

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

DAVID PULKRABEK, BARBARA
RAINEY, ANDREW SCHWAB,
WESLEY DICKMAN, and WHITNEY
DICKMAN, on their own behalf and on
behalf of a class of similarly situated
individuals,

Plaintiff,

vs.

TOYOTA MOTOR SALES, U.S.A., INC.,
and TOYOTA MOTOR NORTH
AMERICA, INC.,

Defendants.

Case No. 2:20-cv-00036-JRG-RSP

SETTLEMENT AGREEMENT

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WHEREAS, Plaintiffs' Third Amended Complaint in the above-referenced action alleges certain 2019, 2020, and 2021 RAV4 vehicles are defective because the fuel tank cannot be filled to its expected capacity;

WHEREAS, Class Counsel have conducted substantial discovery, have investigated the facts and underlying events relating to the subject matter of the claims, have carefully analyzed the applicable legal principles, and have concluded, based upon their investigation, and taking into account the risks, uncertainties, burdens and costs of further prosecution of their claims, and taking into account the substantial benefits to be received pursuant to this Settlement Agreement and that a resolution and compromise on the terms set forth herein is fair, reasonable, adequate, and in the best interests of the Class Representatives and the Class;

WHEREAS, Toyota, for the purpose of avoiding burden, expense, risk, and uncertainty of continuing to litigate the claims, and for the purpose of putting to rest all controversies with Class Representatives, the Class, the Action and the Related Action, and claims that were or could have been alleged in the Third Amended Complaint, except as otherwise set forth herein, and without any admission of liability or wrongdoing, agrees to enter into this Settlement Agreement;

WHEREAS, as a result of extensive arm's length negotiations, including numerous mediation sessions amongst the Parties before Settlement Mediator Patrick A. Juneau, Class Representatives, Class Counsel and Toyota (all terms as defined below) have entered into this Settlement Agreement;

WHEREAS, Class Counsel represent and warrant that they are fully authorized to enter into this Settlement Agreement on behalf of the Class Representatives, and on behalf of the Class, and that Class Counsel have consulted with and confirmed that all Class Representatives fully support and have no objection to this Settlement Agreement; and

WHEREAS, it is agreed and understood that this Settlement Agreement shall not be deemed or construed to be an admission, concession, or evidence of any violation of any federal, state, or local statute, regulation, rule, or other law, or principle of common law or equity, or of any liability or wrongdoing whatsoever, by Toyota or any of the Released Parties, or of the truth or validity of any of the claims that Class Representatives have asserted;

NOW, THEREFORE, without any admission or concession by Class Representatives or Class Counsel of any lack of merit to their allegations and claims, and without any admission or concession by Toyota of any liability or wrongdoing or lack of merit in its defenses, in consideration of the mutual covenants and terms contained herein, and subject to both the preliminary and final approval by the Court, Class Counsel, Class Representatives, and Toyota agree as follows:

I. PROCEDURAL HISTORY

A. Pulkrabek, et al. v. Toyota Motor Sales, U.S.A., Inc., et al., Case No. 2:20-cv-00036-JRG-RSP (E.D. Tex.)

1. On February 13, 2020, plaintiffs David Pulkrabek, Barbara Rainey, Andrew Schwab, Wesley Dickman, and Whitney Dickman (the “*Pulkrabek*” Plaintiffs”) filed a putative class action complaint against Toyota Motor Sales, U.S.A., Inc. (“TMS”), Toyota Motor North America, Inc. (“TMNA”), and Toyota Motor Corporation (“TMC”)¹ in the United States District Court for the Eastern District of Texas. *Pulkrabek, et al. v. Toyota Motor Sales, U.S.A., Inc., et al.*, Case No. 2:20-cv-00036-JRG-RSP (E.D. Tex.). The *Pulkrabek* Plaintiffs asserted claims under Missouri’s consumer protection statute, a claim for common law fraud, express and implied warranty claims, a claim under the Magnuson-Moss Warranty Act on behalf of a proposed nationwide class, and an unjust enrichment claim arising from the manufacture and sale of

¹ The *Pulkrabek* Plaintiffs never served TMC with the complaint and have since voluntarily dismissed TMC from this case.

2019-2020 model year Toyota RAV4 Hybrid vehicles equipped with fuel tanks that the *Pulkrabek* Plaintiffs allege were defective.

2. On May 1, 2020, TMS and TMNA filed a second unopposed motion to extend the time for TMS and TMNA to respond to the complaint. This extension was sought to coordinate TMS and TMNA's response deadline with that in similar actions pending in the federal courts of California. On May 5, 2020, the court granted TMS and TMNA's unopposed motion, setting a deadline of June 17, 2020 for TMS and TMNA to respond to the complaint.

3. On June 17, 2020, TMS and TMNA filed their motion to dismiss the complaint.

4. On July 9, 2020, the *Pulkrabek* Plaintiffs filed a First Amended Complaint ("FAC"). The FAC did not add any new plaintiffs or new claims. On that same day, the *Pulkrabek* Plaintiffs filed a notice of voluntary dismissal of Toyota Motor Corporation without prejudice, which the court granted on July 10, 2020.

5. On July 13, 2020, the *Pulkrabek* Plaintiffs filed a notice of readiness for scheduling conference, and requested a scheduling conference. On July 15, 2020, the court issued a notice of scheduling conference, and set a scheduling conference for August 24, 2020. The court also issued proposed deadlines for a docket control order and discovery order.

6. On August 13, 2020, TMS and TMNA filed their motion to dismiss the FAC.

7. On August 24, 2020, the parties participated in a scheduling conference before U.S. Magistrate Judge Roy S. Payne, and the following day, the Court issued an Order summarizing the conference. In that Order, the Court ruled that discovery would not commence until January 4, 2021, although initial disclosures would be due on October 30, 2020, with any additional disclosures due by November 20, 2020. The Court also directed the parties to file a Discovery Order and Protective Order. The Court also set new deadlines for briefing on TMS and TMNA's

motion to dismiss, including a deadline of November 10, 2020 for the *Pulkrabek* Plaintiffs to oppose to TMS and TMNA's motion to dismiss; a deadline of December 1, 2020 for TMS and TMNA to file a reply; and a deadline December 15, 2020 for the *Pulkrabek* Plaintiffs to file a sur-reply. Finally, the Court set several deadlines related to the issue of class certification.

8. On October 30, 2020, the parties served their initial disclosures.

9. On November 10, 2020, the *Pulkrabek* Plaintiffs filed their opposition to TMS and TMNA's motion to dismiss the FAC.

10. On November 20, 2020, TMS and TMNA filed their supplemental disclosures.

11. On December 1, 2020, TMS and TMNA filed their reply in support of their motion to dismiss the FAC.

12. On January 4, 2021, discovery opened in this case. No written discovery has been served by any party. However, the Parties have been exchanging informal confirmatory discovery since the filing of this lawsuit.

13. On March 16, 2021, Judge Roy S. Payne issued his Report and Recommendation that TMS and TMNA's motion to dismiss the FAC be denied. On March 29, 2021, TMS and TMNA filed objections to Judge Payne's Report and Recommendation. On March 30, 2021, the Court (U.S. District Court Judge Rodney Gilstrap) overruled TMS and TMNA's objections to Judge Payne's Report and Recommendation, and adopted the Report and Recommendation that TMS and TMNA's motion to dismiss the FAC be denied.

14. On May 13, 2021, TMS and TMNA filed their respective answers to the FAC.

15. On June 15, 2021, Plaintiffs filed a Second Amended Complaint ("SAC"). The SAC (i) added Ken Ly as a plaintiff; (ii) added 2021 RAV4 Hybrid vehicles as subject vehicles; and (iii) added additional counts including violation of California Consumer Legal Remedies Act

(Cal. Civ. Code § 1750, et seq.), violation of California Unfair Competition Law (Cal. Bus. & Prof. Code § 17200), violation of California False Advertising Law (Cal. Bus. & Prof. Code § 17500, et seq.), violation of Song-Beverly Consumer Warranty Act – breach of express warranty (Cal. Civ. Code §§ 1791.2 & 1793.2(d)), and violation of Song-Beverly Consumer Warranty Act – breach of implied warranty (Cal. Civ. Code §§ 1791.2 & 1792).

16. On October 14, 2021, Plaintiffs filed a Third Amended Complaint (“Third Amended Complaint”). The Third Amended Complaint alleged that some of the Subject Vehicles had a defect in the manufacture and design of the fuel tanks which can cause the fuel gauge to inaccurately display the fuel level of the gas in the fuel tank. The Third Amended Complaint alleged that these inaccurate readings would lead a consumer to believe he or she could not completely fill up his or her Subject Vehicle and/or a consumer would believe that their fuel tank was nearing empty even though there was more than 1.5 gallons of fuel remaining.²

17. TMS and TMNA have provided confirmatory discovery to Class Counsel, including over 100,000 pages of internal Toyota documents, which Class Counsel has reviewed as part of the settlement negotiation process.

