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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
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11 CARIN and EDWARD MILLIGAN,
12 California residents, on behalf of
13 themselves and all others similarly
14 situated,

15 Plaintiffs,

16 vs.

17 TOYOTA MOTOR SALES, U.S.A.,
18 INC., a California corporation; and
19 TOYOTA MOTOR CORPORATION, a
20 foreign corporation,

21 Defendants.
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Case No. C09-05418 RS

Judge: Hon. Richard Seeborg

CLASS ACTION
SETTLEMENT AGREEMENT

Complaint filed: November 17, 2009
Second Amended Complaint filed:
March 2, 2010

1 SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

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3 This Settlement Agreement and Release of Claims ("Settlement Agreement") is
4 entered into on March 18, 2011, by and between, on the one hand, Toyota Motor
5 Sales, U.S.A., Inc. and, on the other hand, the Representative Class Plaintiffs (as
6 defined below) in the Related Actions (as defined below), on behalf of themselves and
7 the Settlement Class (as defined below) to settle and compromise the Related Actions
8 according to the terms and conditions herein.
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10 I. DEFINITIONS

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12 The following definitions apply to and are incorporated into this Settlement
13 Agreement.

- 14 1. "Automatic transmission" means and includes the automatic transaxle in
15 the Class Vehicles.
- 16 2. "CARB" refers to the California Air Resources Board.
- 17 3. "Class Counsel" means all attorneys of record in the Related Actions.
- 18 4. "Class Settlement" means the settlement of the Related Actions as set
19 forth in this Settlement Agreement.
- 20 4. "Class Vehicles" means model-year 2001-2003 Toyota RAV4 vehicles
21 with automatic transmissions.
- 22 5. "The Court" unless otherwise indicated, means the United States District
23 Court for the Northern District of California.
- 24 6. "ECM" means the engine control module in the Class Vehicles.
- 25 7. "Effective Date of Settlement" means the date on which all appellate
26 rights with respect to the Final Approval Order and Judgment in the *Milligan* case
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1 have expired or been exhausted in such a manner as to affirm the Final Approval
2 Order and Judgment.

3 8. "Final Approval Order and Judgment" means the Class Action
4 Settlement is approved in all respects by the Court and an order and final judgment of
5 dismissal with prejudice is entered against all Representative Class Plaintiffs and
6 Settlement Class members who do not opt out as provided in Federal Rule of Civil
7 Procedure 23(b)(3), and the time for the filing of an appeal has expired or, if there are
8 appeals, approval of the settlement and judgment has been affirmed in all respects by
9 the appellate court of last result to which such appeals have been taken and such
10 affirmances have become no longer subject to further appeal or review.

11 9. "Notice" means the form attached as Exhibit B. The Spanish-language
12 version of the same is attached as Exhibit C.

13 10. "Notice Plan" means the method of providing notice to the Settlement
14 Class as approved by the Court in its Preliminary Approval Order.

15 11. "Parties" means Toyota, Representative Class Plaintiffs, and Settlement
16 Class members as each of those terms is defined in this Settlement Agreement.

17 12. "Preliminary Approval Motion" means a motion to be filed by Class
18 Counsel requesting the Court enter a Preliminary Approval Order granting
19 preliminary approval of the Class Settlement and Notice Plan as set forth in this
20 Settlement Agreement.

21 13. "Preliminary Approval Order" means an order entered by the Court
22 substantially in the form attached as Exhibit D.

23 14. "Reimbursement Period" means the time period from the date of the
24 Final Approval Order and Judgment through December 31, 2014.

25 15. "Related Actions" means the following two class actions: *Carin and*
26 *Edward Milligan v. Toyota Motor Sales, U.S.A., Inc., et al.*, United States District
27 Court, Northern District of California, Case No. C09-05418 RS, filed November 17,

1 2009 (“*Milligan*”), and *Damashata Washington v. Toyota Motor Sales, U.S.A., Inc.*,
2 Superior Court of California, County of Santa Clara, Case No. 1-10-CV-164200, filed
3 February 22, 2010 (“*Washington*”).

4 16. “Released Claims” refers to any and all claims, including demands,
5 rights, liabilities, and causes of action, of every nature and description that were or
6 could have been asserted in either of the Related Actions relating to a defect in the
7 ECM and/or transmission of Class Vehicles, as described more fully in Exhibit A
8 attached to this Settlement Agreement, and excludes any claims for personal injury.

9 17. “Representative Class Plaintiffs” means Carin Milligan, George Edwin
10 Milligan, and Damashata Washington. George Edwin Milligan is one of the three
11 named class representatives in this lawsuit, but was erroneously referenced as
12 “Edward Milligan.” George Edwin Milligan is the person referenced as “Edward
13 Milligan” throughout this lawsuit and in all pleadings and case captions. All
14 references to “Edward Milligan” refer to the person of George Edwin Milligan and
15 any reference to George Edwin Milligan includes and should not be construed as
16 different from a reference to “Edward Milligan.”

17 18. “Settlement Administrator” refers to Rosenthal & Company LLC, Class
18 Action Settlement Administrators, 75 Rowland Way, Suite 250, Novato, California,
19 94945.

20 19. “Settlement Class” means all persons in the United States, including the
21 Commonwealth of Puerto Rico, who currently own or lease or who previously owned
22 or leased a Class Vehicle. Excluded from the Settlement Class are the following: a)
23 officers and directors of Toyota (as defined below) b) the Judge to whom this case is
24 assigned and any member of the Judge’s immediate family; and c) persons who have
25 submitted a timely and valid request for exclusion from the Settlement Class.

26 20. “TMC” means Toyota Motor Corporation and each of its present or
27 former officers, directors, employees, agents, attorneys, administrators, successors,
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1 suppliers, distributors, reorganized successors, spin-offs, assignees, holding
2 companies, subsidiaries, affiliates, parents, joint venturers, partners, members,
3 divisions, and predecessors, and authorized dealers.

