UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES - GENERAL**

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| Case No. | 2:20-cv-10518-JVS (MRWx) | Date | July 13, 2022 |
| Title | William Martin et al v. Toyota Motor Credit Corporation et al. | | |

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| Present: The Honorable | **James V. Selna, U.S. District Court Judge** |

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| Lisa Bredahl | Not Present |
| Deputy Clerk | Court Reporter |
| Attorneys Present for Plaintiffs: | Attorneys Present for Defendants: |
| Not Present | Not Present |

**Proceedings:** **[IN CHAMBERS] Order Regarding Motion for Preliminary Approval of Class Settlement**

Plaintiffs William Martin and Lori Mitchell, on behalf of themselves and all others similarly situated (collectively, "Plaintiffs"), move for an order (1) preliminarily approving class-wide settlement; (2) certifying the proposed class for settlement purposes; (3) approving the form and manner of Notice to the Class; (4) appointing Plaintiffs as the Class Representatives and Frank Sims & Stolper LLP and Franklin D. Azar & Associates, P.C. as class counsel (collectively, "Counsel"); (5) appointing Atticus Administration LLP ("Atticus") to serve as the Settlement Administrator; and (6) set the relevant deadlines for a Final Approval Hearing. Mot., Dkt. No. 60. Defendant Toyota Motor Credit Corporation ("Toyota") does not oppose.

The Court finds that oral argument would not be helpful in this matter. Fed. R. Civ. P. 78; L.R. 7-15. For the following reasons, the Court **GRANTS** preliminary approval of the proposed settlement; **GRANTS** the class certification for settlement purposes; **ORDERS** dissemination of notice to the Class pursuant to the proposed notice plan; and **APPOINTS** Atticus as the Settlement Administrator for the dissemination of notice.

## I. BACKGROUND

### *A. Allegations and Procedural History*

The following allegations are taken from the Second Amended Complaint ("SAC"). SAC, Dkt. No. 58.

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Plaintiffs and the Class financed the purchase of their cars by entering into retail installment sales contracts with auto dealerships (the "dealers") in which Plaintiffs agreed to pay the price of their cars in monthly installments, with interest, over a fixed period of years. SAC ¶ 2. The dealers then immediately sold or assigned the retail installment sales contracts to Toyota, who became the creditor. Id. ¶¶ 2-3. Each of the retail installment contracts at issue in this lawsuit included a GAP Waiver, a debt cancellation agreement that provides that in the event a customer suffers a "total loss" and their vehicle is worth less than the balance owed to the creditor, the creditor agrees to waive that balance. Id. ¶ 4. This difference between the balance owed the creditor and the value of the car is called the "deficiency balance," or "GAP." Id. ¶ 5.

The total cost of GAP coverage for the full term of the contract is separately listed on the retail installment sales contract as part of the total amount financed (the "GAP fees"). Id. ¶ 6. The contract will also list out the total amount of interest that the customer will pay over the course of the agreement. Id. Although these amounts are listed, the customer pays both the interest and the GAP coverage in monthly installments over the life of the contract. Id.

When customers pay off the finance agreements early (i.e., before the maturity date), this results in what Toyota and the industry refer to as "unearned GAP fees" and "unearned finance charges." Id. ¶ 7. Plaintiffs explain:

> For example, if the total cost of GAP protection for four years of GAP coverage is $800, but the customer pays off their finance agreement in two years, this results in $400 of "unearned GAP fees" for the unused half of the contract term. This portion of the GAP fees is "unearned" because once the finance agreement is paid-off early, there is no possibility of a GAP and the customer is no longer receiving anything of value by paying for future GAP protection.

Id.

When a customer wants to pay off their finance agreement prior to the end of the contract term, Toyota informs the customer of the total payoff amount that the customer owes. This amount typically does not include the unearned finance charge, but does include the unearned GAP fees. Id. ¶ 8. Plaintiffs contend that at the time of an early

payoff, Toyota "fraudulently represents to its customers (including Plaintiffs and the Class) that they owe Toyota the unearned GAP fees for the remaining term of the contract, even though Toyota knows these fees are not earned, and can never be earned, because the finance agreement is terminating early." Id. As a result of this practice, Toyota collects and keeps tens of millions of dollars of unearned money each year. Id. It is possible for customers to reclaim the unearned GAP fees. But the "'fine print' language" on the back of the GAP Waiver addendums requires customers to send written notice of cancellation in order to claim the unearned GAP fees as a credit or refund after an early payoff. Id. ¶ 11.

