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Signature Page]*

12 Attorneys for Plaintiffs and the putative Class

13 **UNITED STATES DISTRICT COURT**

14 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

15 BRIAN WARNER, KENNETH
MACLEOD; MICHAEL MEADE,
16 MICHAEL WATSON, JAMES
FULLER, and DALE FRANQUET,
17 individually and on behalf of all
others similarly situated,

18 Plaintiffs,

19 v.

20 TOYOTA MOTOR SALES, U.S.A.,
21 INC., a California corporation,

22 Defendant.

Case No. 2:15-cv-02171-FMO-(FFMx)

CLASS ACTION

**JOINT NOTICE OF ERRATA RE
EXHIBIT 3 TO SETTLEMENT
AGREEMENT**

USDJ: Fernando M. Olguin
Ctrm: 22, 5th Floor – Spring
USMJ: Frederick F. Mumm
Ctrm: E, 9th Floor – Spring

JURY TRIAL DEMANDED

Complaint Filed: March 24, 2015

BLOOD HURST & O'REARDON, LLP

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TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on November 15, 2016, Plaintiffs Ryan Burns, Dale Franquet, James Fuller, James Good, Kenneth MacLeod, Michael Mead, Brian Warner, and Michael Watson (collectively "Plaintiffs"), electronically filed the Settlement Agreement (ECF 91), and accompanying exhibits 1 through 11 (ECF 91-1) on behalf Plaintiffs and Defendant Toyota Motor Sales, U.S.A., Inc. (the "Parties").

The Parties made certain changes to the Settlement Agreement, and revised certain exhibits to conform to those changes, except for the (Proposed) Final Order Approving Class Action Settlement, which was Exhibit 3 to the Settlement Agreement.

This erratum shall serve to submit the conformed (Proposed) Final Order Approving Class Action Settlement, to replace the previously filed exhibit.

Respectfully submitted,

Dated: November 15, 2016

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By: s/ Timothy G. Blood

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Dated: November 15, 2016

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Tovota Motor Sales. U.S.A.. Inc.*

BLOOD HURST & O'REARDON, LLP

ECF CERTIFICATION

The filing attorney attests that he has obtained concurrence regarding the filing of this document from the signatories to this document.

Dated: November 15, 2016

BLOOD HURST & O'REARDON, LLP

By: s/ Timothy G. Blood
TIMOTHY G. BLOOD

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CERTIFICATE OF SERVICE

I hereby certify that on November 15, 2016, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the Electronic Mail Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on November 15, 2016.

s/ Timothy G. Blood

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12 [Additional Counsel Appear on Signature Page]

13 Attorneys for Plaintiffs and the putative Class

14 **UNITED STATES DISTRICT COURT**

15 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

16 BRIAN WARNER, KENNETH
MACLEOD; MICHAEL MEADE,
17 MICHAEL WATSON, JAMES
FULLER, and DALE FRANQUET,
18 individually and on behalf of all
others similarly situated,

19 Plaintiffs,

20 v.

21 TOYOTA MOTOR SALES, U.S.A.,
22 INC., a California corporation,

23 Defendant.

Case No. 2:15-cv-02171-FMO-(FFMx)

CLASS ACTION

**EXHIBIT 3 TO SETTLEMENT
AGREEMENT [ECF NO. 91-1]**

USDJ: Fernando M. Olguin
Ctrm: 22, 5th Floor – Spring
USMJ: Frederick F. Mumm
Ctrm: E, 9th Floor – Spring

JURY TRIAL DEMANDED

Complaint Filed: March 24, 2015

EXHIBIT 3

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION**

**BRIAN WARNER, KENNETH
MACLEOD, MICHAEL MEADE,
MICHAEL WATSON, JAMES
FULLER, and DALE FRANQUET,
individually and on behalf of all
others similarly situated,**

Plaintiffs,

v.

**TOYOTA MOTOR SALES, U.S.A.,
INC., a California corporation,**

Defendant.