B. *Boulom, et al. v. Toyota Motor Sales, U.S.A., Inc., et al. Case No. 2:20-cv-00999-PSG-PJW (C.D. Cal.)*

1. On January 30, 2020, plaintiffs Steven Boulom, Kathleen Champigny, and Alanna Farber (the “*Boulom* Plaintiffs”) filed a class action complaint against Toyota Motor Sales, U.S.A., Inc. (“TMS”), Toyota Motor North America, Inc. (“TMNA”), and Toyota Motor Corporation (“TMC”)³ in the United States District Court for the Central District of California. *Boulom, et al. v. Toyota Motor Sales, U.S.A., Inc., et al.*, Case No. 2:20-cv-00999-PSG-PJW (C.D. Cal.). The

² This Settlement Agreement does not resolve or provide a release for claims related to Actual Capacity of the Subject Vehicles’ fuel tanks, included in the cases consolidated in *In re Toyota RAV4 Hybrid Fuel Tank Litig.*, No. 3:20-cv-00337 (N.D. Cal.).

³ The *Boulom* Plaintiffs never served TMC in this case.

Boulom Plaintiffs asserted class claims under California and Pennsylvania's consumer protection statutes, express and implied warranty claims, a claim under the Magnuson-Moss Warranty Act on behalf of a proposed nationwide class, and a claim for unjust enrichment arising from the manufacture and sale of 2019-2020 model year Toyota RAV4 Hybrid vehicles equipped with fuel tanks that the *Boulom* Plaintiffs allege were defective.

2. On June 17, 2020, TMS and TMNA filed their motion to dismiss the complaint.

3. On July 31, 2020, the parties submitted a joint stipulation to (1) extend the time for the *Boulom* Plaintiffs to oppose TMS and TMNA's motion to dismiss the complaint, (2) extend the time for TMS and TMNA to submit a reply, and (3) continue the hearing on TMS and TMNA's motion to dismiss, all by a period of thirty (30) days. The parties sought this continuance to accommodate the *Boulom* Plaintiffs' discussions regarding the potential consolidation of their claims with several similar actions currently pending in the Northern District of California, which would have obviated the need for any further briefing or a hearing on TMS and TMNA's motion to dismiss in *Boulom*.

4. On August 3, 2020, the court approved this stipulation, setting a deadline of September 7, 2020 for the *Boulom* Plaintiffs to file an opposition to TMS and TMNA's motion to dismiss, a deadline of September 14, 2020 for TMS and TMNA to file a reply, and a hearing date of September 28, 2020.

5. On September 1, 2020, the parties submitted a joint stipulation to (1) extend the time for the *Boulom* Plaintiffs to oppose TMS and TMNA's motion to dismiss the complaint, (2) extend the time for TMS and TMNA to submit a reply, and (3) continue the hearing on TMS and TMNA's motion to dismiss, all by a period of sixty (60) days. This continuance was sought to further accommodate the *Boulom* Plaintiffs' discussions regarding the potential consolidation of

their claims with several similar actions currently pending in the Northern District of California, which had since been consolidated into a single action, *In Re Toyota RAV4 Hybrid Fuel Tank Litigation*, Case No. 3:20-cv-00337 (N.D. Cal.), as such consolidation would have obviated the need for any further briefing or a hearing on TMS and TMNA's motion to dismiss in *Boulom*.

6. On September 3, 2020, the court approved the parties' stipulation, setting a deadline of November 2, 2020 for the *Boulom* Plaintiffs to file an opposition to TMS and TMNA's motion to dismiss the complaint, a deadline of November 23, 2020 for TMS and TMNA to file a reply, and a tentative hearing date of December 7, 2020.

7. On October 27, 2020, the parties submitted a joint stipulation to stay briefing on TMS and TMNA's motion to dismiss the complaint pending resolution of TMS's motion to dismiss the complaint in *In Re Toyota RAV4 Hybrid Fuel Tank Litigation*, Case No. 3:20-cv-00337 (N.D. Cal.). The parties also stipulated to file a joint status report with the court by January 15, 2021, informing the court on the status of *In Re Toyota RAV4 Hybrid Fuel Tank Litigation*, Case No. 3:20-cv-00337 and the parties' continued efforts at coordination.

8. On October 29, 2020, the court approved the parties' stipulation, and stayed the briefing on TMS and TMNA's motion to dismiss the complaint. The court further ordered the parties to file a joint status report with the court by January 15, 2021, and set a status conference for January 21, 2020, with the hearing on TMS and TMNA's motion to dismiss to be set upon the filing of the joint status report.

9. On January 15, 2021, the parties filed a joint status report and stipulation to further stay briefing on TMS and TMNA's motion to dismiss the complaint pending resolution of TMS's motion to dismiss in *In Re Toyota RAV4 Hybrid Fuel Tank Litigation*, Case No. 3:20-cv-00337. The parties explained that they were continuing their coordination efforts, and that no written order

had been issued on TMS's motion to dismiss *In Re Toyota RAV4 Hybrid Fuel Tank Litigation*, Case No. 3:20-cv-00337. The parties further stipulated to file a joint status report with the court by March 15, 2021, informing the court on the status of *In Re Toyota RAV4 Hybrid Fuel Tank Litigation*, Case No. 3:20-cv-00337 and the parties' continued efforts at coordination.

10. On January 20, 2021, the court approved this stipulation, further staying briefing on TMS and TMNA's motion to dismiss the complaint. The court also ordered the parties to file a joint status report with the court by March 15, 2021, with the hearing on TMS and TMNA's motion to dismiss to be set upon the filing of the joint status report.

11. On March 15, 2021, the parties filed a joint status report and stipulation to further stay briefing on TMS and TMNA's motion to dismiss the complaint pending resolution of TMS's motion to dismiss in *In Re Toyota RAV4 Hybrid Fuel Tank Litigation*, Case No. 3:20-cv-00337. The parties explained that they were continuing their coordination efforts, and that no written order had been issued on TMS's motion to dismiss *In Re Toyota RAV4 Hybrid Fuel Tank Litigation*, Case No. 3:20-cv-00337. The parties further stipulated to file a joint status report with the court by May 14, 2021, informing the court on the status of *In Re Toyota RAV4 Hybrid Fuel Tank Litigation*, Case No. 3:20-cv-00337 and the parties' continued efforts at coordination.

12. On March 30, 2021, the court approved the parties' stipulation, further staying briefing on TMS and TMNA's motion to dismiss the complaint. The court also ordered the parties to file a joint status report with the court by May 14, 2021, with the hearing on TMS and TMNA's motion to dismiss to be set upon the filing of the joint status report.

C. Other Litigations

1. On January 29, 2020, Class Counsel Blood Hurst & O'Reardon, LLP and Barnow and Associates, P.C. filed a putative class action complaint against TMS and TMNA in the United States District Court for the Northern District of California on behalf of Ken Ly, *Ly v. TMS, et al.*,

Case No. 3:20-cv-00640-EMC (N.D. Cal). Mr. Ly asserted similar class claims as the *Pulkrabek* and *Boulom* Plaintiffs. On July 8, 2020, *Ly* was voluntarily dismissed without prejudice pending settlement negotiations.

2. On March 6 2020, Plaintiffs' Counsel Bleichmar Fonti & Auld LLP filed a putative class action complaint against TMS and TMNA in the United States District Court for the Northern District of California on behalf of Cole Coleman, Bruce Coletta, David DiOrio, Robert Jacobson-Duteil, Brianna Lee, Cristin Trosien, and Michele Williams, *Coleman v. TMS, et al.*, Case No. 3:20-cv-01663-EMC (N.D. Cal). The *Coleman* plaintiffs asserted similar class claims as the *Pulkrabek* and *Boulom* Plaintiffs. On July 8, 2020, *Coleman* was voluntarily dismissed without prejudice pending settlement negotiations.

II. DEFINITIONS

A. As used in this Settlement Agreement and the attached exhibits (which are an integral part of this Settlement Agreement and are incorporated herein in their entirety by reference), the following terms have the following meanings, unless this Settlement Agreement specifically provides otherwise:

1. "Action" means the above-captioned litigation, *Pulkrabek, et al. v. Toyota Motor Sales, U.S.A., Inc.*, Case No. 2:20-cv-00036-JRG-RSP currently pending in the United States District Court for the Eastern District of Texas.