Plaintiffs contend that the early payoff of contract automatically terminates the GAP Waiver addendum. Id. ¶ 10. Moreover, Plaintiffs allege that Toyota knows that if the contract is terminated early, so there is no basis for continuing to charge customers for future GAP coverage. Plaintiffs therefore argue that there is no legitimate basis for Toyota to include the unearned GAP fees in the early payoff amount quoted to customers. Id. ¶ 11.

After an early payoff, Toyota sends the customer (including Plaintiffs and the Class) a uniform letter from "Toyota Financial Services" confirming that the finance agreement has been "paid in full."[1] Id. ¶ 12. In the letter, Toyota informs customers that "[i]f you have paid off your account before the original maturity date" (i.e., an "early payoff") "you may be entitled to a refund" for products such as GAP, and "you can cancel these products by contacting your dealer or the product provider/administrator directly." Id. Plaintiffs argue that these notices are misleading because customers are in fact entitled to a GAP refund; and the language discourages customers from seeking the refund. Id.

Plaintiffs filed suit on November 17, 2020. Dkt. No. 1. In the operative pleading, the SAC, Plaintiffs bring four causes of action for: (1) breach of contract; (2) violations of the California Consumer Legal Remedies Act; (3) violations of the California Unfair Business Practices Act; and (4) declaratory relief. SAC.

The lawsuit was deemed related to the then-pending Wells Fargo matter, 8:18-cv-00332-JVS (MRWx), which likewise concerned allegations that Wells Fargo

[1]Here Plaintiffs reference Exhibit D, which was filed with the original complaint. Dkt. No. 1.

failed to pay GAP refunds after early payoffs. Dkt. No. 5. This Court approved a preliminary settlement in that case in an order dated June 8, 2021, to which Plaintiffs frequently refer. See Herrera v. Wells Fargo Bank, N.A., No. 18-cv-332-JVS (MRWx), 2021 WL 3932257, at *1 (C.D. Cal. June 8, 2021). The Toyota matter was reassigned to this Court on November 18, 2020. Dkt. No. 12.

On January 11, 2021, Toyota filed a motion to dismiss Plaintiffs' initial complaint. Dkt. No. 20. The parties then agreed that Plaintiffs would file a First Amended Complaint dismissing certain claims and alter ego allegations.
Decl. of Jason Frank ("Frank Decl."), Dkt. No. 60-2 ¶ 11. Toyota filed an answer to Plaintiffs' First Amended Complaint. Dkt. No. 32. The parties then engaged in discovery, including document production and review, reviewing data for over 1.1 million finance agreements, conducting five witness depositions, interviewing Toyota customers, and responding to and propounding interrogatories and document requests. Frank Decl. ¶ 13.

The parties reached a settlement of this lawsuit shortly before Plaintiffs' deadline to file their motion for class certification. Frank Decl. ¶ 14. The parties stipulated to Plaintiffs filing a Second Amended Complaint to conform with the Settlement, which was filed on June 16, 2022. Dkt. Nos. 55, 55-1, 58.

*B. Summary of Settlement*

*i. The Settlement Class*

The Settlement Class (also referred to as the "Class") includes two groups: the Statutory Class and the Non-Statutory Class. Settlement, Dkt. No. 60-1 ¶ 10. The Statutory Class is defined as:

> [A]ll persons in the United States: (a) who entered into Finance Agreements with GAP protection in the States of Alabama, Colorado, Indiana, Iowa, Massachusetts, New Jersey, Oklahoma, Oregon, Texas, Vermont, Wisconsin or Wyoming; (b) whose agreements were assigned to [Toyota]; (c) who paid off their Finance Agreements at least 30 days prior to the original maturity date; (d) whose Early Payoffs occurred during the

> Statutory Class Period; and; (e) who did not previously receive a GAP Refund or suffer a total loss of the Vehicle during the term of the Finance Agreement.

Id. ¶ 60. The Non-Statutory Class is defined as:

> [A]ll persons in the United States (a) who entered into Finance Agreements with GAP protection that were assigned to [Toyota]; (b) who paid off their Finance Agreements at least 30 days prior to the original scheduled maturity date; (c) whose Early Payoffs occurred during the time period January 1, 2016 through October 25, 2021; and (d) who did not receive a GAP Refund, or suffer a total loss of the Vehicle during the term of the Finance Agreement. Excluded the Non-Statutory Class are any persons who fall under the definition of the Statutory Class. . . .

Id. ¶ 44.