4 21. "TMS" means Toyota Motor Sales, U.S.A., Inc., and each of its present
5 or former officers, directors, employees, agents, attorneys, administrators, successors,
6 suppliers, distributors, reorganized successors, spin-offs, assignees, holding
7 companies, subsidiaries, affiliates, parents, joint venturers, partners, members,
8 divisions, and predecessors, and authorized dealers.

9 22. "Toyota" means and includes TMS and TMC, Toyota Motor
10 Engineering & Manufacturing North America, Inc., any other Toyota entities, and any
11 of their past, present, and future parent corporations/companies, subsidiary
12 corporations/companies, affiliate corporations/companies, division corporations/
13 companies, shareholders, stockholders, officers, directors, employees, agents,
14 licensors, licensees, dealers, authorized repair facilities, servants, attorneys, insurers,
15 experts, consultants, investigators, representatives, distributors, assemblers, partners,
16 component part designers, manufacturers, and suppliers, any entity involved in the
17 chain of design, manufacture, sale, and distribution of the Class Vehicles and their
18 component parts, authorized service facilities, and dealers associated with and/or
19 having any contractual relationship with TMC and/or TMS, any service facility or
20 dealer involved in any way with the Class Vehicles, or any of its components.

21 To the extent not already included in the immediately preceding paragraph,
22 "Toyota" includes any and all individuals and entities involved in the design,
23 development, testing, manufacture, assembly, distribution, marketing, advertising,
24 sale, financing, warranty, repair and maintenance of the Class Vehicles and any
25 component parts of the Class Vehicles, regardless of whether such individuals and
26 entities are parties to the action or specifically identified in this Settlement Agreement.

“Toyota” is intentionally defined to encompass all individuals and entities associated with TMC and TMS, in the design, development, testing, manufacture, assembly, distribution, marketing, advertising, sale, financing, warranty, repair and maintenance of the Class Vehicles or any of their component parts to cover the largest and broadest group of individuals and entities to bring all disputes and litigation to an end. All Parties understand and agree that the word “Toyota” includes entities and persons identified in the definition of “Toyota” even though some of those persons and entities are not parties to this litigation nor are they specifically identified in this Settlement Agreement. The word “Toyota” shall not be limited in any way and will include any person and/or entity that may be the subject of any future complaint and lawsuit related to the Class Vehicles or any of its components and the injuries or damages sustained by the Representative Class Plaintiffs and/or Settlement Class members as alleged in the Related Actions.

Some of the suppliers of component parts of the Class Vehicles and other entities who are released by this Settlement Agreement include: Fujitsu Ten Limited, Aisin AW Co., Ltd., AW Transmission Engineering USA, Inc., and Toyota Industries Corporation.

II. RECITALS

1. TMS is a corporation organized under the laws of the State of California and is engaged in the business of, among other things, sales and marketing of motor vehicles. TMC is a Japanese corporation engaged in the business of, among other things, the design and manufacture of motor vehicles. TMC manufactured the Class Vehicles and TMS distributed them in the United States.

2. Approximately 235,000 Class Vehicles were sold in the United States and Puerto Rico.

3. On or about March 3, 2006, Toyota issued a technical service bulletin noting that some Class Vehicles “may exhibit a harsh shift condition.”

4. The Class Vehicles were sold with a federal emissions warranty that covers defects in the materials and workmanship of the ECM that might cause the Class Vehicles to fail to meet federal emissions standards for a period of 96 months (eight years) or 80,000 miles, whichever occurs first.

5. Toyota and CARB reached an understanding that Toyota will provide a warranty enhancement for a period of ten (10) years or 150,000 miles from the in-service date for the Class Vehicles, whichever occurs first, for a harsh shift condition associated with the ECMs and/or automatic transmissions in the Class Vehicles.

Coverage under the warranty enhancement applies only for work performed at an authorized Toyota dealer. A copy of the notice sent by Toyota to current owners of Class Vehicles in connection with the CARB discussions is attached as Exhibit A.

6. Toyota denies the material factual allegations and legal claims asserted in the Related Actions, and denies that the Related Actions affected its discussion of the warranty enhancement with CARB or the outcome of the same. The Representative Class Plaintiffs and Class Counsel disagree with Toyota's position. Toyota does not believe the claims asserted in the Related Actions are meritorious, but desires to avoid the uncertainty and expense of further litigation, and wishes to provide support to Toyota's loyal customers through the warranty enhancement discussed with CARB and the further warranty enhancement provided for in this Settlement Agreement.

7. This Settlement Agreement was entered into after extensive arm's length discussions and negotiations between Class Counsel and counsel for Toyota. These negotiations included two full-day formal mediation sessions with Justice Edward J. Wallin (Ret.) and several lengthy telephone conferences with Justice Wallin.

8. The Parties desire to compromise and settle all issues and claims that have been brought or could have been brought against Toyota in the Related Actions.

9. Counsel for Toyota and Class Counsel agree that the settlement contemplated by this Settlement Agreement is a fair, adequate, and reasonable resolution of the Related Actions.

10. The Parties desire and intend to seek the Court's approval of a nationwide class settlement of the Related Actions as set forth in this Settlement Agreement and, upon such judicial approval, the Parties intend also to seek a Final Approval Order and Judgment (as defined above) from the Court, dismissing the claims of all plaintiffs in the Related Actions with prejudice.

11. The Representative Class Plaintiffs and Class Counsel have concluded under the circumstances and considering the pertinent facts, applicable law, and Toyota's warranty enhancement discussed with CARB, that it is in the best interests of the Representative Class Plaintiffs and Settlement Class members to enter into this Settlement Agreement to avoid the uncertainties of litigation and to assure a benefit to themselves and all Settlement Class members. The Representative Class Plaintiffs and Class Counsel consider this Settlement Agreement to be fair, reasonable, and adequate and in the best interests of the Settlement Class members.

It is agreed that in consideration of the promises and mutual covenants set forth in this Settlement Agreement and the foregoing Recitals, and the entry by the Court of a Final Approval Order and Judgment approving the terms and conditions of the settlement as set forth in this Settlement Agreement, and providing for dismissal with prejudice of the claims asserted in the Related Actions, the Related Actions shall be settled and compromised under the terms and conditions contained herein.

