

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

SHARON CHENG, CRISTINA DIAS,
RHONDA SANFILIPO, BRUCE PULEO,
ZINA PRUITT, RON ZIMMERMAN,
CHERYL SILVERSTEIN, TINA FENG,
ROBERT HAKIM, BERNADETTE GRIMES,
ELIZABETH GENDRON, ROGER CARTER,
MARLENE RUDOLPH, PATRICIA
BARLOW, TERESA EDWARDS, ISAAC
TORDJMAN, JAMES HETTINGER, DIEU
LE, CHRIS BOHN, DANIEL DEWEERDT,
CRAIG BOXER, BETTY DENDY,
ELIZABETH PERSAK, KRISTI ROCK,
JENNIFER CHALAL, JOHN TORRANCE,
LENARD SHOEMAKER, MICHAEL
MITCHELL, ROBERT SKELTON, JEFFREY
JONES, ISABEL MARQUES, PAYAM
RASTEGAR, and SYED ABDUL NAFAY,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

TOYOTA MOTOR CORPORATION,
TOYOTA MOTOR NORTH AMERICA, INC.,
and DENSO INTERNATIONAL AMERICA,
INC.,

Defendants.

Case No: 20-CV-629-JRC

**ORDER PRELIMINARILY APPROVING CLASS SETTLEMENT DIRECTING
NOTICE TO THE CLASS AND SCHEDULING FAIRNESS HEARING**

The Parties to the above-captioned action currently pending against Toyota Motor Corporation, Toyota Motor North America, Inc. (collectively “Toyota”), and Denso International America, Inc. (“Denso”) (collectively, “Defendants”) have agreed to a proposed class action settlement, the terms and conditions of which are set forth in an executed Settlement Agreement

(the “Settlement” or “Settlement Agreement”).¹ The Parties reached the Settlement through arm’s-length negotiations with the assistance and oversight of Settlement Special Master Patrick A. Juneau. Under the Settlement Agreement, subject to the terms and conditions therein and subject to Court approval, the Action will be dismissed with prejudice, and Class Representatives and the proposed Class would fully, finally, and forever resolve, discharge, and release their claims against the Released Parties in exchange for Toyota’s agreement to implement a Customer Support Program for Additional Vehicles, which includes a Loaner/Towing Program; an Extended New Parts Warranty for Subject Vehicles and SSC Vehicles, which also includes a Loaner/Towing Program; reimburse Class Members for previously paid out-of-pocket expenses incurred to repair or replace a Fuel Pump of Covered Vehicles that were not otherwise reimbursed, among other related relief; and Toyota’s payment of the costs and expenses associated with providing and implementing the relief, as set forth in the Settlement Agreement.

The Settlement Agreement has been filed with the Court, and the Parties have filed a Joint Motion for Preliminary Approval of Class Settlement for Preliminary Certification of the Class for settlement purposes only, and the issuance of related orders (the “Motion”). Upon considering the Motion and exhibits thereto, the Settlement Agreement and related documents and exhibits, the record in these proceedings, the representations and recommendations of counsel, and the requirements of law, the Court finds that: (1) this Court has jurisdiction over the subject matter and Parties to these proceedings; (2) the proposed Class meets the requirements of Rule 23 of the Federal Rules of Civil Procedure² and should be preliminarily certified for settlement purposes only; (3) the persons and entities identified below should be appointed Class Representatives, and Class Counsel; (4) the Settlement is the result of informed, good-faith,

¹ Capitalized terms shall have the definitions and meanings accorded to them in the Settlement Agreement.