No. 2:15-cv-02171-FMO-(FFMx)

**[PROPOSED] FINAL ORDER
APPROVING CLASS ACTION
SETTLEMENT**

1 WHEREAS, the Court, having considered the Settlement Agreement dated
2 [MONTH] ____, 2016 (the “Settlement Agreement”) between and among Class
3 Representatives, through Class Counsel, and Defendant Toyota Motor Sales, U.S.A.,
4 Inc. (“Toyota”), the Court’s [MONTH] ____, 2016 Order Granting Preliminary
5 Approval of the Class Settlement, Directing Notice to the Class, and Scheduling
6 Fairness Hearing (Dkt. No. ____) (the “Preliminary Approval Order”), having held a
7 Fairness Hearing on [date], and having considered all of the submissions and
8 arguments with respect to the Settlement Agreement, and otherwise being fully
9 informed, and good cause appearing therefore (all capitalized terms as defined in the
10 Settlement Agreement);

11 IT IS HEREBY ORDERED AS FOLLOWS:

12 1. This Final Order Approving Class Action Settlement incorporates
13 herein and makes a part hereof, the Settlement Agreement and its exhibits, the
14 Preliminary Approval Order, all exhibits to the Settlement Agreement and the
15 Preliminary Approval Order. Unless otherwise provided herein, the terms defined in
16 the Settlement Agreement and Preliminary Approval Order shall have the same
17 meanings for purposes of this Final Order and accompanying Final Judgment.

18 2. The Court has personal jurisdiction over all parties in the Action and the
19 Related Action, including, but not limited to all Class Members, and has subject
20 matter jurisdiction over the Action and the Related Action, including without
21 limitation, jurisdiction to approve the Settlement Agreement, grant final certification
22 of the Class, to settle and release all claims released in the Settlement Agreement and
23 to dismiss the Action and the Related Action with prejudice and enter final judgment
24 in each Action.

25 **I. THE SETTLEMENT CLASS**

26 3. Based on the record before the Court, including all submissions in
27 support of the settlement set forth in the Settlement Agreement, objections and
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1 responses thereto and all prior proceedings in the Action and the Related Action, as
2 well as the Settlement Agreement itself and its related documents and exhibits, the
3 Court hereby confirms the certification of the following nationwide Class (the
4 “Class”) for settlement purposes only:

5 All persons, entities or organizations who, at any time as of or before [date of
6 Preliminary Approval Order], own or owned, purchase(d) or lease(d) Subject
7 Vehicles (as listed in Appendix A to this Final Order) distributed for sale or lease in
8 any of the fifty States, the District of Columbia, Puerto Rico and all other United
9 States territories and/or possessions. Excluded from the Class are: (a) Toyota, its
10 officers, directors and employees; its affiliates and affiliates’ officers, directors and
11 employees; its distributors and distributors’ officers, directors and employees; and
12 Toyota Dealers and Toyota Dealers’ officers and directors; (b) Plaintiffs’ Counsel;
13 (c) judicial officers and their immediate family members and associated court staff
14 assigned to this case; and (d) persons or entities who or which timely and properly
15 excluded themselves from the Class as provided in this Settlement Agreement.

16 The Court finds that only those persons/entities/organizations listed on
17 Appendix B to this Final Order Approving Class Action Settlement have timely and
18 properly excluded themselves from the Class and, therefore, are not bound by this
19 Final Order Approving Class Action Settlement or the accompanying Final
20 Judgment.

21 4. The Court confirms, for settlement purposes and conditioned upon the
22 entry of the Final Order and Final Judgment and upon the occurrence of the Final
23 Effective Date, that the Class meets all the applicable requirements of FED. R. CIV. P.
24 23(a) and (b)(3):

25 a. *Numerosity.* The Class, which is ascertainable, consists of over
26 one million members located throughout the United States and satisfies the
27 numerosity requirement of FED. R. CIV. P. 23(a)(1). Joinder of these widely-

1 dispersed, numerous Class Members into one suit would be impracticable.