1 **III. TERMS OF SETTLEMENT AGREEMENT AND RELEASE**

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3 1. This Settlement Agreement is for settlement purposes only. Neither this
4 Settlement Agreement nor any action taken pursuant to it shall constitute, or be
5 construed as, an admission of the validity of any claim or any factual allegation that
6 was or could have been made by the Representative Class Plaintiffs and Settlement
7 Class members in the Related Actions, or of any wrongdoing, fault, violation of law,
8 or liability of any kind on the part of Toyota. This agreement shall not be offered or
9 admissible in evidence by or against Toyota, or cited or referred to in any action or
10 proceeding, except (a) in any action or proceeding brought by or against the Parties to
11 enforce or otherwise implement the terms of this Settlement Agreement, or (b) in any
12 action to support a defense of issue preclusion, claim preclusion, release, estoppel, or
13 similar defense in law or equity.

14 2. Subject to Court approval, the Parties agree the *Milligan* action will be
15 deemed, for purposes of settlement only, to be certified as a class action in accordance
16 with the Settlement Class as defined above, and that the *Milligan* action shall be
17 settled on that basis and the other Related Action (*Washington*) shall be dismissed by
18 stipulation after all rights to appeal the Final Approval Order and Judgment in the
19 *Milligan* action have expired or have been exhausted in such a manner as to affirm the
20 Final Approval Order and Judgment.

21 3. Neither this Settlement Agreement nor any class certification pursuant to
22 it shall constitute, in this or any other proceeding, an admission by Toyota nor a
23 finding or evidence that any requirement for class certification is satisfied in the
24 Related Actions or any other litigation, except for the limited purposes related to this
25 Settlement Agreement. If this Settlement Agreement is terminated pursuant to its
26 terms, any order certifying the Settlement Class shall be vacated, and the Related
27 Actions shall proceed as though the Settlement Class had never been certified, without
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1 prejudice to the Parties' rights to either request or oppose class certification. This
2 Settlement Agreement is for settlement purposes only and shall have no precedential
3 value in any future litigation with regard to the certifiability of the proposed classes in
4 the Related Actions.

5 4. In consideration for the release of claims by the Representative Class
6 Plaintiffs and Settlement Class members and the dismissal with prejudice of the
7 Related Actions as provided in this Settlement Agreement, Toyota agrees to provide
8 relief to the Settlement Class members as follows:

9 a. In addition to its understanding with CARB to provide notice of
10 the warranty enhancement to current owners of the Class Vehicles, Toyota will
11 provide the Notice, in the form attached as Exhibit B, to all members of the Settlement
12 Class reasonably identified by R.L. Polk & Co. In addition to Exhibit B, a Spanish –
13 language version of the Notice, attached as Exhibit C, will be provided to all
14 Settlement Class members in Puerto Rico. It is understood and agreed that access to
15 owner and lessee information in some states may only be obtained through court
16 order. The parties agree to cooperate to facilitate the identification of owners and
17 lessees by R.L. Polk & Co. with the understanding that, because of the requirement of
18 some states that vehicle owner and lessee information only be released through a court
19 order, this information may not be available until after preliminary approval of the
20 Class Settlement.

21 b. The Notice of the proposed settlement to Settlement Class
22 members shall include the following language:

23 Some 2001-2003 model-year RAV4s equipped
24 with automatic transmissions have experienced a
25 “harsh shift condition.” When this occurs, the
26 vehicle may suddenly not shift smoothly and/or it
27 may exhibit harshness in shifting operations during

1 driving. The “harsh shift condition” may be
2 attributable to the Electronic Control Module
3 (ECM). A malfunctioning ECM may also cause
4 damage to your vehicle’s automatic transmission.

5 c. Toyota will continue to provide a warranty enhancement for any
6 current-owner’s Class Vehicle, and begin to provide for any current-lessee’s and
7 prior-owner/lessee’s Class Vehicle, for a period of ten (10) years or 150,000 miles
8 from the Class Vehicle’s in-service date, whichever occurs first, for a harsh shift
9 condition of the automatic transmission and/or illumination of the Malfunction
10 Indicator Light (check engine light) with the following codes: P0750, P0753, P0755,
11 P0758, and/or P1760, as referenced in Exhibit A. Should a Settlement Class member
12 experience this condition and/or codes, any Toyota dealer will inspect the vehicle to
13 verify the condition. If the condition is verified, the dealer will repair the Class
14 Vehicle at no charge, by replacing the ECM and/or automatic transmission. In the
15 majority of cases, the repair will only require the replacement of the ECM.

16 d. Toyota will continue to reimburse current-owner Settlement Class
17 members and will begin to reimburse current-lessee and prior-owner/lessee Settlement
18 Class members who paid, prior to the receipt of notice of the warranty enhancement,
19 for repair or replacement of the ECM and/or automatic transmission for the specific
20 condition described in paragraph 4c where the condition occurred in Class Vehicles
21 falling within the enhanced-warranty period. Toyota will handle the processing of
22 these reimbursement claims. If a Settlement Class member has already been
23 reimbursed for their ECM and/or automatic transmission replacement or repair, they
24 will not be entitled to further reimbursement for that same replacement or repair.

25 e. To submit a claim for reimbursement, the Settlement Class
26 member must mail, during the Reimbursement Period:

- (1) a copy of the repair order or other similar service document that includes the reason for repair/replacement and the proof of payment;
- (2) proof of ownership or lease at the time of repair or replacement, which prior owners or lessees may establish by declaration under penalty of perjury; and
- (3) include the owner or lessee or prior owner or lessee's name, address, and telephone number.

