dkt. 91-1, Exh. 9, Finegan Decl. at ¶ 16), describes the nature of the action and
25 identifies the Subject Vehicles. (See Dkt. 91-1, Exh. 6 (“Direct Mail Notice”) at 1). It advises the
26 recipients that Toyota’s records indicate that he or she may be a class member for the vehicle with
27 a certain Vehicle Identification Number and that the class member’s rights may be affected by the
28 settlement. (See id.). It also describes the relief provided by the settlement. (See id. at 1-2).

1 Additionally, the Direct Mail Notice: informs class members how to obtain the Long Form Notice
2 by visiting the settlement website, calling the toll-free number, or writing to the Settlement Notice
3 Administrator; provides the deadlines for opting out of the class, submitting objections, and
4 submitting claim forms; and includes the date of the final fairness hearing. (See id. at 2). The
5 Direct Mail Notice states in bold: “If you are a class member, you must consult [the settlement
6 website] to determine how this settlement may affect you.” (Id.).

7 The Long Form Notice, which will be located on the settlement website, (see Dkt. 91-1, Exh.
8 9, Finegan Decl. at ¶¶ 46, 48 & 51), describes the nature of the action, including the class claims
9 and Toyota’s defenses. (See Dkt. 91-1, Exh. 4 (“Long Form Notice”) at 4); see also Fed. R. Civ.
10 P. 23(c)(2)(B)(i) & (iii). The class definition is conspicuously included in a section entitled, “How
11 do I know if I am part of the Settlement?” (see Dkt. 91-1, Exh. 4, Long Form Notice at 6), and the
12 Subject Vehicles are identified in a section entitled, “What vehicles are included in the settlement?”
13 (See id. at 5-6); see also Fed. R. Civ. P. 23(c)(2)(B)(ii). The Long Form Notice also explains the
14 terms of the settlement, including the benefits class members will receive. (See Dkt. 91-1, Exh.
15 4, Long Form Notice at 7-12). It explains what class members need to do to obtain each of the
16 available types of relief. (See id.). The Long Form Notice also includes an explanation laying out
17 the class members’ options under the settlement, i.e., they may exclude themselves, object, or
18 do nothing. (See id. at 3, 12-13, 14-16); see also Fed. R. Civ. P. 23(c)(2)(B)(v)-(vi). Class
19 members may elect to exclude themselves from the settlement by completing and mailing a simple
20 Request to Opt Out form (or a letter) to the Settlement Notice Administrator, which is attached to
21 the Long Form Notice and available on the settlement website. (See Dkt. 91-1, Exh. 4, Long Form
22 Notice at 13; see also Dkt. 91-1, Exh. 10 (Request to Opt Out/Request for Exclusion Form)). Also,
23 if class members choose to object to the settlement, they may do so by submitting their written
24 objections to the court, and they may attend the Final Fairness Hearing with or without an
25 attorney.¹² (See Dkt. 91-1, Exh. 4, Long Form Notice at 14-17); see Fed. R. Civ. P. 23(c)(2)(B)(iv).

26
27 ¹² The Long Form Notice explains that class members who object and wish to speak at
28 the Final Fairness Hearing must file a notice of intent to appear. (See Dkt. 91-1, Exh. 4, Long
Form Notice at 15-17).

1 The Long Form Notice also explains that all members of the class who do not exclude themselves
2 will release all claims that relate to the claims or issues asserted in the lawsuit, and it indicates in
3 an attached appendix that the release does not include claims for personal injury, wrongful death,
4 or physical property damage arising from an accident. (See Dkt. 91-1, Exh. 4, Long Form Notice
5 at 12 & 18-21); see also Fed. R. Civ. P. 23(c)(2)(B)(vii). Information regarding the final approval
6 hearing is also included. (See Dkt. 91-1, Exh. 4, Long Form Notice at 16-17).

7 Based on the foregoing, the court finds there is no alternative method of distribution that
8 would be more practicable here, or any more reasonably likely to notify the class members. Under
9 the circumstances, the court finds that the procedure for providing notice and the content of the
10 class notice constitute the best practicable notice to class members and complies with the
11 requirements of due process.

12 E. Summary.

13 The court's preliminary evaluation of the Settlement Agreement "does not disclose grounds
14 to doubt its fairness[,] . . . such as unduly preferential treatment of class representatives or of
15 segments of the class, or excessive compensation for attorneys, and appears to fall within the
16 range of possible approval[.]" In re Vitamins Antitrust Litig., 2001 WL 856292, *4 (D.D.C. 2001)
17 (quoting Manual for Complex Litigation § 30.41 (3d ed. 1999)); see also Spann, 314 F.R.D. at 323
18 (same); In re NVIDIA Corp. Derivative Litig., 2008 WL 5382544, *2 (N.D. Cal. 2008) (same).

