

**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: 1:20-cv-00629-WFK-JRC

**DENSO INTERNATIONAL AMERICA, INC.'s MEMORANDUM IN SUPPORT OF
JOINT MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT**

Denso International America, Inc. submits this Memorandum in Support of the Joint Motion For Entry Of An Order Granting Preliminary Approval Of Class Action Settlement And Issuance Of Related Orders (the “Joint Motion”).¹

1. Plaintiff’s Allegations and Claims

In their Class Action Complaint,² Plaintiffs allege that certain Fuel Pumps manufactured by Denso³ and incorporated by Toyota into the Subject Vehicles were defective. As a result, Defendants have conducted several Recalls. Plaintiffs also allege that the Recalls were inadequate because not all Vehicles with allegedly defective Fuel Pumps have been recalled and because the method of repair used in the Recall was inadequate.

The Class Action Complaint is brought by 33 Plaintiffs on behalf of a nationwide class, multi-state classes for consumer protection, strict liability, and negligent recall, and individual state classes for Alabama, Arizona, California, Florida, Georgia, Illinois, Maryland, Missouri, New York, New Jersey, North Carolina, Ohio, Pennsylvania, Texas, Utah, and Virginia, and asserts

¹ Denso supports preliminary approval in order to avoid the expenses, uncertainties, delays, and other risks inherent in continued litigation and agrees to provisional certification of the proposed class *for settlement purposes only*. Denso denies all allegations of wrongdoing, fault, liability, or damage and vigorously disputes that it or any related entity have engaged in any actionable conduct. Defendants reserve all of their objections to class certification for litigation purposes, and do not consent to certification of the proposed class for any purpose other than to effectuate the settlement.

² Unless otherwise indicated, underlined terms used in this Memorandum have the same meaning as in the Settlement Agreement attached to the Joint Motion. The definitions are contained, in alphabetical order, in Section II of the Settlement Agreement. For readability, this Memorandum underlines the defined terms on first use, but not thereafter.

³ “Denso” is a collective term for DIAM and Denso Corporation, the corporate parent of DIAM located in Japan. Denso Corporation was dismissed without prejudice on August 16, 2021. Denso Corporation is thus not a party to the Action, but it is a released party under the Settlement Agreement.

claims against Toyota and DIAM. The 33 named Plaintiffs assert 97 causes of action. Most of the claims are asserted against both Toyota and DIAM, but warranty claims under the Uniform Commercial Code and certain other claims are brought only against Toyota.

2. Motion Practice, Discovery, and Settlement Negotiations

A. Motion Practice

On January 15, 2021, TMNA and DIAM served their motions to dismiss. Plaintiffs responded on March 30, 2021, and TMNA and DIAM filed their replies on May 28, 2021. On March 1, 2022, TMNA and DIAM withdrew their pending motions to dismiss without prejudice and with leave to refile.

B. Discovery

Since the Action was initiated, the Parties have engaged in extensive formal discovery and informal confirmatory discovery. Plaintiffs, TMNA, and DIAM submitted a Discovery Plan, which was approved by the Court on October 28, 2020. Plaintiffs, TMNA, and DIAM served their written initial disclosures on November 2, 2020. Plaintiffs served requests for production of documents on TMNA and DIAM on July 2, 2020, and served updated Requests on January 22, 2021. DIAM served its responses to Plaintiffs' requests on March 15, 2021. TMNA served its responses to Plaintiffs' requests on April 7, 2021. On September 9, 2021, TMC served its Initial Disclosures, Responses to Plaintiffs' Requests for Production, and Response to Plaintiffs' Interrogatory. Also on September 9, 2021, TMNA served its Response to Plaintiffs' Interrogatory with verification. Defendants have produced documents responsive to Plaintiffs' requests.

As a part of formal discovery, Defendants produced, and Plaintiffs processed and reviewed, about 655,000 documents containing approximately 1.5 million pages related to the Recall, the design and operation of the subject fuel pumps, warranty data, failure modes attributed to the

subject fuel pumps, the Defendants' investigation into the defect, and the defect countermeasure development and implementation.

As a part of confirmatory discovery, Defendants have produced a substantial number of additional documents, tangible things, and information requested by Class Counsel related to the design and operation of the original equipment fuel pump; the design, operation, development, implementation, the effectiveness of the countermeasure fuel pump; and the Recalls. Defendants also produced witnesses for interview on these topics and other matters requested by Class Counsel. Plaintiffs purportedly conducted additional investigation and analysis through a technical expert they engaged.

C. Settlement Negotiations

On November 3, 2021, the Parties jointly moved the Court to appoint Patrick A. Juneau as Settlement Special Master. The Court granted the joint motion on the same day. On February 16, 2022, on the Parties' consent, the Action was referred to Magistrate Judge James R. Cho to conduct all proceedings and order the entry of a final judgment pursuant to 28 U.S.C. § 636(c).