The claim should be mailed to one of the following addresses for reimbursement consideration:

Toyota Motor Sales, U.S.A., Inc.
Toyota Customer Experience, WC 10
19001 South Western Avenue
Torrance, CA 90509
(Continental United States Claims)

Servco Automotive Customer Services
2850 Pukoloa Street, Suite 202
Honolulu, HI 96819
(Hawaii Claims)

Toyota de Puerto Rico Corp
P.O. Box 195467
San Juan, Puerto Rico 00919
(Puerto Rico Claims)

Settlement Class members who fail to submit valid reimbursement claims within the Reimbursement Period cannot obtain payments pursuant to this Settlement Agreement, but will in all other respects be subject to and bound by the provisions and releases of this Settlement Agreement and the Final Approval Order and Judgment entered by the Court.

f. A Settlement Class member whose claim for reimbursement or warranty repair or replacement is denied in part or in whole and who desires review of that decision must proceed according to the following appeal process:

1 (1) The Settlement Class member must contact Class Counsel
2 and advise them of the dispute. Class Counsel will then contact Toyota's designated
3 counsel:

4 Eva M. Weiler, Esq.
5 Shook, Hardy & Bacon L.L.P.
6 5 Park Plaza, Suite 1600
Irvine, CA 92614
(949) 475-1500

7 (2) If the dispute cannot be resolved between counsel, and the
8 Settlement Class member wants to pursue the claim further, Class Counsel must
9 submit a written appeal claim to the Settlement Administrator and serve a copy on
10 Toyota's designated counsel within twenty (20) days after the meet-and-confer
11 process between counsel is terminated. Toyota will have twenty (20) days from the
12 date of mailing of the appeal claim to mail a written response.

13 (3) The Settlement Administrator will receive and review the
14 appeal claim and any response from Toyota, confirm the requestor is a Settlement
15 Class member, and decide the issue based on these submissions. The Settlement
16 Administrator's decision will be final and binding.

17 (4) The Settlement Administrator's fees and costs will be paid
18 by Toyota.

19 5. Upon the Effective Date of Settlement, the Representative Class
20 Plaintiffs and Settlement Class members, and each of them, forever release, discharge,
21 waive, and covenant not to sue Toyota regarding any of the Released Claims. This
22 release includes all such claims that the Representative Class Plaintiffs and Settlement
23 Class members do not know of or suspect to exist in their favor at the time of this
24 release and that, if known by them, might have affected their settlement and release of
25 Toyota, or might have affected their decision not to object to this Settlement
26 Agreement. With respect to all Released Claims, the Representative Class Plaintiffs
27 and Settlement Class members **expressly waive and relinquish to the fullest extent**

1 permitted by law the rights conferred by section 1542 of the California Civil Code,
2 which provides:

3 **A general release does not extend to claims which the**
4 **creditor does not know or suspect to exist in his favor**
5 **at the time of executing the release, which if known by**
6 **him must have materially affected his settlement with**
7 **the debtor.**

8 The Representative Class Plaintiffs and Settlement Class members further expressly
9 waive and relinquish to the fullest extent permitted by law any rights under any law of
10 any state or territory of the United States, including the Commonwealth of Puerto
11 Rico, and any federal law or principle of common law or equity, or of international
12 foreign law, that is comparable to section 1542 of the California Civil Code. The
13 Representative Class Plaintiffs and Settlement Class members recognize that even if
14 they later discover facts in addition to or different from those they now know or
15 believe to be true, they nevertheless agree that upon entry of the Final Approval Order
16 and Judgment, the Representative Class Plaintiffs and Settlement Class members
17 fully, finally, and forever settle and release any and all of the Released Claims.
18 Released Claims do not include claims of personal injury. The foregoing waiver and
19 release was bargained for and is a material element of this Settlement Agreement.

20 6. Class Counsel shall present this Settlement Agreement to the Court as
21 soon as practicable after its execution through a Preliminary Approval Motion that
22 shall request entry of a Preliminary Approval Order, including:

23 a. the preliminary approval of the settlement set forth in this
24 Settlement Agreement as fair, reasonable, adequate, and in the best interests of the
25 Settlement Class;

b. certification for settlement purposes only of the Settlement Class as defined in this Settlement Agreement, pending final approval of the Class Settlement;

c. approval of the Notice Plan;

d. a schedule for a hearing by the Court after the Notice period has expired to approve the Class Settlement and to consider Class Counsel's applications for attorneys' fees and expenses and incentive awards;

e. a stay of all proceedings in the Related Actions until such time as the Court renders a final decision regarding the approval of the Class Settlement;

f. appointment of Carin Milligan, George Edwin Milligan, and Damashata Washington as Representative Class Plaintiffs; and

g. appointment of Jeffrey B. Cereghino of Merrill, Nomura & Molineux LLP, Michael F. Ram of Ram & Olson LLP, Beth E. Terrell of Terrell Marshall & Daudt PLLC, Steven M. Tindall of Rukin Hyland Doria & Tindall LLP, and Jennie Anderson of Andrus Anderson LLP as Class Counsel.

Toyota shall be permitted, but not required, to file responsive papers, in its sole discretion.

7. Toyota shall provide notice to state and federal officials of the proposed Class Settlement as required by the Class Action Fairness Act (28 U.S.C. § 1715) within ten (10) days after Class Counsel files a Preliminary Approval Motion.

8. Toyota, through the Settlement Administrator, shall disseminate Notice of the pendency of the Class Settlement and the hearing on a Final Approval Order and Judgment, in substantially the form set forth in Exhibit B, by First-Class U.S. Mail, postage paid, to potential Settlement Class members, including prior owners and lessees of Class Vehicles. In addition to Exhibit B, a Spanish-language version of the Notice, Exhibit C, will be sent to all Settlement Class members in Puerto Rico. The mailing list for the Notice shall be compiled from information that includes

1 information provided by R.L. Polk & Co., and shall include all identifiable current and
2 prior owners and lessees of the Class Vehicles in the United States and the
3 Commonwealth of Puerto Rico. If any Notice is returned along with an advisory
4 identifying a forwarding address, the Settlement Administrator shall cause the Notice
5 to be placed in First-Class U.S. Mail, postage paid, directed to the forwarding address.
6 Toyota shall have no further obligation to locate potential Settlement Class members
7 or to mail additional copies of the Notice. Toyota shall pay all costs related to the
8 printing and mailing of the Notice and all costs incurred by the Settlement
9 Administrator to provide the services specified in this Settlement Agreement.