² All citations to the Rules shall refer to the Federal Rules of Civil Procedure.

arm's-length negotiations between the Parties and their capable and experienced counsel and is not the result of collusion; (5) the Settlement is fair, reasonable, and adequate and should be preliminarily approved; (6) the proposed Settlement is sufficiently fair, reasonable, and adequate to warrant sending notice of the Settlement to the Class; (7) the proposed Notice Program and proposed forms of notice satisfy Rule 23 and Constitutional Due Process requirements and are reasonably calculated under the circumstances to apprise the Class of the pendency of the Action, preliminary class certification for settlement purposes only, the terms of the Settlement, Class Counsel's application for an award of attorneys' fees and expenses ("Fee Application") and request for Class Representative service awards, their rights to opt-out of the Class and object to the Settlement, and the process for submitting a Claim to request reimbursement under the Out-of-Pocket Claims Process; (8) good cause exists to schedule and conduct a Fairness Hearing, pursuant to Rule 23(e), to assist the Court in determining whether to grant final approval of the Settlement, certify the Class, for settlement purposes only, and issue a Final Order and Final Judgment, and whether to grant Class Counsel's Fee Application and request for Class Representative service awards; and (9) the other related matters pertinent to the preliminary approval of the Settlement should also be approved.

Based on the foregoing, **IT IS HEREBY ORDERED AND ADJUDGED** as follows:

1. The Court has jurisdiction over the subject matter and Parties to this proceeding pursuant to 28 U.S.C. §§ 1331 and 1332.
2. Venue is proper in this District pursuant to 28 U.S.C. § 1391(a) because a substantial part of the events or omissions alleged by the Class Representatives occurred in this District.

Preliminary Class Certification for Settlement Purposes Only and Appointment of
Class Representatives and Class Counsel

3. In deciding whether to preliminarily certify a settlement class, a court must consider the same factors that it would consider in connection with a proposed litigation class—*i.e.*, all Rule 23(a) factors and at least one subsection of Rule 23(b) must be satisfied—except that the Court need not consider the manageability of a potential trial, since the settlement, if approved, would obviate the need for a trial. *Amchem Prod., Inc. v. Windsor*, 521 U.S. 591, 620 (1997).

4. The Court finds, for settlement purposes, that the Rule 23 factors are satisfied and that preliminary certification of the proposed Class is appropriate under Rule 23. The Court, therefore, preliminarily certifies the following Class for settlement purposes only:

All individuals or legal entities who, at any time as of the entry of the Initial Notice Date, own or owned, purchase(d) or lease(d) Covered Vehicles 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) Denso, its officers, directors and employees; its affiliates and affiliates' officers, directors and employees; its distributors and distributors' officers, directors and employees; (c) Plaintiffs' Counsel; and (d) judicial officers and their immediate family members and associated court staff assigned to this case. In addition, persons or entities are not Class Members once they timely and properly exclude themselves from the Class, as provided in this Settlement Agreement, and once the exclusion request is finally approved by the Court.

“Covered Vehicles” means the Additional Vehicles, SSC Vehicles, and the Subject Vehicles. “Additional Vehicles” means those vehicles that are equipped with Denso low-pressure fuel pumps with part number prefixes 23220- and/or 23221- that are identified in Exhibit 1b. “SSC Vehicles” means the vehicles identified as part of the Special Service

Campaigns 21LC01 and 21TC03, all of which are equipped with Denso low-pressure fuel pumps with part number prefixes 23220- and/or 23221-, and are listed on Exhibit 1a of the Settlement Agreement. “Subject Vehicles” means those vehicles that were identified as part of the Recall as defined in Section II.A.41 of the Settlement Agreement, all of which are equipped with Denso low-pressure fuel pumps with part number prefixes 23220- and/or 23221-, and/or are recalled vehicles that are listed in Exhibit 2 of the Settlement Agreement.

“Recall(s)” means Toyota’s recalls of the Subject Vehicles, namely, Toyota’s Recall 20V-012 submitted to NHTSA on or about January 13, 2020, the amendments submitted for Recall 20V-682 on or about November 4, 2020, and the amendments submitted for Recall 21V-617 on or about August 6, 2021, as identified in Exhibit 2 of the Settlement Agreement, and any expansions related thereto prior to Preliminary Approval.