*ii. Consideration for Settlement*

Under the terms of the Settlement, Toyota shall directly pay each member of the Statutory Class the full amount of their GAP Refund without any deduction for cancellation fees, plus interest at the applicable State-specific pre-judgment interest rate. Settlement ¶ 103. Based on the most recent data provided by Toyota, Plaintiffs' expert estimates that Toyota will pay over $19.1 million to the Statutory Class. Decl. of L. Scott Baggett ("Baggett Decl."), Dkt. No. 60-3 ¶¶ 14, 28.

Toyota shall also establish a non-reversionary Settlement Fund totaling $59 million to pay for (a) approved claims for GAP Refunds to Non-Statutory Class members; (b) Notice and Administration Costs; (c) fee and expense awards approved by the court; and (d) service awards approved by the Court. Settlement ¶ 105. Each member of the Non-Statutory Class will be eligible to submit a claim for up to the full amount of their GAP Refund, without any deduction for cancellation fees, to be paid from the Settlement Fund. Settlement ¶ 104. Each Non-Statutory Class member will be required to submit a completed and signed Claim Form to the Settlement Administrator by the Claim Form deadline verifying that they are eligible for the GAP Refund. Id.

The Settlement includes as a benefit the "Business Practice Change" that Toyota implemented to its refund practices so that it now automatically and directly provides GAP Refunds to customers in all U.S. States within a reasonable time after receipt of an Early Payoff, provided such payoff occurs more than thirty days prior to the original maturity date of the Finance Agreement. Id. ¶ 102. Toyota agrees that it will not materially change this practice for at least four years after the Settlement's effective date, and will not revert back to a state-by-state approach during this period. Id.

*iii. Attorneys' Fees and Costs*

Class Counsel will be seeking an attorneys' fee award not to exceed $19 million and an expense award of no more than $150,000. Id. ¶ 145. Toyota reserves the right to challenge the fee award. The final amount of any award remains subject to approval by the Court. Id. Any fee and expense awards approved by the Court will be paid from the Settlement Fund. Id. ¶ 107.

*iv. Notice and Administrative Expenses and Service Awards*

The Settlement provides that Notice and Administration Costs shall be paid from the Settlement Fund. Id. ¶ 106. The Settlement Administrator has agreed that these costs will not exceed $800,000, unless specifically approved by the Court and parties. Id.

The Settlement also provides for a Service Award of $2,500 to the two named Plaintiffs, Martin and Mitchell, subject to the approval of the Court. The Service Awards will be paid from the Settlement Fund. Id. ¶ 148.

*v. Release*

Upon the effective date of the Settlement and pursuant to the Court's entry of the Final Approval Order and Judgment, Plaintiffs and each and every Class Member release Defendants from:

> [A]ny and all past and/or present claims, counterclaims, lawsuits, set-offs, costs, losses, rights, demands, charges, complaints, actions, causes of action, obligations, or liabilities of any and every kind, whether class,

> individual, or otherwise in nature, including, without limitation, those known or unknown or capable of being known; those which are unknown but might be discovered or discoverable based upon facts other than or different from those facts known or believed at this time; those which are foreseen or unforeseen, suspected or unsuspected, asserted or unasserted, and/or contingent or non-contingent; and those which are accrued, unaccrued, matured or not matured, under the laws of any jurisdiction, which they, whether directly, representatively, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have, arising from or relating in any way to the Class Member's entitlement to a GAP Refund after an Early Payoff that occurred during the Class Period or Statutory Class Period, as appropriate (the "Class Released Claims"). For clarification, the Class Releasees do not include any Dealers or GAP Administrators (other than TMIS), including without limitation, those identified in the Class Members' GAP Agreements or Finance Agreements.

Id. ¶ 97. The Settlement also provides that the Class Releasors shall not commence any future actions following the release of the Class Released Claims. Id. ¶ 98. The Release includes a covenant not to sue for the Class Releasors and a waiver of California Civil Code § 1542 and similar laws. Finally, the Settlement provides: "Subject to Court approval, all Class Releasors shall be bound by this Agreement, and all of their claims shall be dismissed with prejudice and released, even if they never received actual notice of the Action or this Settlement." Id. ¶ 101.

*vi. Notice*

The Settlement Agreement selects Atticus to be the Settlement Administrator. Id. ¶ 57. The Settlement provides that within fourteen days after filing the Motion for Preliminary Approval, Toyota shall provide the Settlement Administrator with data regarding the potential Class members, including contact information. For the Statutory Class members, Toyota shall also provide the customer's actual or estimated GAP Refund and accrued interest. Id. ¶¶ 114-115. Also within fourteen days the Settlement Administrator will mail, via first-class mail, and email (where email addresses are available) the Notice of Settlement to each potential Class member. Id. ¶ 119.