19 **CONCLUSION**

20 Based on the foregoing, IT IS ORDERED THAT:

21 1. The Joint Motion for Entry of Order Granting Preliminary Approval of Class Action
22 Settlement, Certification of Settlement Class, and Approval of Class Notice (**Document No. 88**)
23 is **granted** upon the terms and conditions set forth in this Order.

24 2. The court preliminarily certifies the class, as defined in § II.A.8 of the Settlement
25 Agreement ("Settlement Agreement") (**Document No. 91**) for the purposes of settlement. The
26 Subject Vehicles are identified in Exhibit 7 to the Settlement Agreement. (See Dkt. 91-1,
27 Settlement Agreement, Exh. 7).

28 3. The court preliminarily appoints plaintiffs Brian Warner, Kenneth MacLeod, Michael

1 Meade, Michael Watson, Dale Franquet, James Fuller, Ryan Burns, and James Good as class
2 representatives for settlement purposes.

3 4. The court preliminarily appoints Timothy G. Blood of Blood Hurst and O'Reardon LLP
4 and Ben Barnow of Barnow and Associates P.C. as class counsel for settlement purposes.

5 5. The court preliminarily finds that the terms of the Settlement are fair, reasonable and
6 adequate, and comply with Rule 23(e) of the Federal Rules of Civil Procedure.

7 6. The proposed manner of the notice of settlement set forth in the Settlement Agreement
8 constitutes the best notice practicable under the circumstances and complies with the
9 requirements of due process.

10 7. The court approves the form, substance, and requirements of the: Direct Mail Notice
11 (Dkt. 91-1, Settlement Agreement, Exh. 6); Long Form Notice (Dkt. 91-1, Settlement Agreement,
12 Exh. 4); Publication Notice (Dkt. 91-1, Settlement Agreement, Exh. 8); the Frame Replacement
13 Reimbursement Claim Form (Dkt. 91-1, Settlement Agreement, Exh. 1); and Request to Opt
14 Out/Request for Exclusion Form (Dkt. 91-1, Settlement Agreement, Exh. 10).

15 8. The parties shall carry out the settlement and claims process according to the terms of
16 the Settlement Agreement.

17 9. Jeanne Finegan ("Finegan") of Heffler Claims Group ("Heffler") is hereby appointed as
18 the Settlement Notice Administrator. Promptly following entry of this order, Finegan will prepare
19 final versions of the notices, claim, and exclusion forms, incorporating the relevant dates and
20 deadlines set forth in this Order and the Settlement Agreement, and will commence the notice
21 process, in accordance with the Settlement Agreement. Notice shall commence no later than
22 **January 3, 2017**.

23 10. Patrick A. Juneau and Michael Juneau are hereby appointed as the Settlement Claims
24 Administrators.

25 11. Any class member who wishes to: (a) object to the settlement, including the requested
26 attorney's fees, costs and incentive awards; and/or (b) exclude him or herself from the settlement
27 must file his or her objection to the settlement or request for exclusion (i.e., the Opt-Out Form) no
28 later than **March 27, 2017**, in accordance with the Settlement Agreement, Long Form Notice

1 and/or Opt-Out Form.

2 12. Any class member who wishes to appear at the final approval (fairness) hearing, either
3 on his or her own behalf or through an attorney, to object to the settlement, including the
4 requested attorney's fees, costs and incentive awards, shall, no later than **March 27, 2017**, file
5 with the court and serve on class counsel and defendants a Notice of Intent to Appear at Fairness
6 Hearing ("Notice"). The Notice shall indicate whether the class member will appear on his or her
7 own behalf or through an attorney.

8 13. A final approval (fairness) hearing is hereby set for **April 27, 2017**, at **10:00 a.m.** in
9 Courtroom 6D of the First Street Courthouse, to consider the fairness, reasonableness, and
10 adequacy of the Settlement as well as the award of attorney's fees and costs to class counsel, and
11 service awards to the class representatives.

12 14. Plaintiffs shall file a motion for an award of class representative incentive payments and
13 attorney's fees and costs no later than **February 27, 2017**, and notice it for hearing for the date
14 set forth in paragraph 13 above. Any objection to the motion for an award of class representative
15 incentive payments and attorney's fees and costs, by class members, shall be filed by the deadline
16 set forth in paragraph 11 above. In the event any objections to the motion for an award of class
17 representatives incentive payments and attorney's fees and costs are filed, class counsel shall,
18 no later than **April 10, 2017**, file a reply addressing the objections.

19 15. Plaintiffs shall, no later than **April 10, 2017**, file and serve a motion for final approval
20 of the settlement and a response to any objections to the settlement. The motion shall be noticed
21 for hearing for the date set forth in paragraph 13 above. Defendant may file and serve a
22 memorandum in support of final approval of the Settlement Agreement or in response to
23 objections no later than **April 10, 2017**.

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