2. "Actual Capacity," for purposes of this Settlement Agreement and its exhibits, as asserted by plaintiffs in *In Re Toyota RAV4 Hybrid Fuel Tank Litigation*, Case No. 3:20-cv-00337 (N.D. Cal.), means the actual amount of liquid fuel that exists in a fuel tank after an owner or lessee of the Subject Vehicle fills the fuel tank at a gasoline station under normal operating conditions.

3. “Agreement” or “Settlement Agreement” means this Settlement Agreement and the exhibits attached hereto or incorporated herein, as well as any and all subsequent amendments and any exhibits to such amendments.

4. “Attorneys’ Fees, Costs, and Expenses” means such funds as may be awarded by the Court to compensate any and all attorneys representing plaintiffs who have assisted in conferring the benefits upon the Class under this Settlement Agreement for their fees and expenses in connection with the Action and the Related Action and the Settlement Agreement, as described in Section VIII of this Settlement Agreement.

5. “Class” means, for settlement purposes only, all persons, entities or organizations who, at any time as of the entry of the Preliminary Approval Order, own or owned, purchase(d) or lease(d) Subject Vehicles distributed for sale or lease in any of the fifty States, the District of Columbia, Puerto Rico and all other United States territories and/or possessions. Excluded from the Class are: (a) Toyota, its officers, directors and employees; its affiliates and affiliates’ officers, directors and employees; its distributors and distributors’ officers, directors and employees; and Toyota Dealers and Toyota Dealers’ officers and directors; (b) Plaintiffs’ Counsel; (c) judicial officers and their immediate family members and associated court staff assigned to this case; and (d) persons or entities who or which timely and properly exclude themselves from the Class as provided in this Settlement Agreement.

6. “Class Counsel” means Timothy G. Blood of Blood Hurst & O’Reardon, LLP, Bonner C. Walsh of Walsh PLLC, Ben Barnow of Barnow and Associates, P.C., and Matthew D. Schelkopf of Sauder Schelkopf LLC.

7. “Class Member” means a member of the Class as defined in paragraph 5 above and in the Third Amended Complaint.

8. “Class Notice” means the notice program described in Section IV.

9. “Class Representatives” means David Pulkrabek, Barbara Rainey, Andrew Schwab, Wesley Dickman, Whitney Dickman, and Ken Ly.

10. “Court” means the United States District Court for the Eastern District of Texas.

11. “Direct Mail Notice” means the notice substantially in the form as attached hereto as Exhibit 4.

12. “Extended Customer Support Program” means the customer support program as further described in Section III below.

13. “Fairness Hearing” means the hearing for the purposes of the Court determining whether to approve this Settlement Agreement as fair, reasonable, and adequate.

14. “Final Effective Date” means the latest date on which the Final Order and/or Final Judgment approving this Settlement Agreement becomes final. For purposes of this Settlement Agreement:

a. if no appeal has been taken from the Final Order and/or Final Judgment, “Final Effective Date” means the date on which the time to appeal therefrom has expired; or

b. if any appeal has been taken from the Final Order and/or Final Judgment, “Final Effective Date” means the date on which all appeals therefrom, including petitions for rehearing or reargument, petitions for rehearing en banc and petitions for certiorari or any other form of review, have been finally disposed of in a manner that affirms the Final Order or Final Judgment; or

c. at the conclusion of the Settlement, Class Counsel and Toyota may agree in writing, the “Final Effective Date” can occur on an earlier agreed date.

15. “Final Judgment” means the Court’s final judgment as described in Section IX of this Settlement Agreement, which is to be substantially in the form attached hereto as Exhibit 9.

16. “Final Order” means the Court’s order approving the Settlement Agreement, as described in Section IX, which is to be substantially in the form attached hereto as Exhibit 10.

17. “First Use” means the date that the Subject Vehicle was originally sold or leased.

18. “Initial Notice Date” means the date on which the first notice is disseminated to the Class.

19. “Loaner Vehicle” means a vehicle provided pursuant to the Extended Customer Support Program.

20. “Long Form Notice” means the Long Form Notice substantially in the form attached hereto as Exhibit 3.

21. “Parties” means Class Representatives and Toyota, collectively, as each of those terms is defined in this Settlement Agreement.

22. “Plaintiffs’ Counsel” means, in addition to Class Counsel, the lawyers representing the plaintiffs in the Action and Related Action, including Blood Hurst & O’Reardon, LLP; Barnow and Associates, P.C.; Ward, Smith & Hill, PLLC; Douglas, Haun & Heidemann, P.C.; Bleichmar Fonti & Auld LLP; Kehoe Law Firm, P.C.; Capstone Law APC; and Berger Montague PC.

23. “Preliminary Approval Order” means the order to be entered by the Court preliminarily approving the settlement as outlined in Section IX and to be substantially in the form attached hereto as Exhibit 1.

24. “Publication Notice” means the publication notice substantially in the form as attached hereto as Exhibit 5.

25. “Release” means the release and waiver set forth in Section VII of this Settlement Agreement and in the Final Judgment and Final Order.

26. “Related Action” means *Boulom et al. v. Toyota Motor Sales, U.S.A., et al.*, Case No. 2:20-cv-00999-GW-ADS, pending in the District Court for the Central District of California.

27. “Released Parties” or “Released Party” means any Toyota entity, including, but not limited to, Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Inc., Toyota Motor North America, Inc., Toyota Motor Engineering and Manufacturing North America, Inc., and each of their past, present and future parents, predecessors, successors, assigns, holding companies, joint-ventures and joint-venturers, partnerships and partners, members, divisions, stockholders, bondholders, subsidiaries, related companies, affiliates, officers, directors, employees, associates, dealers, representatives, suppliers, vendors, advertisers, service providers, distributors and sub-distributors, agents, attorneys, administrators, advisors, dealers, and component suppliers (e.g., Kautex and FTS). The Parties expressly acknowledge that each of the foregoing is included as a Released Party even though not identified by name herein.

28. “Settlement Notice Administrator” means the Court-appointed third-party agent or administrator agreed to by the Parties and submitted to the Court for appointment to

implement the notice plan. The Parties agree that Jeanne Finegan of Kroll Notice Media Solutions shall serve as Settlement Notice Administrator, subject to approval by the Court.

29. “Settlement Special Master” means the mediator agreed to by the Parties and submitted to the Court for appointment to administer, coordinate and preside over settlement-related proceedings. The Parties jointly recommend that Patrick A. Juneau shall serve as Settlement Special Master, pursuant to Federal Rule of Civil Procedure 53, subject to approval by the Court. The Settlement Special Master’s Declaration is attached as Exhibit 7.

30. “Subject Vehicles” means model year 2019, 2020, and 2021 Toyota RAV4 Hybrid vehicles in which the fuel gauge indicates that the fuel tank may not be able to be filled to its expected capacity. A list of the Subject Vehicles is included in Exhibit 8 and can also be obtained by visiting the Settlement Website, which contains a VIN lookup tool, calling the Settlement toll-free telephone number, or contacting the Settlement Notice Administrator and requesting the Long Form Notice.

31. “Third Amended Complaint” means the Third Amended Complaint filed in *Pulkrabek* on October 14, 2021.

32. “Toyota” or “Defendant” means Toyota Motor Sales, U.S.A., Inc. and Toyota Motor North America, Inc.

33. “Toyota Dealers” means authorized Toyota dealers.

34. “Toyota’s Counsel” means John P. Hooper and King & Spalding LLP and Jahmy S. Graham and Matthew G. Lindenbaum of Nelson Mullins Riley & Scarborough LLP.

B. Other capitalized terms used in this Settlement Agreement but not defined in this Section II shall have the meanings ascribed to them elsewhere in this Settlement Agreement.

C. The terms “he or she” and “his or her” include “it” or “its” where applicable.

III. SETTLEMENT RELIEF

In consideration for the dismissal of the Action and the Related Action with prejudice, as contemplated in this Settlement Agreement, and for the full and complete Release, Final Judgment and Final Order, as further specified herein, Toyota agrees to provide the relief specified in this Section. The costs and expenses associated with providing the relief and otherwise implementing the relief specified in Section III of this Settlement Agreement shall be the sole obligation of and paid by Toyota. After the issuance of the Preliminary Approval Order signed by the Court, Toyota, at its sole discretion, may, after consultation with Class Counsel, implement the Extended Customer Support Program in advance of 30 days after the occurrence of the Final Effective Date.