*vii. Opt-Out and Objection Process*

Class Members may request exclusion from the Settlement on an individual basis. To request exclusion, a Class Member must mail a Request for Exclusion to the Settlement Administrator with a postmark date no later than the Exclusion/Objection deadline. Instructions for exclusion shall be specified in the Class Notice. Id. ¶¶ 128-130.

## II. LEGAL STANDARD

Federal Rule of Civil Procedure Rule 23(e) requires court approval for class-action settlements. Fed. R. Civ. P. 23(e). When a class action reaches a settlement agreement before class certification, a court uses a two-step process to approve a class-action settlement. Staton v. Boeing Co., 327 F.3d 938, 952 (9th Cir. 2003). First, the court must certify the proposed settlement class. Id. Second, if the proposed settlement would bind class members, the Court may approve it only after a hearing and only on finding that it is fair, reasonable and adequate. Fed. R. Civ. P. 23(e).

## III. DISCUSSION

### *A. Class Certification*

Rule 23(a) imposes four prerequisites for a class action: (1) the class is so numerous that a joinder of all members is impracticable (numerosity); (2) there are questions of law or fact common to the class (commonality); (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class (typicality); and (4) the representative parties will fairly and adequately protect the interests of the class (adequacy). Fed. R. Civ. P. 23(a); United Steel, Paper & Forestry, Rubber, Mfg. Energy, Allied Indus. & Serv. Workers Int'l Union, AFL-CIO v. ConocoPhillips Co., 593 F.3d 802, 806 (9th Cir. 2010).

The Court finds that these prerequisites are met.

*i. Numerosity*

Under Rule 23(a)(1), a class must be so numerous that joinder of all members is impracticable. Fed. R. Civ. P. 23(a)(1). Plaintiffs provide evidence based on Toyota's current records demonstrating that there are approximately 43,142 loan files that fall under the Statutory Class definition and potentially 628,485 loan files that fall under the Non-Statutory Class definition. Baggett Decl. ¶ 20.7. Plaintiffs also represent that there are 100 or more class members nationwide. SAC ¶ 14. This clearly satisfies the numerosity requirement. See Vinh Nguyen v. Radient Pharmaceuticals Corp., 287 F.R.D. 563, 569 (C.D. Cal. 2012) ("[A] proposed class of at least forty members presumptively satisfies the numerosity requirement.").

*ii. Commonality*

Rule 23(a)(2)'s commonality requirement is satisfied if "there are questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). "The existence of shared legal issues with divergent factual predicates is sufficient, as is a common core of salient facts coupled with disparate legal remedies within the class." Hanlon, 150 F.3d at 1019. A common question "must be of such a nature that it is capable of classwide resolution – which means that the determination of its truth or falsity will resolve an issue that is central to the validity of each of the claims in one stroke." Wal-Mart v. Dukes, 564 U.S. 338, 350 (2011). There must be at least "a single common question" to satisfy the commonality requirement. Wang v. Chinese Daily News, 709 F.3d 829, 834 (9th Cir. 2013).

Here, common questions of law and fact exist. The SAC challenges Toyota's uniform policy of collecting unearned GAP fees as part of an Early Payoff, and its failure to comply with the Automatic Refund Requirements in 12 States. SAC ¶¶ 1, 8, 11(e), 28. All claims rely on the legal question of whether Toyota assumed the GAP Agreement's contractual and/or legal obligation to issue a refund of unearned GAP fees after an Early Payoff after being assigned the Finance Agreement and the GAP Agreement. Id. ¶¶ 36-50. The claims also rely on whether Toyota's policy to collect and fail to refund unearned GAP fees constitutes a breach of contract and violation of the applicable State's Automatic Refund Requirements. Id. ¶¶ 52-63. These claims "depend upon a common contention. . . [whose] truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." Dukes, 564 U.S. at 350.

Accordingly, the Court finds the element of commonality is satisfied here.

*iii. Typicality*

Rule 23(a)(3) requires that "the claims or defenses of the representative parties are typical of the claims or defenses of the class." Hanlon, 150 F.3d at 1020. To meet the typicality requirement, the plaintiffs must show that (1) "other members have a similar injury"; (2) "the action is based on conduct that is not unique to the named plaintiffs"; and (3) "other class members have been injured by the same course of conduct." Ellis v. Costco Wholesale Corp., 657 F.3d 970, 984 (9th Cir. 2011). "Under the rule's permissive standards, representative claims are 'typical' if they are reasonably co-extensive with those of the absent class members; they need not be substantially identical." Hanlon, 150 F.3d at 1020 (internal quotations omitted).