2 b. *Commonality*. There are some questions of law or fact common
3 to the Class with regard to the alleged activities of Toyota in this case. These issues
4 are sufficient to establish commonality under FED. R. CIV. P. 23(a)(2).

5 c. *Typicality*. The claims of Class Representatives are typical of the
6 claims of the Class Members they seek to represent for purposes of settlement.

7 d. *Adequate Representation*. Plaintiffs' interests do not conflict
8 with those of absent members of the Classes, and Plaintiffs' interests are co-
9 extensive with those of absent Class Members. Additionally, this Court recognizes
10 the experience of Class Counsel Timothy G. Blood of Blood Hurst and O'Reardon
11 LLP and Ben Barnow of Barnow and Associates P.C. Plaintiffs and their counsel
12 have prosecuted this action vigorously on behalf of the Class. The Court finds that
13 the requirement of adequate representation of the Class has been fully met under
14 FED. R. CIV. P. 23(a)(4).

15 e. *Predominance of Common Issues*. The questions of law or fact
16 common to the Class Members, as pertains to consideration of the Settlement
17 Agreement, predominate over any questions affecting any individual Class Member.

18 f. *Superiority of the Class Action Mechanism*. The class action
19 mechanism provides a superior procedural vehicle for settlement of this matter
20 compared to other available alternatives. Class certification promotes efficiency and
21 uniformity of judgment because the many Class Members will not be forced to
22 separately pursue claims or execute settlements in various courts around the country.

23 5. The designated Class Representatives are as follows: Brian Warner,
24 Ryan Burns, Kenneth Macleod, Michael Meade, Michael Watson, James Fuller,
25 James M. Good, and Dale Franquet. The Court finds that these Class Members have
26 adequately represented the Class for purposes of entering into and implementing the
27 Settlement Agreement. The Court appoints Timothy G. Blood of Blood, Hurst &

1 O'Reardon, LLP and Ben Barnow of Barnow and Associates P.C. as Class Counsel.

2 6. In making all of the foregoing findings, the Court has exercised its
3 discretion in certifying the Class.

4 **II. NOTICE TO CLASS MEMBERS**

5 7. The record shows and the Court finds that the Class Notice has been
6 given to the Class in the manner approved by the Court in its Preliminary Approval
7 Order (Dkt. No. ____). The Court finds that such Class Notice: (i) is reasonable and
8 constitutes the best practicable notice to Class Members under the circumstances;
9 (ii) constitutes notice that was reasonably calculated, under the circumstances, to
10 apprise Class Members of the pendency of the Action and the terms of the
11 Settlement Agreement, their right to exclude themselves from the Class or to object
12 to all or any part of the Settlement Agreement, their right to appear at the Fairness
13 Hearing (either on their own or through counsel hired at their own expense) and the
14 binding effect of the orders and Final Order and Final Judgment in the Action,
15 whether favorable or unfavorable, on all persons who do not exclude themselves
16 from the Class; (iii) constitutes due, adequate, and sufficient notice to all persons or
17 entities entitled to receive notice; and (iv) fully satisfied the requirements of the
18 United States Constitution (including the Due Process Clause), FED. R. CIV. P. 23
19 and any other applicable law as well as complying with the Federal Judicial Center's
20 illustrative class action notices.

21 The Court further finds that Toyota, through the Settlement Notice
22 Administrator, provided notice of the settlement to the appropriate state and federal
23 government officials pursuant to 28 U.S.C. §1715. Furthermore, the Court has given
24 the appropriate state and federal government officials the requisite ninety (90) day
25 time period to comment or object to the Settlement Agreement before entering its
26 Final Order and Final Judgment.

1 **III. FINAL APPROVAL OF SETTLEMENT AGREEMENT**

2 8. The Court finds that the Settlement Agreement resulted from extensive
3 arm's length good faith negotiations between Class Counsel and Toyota, through
4 experienced counsel, with the assistance and oversight of Settlement Special Master
5 Patrick A. Juneau.