5. Specifically, the Court finds, for settlement purposes, that the Class, for preliminary approval only, satisfies the following factors of Rule 23:

(a) Numerosity: The Court preliminarily finds that the Settlement Class is ascertainable from Defendants’ confirmatory discovery as well as from other objective criteria, and the members of the Settlement Class are so numerous that their joinder before the Court would be impracticable. *See Vu v. Diversified Collection Servs., Inc.*, 293 F.R.D. 343, 352 (E.D.N.Y. 2013) (“While there is no magic number, courts have found numerosity to be satisfied by a class of forty members.”) (citing *Consol. Rail Corp. v. Town of Hyde Park*, 47 F.3d 473, 483 (2d Cir. 1995)). Thus, the Rule 23(a)(1) numerosity requirement is met.

(b) Commonality: The commonality requirement of Rule 23(a)(2) is satisfied for settlement purposes because there are multiple questions of law and fact that center on the manufacturing and sale of Covered Vehicles equipped with low-pressure Denso fuel pumps, as

alleged and/or described in the Second Amended Consolidated Class Action Complaint, which are common to the Class. *See Dupler v. Costco Wholesale Corp.*, 249 F.R.D. 29, 37 (E.D.N.Y. 2008) (“A single common issue of law will satisfy the commonality requirement.”).

(c) Typicality: The Class Representatives’ claims are typical of the other Class Members’ claims for purposes of Settlement because they concern the same alleged conduct, arise from the same legal theories, and allege the same types of harm and entitlement to relief. *See Shabazz v. Morgan Funding Corp.*, 269 F.R.D. 245, 250 (S.D.N.Y. 2010) (“Rule 23(a)(3) is satisfied when each class member’s claim arises from the same course of events and each class member makes similar legal arguments to prove the defendant’s liability.”). Rule 23(a)(3) is therefore satisfied.

(d) Adequacy: The Court preliminarily finds that the Class Representatives will fairly and adequately protect the interests of the Settlement Class in that: (i) the Class Representatives’ interests and the nature of claims alleged are consistent with those of the members of the Settlement Class; (ii) there appear to be no conflicts between or among the Class Representatives and the Settlement Class; and (iii) the Class Representatives and the members of the Settlement Class are represented by qualified, reputable counsel who are experienced in preparing and prosecuting complex class actions. Rule 23(a)(4) is therefore satisfied.

(e) Predominance and Superiority: Rule 23(b)(3) is satisfied for settlement purposes as well because the common legal and alleged factual issues here predominate over individualized issues, and resolution of the common issues for Class Members in a single, coordinated proceeding is superior to individual lawsuits addressing the same legal and factual issues.

6. The Court appoints the following persons as Class Representatives: Sharon Cheng, Cristina Dias, Rhonda SanFilipo, Bruce Puleo, Zina Pruitt, Ron Zimmerman, Cheryl Silverstein, Tina Feng, Robert Hakim, Bernadette Grimes, Elizabeth Gendron, Roger Carter, Marlene Rudolph, Patricia Barlow, Teresa Edwards, Issac Tordjman, James Hettinger, Dieu Le, Chris Bohn, Daniel Deweerdt, Craig Boxer, Betty Dendy, Elizabeth Persak, Kristi Rock, Jennifer Chalal, John Torrance, Lenard Shoemaker, Michael Mitchell, Robert Skelton, Jeffrey Jones, Isabel Marques, Payam Rastegar, and Syed Abdul Nafay, plaintiffs in the Action.

7. The Court appoints the following persons and entities as Class Counsel:

W. Daniel “Dee” Miles III
Demet Basar
Beasley, Allen, Crow, Methvin, Portis & Miles, P.C.
218 Commerce Street
Montgomery, Alabama 36104
Tel.: (800) 898-2034
E-mail: Dee.Miles@BeasleyAllen.com
E-mail: Demet.Basar@BeasleyAllen.com

Preliminary Approval of the Settlement

8. Pursuant to Rule 23(e)(2), in order to grant preliminary approval, the Court must find that the proposed Settlement is “fair, reasonable, and adequate” after considering whether: (A) the class representatives and class counsel have adequately represented the class; (B) the proposal was negotiated at arm’s length; (C) the relief provided for the class is adequate—taking into account (i) the costs, risks, and delay of trial and appeal, (ii) the effectiveness of any the proposed methods of distributing relief to the class, including the method of processing class-member claims, if required; (iii) the terms of any proposed award of attorney’s fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3); and (D) the proposal treats class members equitably relative to each other. Fed. R. Civ. P. 23(e)(2) (amended Dec. 2018).