Here, Toyota collected unearned GAP fees from Plaintiff Martin as part of an early payoff and failed to issue a refund of those fees as part of its standard policy not to issue a refund unless the customer sends a subsequent written notice of cancellation or request. SAC ¶ 17; Declaration of William Martin ("Martin Decl."), Dkt. No. 60-6 ¶ 3. This is the same injury suffered by the Non-Statutory Class members. Plaintiff Mitchell's GAP Agreement, governed by the laws of Colorado, was governed by an automatic refund requirement, and Toyota failed to issue her a GAP Refund after her early payoff, nor did it pay her interest on those unpaid amounts. SAC ¶ 18; Declaration of Lori Mitchell ("Mitchell Decl."), Dkt. No. 60-7 ¶ 3. This is the same injury suffered by the Statutory Class members.

Accordingly, the named Plaintiffs' claims "are based on the same facts and the same legal and remedial theories as the claims of the rest of the class members." Wolin v. Jaguar Land Rover North Am., LLC, 617 F.3d 1168, 1175 (9th Cir. 2010).

*iv. Adequacy*

Representation is fair and adequate if (a) the named plaintiffs and their counsel are able to prosecute the action vigorously; (b) the named plaintiffs do not have conflicts of interest with the unnamed class members; and (c) the attorneys representing the class are qualified and competent. Lerwill v. Inflight Motion Pictures, Inc., 582 F.2d 507, 512 (9th

Cir. 1978).

Here, the named Plaintiffs and Class Counsel do not have any known conflicts of interests with the Class, and the Class Representative's claims are based on the same conduct that affected the rest of the Class. Frank Decl. ¶ 25, Martin Decl., ¶ 6; Mitchell Decl., ¶ 6. Plaintiffs are represented by experienced Class Counsel who have vigorously litigated this case on behalf of the Class, and who have been previously approved by this Court as Class Counsel in the substantively identical Wells Fargo class action concerning GAP refunds. Frank Decl., ¶¶ 8(a), 24.

Accordingly, the Court finds the class certifications requirements to be satisfied here.

*B. Approval of the Proposed Settlement*

Under Rule 23(e)(2) if the proposed settlement would bind class members, the Court may approve it only after a hearing and only on finding that it is fair, reasonable and adequate. To make this determination, the Court must consider the following factors:

> (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 proposed method of distributing relief to the class, including the method of processing class-member claims;
> (iii) the terms of any proposed award of attorneys' 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).

*i. Adequacy of Representation by Class Representatives and Class*

*Counsel*

Under Rule 23(e)(2)(A), the first factor to be considered is whether the class representatives and class counsel have adequately represented the class. This analysis includes "the nature and amount of discovery" undertaken in the litigation. Fed. R. Civ. P. 23(e)(2)(A), 2018 Advisory Committee Notes.

As discussed above, the Class Representatives and counsel are adequate representation for purposes of certifying the class. In addition, the Court notes the following showings of the adequacy of representation. The case only settled after two mediations regarding the Settlement Class. The parties then engaged in a third mediation regarding attorneys' fees. Frank Decl. ¶¶ 16-18. The second two mediations followed the completion of Class discovery and the preparation of Plaintiffs' motion for class certification. Id. ¶¶ 13, 14, 35. Discovery in this case included (1) reviewing over 20,486 pages of documents, not including spreadsheets; (2) reviewing data for over 1.1 million Finance Agreements with GAP protection that were paid off early during the time period January 1, 2016 through October 25, 2021; and (3) taking five depositions. Id. ¶ 13.

"The extent of the discovery conducted to date and the stage of the litigation are both indicators of [Class] Counsel's familiarity with the case and of Plaintiffs having enough information to make informed decisions." Jimenez v. Allstate Ins. Co., No. 10-cv-08486-JAK (FFMx), 2020 WL 11624498, at *8 (C.D. Cal. May 1, 2020) (quoting In re Omnivision Techs., Inc., 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2008)). Here, the three days of mediation and extent of discovery support a finding of adequacy of class counsel and representation because it suggests that the parties fully understood the legal and factual issues surrounding the case. See Nat'l Rural Telecomm. Coop. v. DirecTV, Inc., 221 F.R.D. 523, 527 (C.D. Cal. 2004) ("A court is more likely to approve a settlement if most of the discovery is completed because it suggests that the parties arrived at a compromise based on a full understanding of the legal and factual issues surrounding the case." (quoting 5 Moore's Federal Practice, § 23.85[2][e] (Matthew Bender 3d ed.)).