6 9. Pursuant to FED. R. CIV. P. 23(e), the Court hereby finally approves in
7 all respects the settlement as set forth in the Settlement Agreement and finds that the
8 the Settlement Agreement, and all other parts of the settlement are, in all respects,
9 fair, reasonable, and adequate, and in the best interest of the Class and are in full
10 compliance with all applicable requirements of the Federal Rules of Civil Procedure,
11 the United States Constitution (including the Due Process Clause), the Class Action
12 Fairness Act, and any other applicable law. The Court hereby declares that the
13 Settlement Agreement is binding on all Class Members, except those identified on
14 Appendix B, and it is to be preclusive in the Action and the Related Action. The
15 decisions of the Settlement Claims Administrator relating to the review, processing,
16 determination and payment of Claims submitted pursuant to the Settlement
17 Agreement are final and not appealable.

18 10. The Court finds that the Settlement Agreement is fair, reasonable and
19 adequate based on the following factors, among other things: (a) there is no fraud or
20 collusion underlying the Settlement Agreement; (b) the complexity, expense,
21 uncertainty and likely duration of litigation in the Action and the Related Action
22 favor settlement on behalf of the Class; (c) the Settlement Agreement provides
23 meaningful benefits to the Class; and (d) any and all other applicable factors that
24 favor final approval.

25 11. The Parties are hereby directed to implement and consummate the
26 settlement according to the terms and provisions of the Settlement Agreement. In
27 addition, the Parties are authorized to agree to and adopt such amendments and
28

1 modifications to the Settlement Agreement as: (i) shall be consistent in all material
2 respects with this Final Order Approving Class Action Settlement: and (ii) do not
3 limit the rights of the Class.

4 12. The Court has considered all objections, timely and proper or otherwise,
5 to the Settlement Agreement and denies and overrules them as without merit.

6 **IV. DISMISSAL OF CLAIMS, RELEASE**
7 **AND INJUNCTION**

8 13. The Action is hereby dismissed with prejudice on the merits and
9 without costs to any party, except as otherwise provided herein or in the Settlement
10 Agreement. The Parties are to file a stipulation of dismissal with prejudice or a
11 substantial equivalent in the Related Action, pursuant to the terms of the Settlement
12 Agreement.

13 14. Upon entry of this Final Order Approving Class Action Settlement and
14 the Final Judgment, Class Representatives and each Class Member (except those
15 listed on Appendix B), on behalf of themselves and any other legal or natural persons
16 who may claim by, through or under them, agree to fully, finally, and forever release,
17 relinquish, acquit, and discharge the Released Parties from any and all claims,
18 demands, suits, petitions, liabilities, causes of action, rights, and damages of any
19 kind and/or type regarding the subject matter of the Action and the Related Action,
20 including, but not limited to, compensatory, exemplary, punitive, expert and/or
21 attorneys' fees or by multipliers, whether past, present, or future, mature, or not yet
22 mature, known or unknown, suspected or unsuspected, contingent or non-contingent,
23 derivative or direct, asserted or un-asserted, whether based on federal, state or local
24 law, statute, ordinance, regulation, code, contract, common law, violations of any
25 state's deceptive, unlawful, or unfair business or trade practices, false, misleading or
26 fraudulent advertising, consumer fraud or consumer protection statutes, any breaches
27 of express, implied or any other warranties, RICO, or the Magnuson-Moss Warranty

1 Act, or any other source, or any claim of any kind related arising from, related to,
2 connected with, and/or in any way involving the Action, the Related Action, the
3 Subject Vehicles' frames and/or associated parts that are, or could have been,
4 defined, alleged or described in the Second Amended Complaint, the Action, the
5 Related Action or any amendments of the Action or the Related Action.
6 Notwithstanding the foregoing, Class Representatives and Class Members are not
7 releasing claims for personal injury, wrongful death or actual physical property
8 damage arising from an accident involving a Subject Vehicle.