9. Preliminary approval is appropriate where the proposed settlement appears to be the “result of serious, informed, non-collusive (‘arm’s length’) negotiations, where there are no grounds to doubt its fairness and no other obvious deficiencies . . . and where the settlement appears to fall within the range of possible approval.” *Cohen v. J.P. Morgan Chase & Co.*, 262 F.R.D. 153, 157 (E.D.N.Y. 2009).

10. The Court preliminarily approves the Settlement Agreement and the exhibits appended to the Motion as fair, reasonable, and adequate under Rule 23(e)(2), after taking into account that the class representatives and class counsel have adequately represented the class; the Settlement was reached in the absence of collusion and is the product of informed, good-faith, arm’s-length negotiations between the Parties and their capable and experienced counsel; the relief provided is adequate given: (a) the costs, risks and delay of trial and appeal, (b) Notice is sufficient to notify the Class, (c) the terms of the proposed attorney’s fees and timing of payment, and (d) the remaining terms of the Settlement Agreement. The Court also finds that the Parties have submitted sufficient information for the Court to support that Notice should be disseminated as “the proposed settlement will likely earn final approval.” *See* Fed. R. Civ. P. 23(e) advisory committee’s note to 2007 amendment.

11. The Court further finds that the Settlement, including the exhibits, appended to the Motion is within the range of reasonableness and possible judicial approval, such that: (a) a presumption of fairness is appropriate for the purposes of preliminary settlement approval; and (b) it is appropriate to effectuate notice to the Class, as set forth below and in the Settlement Agreement, and schedule a Fairness Hearing to assist the Court in determining whether to grant final approval to the Settlement and enter Final Judgment. *See Cohen*, 262 F.R.D. at 157.

Approval of Notice Program and Direction to Effectuate the Notice

12. The Court approves the form and content of the notices to be provided to the Class, substantially in the forms appended as Exhibits 5 (*as modified by Dkt. 166*), 6, 7 to the Settlement Agreement. The Court further approves the establishment of an internet website for the Settlement. The Court further finds that the Notice Program, described in Section IV of the Settlement Agreement, is the best practicable under the circumstances. The Notice Program is reasonably calculated under the circumstances to apprise the Class of the pendency of the Action, class certification for settlement purposes only, the terms of the Settlement, their rights to opt-out of the Class and object to the Settlement, Class Counsel's Fee Application, and the request for Class Representative service awards. The notices and Notice Program constitute sufficient notice to all persons and entities entitled to notice. The notices and Notice Program satisfy all applicable requirements of law, including, but not limited to, Rule 23 and the constitutional requirement of due process. The Court finds that the forms of notice are written in simple terminology, are readily understandable by Class Members and comply with the Federal Judicial Center's illustrative class action notices. The Court orders that the notices be disseminated to the Class as per the Notice Program.

13. The Court directs that Patrick A. Juneau and Patrick Hron of Juneau David, APLC shall act as the Settlement Claims Administrator.

14. The Court directs that Jeanne Finegan of Kroll Notice Media act as the Settlement Notice Administrator.

15. The Court appoints Miller Kaplan Arase LLP as the Tax Accountant.

16. The Settlement Notice Administrator shall implement the Notice Program, as set forth in the Settlement, using substantially the forms of notice appended as Exhibits 5 (*as*

modified by Dkt. 166), 6, and 7 to the Settlement Agreement and approved by this Order. Notice shall be provided to the Class Members pursuant to the Notice Program and the Settlement Notice Administrator's declaration and notice plan (Settlement Agreement, Exs. 4 and 9), as specified in Section IV of the Settlement Agreement and approved by this Order.