10 9. A copy of the Notice shall also be available on the internet on a website
11 to be established and maintained by the Settlement Administrator. Other contents of
12 this website may include this Settlement Agreement, court filings necessary to obtain
13 preliminary approval of the Class Settlement, the Final Approval Order and Judgment,
14 and Frequently Asked Questions ("FAQs") about the Class Settlement. Class Counsel
15 may summarize the Class Settlement on their websites with a link to the Settlement
16 Administrator's website and may refer Settlement Class members to Class Counsels'
17 websites, but will not otherwise publicize those websites. The content of these
18 websites will be mutually agreed upon by the Parties. These websites may remain
19 active and accessible through December 31, 2014. Class Counsel will pay for any
20 costs associated with the establishment and maintenance of their websites.

21 10. The Settlement Administrator will establish a toll-free telephone number
22 that will be included in the Notice. The toll-free telephone number will provide pre-
23 recorded information, agreed to by the Parties, on the following: (1) a statement on
24 the status of the Class Settlement and its terms, (2) a reference to the Settlement
25 Administrator's website for further information, and (3) the address of Class Counsel
26 to whom Settlement Class members may write for additional information. The
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1 Settlement Administrator's obligation to maintain the toll-free telephone number will
2 continue until the Class Settlement receives final approval by the Court.

3 11. The Settlement Administrator shall complete mailing of the Notice
4 within thirty (30) days after receipt of the final mailing list information regarding
5 current and prior owners and lessees of the Class Vehicles from R.L. Polk & Co.
6 Class Counsel and counsel for Toyota will request that the Court schedule a fairness
7 hearing to obtain final approval of the Class Settlement as soon as reasonably possible
8 and consistent with the approved Class Notice Plan.

9 12. Anyone who wishes to be excluded from the Settlement Class must
10 submit a written request for exclusion by First-Class U.S. Mail, postage paid, to the
11 United States Post Office Box established and maintained by the Settlement
12 Administrator for the purposes of this Class Settlement: Toyota RAV4 ECM
13 Settlement Claims Administrator, P.O. Box 6177, Novato, California 94948-6177.
14 The Settlement Administrator's obligation to maintain this Post Office Box will
15 continue until the Class Settlement receives final approval from the Court. Any
16 request for exclusion from the Class Settlement must be postmarked on or before the
17 deadline specified in the Notice, which shall be no less than forty-five (45) days after
18 the mailing of the Notice.

19 a. Anyone submitting a request for exclusion must (i) set forth his/her
20 full name and current address; (ii) identify the model year and model of his/her Class
21 Vehicle(s) and the approximate date of purchase; (iii) state whether the Settlement
22 Class member requesting exclusion still owns or leases the Class Vehicle; and (iv)
23 specifically state his/her desire to be excluded from the Settlement Class. Any current
24 owner or lessee of a Class Vehicle who submits a request for exclusion must also
25 provide the vehicle identification number of the Class Vehicle with that request.

26 b. Anyone who falls within the Settlement Class definition and does
27 not submit a request for exclusion in complete accordance with the deadlines and
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1 other specifications set forth in the Notice shall become a Settlement Class member
2 and be bound by all proceedings, orders, and judgments of the Court pertaining to the
3 Settlement Class pursuant to this Settlement Agreement.

4 13. Any Settlement Class member who wishes to object to the Class
5 Settlement must send a written objection ("Objection") to the Settlement
6 Administrator at the United States Post Office Box described in paragraph 13 above
7 and paragraph 20 of the Definitions by First- Class U.S. Mail, postage paid. All
8 objections must also be served on Class Counsel and on counsel for Toyota at the
9 addresses specified in paragraph 33 below. Any objection must be postmarked on or
10 before the deadline specified in the Notice, which shall be forty-five (45) days after
11 mailing of the Notice. Only Settlement Class members may object to the Class
12 Settlement. The Settlement Administrator shall be responsible for forwarding all
13 Objections to counsel for Toyota and Class Counsel. Class Counsel will file all timely
14 and valid Objections with the Court.

15 a. In his/her objection, an objecting Settlement Class member must
16 (i) set forth his/her full name, current address, and telephone number; (ii) identify the
17 model year of his/her Class Vehicle(s), as well as the vehicle identification number of
18 his/her Class Vehicle(s); (iii) state whether he/she is a current or prior owner or lessee;
19 (iv) state when he/she purchased the Class Vehicle(s); (v) set forth a statement of the
20 position the objector wishes to assert, including the factual and legal grounds for the
21 position; and (vi) provide copies of any other documents that the objector wishes to
22 submit in support of his/her position.

23 b. Any Settlement Class member who does not submit an objection in
24 complete accordance with this paragraph and the provisions specified in the Notice
25 shall not be permitted to object to the Class Settlement.

26 c. Subject to approval of the Court, any objecting Settlement Class
27 member may appear at any hearing on the Final Approval Order and Judgment

1 (“Fairness Hearing”) held by the Court, in person or through counsel, to show cause
2 why the proposed Class Settlement should not be approved as fair, adequate, and
3 reasonable, or to object to any petitions for attorneys’ fees, Representative Class
4 Plaintiff incentive fees, and reimbursement of litigation costs and expenses. The
5 objecting Settlement Class member must file with the Clerk of the Court and serve
6 upon counsel designated in paragraph 33 below, a notice of intention to appear at the
7 Fairness Hearing (“Notice of Intention to Appear”) by the deadline specified in the
8 Notice, which shall be forty-five (45) days after the mailing of the Notice pursuant to
9 this Agreement. The Notice of Intention to Appear must include copies of any papers,
10 exhibits, or other evidence that the objecting Settlement Class member (or his/her
11 counsel) will present to the Court in connection with the Fairness Hearing. Any
12 Settlement Class member who does not provide a Notice of Intention to Appear in
13 complete accordance with the deadlines and other specifications set forth in the
14 Notice, and who has not filed an Objection in complete accordance with the deadlines
15 and other specifications set forth in this paragraph and the Notice, will, subject to the
16 Court’s final determination in the exercise of its discretion, be barred from speaking
17 or otherwise presenting any views at any fairness hearing.