In negotiating the substance and form of settlement, the Parties held numerous video and telephonic conferences, as well as four separate in-person meetings, each lasting almost a full day. The Parties engaged in pre-meeting and post-meeting discussions before and after each in person meeting. The Parties also sought assistance from the Court-appointed Settlement Special Master Patrick Juneau during and following the final meetings. The Parties exchanged countless drafts of settlement agreements and documents and painstakingly crafted terms to which all parties eventually could agree. After the parties reached final agreement on the substance and form of a settlement, they engaged in a final, all day negotiation session, mediated by Special Master Juneau, and they eventually accepted the mediator's recommendation on a settlement amount for attorney fees and costs.

3. Settlement Terms⁴

A. Benefits to the Class

The proposed settlement provides three principal benefits to Class Members: (1) a “Customer Support Program” for Class Members with Additional Vehicles, that is, Subject Vehicles that have not been included in the Recalls; (2) an “Extended New Parts Warranty” for Subject Vehicles and SSC Vehicles; and (3) an “Out of Pocket Claims Process,” allowing for reimbursement of Class Member’s certain out of pocket expenses of repairing or replacing Fuel Pumps.

The Customer Support Program⁵ includes two primary benefits for Class Members who own or lease an Additional Vehicle. First, those Class Members will be covered (parts and labor) for repairs needed to correct defects in material or workmanship of the Fuel Pumps for 15 years. Second, those Class Members will receive the same towing and loaner vehicle benefits as do Class Members who own or lease a Subject Vehicle.

The Extended New Parts Warranty⁶ applies to the components of the Fuel Pump replaced as part of the Recall or for SSC Vehicles for the lesser of 15 years or 150,000 miles. In addition, Class Members who own or lease those vehicles are eligible for a free Loaner Vehicle or towing to the same extent as under the Recall.

The Out of Pocket Claims Process⁷ allows Class Members, during the Claim Submission

⁴ This Memorandum summarizes the Settlement Agreement. If there is any inconsistency between this Memorandum and the Settlement Agreement, the Settlement Agreement shall control.

⁵ See Settlement Agreement § III A for further details of the Customer Support Program.

⁶ See Settlement Agreement § III B for further details of the Extended New Parts Warranty.

⁷ See Settlement Agreement § III C for further details of the Out of Pocket Claims Process.

Period, to submit Claims for unreimbursed previously paid out-of-pocket expenses incurred to repair or replace a Fuel Pump of Covered Vehicles that were either (a) incurred prior to the Initial Notice Date; or (b) incurred after the Initial Notice Date and before the Final Effective Date (subject to proof that they were denied coverage by the Toyota dealer prior to incurring the cost).

B. Limited Release⁸

Class Members who do not exclude themselves from the Class will release Toyota and Denso from liability about the issues in the lawsuit. Claims for personal injury, wrongful death, or physical property damage (except to the Fuel Pump in the Covered Vehicle itself) from the Covered Vehicle will not be released.

4. The Proposed Settlement Should be Preliminarily Approved for Purpose of Giving Notice to the Class

The issue before this Court on the Joint Motion is whether notice of the proposed Settlement should be given to the Class. *See* Fed. R. Civ. P. 23(e)(1)(A). Notice is proper upon a showing that “the court will likely be able to: (i) approve the proposal under Rule 23(e)(2); and (ii) certify the class for purposes of judgment on the proposal.” Fed. R. Civ. P. 23(e)(1)(B).

“A court should preliminarily approve a proposed settlement which “appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class and falls within the range of possible approval.” *Hart v. BHH, LLC*, 334 F.R.D. 74, 76 (S.D.N.Y. 2020) (internal quotation omitted); *accord, Berkson v. Gogo LLC*, 147 F. Supp. 3d 123, 130 (E.D.N.Y. 2015). “A settlement reached after a supervised mediation receives a presumption of reasonableness and the absence of collusion.” *In re Payment Card Interchange Fee & Merch.*

⁸ *See* Settlement Agreement § VII for further details of the Release.

Disc. Antitrust Litig., 330 F.R.D. 11, 35 (E.D.N.Y. 2019) (quoting 2 McLaughlin on Class Actions § 6:7 (18th ed.)).

Measured by these standards and based on the facts discussed above and in the accompanying memoranda being filed by Toyota and by Plaintiffs, there can be no question but that preliminary approval, that is, authorization to disseminate notice, should be granted.

5. Conclusion

The Court should grant the Joint Motion in its entirety.

Dated: September 7, 2022

/s/ Joshua E. Abraham

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