The Court finds that the class representatives and class counsel adequately represented the class in this case.

*b. Negotiated at Arm's Length*

The second Rule 23(e)(2) factor asks the Court to confirm that the proposed settlement was negotiated at arm's length. Fed. R. Civ. P. 23(e)(2)(B). As with the preceding factor, this can be "described as [a] 'procedural' concern[], looking to the conduct of the litigation and of the negotiations leading up to the proposed settlement." Fed. R. Civ. P. 23(e)(2), 2018 Advisory Committee Notes. "[T]he involvement of a neutral or court-affiliated mediator or facilitator in [settlement] negotiations may bear on whether th[ose] [negotiations] were conducted in a manner that would protect and further the class interests." Fed. R. Civ. P. 23(e), 2018 Advisory Committee Notes; accord Pederson v. Airport Terminal Servs., 2018 WL 2138457, at *7 (C.D. Cal. April 5, 2018) (the oversight "of an experienced mediator" reflected noncollusive negotiations).

Here, the settlement negotiations were conducted throughout the course of two separate full-day mediations before the Honorable Jay C. Gandhi (Ret.) and the Honorable Andrew J. Guilford (Ret.). Frank Decl. ¶¶ 16-17. These mediations were separated by almost nine months in which the parties conducted discovery. During the second mediation with Judge Guilford, the parties were able to reach an agreement on all material terms for the Settlement Class and enter a binding term sheet. Id. ¶ 17. The parties report that they agreed on the relief the class would receive before they negotiated attorneys' fees in a third mediation before Judge Guilford. Id. ¶ 18.

Accordingly, the Court concludes that the settlement is a product of informed, arms-length negotiations.

*c. Adequacy of Relief Provided for the Class*

The third factor the Court considers is whether "the relief provided for the class is adequate, taking in to account: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorneys' fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3)." Fed. R. Civ. P. 23(e)(2)(C). Under this factor, the relief "to class members is a central concern." Fed. R. Civ. P. 23(e)(2)(C), Advisory Committee Notes.

The Settlement has separate provisions for the Statutory and Non-Statutory Class claims. It provides that the Statutory Class members will receive the full refund and interest owed. Plaintiffs' expert estimated that Toyota will pay over $19.1 million to the Statutory Class. Baggett Decl. ¶¶ 14, 28.

For the Non-Statutory Class, the Settlement establishes a Settlement Fund totaling $59 million to pay for approved claims for GAP Refunds to Non-Statutory Class members, as well as other fees, awards, and costs. Settlement ¶ 105. Each member of the Non-Statutory Class will be eligible to submit a claim for up to the full amount of their GAP Refund, without any deduction for cancellation fees, to be paid from the Settlement Fund. Id. ¶ 104. After certain awards, fees, and expenses, there will be at least $39 million available to pay out eligible claims to the Non-Statutory Class members.[2] Toyota asserts that there are *potentially* a maximum of 628,485 members in the Non-Statutory Class. Baggett Decl. ¶ 21. If every one of these individuals qualified for a GAP Refund under this Settlement (i.e., they never received a GAP refund from a third-party, nor they did suffer a total loss of their Vehicle), then each member would receive an average payment of $62.19. Frank Decl. ¶ 32. In Wells Fargo, the Court found that a settlement payment of under $10.000 to the Non-Statutory Class members would be adequate given that those class members could not rely on automatic refund requirements to support their claims. Wells Fargo, 2021 WL 3932257, at *10. In any case, it is unlikely that all of the potential class members will be eligible, making it likely that the amount available per eligible claim will be greater.

Accordingly, the Court finds the relief to be adequate.

*i. Costs, Risks, and Delay of Trial and Appeal*

"A[] central concern [when evaluating a proposed class action settlement] . . . relate[s] to the cost and risk involved in pursuing a litigated outcome." Fed. R. Civ. P. 23(e), 2018 Advisory Committee Notes. "Proceeding in this litigation in the absence of

[2]The additional expenses to be paid from the Settlement Fund consist of notice and administration costs not to exceed $800,000; attorneys' fees will not exceed $19 million; an expense award not to exceed $150,000; and service awards not to exceed $2,500. The attorneys' fee award in particular is still subject to Court review. These expenses will deduct, at most, approximately $20 million from the funds available to the Non-Statutory Class.

settlement poses various risks such as . . . having summary judgment granted against Plaintiffs[] or losing at trial. Such considerations have been found to weigh heavily in favor of settlement." Graves v. United Industries Corporation, 2020 WL 953210, at *7 (C.D. Cal. Feb. 24, 2020) (citing Rodriguez v. West Publishing Corp., 563 F.3d 948, 966 (9th Cir. 2009); Curtis-Bauer v. Morgan Stanley & Co., Inc., 2008 WL 4667090, at *4 (N.D. Cal. Oct. 22, 2008).