A. Extended Customer Support Program

Toyota will offer the Extended Customer Support Program to all Class Members. The Extended Customer Support Program (“ECSP”):

1. Will provide, at no cost, an inspection of the fuel tank and/or fuel sender gauge unit to Class Members who believe that their fuel tank is experiencing the condition at issue in the Action.
2. If the condition is verified, the Subject Vehicle will be repaired at no cost with a new improved fuel tank and/or fuel sender gauge unit, as required.
3. The Extended Customer Support Program will begin no later than 30 days after the occurrence of the Final Effective Date and will cover 15 years from the date of First Use of the Subject Vehicle or 150,000 miles,⁴ whichever occurs first, on original parts.

⁴ Current coverage under the Customer Support Program is measured from 8 years from the date of first use or 100,000 miles, whichever occurs first.

4. Without cost to Class Members and upon request from the Class Member, Toyota shall arrange a complimentary Loaner Vehicle (for Class Members 25 (twenty-five) years or older and upon proof of adequate insurance) if the Subject Vehicle is undergoing fuel tank and/or fuel sender gauge unit replacement pursuant to the terms of this Settlement Agreement and the repair exceeds 6 hours and/or the Subject Vehicle is required by the Toyota dealer to remain at the dealership for at least one overnight. Loaner Vehicle is available starting with repair (not inspection) appointment until the day the work is completed. Loaner Vehicles are not available if the Class Member drops off the Subject Vehicle at or near the end of the working day at the Toyota dealer.

Vehicles with titles marked flood-damaged are not eligible for the Extended Customer Support Program.

IV. NOTICE TO THE CLASS

Toyota shall identify the VIN numbers for the Subject Vehicles utilizing R.L. Polk & Co. (IHS Markit) data to identify current names and addresses for Class Members.

Class Notice will be accomplished through a combination of the Direct Mail Notice, Publication Notice, notice through the settlement website, Long Form Notice, social media notice, and other applicable notice, each of which is described below, as specified in the Preliminary Approval Order, the Notice Plan (attached hereto as Exhibit 2), and this Settlement Agreement and in order to comply with all applicable laws, including but not limited to, Fed. R. Civ. P. 23, the Due Process Clause of the United States Constitution, and all other applicable statutes, laws and rules.

The costs of disseminating the notice and otherwise implementing the notice specified in Section IV of this Settlement Agreement shall be paid by Toyota.

A. Direct Mail Notice

The Settlement Notice Administrator shall send the Direct Mail Notice, substantially in the form attached hereto as Exhibit 4, by U.S. Mail, proper postage prepaid, to the current registered owners of Subject Vehicles, as identified by data to be forwarded to the Settlement Notice Administrator by R.L. Polk & Co. The Direct Mail Notice shall inform potential Class Members on how to obtain the Long Form Notice via the settlement website, via regular mail or via a toll-free telephone number, pursuant to Sections IV(E) and (F), below. In addition, the Settlement Notice Administrator shall: (a) re-mail any notices returned by the United States Postal Service with a forwarding address no later than the deadline found in the Preliminary Approval Order; (b) by itself or using one or more address research firms following receipt of any returned notices that do not include a forwarding address, research such returned mail for better addresses and promptly mail copies of the applicable notice to any better addresses so found.

B. Publication Notice

The Settlement Notice Administrator shall cause the publication of the Publication Notice as described in the Declaration of the Settlement Notice Administrator, and in such additional newspapers, magazines and/or other media outlets as shall be agreed upon by the Parties. The form of the Publication Notice agreed upon by the Parties is in the form substantially similar to the one attached to the Agreement as Exhibit 5.

C. Internet Website

The Settlement Notice Administrator shall establish a settlement website that will inform Class Members of the terms of this Settlement Agreement, their rights, dates and deadlines, Class

membership by way of VIN lookup function, and related information. The website shall include, in .pdf format, materials agreed upon by the Parties and/or required by the Court, including, but not limited to, the Settlement Agreement, the Publication Notice, Frequently Asked Questions and Answers, important dates, and Court documents that may be of interest to most Class Members, such as the complaint and the filings in support of preliminary and final approval. Class Counsel may also post on their individual firm websites documents that have been filed with and/or approved by the Court.

D. Long Form Notice

1. Contents of Long Form Notice.

The Long Form Notice shall be in a form substantially similar to the document attached to this Settlement Agreement as Exhibit 3, and shall advise Class Members of the following:

a. General Terms: The Long Form Notice shall contain a plain and concise description of the nature of the Action and the Related Action, the history of the litigation of the claims, the preliminary certification of the Class for settlement purposes, and the Settlement Agreement, including information on the identity of Class Members, how the Settlement Agreement would provide relief to the Class and Class Members, what claims are released under the Settlement Agreement and other relevant terms and conditions.

b. Opt-Out Rights: The Long Form Notice shall inform Class Members that they have the right to opt out of the settlement. The Long Form Notice shall provide the deadlines and procedures for exercising this right.

c. Objection to Settlement: The Long Form Notice shall inform Class Members of their right to object to the Settlement Agreement and to appear at the Fairness Hearing. The Long Form Notice shall provide the deadlines and procedures for exercising these rights.

d. Fees and Expenses: The Long Form Notice shall inform Class Members about the amounts being sought by Plaintiffs' Counsel as Attorneys' Fees and Expenses and individual awards to the Class Representatives, and shall explain that Toyota will pay the fees and expenses awarded to Plaintiffs' Counsel and individual awards to the Class Representatives in addition to amounts being made available for relief to Class Members by this Settlement Agreement.

2. Dissemination of Long Form Notice.

The Long Form Notice shall be available on the settlement website. The Settlement Notice Administrator shall send via first-class mail the Long Form Notice to those persons who request it in writing or through the toll-free telephone number.

E. Toll-Free Telephone Number

The Settlement Notice Administrator shall establish a toll-free telephone number that will provide Settlement-related information to Class Members using an Interactive Voice Response system, with an option to speak with live operators.

F. Internet Banner Notifications

The Settlement Notice Administrator shall, pursuant to the Parties' agreement, establish banner notifications on the internet that will provide settlement-related information to Class Members and shall utilize additional internet-based notice efforts as to be agreed to by the Parties.

G. Class Action Fairness Act Notice

The Settlement Notice Administrator shall send to each appropriate State and Federal official, the materials specified in 28 U.S.C. § 1715, and shall otherwise comply with its terms. The identities of such officials and the content of the materials shall be mutually agreeable to the Parties and in all respects comport with statutory obligations.

H. Duties of the Settlement Notice Administrator

1. The Settlement Notice Administrator shall be responsible for, without limitation: (a) printing, mailing and/or arranging for the mailing of the Direct Mail Notice; (b) handling returned mail not delivered to Class Members; (c) attempting to obtain updated address information of Class Members for any Direct Mail Notices returned without a forwarding address; (d) making any additional mailings required under the terms of this Settlement Agreement; (e) responding to requests for Long Form Notice; (f) receiving and maintaining on behalf of the Court any Class Member correspondence regarding requests for exclusion and/or objections to the Settlement Agreement; (g) forwarding written inquiries to Class Counsel or their designee for a response, if warranted; (h) establishing a post-office box for the receipt of any correspondence; (i) responding to requests from Class Counsel and/or Toyota's Counsel; (j) establishing a website and toll-free voice response unit with message capabilities to which Class Members may refer for information about the Action and the Settlement Agreement; and (k) otherwise implementing and/or assisting with the dissemination of the notice of the Settlement Agreement. The Settlement Notice Administrator shall be responsible for arranging for the publication of the Publication Notice, establishing internet banner notifications and for consulting on Class Notice. The Settlement Notice Administrator shall coordinate their activities to minimize costs in effectuating the terms of this Settlement Agreement.

2. If the Settlement Notice Administrator makes a material or fraudulent misrepresentation to any party, conceals requested material information, or fails to perform adequately on behalf of Toyota or the Class, the Parties may agree to remove the Settlement Notice Administrator. Disputes regarding the retention or dismissal of the Settlement Notice Administrator shall be referred to the Court for resolution.

3. The Settlement Notice Administrator may retain one or more persons to assist in the completion of its responsibilities.

4. Not later than 20 days before the date of the Fairness Hearing, the Settlement Notice Administrator shall file with the Court a list of those persons who have opted out or excluded themselves from this settlement and the terms of this Settlement Agreement. The Settlement Notice Administrator shall file with the Court the details outlining the scope, method and results of the notice program.

5. The Settlement Notice Administrator and the Parties shall promptly after receipt provide copies of any requests for exclusion, objections and/or related correspondence to each other.

I. Duties of the Settlement Special Master

1. Pursuant to Federal Rule of Civil Procedure 53, the Settlement Special Master shall oversee the Parties' efforts to implement the terms and conditions of this Agreement, including, but not limited to, the Extended Consumer Support Program. The Settlement Special Master shall address and, if necessary, mediate, any potential issues that might arise between Class Counsel and Toyota' counsel relating to the Settlement and shall retain such records as are appropriate.