9 15. Notwithstanding the foregoing, the Released Parties shall be held
10 harmless by any Class Representative or Class Member for a Released Claim against
11 the Released Parties asserted by that Class Representative or Class Member, either
12 brought directly or by any legal or natural persons who claim by, through, or under
13 that Class Representative or Class Member.

14 16. By not excluding themselves from the Action and the Related Action
15 and to the fullest extent they may lawfully waive such rights, all Class
16 Representatives are deemed to acknowledge and waive Section 1542 of the Civil
17 Code of the State of California and any law of any state or territory that is equivalent
18 to Section 1542. Section 1542 provides that:

19 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS**
20 **WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO**
21 **EXIST IN HIS OR HER FAVOR AT THE TIME OF**
22 **EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR**
23 **HER MUST HAVE MATERIALLY AFFECTED HIS OR HER**
SETTLEMENT WITH THE DEBTOR.

24 17. The Court orders that the Settlement Agreement shall be the exclusive
25 remedy for all claims released in the Settlement Agreement for all Class Members
26 not listed on Appendix B.

1 exclusive jurisdiction of this Court, for the purpose of any suit, action, proceeding or
2 dispute arising out of or relating to the Settlement Agreement or the applicability of
3 the Settlement Agreement, including the exhibits thereto, and only for such purposes.

4 20. In the event that the Final Effective Date does not occur, certification of
5 the Class shall be automatically vacated and this Final Order Approving Class
6 Action Settlement and the accompanying Final Judgment, and other orders entered in
7 connection with the Settlement Agreement and releases delivered in connection with
8 the Settlement Agreement, shall be vacated and rendered null and void as provided
9 by the Settlement Agreement.

10 21. Without further order of the Court, the Parties may agree to reasonably
11 necessary extensions of time to carry out any of the provisions of the Settlement
12 Agreement. Likewise, the Parties may, without further order of the Court, agree to
13 and adopt such amendments to the Settlement Agreement (including exhibits) as are
14 consistent with this Final Order Approving Class Action Settlement and the
15 accompanying Final Judgment and do not limit the rights of Class Members under
16 the Settlement Agreement.

17 22. Nothing in this Final Order Approving Class Action Settlement or the
18 accompanying Final Judgment shall preclude any action in this Court to enforce the
19 terms of the Settlement Agreement.

20 23. Neither this Final Order Approving Class Action Settlement nor the
21 accompanying Final Judgment (nor any document related to the Settlement
22 Agreement) is or shall be construed as an admission by the Parties. Neither the
23 Settlement Agreement (or its exhibits), this Final Order Approving Class Action
24 Settlement, the accompanying Final Judgment, or any document related to the
25 Settlement Agreement shall be offered in any proceeding as evidence against any of
26 the Parties of any fact or legal claim; provided, however, that Toyota and the
27 Released Parties may file any and all such documents in support of any defense that

1 the Settlement Agreement, this Final Order Approving Class Action Settlement, the
2 accompanying Final Judgment and any other related document is binding on and
3 shall have res judicata, collateral estoppel, and/or preclusive effect in any pending or
4 future lawsuit by any person who is subject to the release described above in
5 Paragraph 14 asserting a released claim against any of the Released Parties.

6 24. A copy of this Final Order Approving Class Action Settlement shall be
7 filed in, and applies to, the Action.

8
9 SO ORDERED this ____ day of _____ 2017.

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11 _____
12 Honorable Fernando M. Olguin
13 Judge of the United States District Court
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APPENDIX A
SUBJECT VEHICLES

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APPENDIX B

PERSONS, ENTITIES AND ORGANIZATIONS THAT HAVE PROPERLY
EXCLUDED THEMSELVES FROM THE CLASS

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CERTIFICATE OF SERVICE

I hereby certify that on November 15, 2016, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the Electronic Mail Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on November 15, 2016.

s/ Timothy G. Blood

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