18 14. The Settlement Administrator shall, upon request, provide copies to Class
19 Counsel and counsel for Toyota of all requests for exclusion and all written
20 communications relating to the Class Settlement that the Settlement Administrator
21 receives from Settlement Class members or others that were not served on the Parties.
22 The Party that makes the request shall bear all costs of providing copies to that Party.
23 To the extent Class Counsel or counsel for Toyota receive requests for exclusions or
24 objections that have not been transmitted to the Settlement Administrator, they shall
25 transmit those communications to the Settlement Administrator, who shall provide the
26 other Parties with a copy of those communications.

15. Following final approval by the Court of the Class Settlement, the Parties will request entry of a Final Approval Order and Judgment. In the Final Approval Order and Judgment, the Parties shall seek, among other things:

a. final approval to the terms of this Settlement Agreement as fair, adequate, and reasonable;

b. provision for the orderly performance and enforcement of the terms and conditions of this Settlement Agreement;

c. dismissal of the *Milligan* action with prejudice;

d. discharge of Toyota from all further liability for the Released Claims to Settlement Class members;

e. provision for a permanent bar that enjoins each of the Settlement Class members and any of their predecessors, successors, representatives, parent companies, subsidiaries, affiliates, heirs, executors, administrators, attorneys, successors, and assignees, from instituting, filing, commencing, prosecuting, maintaining, continuing to prosecute, directly or indirectly, as an individual or collectively, representatively, derivatively, or on behalf of them, or in any other capacity of any kind whatsoever, any action in any state or federal court or any other tribunal, forum, or proceeding of any kind, against Toyota that asserts any of the Released Claims:

f. confirmation of certification of the Settlement Class for settlement purposes only, finding that the requirements for class treatment have been met for purposes of the Settlement Class;

g. a finding that the form and manner of disseminating class Notice as set forth in this Settlement Agreement and ordered by the Court was accomplished as directed, constituted the best practicable notice under the circumstances, met or exceeded the requirements of due process, and constituted due and sufficient notice to all members of the Settlement Class; and

h. a finding that the Representative Class Plaintiffs and Class Counsel have fairly and adequately represented the interests of the Settlement Class members at all times in the Related Actions.

16. If the Preliminary Approval Order or the Final Approval Order and Judgment is not obtained from the Court in the form and as contemplated by this Settlement Agreement and its proposed orders, or the Final Order and Judgment is reversed or modified on appeal, or the number of Settlement Class members seeking to be excluded from the Class Settlement exceeds 250, and either the Representative Class Plaintiffs or Toyota so elect, this Settlement Agreement shall be null and void and have no further force and effect with respect to any of the Parties in the Related Actions. In that event, the Settlement Agreement may not be offered in evidence or used in any litigation (including the Related Actions) for any purpose, including the existence, certification, or maintenance of any purported class. The canceling and terminating Party may make such election only by furnishing written notice of an intent not to proceed with the terms and conditions of this Settlement Agreement to the other Party within fifteen (15) calendar days of the event forming the basis for the election to terminate. In the event of such an election, this Settlement Agreement and all negotiations, proceedings, documents, and related statements shall be without prejudice to the Parties, shall not be deemed an admission by any Party of any matter, and shall not be used for any purpose. All Parties to any of the Related Actions shall stand in the same position as if this Settlement Agreement had not been negotiated, made, or filed with the Court, and without prejudice to the Parties' rights to either request or oppose class certification.

17. Toyota agrees not to oppose a petition on behalf of all Class Counsel for attorneys fees, and verifiable costs (“fee award”) in a total amount not to exceed \$830,000, or a petition on behalf of the Representative Class Plaintiffs for an award of incentive payments not to exceed \$5,000 to the Milligans and \$5,000 to Washington.

1 Class Counsel agree not to seek more from the Court, and will not accept more than
2 \$830,000 total for a fee award. The Representative Class Plaintiffs agree not to seek
3 more from the Court, and will not accept more than \$5,000 for Ms. Washington and
4 \$5,000 for the Milligans for incentive payments. Class Counsel and the
5 Representative Class Plaintiffs agree to provide an executed W-9 tax form to Toyota
6 promptly following final approval of the settlement by the Court. Toyota agrees to
7 pay the fee award and/or incentive payments as provided herein, or such lesser
8 amounts, if so ordered by the Court, within fifteen (15) business days of confirmation
9 of the entry of dismissal with prejudice of all of the Related Actions or receipt of all
10 W-9 tax forms, whichever date is latest. Toyota shall deliver the fee award and
11 incentive payments to Class Counsel, who will be solely responsible for allocating
12 said funds to the Representative Class Plaintiffs and Class Counsel. In no event shall
13 Toyota be obligated to pay Class Counsel, the Representative Class Plaintiffs,
14 Settlement Class members, or other counsel any attorney fees, incentive payments, or
15 costs in an amount greater than the amounts specified in this paragraph for activity
16 relating to the allegations that form, or could have formed, the basis of the Related
17 Actions. Notwithstanding paragraph 17, no order of the Court or modification or
18 reversal on appeal of any order of the Court concerning the amount of attorneys' fees,
19 costs, or expenses awarded by the Court to Class Counsel or the amount of incentive
20 fees awarded by the Court to the Representative Class Plaintiffs shall constitute
21 grounds for cancellation or termination of this Settlement Agreement.

22 18. The Parties agree that Toyota is in no way liable for any taxes Class
23 Counsel, the Representative Class Plaintiffs, Settlement Class members, or others may
24 be required to pay as a result of the receipt of any benefits under the Class Settlement.
25 The Parties also agree Class Counsel, the Representative Class Plaintiffs, and the
26 Settlement Class members are not in any way liable for any taxes Toyota may be
27
28

1 required to pay as a result of the payments under or the administration of this
2 Settlement Agreement.