2. The Settlement Special Master may conduct ex parte discussions with the Parties and/or the Court of the issues presented relating to the Agreement.

3. The Settlement Special Master shall address any issues regarding the Settlement raised by Class Members that have not been resolved by the Settlement Notice Administrator.

4. If the Court seeks to obtain any updates of the execution of the Settlement, the Settlement Special Master will be ready, willing, and able to provide the requested information.

5. The Parties, through their respective counsel, may agree to remove and replace the Settlement Special Administrator, subject to Court approval. Disputes regarding the retention or dismissal of the Settlement Special Administrator shall be referred to the Court for resolution.

6. The Settlement Special Master may retain one or more persons to assist in the completion of the Settlement Special Master's responsibilities.

7. The Settlement Special Master shall submit to Toyota invoices of services rendered in implementing this Settlement and addressing the duties identified above at his standard rate and Toyota shall timely pay those invoices.

J. Self-Identification

Persons or entities who believe that they are Class Members and who have not been notified that they are Class Members may contact the Settlement Notice Administrator and provide documentation indicating that they wish to be eligible for the relief provided in this Settlement Agreement and information to establish membership in the Class, such as the VIN of their vehicle and proof of ownership or lease. The Parties shall investigate eligibility and inform the Settlement Notice Administrator of the results of the investigation. The Settlement Notice Administrator shall

in writing inform the person or entity of the results. If the person or entity is deemed to be a Class Member eligible for relief, the Settlement Notice Administrator shall modify its records accordingly.

V. REQUESTS FOR EXCLUSION

A. Any Class Member who wishes to be excluded from the Class must mail a written request for exclusion to the Settlement Notice Administrator at the address provided in the Long Form Notice, specifying that he or she wants to be excluded and otherwise complying with the terms stated in the Long Form Notice and Preliminary Approval Order. The written request must include:

1. The name of the Action;
2. The excluding Class Member's full name, current residential address, mailing address (if different), telephone number, and e-mail address;
3. An explanation of the basis upon which the excluding Class Member claims to be a Class Member, including the make, model year, and VIN(s) of the Subject Vehicle(s);
4. A request that the Class Member wants to be excluded from the Class;
5. The excluding Class Member's dated, handwritten signature (an electronic signature or attorney's signature is not sufficient).

B. The Settlement Notice Administrator shall forward copies of any written requests for exclusion to Class Counsel and Toyota's Counsel. A list reflecting all timely, valid requests for exclusion shall be filed with the Court by the Settlement Notice Administrator no later than 20 days before the Fairness Hearing. If a potential Class Member files a request for exclusion, he or she may not file an objection under Section VI, below.

C. Any Class Member who does not file a timely, valid written request for exclusion as provided in this Section V shall be bound by all subsequent proceedings, orders, and judgments, including, but not limited to, the Release, Final Judgment, and Final Order in the Action, even if he, she, or it has litigation pending or subsequently initiates litigation against Toyota relating to the claims and transactions released in this Settlement Agreement. Toyota's Counsel shall provide to the Settlement Notice Administrator, within 20 business days of the entry of the Preliminary Approval Order, a list of all counsel for anyone who has then-pending litigation against Toyota relating to claims involving the Subject Vehicles and/or otherwise covered by the Release.

VI. OBJECTIONS TO SETTLEMENT

A. Any Class Member who wishes to object to the Settlement Agreement must (1) file their objection electronically with the Court, or (2) mail their objection to the Clerk of the Court, Class Counsel, and Defendant's counsel. For an objection to be considered by the Court, the objection must be received by the Court on or before the deadline established by the Court for submitting objections. For an objection to be considered by the Court, the objection must also set forth:

1. The case name and number of the Action;
2. The objector's full name, current residential address, mailing address (if different), telephone number, and e-mail address;
3. An explanation of the basis upon which the objector claims to be a Class Member, including the make, model year, and VIN(s) of the Subject Vehicle(s);
4. Whether the objection applies only to the objector, to a specific subset of the Class or to the entire Class and all grounds for the objection, accompanied by

- any legal support for the objection known to the objector or his counsel, and any documents supporting the objection;
5. The number of times the objector has objected to a class action settlement within the five years preceding the date that the objector files the objection, the caption of each case in which the objector has made such objection, and a copy of any orders related to or ruling upon the objector's prior such objections that were issued by the trial and appellate courts in each listed case;
 6. The full name, telephone number and address of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement Agreement;
 7. The identity of all counsel representing the objector and whether they will appear at the Fairness Hearing;
 8. The number of times the objector's counsel has objected to a class action settlement within the five years preceding the date that they have filed the objection, and the caption of each case in which objector's counsel has made such objection;
 9. If the Class member or his or her counsel have not made any such prior objection, the Class member shall affirmatively so state in the written materials provided with the objection;
 10. A list of all persons who will be called to testify at the Fairness Hearing in support of the objection;

11. A statement confirming whether the objector intends to personally appear and/or testify at the Fairness Hearing; and

12. The objector's signature and date of signature.

B. Any Class Member who fails to comply with the provisions of Section VI.A., above, shall be deemed to have waived and forfeited any and all rights he or she may have to appear separately and object, whether by a subsequent objection, intervention, appeal, or any other process, and shall be bound by all the terms of this Settlement Agreement and by all proceedings, orders and judgments, including, but not limited to, the Release, the Final Order, and the Final Judgment in the Action and the Related Action. The exclusive means for any challenge to the Settlement Agreement shall be through the provisions of this Section VI.B. Without limiting the foregoing, any challenge to the Settlement Agreement, Final Order, or Final Judgment shall be pursuant to appeal under the Federal Rules of Appellate Procedure and not through collateral proceedings. Class Members may not both object and request exclusion (opt out).

C. Any Class Member who objects to the Settlement Agreement shall be entitled to all the benefits of the Settlement Agreement if the Settlement Agreement and the terms contained herein are approved, as long as the objecting Class Member complies with all requirements of this Settlement Agreement applicable to Class Members.

VII. RELEASE AND WAIVER

A. The Parties agree to the following release and waiver, which shall take effect upon entry of the Final Judgment and Final Order.

B. In consideration for the Settlement Agreement, Class Representatives, and each Class Member, on behalf of themselves and any other legal or natural persons who may claim by, through or under them, agree to fully, finally and forever release, relinquish, acquit, discharge, and

hold harmless the Released Parties from any and all claims, demands, suits, petitions, liabilities, causes of action, rights, and damages of any kind and/or type regarding the subject matter of the Third Amended Complaint filed in the Action, including, but not limited to, compensatory, exemplary, punitive, expert and/or attorneys' fees, whether past, present, or future, mature, or not yet mature, known or unknown, suspected or unsuspected, contingent or non-contingent, derivative or direct, asserted or un-asserted, whether based on federal, state or local law, statute, ordinance, regulation, code, contract, common law, violations of any state's deceptive, unlawful, or unfair business or trade practices, false, misleading or fraudulent advertising, consumer fraud or consumer protection statutes, any breaches of express, implied or any other warranties, RICO, or the Magnuson-Moss Warranty Act, or any other source, or any claim of any kind related arising from, related to, connected with, and/or in any way involving the Action, the Related Action, the Subject Vehicles' fuel tanks and/or associated parts that are, or could have been, defined, alleged or described in the Third Amended Complaint, the Action, or any amendments made to the Third Amended Complaint. Notwithstanding the foregoing, Class Representatives and Class Members are not releasing claims for personal injury, wrongful death, or actual physical property damage arising from the Subject Vehicle, nor are Class Representatives and Class Members releasing claims related to the Actual Capacity of the Subject Vehicles' fuel tanks.

C. The Final Order will reflect this Release.

D. Class Representatives and Class Members expressly agree that this Release, the Final Order, and/or the Final Judgment is, will be, and may be raised as a complete defense to, and will preclude any action or proceeding encompassed by, this Release.

E. Class Representatives and Class Members shall not now or hereafter institute, maintain, prosecute, assert, and/or cooperate in the institution, commencement, filing, or

prosecution of any suit, action, and/or proceeding, against the Released Parties, either directly or indirectly, on their own behalf, on behalf of a class or on behalf of any other person or entity with respect to the claims, causes of action and/or any other matters released through this settlement and the Settlement Agreement.