17. The Settlement Notice Administrator shall send the Direct Mail Notice, substantially in the form attached to the Settlement Agreement as Exhibit 6, by U.S. Mail, proper postage prepaid to Class Members, as identified by data to be forwarded to the Settlement Notice Administrator by IHS Automotive, Driven by Polk. The mailings of the Direct Mail Notice to the persons and entities identified by IHS Automotive, Driven by Polk shall be substantially completed in accordance with the Notice Program. Toyota is hereby ordered to obtain such vehicle registration information through IHS Automotive, Driven by Polk, which specializes in obtaining such information, from, *inter alia*, the applicable Departments of Motor Vehicles.

Escrow Account/Qualified Settlement Fund

18. The Court finds that the Escrow Account is to be a "qualified settlement fund" as defined in Section 1.468B-1(c) of the Treasury Regulations in that it satisfies each of the following requirements:

- (a) The Escrow Account is to be established pursuant to an Order of this Court and is subject to the continuing jurisdiction of this Court;
- (b) The Escrow Account is to be established to resolve or satisfy one or more claims that have resulted or may result from an event that has occurred and that has given rise to at least one claim asserting liabilities; and
- (c) The assets of the Escrow Account are to be segregated from other assets of Defendants, the transferor of the payment to the Settlement Funds and controlled by an Escrow Agreement.

19. Under the “relation back” rule provided under Section 1.468B-1(j)(2)(i) of the Treasury Regulations, the Court finds that Toyota may elect to treat the Escrow Account as coming into existence as a “qualified settlement fund” on the latter of the date the Escrow Account meets the requirements of Paragraphs 18(b) and 18(c) of this Order or January 1 of the calendar year in which all of the requirements of Paragraph 18 of this Order are met. If such a relation-back election is made, the assets held by the Settlement Funds on such date shall be treated as having been transferred to the Escrow Account on that date.

Fairness Hearing, Opt-Outs, and Objections

20. The Court directs that a Fairness Hearing shall be scheduled for **December 14, 2022 at 10:00 a.m. in Courtroom 11D South** before Magistrate Judge James R. Cho to assist the Court in determining whether to grant final approval to the Settlement Agreement, certify the Class, and enter the Final Order and Final Judgment, and whether Class Counsel’s Fee Application and request for Class Representative service awards should be granted.

21. 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, postmarked on a date ordered by the Court, specifying that he, she, they or it wants to be excluded and otherwise complying with the terms stated in the Long Form Notice. The Settlement Notice Administrator shall forward copies of any written requests for exclusion to Class Counsel, Denso’s Counsel, and Toyota’s Counsel. A list reflecting all 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, she, they, or it may not file an objection under Section VI of the Settlement Agreement.

22. Any Class Member who does not file a timely written request for exclusion as

provided in Section V of the Settlement Agreement shall be bound by all subsequent proceedings, orders and judgments, including, but not limited to, the Release, Final Order and Final Judgment in the Action, even if he, she, they, or it has litigation pending or subsequently initiates litigation against Toyota and/or Denso relating to the claims and transactions released in the Action. Toyota's Counsel shall provide to the Settlement Notice Administrator, within 7 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 Covered Vehicles and/or otherwise covered by the Release. Denso's Counsel shall provide to the Settlement Notice Administrator, within 7 business days of the entry of the Preliminary Approval Order, a list of all counsel for anyone who has then-pending litigation against Denso relating to claims involving the Covered Vehicles and/or otherwise covered by the Release.

23. The Opt-Out Deadline shall be specified in the Direct Mail Notice, Publication Notice, and Long Form Notice. All persons and entities within the Class definition who do not timely and validly opt out of the Class shall be bound by all determinations and judgments in the Action concerning the Settlement, including, but not limited to, the Releases set forth in Section VII of the Settlement.