3 19. Toyota shall not be responsible to Settlement Class members who submit
4 Objections to the Class Settlement or who exclude themselves from the Settlement
5 Class for attorneys' fees, costs, or expenses of any kind. Any fee awards and
6 incentive payments payable hereunder and approved by the Court shall be in complete
7 satisfaction of any and all claims for such attorneys' fees, incentive payments, and
8 costs under state or federal law that the Representative Class Plaintiffs, Settlement
9 Class members, or Class Counsel have or may have against Toyota arising out of or in
10 connection with the Related Actions and this Settlement Agreement.

11 20. Each of the Parties will bear its own attorneys' fees and court costs,
12 except as provided in paragraph 18 above, incurred in connection with the negotiation
13 and preparation of this Settlement Agreement, all subsequent proceedings to certify
14 the Settlement Class and receive the Court's approval of this Settlement Agreement,
15 including, without limitation, fees and costs of appeals, and implementation of the
16 terms of this Settlement Agreement.

17 21. Subject to the other provisions of this Settlement Agreement, the Parties
18 agree to cooperate fully, to execute any and all supplementary documents reasonably
19 necessary to effectuate the terms of this Settlement Agreement, and to take all
20 additional actions and reasonable steps that may be necessary or appropriate to obtain
21 judicial approval of this Settlement Agreement and to give this Settlement Agreement
22 full force and effect. The Parties agree the Class Settlement embodied in this
23 Settlement Agreement is fair, adequate, and reasonable as to all Parties.

24 22. This Settlement Agreement and its attachments shall constitute the entire
25 agreement of the Parties and shall not be subject to any change, modification,
26 amendment, or addition without the express written consent of Class Counsel and
27

1 counsel for Toyota. This Settlement Agreement supersedes and replaces all prior
2 negotiations and proposed agreements, written or oral.

3 23. All of the attached exhibits are incorporated into this Settlement
4 Agreement by reference.

5 24. This Settlement Agreement shall be binding upon and inure to the benefit
6 of the Parties and their representatives, heirs, successors, and assignees.

7 25. In the event any one or more of the provisions contained in this
8 Settlement Agreement shall for any reason be held to be invalid, illegal, or
9 unenforceable in any respect, such invalidity, illegality, or unenforceability shall not
10 affect any other provision if Toyota and Class Counsel, on behalf of the
11 Representative Class Plaintiffs and Settlement Class members, mutually elect to
12 proceed as if such invalid, illegal, or unenforceable provision had never been included
13 in this Settlement Agreement.

14 26. Class Counsel warrant that no other attorneys who have appeared on any
15 documents filed on behalf of the Representative Class Plaintiffs, as well as other
16 attorneys who have participated in the Related Actions, have any claim for attorneys'
17 fees separate from those fees that may be awarded to Class Counsel pursuant to
18 paragraph 18 above.

19 27. The Parties stipulate to stay all proceedings in the Related Actions until
20 entry of the Final Approval Order and Judgment, except the stay of proceedings shall
21 not prevent the filing and service of any motions, affidavits, and other papers
22 necessary to obtain approval of this Settlement Agreement.

23 28. Toyota and the Representative Class Plaintiffs acknowledge they have
24 been represented and advised by independent legal counsel throughout the
25 negotiations leading to this Settlement Agreement. They have voluntarily executed
26 this Settlement Agreement with the consent and on the advice of counsel.

1 29. This Settlement Agreement may be executed in counterparts by the
2 Parties, and a facsimile or emailed scanned signature shall be deemed an original
3 signature for purposes of this Settlement Agreement.

4 30. This Settlement Agreement shall be construed under and governed by the
5 laws of the State of California without giving effect to the State of California's
6 choice-of-law principles. The Court shall retain jurisdiction over the interpretation
7 and implementation of this Settlement Agreement, as well as any and all matters
8 arising out of, or relating to, the interpretation or implementation of the Final
9 Approval Order and Judgment.

10 31. The Parties and their counsel have negotiated and fully reviewed the
11 terms of this Settlement Agreement, and the rule that uncertainty or ambiguity is to be
12 construed against the drafter shall not apply to the construction of this Settlement
13 Agreement by a court of law or any other adjudicating body.

14 32. Whenever, under the terms of this Settlement Agreement, a person is
15 required to provide service or written notice to Toyota or to Class Counsel, such
16 service or notice shall be directed to the individuals and addresses specified below,
17 unless those individuals or their successors give notice to the other Parties in writing:

18 As to Class Counsel:

19 Jeffrey B. Cereghino, Esq.
20 Merrill, Nomura & Molineux LLP
21 350 Rose Street
22 Danville, CA 94526

23 Michael F. Ram, Esq.
24 Ram & Olson LLP
25 555 Montgomery Street, Suite 820
26 San Francisco, CA 94111

27 Beth E. Terrell, Esq.
28 Terrell Marshall & Daudt PLLC
29 3600 Fremont Avenue North
30 Seattle, WA 98103

31 Jennie Anderson, Esq.
32 Andrus Anderson LLP

1 155 Montgomery Street, 9th Floor
2 San Francisco, CA 94104

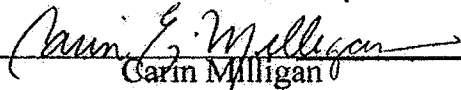
3 Steven Tindall, Esq.
4 Rukin Hyland Doria & Tindall LLP
5 100 Pine Street, Suite 725
6 San Francisco, CA 94111

7 As to Toyota:


8 Frank C. Rothrock, Esq.
9 Eva M. Weiler, Esq.
10 Shook, Hardy & Bacon L.L.P.
11 5 Park Plaza, Suite 1600
12 Irvine, CA 92614

13 Unless otherwise indicated herein, where any Party's exercise of any right under this
14 Settlement Agreement requires written notice, the Party shall serve such written notice
15 by First-Class U.S. Mail, postage paid, or any method that is at least as reliable and
16 timely as First Class U.S. Mail.