F. In connection with the Settlement Agreement, Class Representatives, on their behalf and on behalf of the Class, acknowledge that they may hereafter discover related claims presently unknown or unsuspected, or facts in addition to or different from those that they now know or believe to be true concerning the subject matter of the Third Amended Complaint and/or the Release herein. Nevertheless, it is the intention of Class Counsel and Class Representatives in executing this Settlement Agreement to fully, finally and forever settle, release, discharge, and hold harmless all such matters, and all claims relating thereto which exist, hereafter may exist, or might have existed (whether or not previously or currently asserted in any action or proceeding) with respect to the Action and the Related Action. Notwithstanding the foregoing, Class Representatives and Class Members are not releasing claims related to the Actual Capacity of the Subject Vehicles' fuel tanks.

G. Class Representatives expressly understand and acknowledge that they will be deemed by the Final Judgment and Final Order to acknowledge and waive Section 1542 of the Civil Code of the State of California, which provides that:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Class Representatives expressly waive and relinquish any and all rights and benefits that they may have under, or that may be conferred upon them by, the provisions of Section 1542 of the California Civil Code, or any other law of any state or territory that is similar, comparable or equivalent to Section 1542, to the fullest extent they may lawfully waive such rights.

H. Class Representatives represent and warrant that they are the sole and exclusive owners of all claims that they personally are releasing under this Settlement Agreement. Class Representatives further acknowledge that they have not assigned, pledged, or in any manner whatsoever, sold, transferred, assigned or encumbered any right, title, interest or claim arising out of or in any way whatsoever pertaining to the Action, including without limitation, any claim for benefits, proceeds or value under the Action, and that Class Representatives are not aware of anyone other than themselves claiming any interest, in whole or in part, in the claims that they are releasing under the Settlement Agreement or in any benefits, proceeds or values in the claims that they are releasing under the Settlement Agreement.

I. Without in any way limiting its scope, and, except to the extent otherwise specified in the Agreement, this Release covers by example and without limitation, any and all claims for attorneys' fees, costs, expert fees, or consultant fees, interest, or litigation fees, costs or any other fees, costs, and/or disbursements incurred by Class Counsel, Plaintiffs' Counsel, Class Representatives or Class Members who claim to have assisted in conferring the benefits under this Settlement Agreement upon the Class based on the allegations contained in the Third Amended Complaint.

J. In consideration for the Settlement Agreement, Toyota and its past or present officers, directors, employees, agents, attorneys, predecessors, successors, affiliates, subsidiaries, divisions, and assigns shall be deemed to have, and by operation of the Final Order shall have,

released Plaintiffs' Counsel, Class Counsel and each Class Representative from any and all causes of action that were or could have been asserted pertaining solely to the conduct in filing and prosecuting the litigation or in settling the Action.

K. Class Representatives, Plaintiffs' Counsel and any other attorneys who receive attorneys' fees and expenses from this Settlement Agreement acknowledge that they have conducted sufficient independent investigation and discovery to enter into this Settlement Agreement and, by executing this Settlement Agreement, state that they have not relied upon any statements or representations made by the Released Parties or any person or entity representing the Released Parties, other than as set forth in this Settlement Agreement.

L. The Parties specifically understand that there may be further pleadings, discovery requests and responses, testimony, or other matters or materials owed by the Parties pursuant to existing pleading requirements, discovery requests, or pretrial rules, procedures, or orders, and that, by entering into this Settlement Agreement, the Parties expressly waive any right to receive, hear, or inspect such pleadings, testimony, discovery, or other matters or materials.

M. Nothing in this Release shall preclude any action to enforce the terms of the Agreement, including participation in any of the processes detailed herein.

N. Class Representatives and Class Counsel hereby agree and acknowledge that the provisions of this Release together constitute an essential and material term of the Agreement and shall be included in any Final Judgment and Final Order entered by the Court.

VIII. ATTORNEYS' FEES, COSTS, AND EXPENSES AND CLASS REPRESENTATIVE AWARDS

A. The Parties did not discuss the payment of Attorneys' Fees, Costs, and Expenses, and Class Representative service awards, until after the substantive elements of the Settlement Agreement had been agreed upon.

B. After agreeing to the principal terms set forth in this Settlement Agreement, Class Counsel and Toyota's Counsel negotiated the amount of Attorneys' Fees, Costs, and Expenses that, separate and apart from the consideration for this settlement, following application to the Court and subject to Court approval, would be paid by Toyota as the fee award and costs and expense reimbursement to Plaintiffs' Counsel. As a result of these negotiations, Class Counsel agrees to limit any petition for an award of Attorneys' Fees, Costs, and Expenses in the Action to the amount of \$1,100,000.00 (One-Million and One-Hundred Thousand Dollars and No Cents) for attorneys' fees, costs, and expenses, which shall include the payment of Class Representative service awards. The Attorneys' Fees, Costs, and Expenses awarded by the Court shall be the sole compensation paid by Toyota for all Plaintiffs' Counsel in the Action and Related Action and/or for work incurred that inured to the benefit of the Class.

C. Class Counsel may petition the Court for Class Representative service awards of up to \$2,500.00 (Two-thousand and Five Hundred Dollars and No Cents) per Class Representative for bringing the Action and the Related Action and for their time in connection with the Action and Related Action.

D. Within thirty (30) days after the occurrence of the Final Effective Date, Toyota shall pay the Attorneys' Fees, Costs and Expenses and Class Representative service awards that are awarded by the Court to an account established by Class Counsel. Thereafter, Class Counsel shall distribute the award of Attorneys' Fees, Costs, and Expenses among Plaintiffs' Counsel and the Class Representative service awards to Class Representatives. The Attorneys' Fees, Costs, and Expenses paid by Toyota as provided for in this Agreement shall be allocated by Class Counsel among other plaintiffs' counsel in a manner that Class Counsel in good faith believe reflects the

contributions of plaintiffs' counsel to the prosecution and settlement of the claims against Toyota in the Action and the Related Action.

E. No order of the Court, or modification or reversal or appeal of any order of the Court, concerning the amount(s) of any Attorneys' Fees, Costs, and Expenses awarded by the Court to Class Counsel, or concerning the amounts of Class Representative service awards that are awarded by the Court to Class Representatives, shall affect whether the Final Order and Final Judgment are final or constitute grounds for cancellation or termination of the settlement.

IX. PRELIMINARY APPROVAL ORDER, FINAL ORDER, FINAL JUDGMENT AND RELATED ORDERS

A. The Parties shall seek from the Court, within 14 days after the execution of this Settlement Agreement, a Preliminary Approval Order in a form substantially similar to Exhibit 1. The Preliminary Approval Order shall, among other things:

1. Certify a nationwide settlement-only Class, approve Class Representatives as Class Representatives and appoint Class Counsel as counsel for the Class, pursuant to Fed. R. Civ. P. 23;
2. Preliminarily approve the Settlement Agreement;
3. Require the dissemination of the Notice and the taking of all necessary and appropriate steps to accomplish this task;
4. Determine that Class Notice complies with all legal requirements, including, but not limited to, the Due Process Clause of the United States Constitution;
5. Schedule a date and time for a Fairness Hearing to determine whether the Settlement Agreement should be finally approved by the Court;
6. Require Class Members who wish to exclude themselves to submit an appropriate and timely written request for exclusion as directed in this Settlement Agreement and

Long Form Notice and that a failure to do so shall bind those Class Members who remain in the Class;

7. Require Class Members who wish to object to this Settlement Agreement to submit an appropriate and timely written statement as directed in this Settlement Agreement and Long Form Notice;

8. Require Class Members who wish to appear to object to this Settlement Agreement to submit an appropriate and timely written statement as directed in the Settlement Agreement and Long Form Notice;

9. Require attorneys representing Class Members objecting to the Settlement Agreement, at such Class Members' expense, to file a notice of appearance if required by the Court's local rules and as directed in this Settlement Agreement and Long Form Notice;

10. Issue a preliminary injunction enjoining Class Members from commencing any action or proceeding based on any matter covered by this Settlement Agreement and claim covered by the Third Amended Complaint, including, but not limited to, whether this Settlement Agreement will be given final approval;

11. Appoint Jeanne Finegan of Kroll Notice Media Solutions as the Settlement Notice Administrator;

12. Appoint Patrick A. Juneau as the Settlement Special Master pursuant to Federal Rule of Civil Procedure 53;

13. Authorize Toyota to take all necessary and appropriate steps to establish the means necessary to implement the Agreement; and

14. Issue other related orders to effectuate the preliminary approval of the Agreement.

B. After the Fairness Hearing, the Parties shall seek to obtain from the Court a Final Judgment and Final Order in the forms substantially similar to Exhibits 9 and 10, respectively.

C. Within five (5) business days of issuance by Final Effective Date, the Parties shall file a stipulation of dismissal with prejudice or substantial equivalent in the Related Action.