Here, Plaintiffs believe the Automatic Refund Requirements require Toyota to directly issue the refunds to the Statutory Class, but Plaintiffs recognize the interpretation of these laws will, in most instances, present an issue of first impression and there is no guarantee Plaintiffs' view will prevail. Frank Decl. ¶ 37(a). The Non-Statutory Class faces additional challenges as it would not be able to rely on the automatic refund requirements and would also be subject to (1) Toyota's defense that they did not strictly comply with the written notice requirements in the GAP Agreements; and (2) the argument that Toyota did not assume the contractual obligation to issue the refund as part of the assignment of the initial finance agreement. Frank Decl. ¶ 37(b). Toyota notes that a significant percentage of the Class members are subject to arbitrations agreements with class action waivers, which would make bringing individual claims cost-prohibitive. Frank Decl. ¶ 37(c). Nor is there a guarantee that the Class would even be certified.

Accordingly, the costs, risks, and delay of trial and appeal favor preliminary approval.

*ii. Effectiveness of Proposed Method of Relief Distribution*

Next, the Court must consider "the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims." Fed. R. Civ. P. 23(e)(2)(C). "Often it will be important for the court to scrutinize the method of claims processing to ensure that it facilitates filing legitimate claims." Fed. R. Civ. P. 23(e), 2018 Advisory Committee Notes. "A claims processing method should deter or defeat unjustified claims, but the court should be alert to whether the claims process is unduly demanding." Id.

Here, the relief distribution is straightforward. Statutory Class members will not have to submit a claim and will directly receive their settlement payment from Toyota by

mail; the payments of which will be verified by a declaration from Toyota. Settlement ¶ 103. Non-Statutory Class members will be able to easily complete and submit their Claim Form online by scanning the QR Code on their Notice of Settlement or clicking on the link in the Email-Notice. Id. ¶¶ 123-124. Non-Statutory Class members can also request a hard-copy of the Claim Form be mailed or emailed to them, or they can download and print it from the Settlement Website. Id. The Claim Form only requires the Non-Statutory Class members to check three boxes verifying their eligibility for Settlement relief and sign the Claim Form. Id. Approved claims to the Non-Statutory Class are to be paid electronically or by mail at the election of the Class member. Id. The Court previously found this similar claims process was a reasonable means of distributing relief in Wells Fargo. Wells Fargo, 2021 WL 3932257, at *11.

*iii. Terms of Proposed Award of Attorneys' Fees*

Third, the Court must consider "the terms of any proposed award of attorneys' fees, including timing of payment." Fed. R. Civ. P. 23(e)(2)(c). In considering the proposed award of attorney's fees, the Court must scrutinize the Settlement for three factors that tend to show collusion: "(1) when counsel receives a disproportionate distribution of the settlement; (2) when the parties negotiate a "clear sailing arrangement," under which the defendant agrees not to challenge a request for an agreed-upon attorney's fee; and (3) when the agreement contains a "kicker" or "reverter" clause that returns unawarded fees to the defendant, rather than the class." Briseno v. ConAgra Foods, Inc., 998 F.3d 1014, 1022 (9th Cir. 2021) (internal quotation marks omitted) (citing In re Bluetooth Headset Products Liability Litigation, 654 F.3d 935, 947 (9th Cir. 2011)). The Court must consider whether these factors exist in post-class certification settlements. Id. at 1026.

In class action cases where the defendants provide monetary compensation to the plaintiffs, "courts have discretion to employ either the lodestar method or the percentage-of-recovery method." Bluetooth Headset, 654 F.3d at 942. In the percentage method, "the court simply awards the attorneys a percentage of the fund sufficient to provide class counsel with a reasonable fee," using 25% as a benchmark. Hanlon, 150 F.3d at 1029. Similar to the lodestar, the 25% benchmark can be adjusted upward or downward, depending on the circumstances. In re Hyundai & Kia Fuel Econ. Litig., 926 F.3d 539, 570 (9th Cir. 2019) (citing Six (6) Mexican Workers v. Ariz. Citrus Growers,