24. The Court further directs that any person or entity in the Class who does not opt out of the Class may object, directly or through a lawyer at his, her or its expense, to the Settlement Agreement, the Fee Application and/or the requested service awards to the Class Representatives. Objections must be filed electronically with the Court, or mailed to the Clerk of the Court, Class Counsel, and counsel for Defendants at the following addresses:

- (a) Clerk of the Court

Clerk of the Court
United States District Court for the Eastern District of New York

225 Cadman Plaza East
Brooklyn, New York 11201
Re: Cheng, Case No. 1:20-CV-629- JRC

(b) Class Counsel

W. Daniel “Dee” Miles III
Demet Basar
Beasley, Allen, Crow, Methvin, Portis & Miles, P.C.
218 Commerce Street
Montgomery, Alabama 36104
Tel.: (800) 898-2034
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Email: Demet.Basar@BeasleyAllen.com

(c) Counsel for Toyota

John P. Hooper
Eric F. Gladbach
KING & SPALDING LLP
1185 Avenue of the Americas 34th Floor
New York, New York 10036
Tel.: (212) 556-2220
Email: JHooper@kslaw.com
Email: EGladbach@kslaw.com

(d) Counsel for Denso

Daniel R. W. Rustmann
BUTSEL LONG, P.C.
150 W. Jefferson, Suite 100
Detroit, Michigan 48226
Tel.: (313) 225-7076
Email: rustmann@butzel.com

25. 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 and must set forth:

- (i) The case number and name of the Action;
- (ii) The objector’s full name, current residential address, mailing address (if different), telephone number, and e-mail address;
- (iii) An explanation of the basis upon which the objector claims to be a Class

Member, including the make, model year, and VIN of the Covered Vehicle(s) and whether the Covered Vehicle is currently owned or currently leased by the Class Member;

- (iv) 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 or her counsel and any documents supporting the objection;
- (v) The number of times the objector has objected to a class action settlement within the five (5) 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;
- (vi) 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 and/or the request for Attorneys' Fees, Costs and Expenses;
- (vii) The number of times the objector's counsel has objected to a class action settlement within the five (5) years preceding the date that they have filed the objection, and the caption and case number of each case in which objector's counsel has made such objection and the caption and case number of any related appeal;

- (viii) 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;
- (ix) The identity of all counsel representing the objector who will appear at the Fairness Hearing;
- (x) A list of all persons who will be called to testify at the Fairness Hearing in support of the objection;
- (xi) A statement confirming whether the objector intends to personally appear and/or testify at the Fairness Hearing; and
- (xii) The objector’s dated signature.

26. Any objection that fails to satisfy these requirements and any other requirements found in the Long Form Notice shall not be considered by the Court.

Settlement Deadlines

27. The Settlement deadlines are as follows, assuming the Preliminary Approval Order will be issued on or before September 16, 2022.

EVENT	DEADLINES
Initial Class Notice to be Disseminated	Not later than two business days of the date of the Preliminary Approval Order
Toyota’s Counsel shall provide to the Settlement Notice Administrator a list of all counsel for anyone who has then-pending litigation against Toyota relating to claims involving the Covered Vehicles and/or otherwise covered by the Release, and Denso’s Counsel shall provide to the Settlement Notice Administrator a list of all counsel for anyone who has then-pending litigation against Denso relating to claims involving the Covered Vehicles and/or otherwise covered by the Release.	September 23, 2022