X. MODIFICATION OR TERMINATION OF THIS SETTLEMENT AGREEMENT

A. The terms and provisions of this Settlement Agreement may be amended, modified, or expanded by written agreement of the Parties and approval of the Court; provided, however, that after entry of the Final Judgment and Final Order, the Parties may by written agreement effect such amendments, modifications, or expansions of this Settlement Agreement and its implementing documents (including all exhibits hereto) without further notice to the Class or approval by the Court if such changes are consistent with the Court's Final Judgment and Final Order and do not limit the rights of Class Members under this Settlement Agreement.

B. This Settlement Agreement shall terminate at the discretion of either Toyota or the Class Representatives, through Class Counsel, if: (1) the Court, or any appellate court(s), rejects, modifies, or denies approval of any portion of the Settlement Agreement that the terminating party in its (or their) sole judgment and discretion reasonably determine(s) is material, including, without limitation, the terms of relief, the findings, or conclusions of the Court, the provisions relating to notice, the definition of the Class, and/or the terms of the Release; or (2) the Court, or any appellate court(s), does not enter or completely affirm, or alters, narrows or expands, any portion of the Final Order and Final Judgment, or any of the Court's findings of fact or conclusions of law, that the terminating party in its (or their) sole judgment and discretion reasonably determine(s) is material. The terminating party must exercise the option to withdraw from and terminate this Settlement Agreement, as provided in this Section X, by a signed writing served on

the other Parties no later than 20 days after receiving notice of the event triggering this termination provision. In the event of termination, the Parties will be returned to their positions status quo ante.

C. If an option to withdraw from and terminate this Settlement Agreement arises under Section X(B) above, neither Toyota nor Class Representatives are required for any reason or under any circumstance to exercise that option and any exercise of that option shall be in good faith.

D. If, but only if, this Settlement Agreement is terminated pursuant to Section X(B), above, then:

1. This Settlement Agreement shall be null and void and shall have no force or effect, and no Party to this Settlement Agreement shall be bound by any of its terms, except for the terms of Section X(D) herein;

2. The Parties will petition the Court to have any stay orders entered pursuant to this Settlement Agreement lifted;

3. All of its provisions, and all negotiations, statements, and proceedings relating to it shall be without prejudice to the rights of Toyota, Class Representatives, or any Class Member, all of whom shall be restored to their respective positions existing immediately before the execution of this Settlement Agreement, except that the Parties shall cooperate in requesting that the Court set a new scheduling order such that no Party's substantive or procedural rights are prejudiced by the settlement negotiations and proceedings;

4. Toyota and the other Released Parties expressly and affirmatively reserve all defenses, arguments, and motions as to all claims that have been or might later be asserted in the

Action or the Related Action, including, without limitation, the argument that the Action or the Related Action may not be litigated as a class action;

5. Class Representatives and all other Class Members, on behalf of themselves and their heirs, assigns, executors, administrators, predecessors, and successors, expressly and affirmatively reserve and do not waive all motions as to, and arguments in support of, all claims, causes of actions or remedies that have been or might later be asserted in the Action or the Related Action including, without limitation, any argument concerning class certification, and treble or other damages;

6. Toyota and the other Released Parties expressly and affirmatively reserve and do not waive all motions and positions as to, and arguments in support of, all defenses to the causes of action or remedies that have been sought or might be later asserted in the actions, including without limitation, any argument or position opposing class certification, liability or damages;

7. Neither this Settlement Agreement, the fact of its having been made, nor the negotiations leading to it, nor any discovery or action taken by a Party or Class Member pursuant to this Settlement Agreement shall be admissible or entered into evidence for any purpose whatsoever;

8. Any settlement-related order(s) or judgment(s) entered in this Action after the date of execution of this Settlement Agreement shall be deemed vacated and shall be without any force or effect;

9. All costs incurred in connection with the Settlement Agreement, including, but not limited to, notice, publication, and customer communications are the sole responsibility of

Toyota. Neither the Class Representatives nor Class Counsel shall be responsible for any of these costs or other settlement-related costs; and

10. Notwithstanding the terms of this paragraph, if the Settlement Agreement is not consummated, Class Counsel may include any time spent in settlement efforts as part of any fee petition filed at the conclusion of the case, and Toyota reserves the right to object to the reasonableness of such requested fees.

XI. GENERAL MATTERS AND RESERVATIONS

A. Toyota has denied and continues to deny each and all of the claims and contentions alleged in the Action and the Related Action, and has denied and continues to deny that it has committed any violation of law or engaged in any wrongful act that was alleged, or that could have been alleged, in the Action or the Related Action. Toyota believes that it has valid and complete defenses to the claims asserted against it in the Action and the Related Action and denies that it committed any violations of law, engaged in any unlawful act or conduct, or that there is any basis for liability for any of the claims that have been, are, or might have been alleged in the Action or the Related Action. Nonetheless, Toyota has concluded that it is desirable that the Action and the Related Action be fully and finally settled in the matter and upon the terms and conditions set forth in this Settlement Agreement.

B. The obligation of the Parties to conclude the Settlement Agreement is and shall be contingent upon each of the following:

1. Entry by the Court of the Final Judgment and Final Order approving the Settlement Agreement, from which the time to appeal has expired or which has remained unmodified after any appeal(s); and
2. Any other conditions stated in this Settlement Agreement.

C. The Parties and their counsel agree to keep the existence and contents of this Settlement Agreement confidential until the date on which the Motion for Preliminary Approval is filed; provided, however, that this Section shall not prevent Toyota from disclosing such information, prior to the date on which the Motion for Preliminary Approval is filed, to state and federal agencies, regulators, independent accountants, actuaries, advisors, financial analysts, insurers or attorneys, nor shall it prevent Toyota from disclosing such information based on the substance of this Settlement Agreement. Nor shall it prevent the Parties and their counsel from disclosing such information to persons or entities (such as experts, courts, co-counsel, and/or administrators) to whom the Parties agree disclosure must be made in order to effectuate the terms and conditions of this Settlement Agreement.

D. Class Representatives and Class Counsel agree that the confidential information made available to them solely through the settlement process was made available, as agreed to, on the condition that neither Class Representatives nor their counsel may disclose it to third parties (other than experts or consultants retained by Class Representatives in connection with the Action or the Related Action); that it not be the subject of public comment; that it not be used by Class Representatives or Class Counsel in any way in this litigation or otherwise should the Settlement Agreement not be achieved, and that it is to be returned if a settlement is not concluded; provided, however, that nothing contained herein shall prohibit Class Representatives from seeking such information through formal discovery if not previously requested through formal discovery or from referring to the existence of such information in connection with the settlement of the Action or the Related Action.

E. Information provided by Toyota, Toyota's Counsel, and/or the Settlement Special Master to Class Representatives, Plaintiffs' Counsel, any individual Class Member, counsel for

any individual Class Member, and/or administrators, pursuant to the negotiation and implementation of this Settlement Agreement, includes trade secrets and highly confidential and proprietary business information and shall be deemed “Highly Confidential” pursuant to the protective orders that have been or will be entered in the Action or the Related Action, and shall be subject to all of the provisions thereof. Any materials inadvertently produced shall, upon Toyota’s request, be promptly returned to Toyota’s Counsel, and there shall be no implied or express waiver of any privileges, rights and defenses.

F. Within 90 days after the Final Effective Date (unless the time is extended by agreement of the Parties) and upon Toyota’s written request, Plaintiffs’ Counsel, and any expert or other consultant employed by them in such capacity or any other individual with access to documents provided by Toyota, and/or Toyota’s Counsel, and/or the Settlement Special Master to Plaintiffs’ Counsel shall either: (i) return to Toyota’s Counsel, all such documents and materials (and all copies of such documents in whatever form made or maintained) produced during the settlement process by Toyota and/or Toyota’s Counsel, and/or the Settlement Special Master and any and all handwritten notes summarizing, describing or referring to such documents; or (ii) certify to Toyota’s Counsel that all such documents and materials (and all copies of such documents in whatever form made or maintained) produced by Toyota, and/or Toyota’s Counsel, and/or the Settlement Special Master and any and all handwritten notes summarizing, describing or referring to such documents have been destroyed, provided, however, that this Section X shall not apply to any documents made part of the record in connection with a Claim, nor to any documents made part of a Court filing, nor to Plaintiffs’ Counsel’s work product. Nothing in this Settlement Agreement shall affect any confidentiality order or protective order in the Action.

G. Toyota's execution of this Settlement Agreement shall not be construed to release – and Toyota expressly does not intend to release – any claim Toyota may have or make against any insurer for any cost or expense incurred in connection with this Settlement Agreement, including, without limitation, for attorneys' fees and costs.