904 F.2d 1301, 1311 (9th Cir. 1990)).

Here, Plaintiffs assert that the $19 million in attorneys' fees is reasonable because that amount constitutes 24.3 percent of the estimated settlement value, not including the value of the "Business Practice Change." Plaintiffs arrive at that number by adding the estimated $19.1 million that their expert estimates will be paid to the Statutory Class to the $59 million settlement fund to equal over $78 million. Courts may calculate the fee award as a percentage of the total settlement fund, including attorneys' fees, notice and administrative costs, and litigation expenses. In re Online DVD-Rental Antitrust Litig., 779 F.3d 934, 953 (9th Cir. 2015). Plaintiffs also point out that future GAP Refunds due to the change in business practices that form part of the Settlement could total over $275 million.

Providing further assurance that the agreement was not the product of collusion, the parties have not come to an agreement on the attorneys' fees and the settlement does not contain a "reverter" provision: the Settlement Fund is non-reversionary. See In re Hyundai, 926 F.3d at 570. Further, there is no "clear sailing provision" because Toyota reserves the right to challenge the fee award. See Briseno, 998 F.3d 1014 at 1026 (describing a clear sailing agreement and a kicker as protective of "excessive fees"). Since the key Bluetooth factor is whether Class Counsel would receive "excessive fees," the Court does not believe that the factors weigh in favor of a conclusion that the Settlement is unreasonable.[3]

*iv. Agreement Identification Requirement*

The Court must also evaluate any agreement made in connection with the proposed Settlement. See Fed. R. Civ. P. 23(e)(2)(C)(iv), (e)(3). Here, there are no other agreements other than the Settlement Agreement. Frank Decl. ¶ 40.

*d. Equitable Treatment of Class Members*

[3]When final approval of the Settlement is sought, the Court expects the attorneys to provide a "lodestar" calculation.

The final Rule 23(e)(2) factor turns on whether the proposed settlement "treats class members equitably relative to each other." Fed. R. Civ. P. 23(e)(2). "Matters of concern could include whether the apportionment of relief among class members takes appropriate account of differences among their claims, and whether the scope of the release may affect class members in different ways that bear on the apportionment of relief." Fed. R. Civ. P. 23(e)(2)(D), 2018 Advisory Committee Notes.

Here, the Settlement distinguishes between Statutory Class members and the Non-Statutory Class members. Frank Decl. ¶ 37(b). The Statutory Class members are receiving refunds plus interest directly from Toyota. Settlement ¶ 103. Plaintiffs argue that this is logical because the Statutory Class members have stronger claims because they can rely on Automatic Refund Requirements, which require Toyota to "ensure" that a GAP Refund is paid after an early payoff. Id. The Non-Statutory Class members must submit claims and will be paid from the Settlement Fund. Otherwise, the Settlement and Release is the same for all Settlement Class members. Id. ¶ 97.

As each of the above factors weighs in favor of approval, the Court **GRANTS** preliminary approval of the class action settlement.

*C. The Proposed Settlement Meets the Notice Requirements Under Fed. R. Civ. P. 23(c)(2)(B)*

Under Rule 23(c)(2)(B), "for any class certified under Rule 23(b)(3)—or upon ordering notice under Rule 23(e)(1) to a class proposed to be certified for purposes of settlement under Rule 23(b)(3)—the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B). Rule 23(c)(2)(B) further states that the notice may be made by one of the following: United States mail, electronic means, or another type of appropriate means. Id. "The notice must clearly and concisely state in plain, easily understood language: (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3)." Id.

The proposed judgment meets these notice requirements. Following a review of the submitted Notice, the Court concludes that it will include the substantive information that Rule 23(c)(3) requires. See supra Section I.B.vi.; Settlement Exs. D, E, F. The Parties also intend to contact Class Members by both first-class mail and email, which the Court believes is reasonably calculated to ensure that notice will be sent to all Class Members. Settlement ¶ 119. The Court therefore believes that this requirement for preliminary approval is satisfied.

## IV. CONCLUSION

For the foregoing reasons, the Court **GRANTS** the certification of the Settlement Class, **GRANTS** preliminary approval of the Settlement Agreement, **APPOINTS** Atticus as Class Administrator, and **ORDERS** dissemination of notice to the Class.

**IT IS SO ORDERED.**

Initials of Preparer lmb

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES - GENERAL**

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| Case No. | 2:20-cv-10518-JVS (MRWx) | Date | July 13, 2022 |
| Title | William Martin et al v. Toyota Motor Credit Corporation et al. | | |