17 Dated: 3/7, 2011

18 By: 
19 Carin Milligan

20 Dated: 3/7, 2011

21 By: 
22 George Edwin Milligan

23 Dated: _____, 2011

24 By: _____
25 Damashata Washington

26 Dated: _____, 2011

27 By: _____
28 Toyota Motor Sales, U.S.A., Inc.

By: _____

Its: _____

155 Montgomery Street, 9th Floor
San Francisco, CA 94104

Steven Tindall, Esq.
Rukin Hyland Doria & Tindall LLP
100 Pine Street, Suite 725
San Francisco, CA 94111

As to Toyota:

Frank C. Rothrock, Esq.
Eva M. Weiler, Esq.
Shook, Hardy & Bacon L.L.P.
5 Park Plaza, Suite 1600
Irvine, CA 92614

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Dated: _____, 2011

By: _____

Carin Milligan

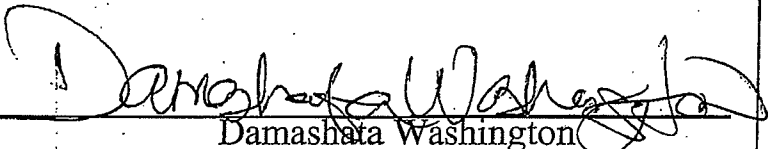
Dated: _____, 2011

By: _____

George Edwin Milligan

Dated: 3-9, 2011

By: _____


Damashata Washington

Dated: _____, 2011

By: _____

Toyota Motor Sales, U.S.A., Inc.

By: _____

Its: _____

1 155 Montgomery Street, 9th Floor
2 San Francisco, CA 94104

3 Steven Tindall, Esq.
4 Rukin Hyland Doria & Tindall LLP
5 100 Pine Street, Suite 725
6 San Francisco, CA 94111

7 As to Toyota:

8 Frank C. Rothrock, Esq.
9 Eva M. Weiler, Esq.
10 Shook, Hardy & Bacon L.L.P.
11 5 Park Plaza, Suite 1600
12 Irvine, CA 92614

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16 timely as First Class U.S. Mail.

17 Dated: _____, 2011

18 By: _____
19 Carin Milligan

20 Dated: _____, 2011

21 By: _____
22 George Edwin Milligan

23 Dated: _____, 2011

24 By: _____
25 Damashata Washington

26 Dated: 3-16, 2011

27 By: G. Webster Burns
28 Toyota Motor Sales, U.S.A., Inc.

By: G. Webster Burns

Its: Assistant General Counsel

1 APPROVED AS TO FORM AND CONTENT:

2 Dated: 2-13, 2011

MERRILL, NOMURA & MOLINEUX LLP

4 By: 

Jeffrey B. Cereghino
Attorneys for Plaintiffs

Carin and George Edwin Milligan

8 Dated: _____, 2011

RAM & OLSON LLP

10 By: _____

Michael F. Ram
Attorneys for Plaintiffs

Carin and George Edwin Milligan

13 Dated: _____, 2011

TERRELL MARSHALL & DAUDT PLLC

15 By: _____

Beth E. Terrell
Attorneys for Plaintiffs
Carin and George Edwin Milligan

18 Dated: Feb. 11, 2011

RUKIN HYLAND DORIA & TINDALL LLP

20 By: 

Steven M. Tindall
Attorneys for Plaintiffs
Carin and George Edwin Milligan

23 (signatures continued on next page)

1 APPROVED AS TO FORM AND CONTENT:

2
3 Dated: _____, 2011

MERRILL, NOMURA & MOLINEUX LLP

4
5 By: _____
6 Jeffrey B. Cereghino
7 Attorneys for Plaintiffs
8 Carin and George Edwin Milligan

9
10 Dated: 2/11, 2011

RAM & OLSON LLP

11 By: _____
12 Michael F. Ram
13 Attorneys for Plaintiffs
14 Carin and George Edwin Milligan

15
16 Dated: _____, 2011

TERRELL MARSHALL & DAUDT PLLC

17 By: _____
18 Beth E. Terrell
19 Attorneys for Plaintiffs
20 Carin and George Edwin Milligan

21
22 Dated: _____, 2011

RUKIN HYLAND DORIA & TINDALL LLP

23 By: _____
24 Steven M. Tindall
25 Attorneys for Plaintiffs
26 Carin and George Edwin Milligan

27 (signatures continued on next page)

1 APPROVED AS TO FORM AND CONTENT:

2
3 Dated: _____, 2011

MERRILL, NOMURA & MOLINEUX LLP

4
5 By: _____
6 Jeffrey B. Cereghino
7 Attorneys for Plaintiffs
8 Carin and George Edwin Milligan

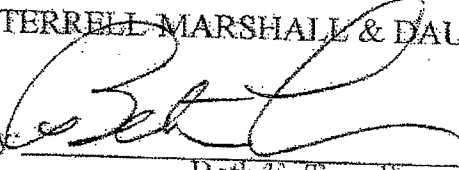
9
10 Dated: _____, 2011

RAM & OLSON LLP

11 By: _____
12 Michael F. Ram
13 Attorneys for Plaintiffs
14 Carin and George Edwin Milligan

15
16 Dated: 2/11, 2011

TERRELL MARSHALL & DAUDT PLLC

17 By:  _____
18 Beth E. Terrell
19 Attorneys for Plaintiffs
20 Carin and George Edwin Milligan

21
22 Dated: _____, 2011

RUKIN HYLAND DORIA & TINDALL LLP

23 By: _____
24 Steven M. Tindall
25 Attorneys for Plaintiffs
26 Carin and George Edwin Milligan

27 (signatures continued on next page)

1 Dated: 3-8, 2011

ANDRUS ANDERSON LLP

2
3 By: 

Jennie Lee Anderson
Attorneys for Plaintiff
Damashata Washington

4
5
6 Dated: March 18, 2011

SHOOK, HARDY & BACON L.L.P.

7
8 By: 

Frank C. Rothrock
Eva M. Weiler
Attorneys for Defendants
Toyota Motor Sales, U.S.A., Inc.