H. Class Counsel represent that: (1) they are authorized by the Class Representatives to enter into this Settlement Agreement with respect to the allegations and claims in the Third Amended Complaint; and (2) they are seeking to protect the interests of the Class.

I. Class Counsel further represent that the Class Representatives: (1) have agreed to serve as representatives of the Class proposed to be certified herein; (2) are willing, able, and ready to perform all of the duties and obligations of representatives of the Class, including, but not limited to, being involved in discovery and fact finding; (3) have read the pleadings in the Action and the Related Action or have had the contents of such pleadings described to them; (4) are familiar with the results of the fact-finding undertaken by Class Counsel; (5) have been kept apprised of settlement negotiations among the Parties, and have either read this Settlement Agreement or have received a detailed description of it from Class Counsel and they have agreed to its terms; (6) have consulted with Class Counsel about the Action and this Settlement Agreement and the obligations imposed on representatives of the Class; (7) have authorized Class Counsel to execute this Settlement Agreement on their behalf; and (8) shall remain and serve as representatives of the Class until the terms of this Settlement Agreement are effectuated, this Settlement Agreement is terminated in accordance with its terms, or the Court at any time determines that said Class Representatives cannot represent the Class.

J. The Parties acknowledge and agree that no opinion concerning the tax consequences of the Settlement Agreement to Class Members is given or will be given by the

Parties, nor are any representations or warranties in this regard made by virtue of this Settlement Agreement. Each Class Member's tax obligations, and the determination thereof, are the sole responsibility of the Class Member, and it is understood that the tax consequences may vary depending on the particular circumstances of each individual Class Member.

K. Toyota represents and warrants that the individual(s) executing this Settlement Agreement is authorized to enter into this Settlement Agreement on behalf of Toyota.

L. This Settlement Agreement, complete with its exhibits, sets forth the sole and entire agreement among the Parties with respect to its subject matter, and it may not be altered, amended, or modified except by written instrument executed by Class Counsel and Toyota's Counsel on behalf of Toyota. The Parties expressly acknowledge that no other agreements, arrangements, or understandings not expressed in this Settlement Agreement exist among or between them, and that in deciding to enter into this Settlement Agreement, they rely solely upon their judgment and knowledge. This Settlement Agreement supersedes any prior agreements, understandings, or undertakings (written or oral) by and between the Parties regarding the subject matter of this Settlement Agreement.

M. This Settlement Agreement and any amendments thereto shall be governed by and interpreted according to the law of the State of Texas notwithstanding its conflict of laws provisions.

N. Any disagreement and/or action to enforce this Settlement Agreement shall be commenced and maintained only in the United States District Court for the Eastern District of Texas.

O. Whenever this Settlement Agreement requires or contemplates that one of the Parties shall or may give notice to the other, notice shall be provided by e-mail and/or next-day (excluding Saturdays, Sundays and Federal Holidays) express delivery service as follows:

1. If to Toyota, then to:

John P. Hooper
King & Spalding LLP
1185 Avenue of the Americas
34th Floor
New York, New York 10036
Tel.: (212) 556-2100
Fax: (212) 556-2222
E-mail: Jhooper@kslaw.com

2. If to the Class, then to:

Timothy G. Blood
Blood Hurst & O'Reardon, LLP
501 West Broadway, Suite 1490
San Diego, CA 92101
Tel: (619) 338-1100
Fax: (619) 338-1101
E-mail: tblood@bholaw.com

P. All time periods set forth herein shall be computed in calendar days unless otherwise expressly provided. In computing any period of time prescribed or allowed by this Settlement Agreement or by order of the Court, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a Federal Holiday, or, when the act to be done is the filing of a paper in court, a day on which weather or other conditions have made the office of the clerk of the court inaccessible, in which event the period shall run until the end of the next day that is not one of the aforementioned days. As used in this Section XI "Federal Holiday" includes New Year's Day, Birthday of Martin Luther King, Jr., Presidents' Day,

Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Patriot's Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President, the Congress of the United States or the Clerk of the United States District Court for the Eastern District of Texas.

Q. The Parties reserve the right, subject to the Court's approval, to agree to any reasonable extensions of time that might be necessary to carry out any of the provisions of this Settlement Agreement.

R. The Class, Class Representatives, Class Counsel, Toyota and/or Toyota's Counsel shall not be deemed to be the drafter of this Settlement Agreement or of any particular provision, nor shall they argue that any particular provision should be construed against its drafter. All Parties agree that this Settlement Agreement was drafted by counsel for the Parties during extensive arm's length negotiations. No parol or other evidence may be offered to explain, construe, contradict, or clarify its terms, the intent of the Parties or their counsel, or the circumstances under which this Settlement Agreement was made or executed.

S. The Parties expressly acknowledge and agree that this Settlement Agreement and its exhibits, along with all related drafts, motions, pleadings, conversations, negotiations, and correspondence, constitute an offer of compromise and a compromise within the meaning of Federal Rule of Evidence 408 and any equivalent rule of evidence in any state. In no event shall this Settlement Agreement, any of its provisions or any negotiations, statements or court proceedings relating to its provisions in any way be construed as, offered as, received as, used as, or deemed to be evidence of any kind in the Action or the Related Action, any other action, or in any judicial, administrative, regulatory or other proceeding, except in a proceeding to enforce this Settlement Agreement or the rights of the Parties or their counsel. Without limiting the foregoing,

neither this Settlement Agreement nor any related negotiations, statements, or court proceedings shall be construed as, offered as, received as, used as or deemed to be evidence or an admission or concession of any liability or wrongdoing whatsoever on the part of any person or entity, including, but not limited to, the Released Parties, Class Representatives, or the Class or as a waiver by the Released Parties, Class Representatives or the Class of any applicable privileges, claims or defenses.

T. Class Representatives expressly affirm that the allegations contained in the operative complaint were made in good faith, but consider it desirable for the Action and the Related Action to be settled and dismissed because of the substantial benefits that the Settlement Agreement will provide to Class Members.

U. The Parties, their successors and assigns, and their counsel undertake to implement the terms of this Settlement Agreement in good faith, and to use good faith in resolving any disputes that may arise in the implementation of the terms of this Settlement Agreement.

V. The waiver by one Party of any breach of this Settlement Agreement by another Party shall not be deemed a waiver of any prior or subsequent breach of this Settlement Agreement.

W. If one Party to this Settlement Agreement considers another Party to be in breach of its obligations under this Settlement Agreement, that Party must provide the breaching Party with written notice of the alleged breach and provide a reasonable opportunity to cure the breach before taking any action to enforce any rights under this Settlement Agreement.

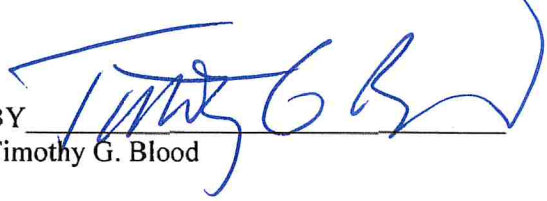
X. The Parties, their successors and assigns, and their counsel agree to cooperate fully with one another in seeking Court approval of this Settlement Agreement and to use their best efforts to effect the prompt consummation of the Settlement Agreement.

Y. This Settlement Agreement may be signed with a facsimile signature and in counterparts, each of which shall constitute a duplicate original.

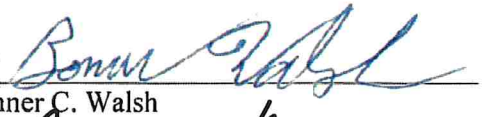
Z. In the event any one or more of the provisions contained in this Settlement Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision if Toyota, on behalf of Defendant, and Class Counsel, on behalf of Class Representatives and Class Members, mutually agree in writing to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Settlement Agreement. Any such agreement shall be reviewed and approved by the Court before it becomes effective.

Agreed to on the date indicated below.

APPROVED AND AGREED TO BY CLASS COUNSEL
AS AUTHORIZED BY CLASS REPRESENTATIVES

BY 
Timothy G. Blood

DATE: Oct. 13, 2021

BY 
Bonner C. Walsh

DATE: October 13, 2021


BY 
Ben Barnow

DATE: Oct 13, 2021

BY 
Matthew D. Schelkopf

DATE: Oct. 13, 2021

APPROVED AND AGREED TO BY TOYOTA MOTOR NORTH AMERICA, INC.


BY 

Elizabeth B. Gibson

DATE: October 14, 2021

Deputy General Counsel
TOYOTA MOTOR NORTH AMERICA, INC.

APPROVED AND AGREED TO AS TO FORM
BY TOYOTA'S COUNSEL

BY 

John P. Hooper
KING & SPALDING LLP

DATE: October 14, 2021