Notice to be Substantially Completed	November 11, 2022
Plaintiffs' Motion, Memorandum of Law and Other Materials in Support of their Requested Award of Attorneys' Fees, Reimbursement of Expenses, and Request for Class Representatives' Service Awards to be Filed with the Court	November 18, 2022
Parties' Motion, Memoranda of Law, and Other Materials in Support of Final Approval to be Filed with the Court	November 18, 2022
Deadline for Receipt by the Clerk of All Objections Filed and/or Mailed by Class Members	November 25, 2022
Deadline for filing Notice of Intent to Appear at Fairness Hearing by Class Members and/or their Personal Attorneys	November 25, 2022
Postmark Deadline for Class Members to Mail their Request to Exclude Themselves (Opt-Out) to Settlement Notice Administrator	December 2, 2022
Settlement Notice Administrator Shall File the Results of the Dissemination of the Notice with the Court	December 5, 2022
Defendants Will Deposit the Amount of Class Representative Service Award and Attorneys' Fees, Costs, and Expenses specified in the Settlement Agreement into the Qualified Settlement Fund	December 8, 2022
Settlement Notice Administrator Shall File a List of Opt-Outs	December 8, 2022
Parties' Supplemental Memorandum of Law in Further Support of the Settlement to be Filed with the Court	December 9, 2022
Fairness Hearing	December 14, 2022 at 10:00 a.m. - No sooner than 89 days after Preliminary Approval Order

Customer Support Program	Begins no later than 30 days after Final Effective Date. Coverage under the CSP for the original parts will continue for 15 years from the Date of First Use, which is the date the vehicle was originally sold or leased
Claim Submission Period	Runs from Initial Notice Date up to and including ninety (90) days after the Court's issuance of the Final Order and Final Judgment

Effect of Failure to Approve the Settlement or Termination

28. In the event the Settlement is not approved by the Court, or for any reason the Parties fail to obtain a Final Order and Final Judgment as contemplated in the Settlement, or the Settlement is terminated pursuant to its terms for any reason, then the following shall apply:

- (i) This Settlement Agreement shall be null and void and shall have no force or effect;
- (ii) The Parties will petition the Court to have any stay orders entered pursuant to the Settlement Agreement lifted;
- (iii) All of its provisions, and all negotiations, statements, and proceedings relating to it shall be without prejudice to the rights of Defendants, 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;
- (iv) Class Representatives, on behalf of themselves and their heirs, assigns,

executors, administrators, predecessors, and successors, and on behalf of the Class, 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 including, without limitation, any argument concerning class certification, and treble or other damages;

- (v) Toyota, Denso, 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;
- (vi) 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, except to the extent the Settlement Agreement is filed with the Court, it can be referenced in the Action and any related appeal;
- (vii) 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;
- (viii) All costs incurred in connection with the Settlement Agreement, including, but not limited to, notice, publication, claims administration and

customer communications are the sole responsibility of Defendants and will be paid by Defendants. Neither the Class Representatives nor Class Counsel shall be responsible for any of these costs or other settlement-related costs; and

- (ix) Notwithstanding the terms of this paragraph, if the Settlement 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 Defendants reserve the right to object to the reasonableness of such requested fees.

Stay/Bar of Other Proceedings

29. Pending the Fairness Hearing and the Court's decision whether to finally approve the Settlement, no Class Member, either directly, representatively, or in any other capacity (even those Class Members who validly and timely elect to be excluded from the Class, with the validity of the opt out request to be determined by the Court only at the Fairness Hearing), shall commence, continue, or prosecute against any of the Released Parties (as that term is defined in the Agreement) any action or proceeding in any court or tribunal asserting any of the matters, claims or causes of action that are to be released in the Agreement. Pursuant to 28 U.S.C. §§ 1651(a) and 2283, the Court finds that issuance of this preliminary injunction is necessary and appropriate in aid of the Court's continuing jurisdiction and authority over the Action. Upon final approval of the Settlement, all Class Members who do not timely and validly exclude themselves from the Class shall be forever enjoined and barred from asserting any of the matters, claims or causes of action released pursuant to the Agreement against any of the Released Parties, and any such Class Member shall be deemed to have forever released any and all such

matters, claims, and causes of action against any of the Released Parties as provided for in the Agreement.

General Provisions

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

31. Any confidential information made available to Class Representatives and Class Counsel through the settlement process shall not be disclosed to third parties (other than experts or consultants retained by Class Representatives in connection with the Action); shall not be the subject of public comment; shall 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 shall 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.

SO ORDERED

Dated: Brooklyn, New York
September 16, 2022

s/ James R. Cho
James R. Cho
United States Magistrate Judge