

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FILED
Superior Court of California
County of Los Angeles

JUL 15 2010

John A. Clarke, Executive Officer/ Clerk
By Alfredo Morales, Deputy
ALFREDO MORALES

CALIFORNIA SUPERIOR COURT
COUNTY OF LOS ANGELES

JUSTIN BAUER, on behalf of himself and all
others similarly situated,

Plaintiff,

v.

TOYOTA MOTOR SALES U.S.A., INC., and
DOES 1-10, inclusive,

Defendants.

Case No. BC 375017

**~~PROPOSED~~ ORDER GRANTING
FINAL APPROVAL OF SETTLEMENT
AGREEMENT, AWARDED
ATTORNEY FEES, LITIGATION
EXPENSES AND INCENTIVE AWARD,
AND ENTERING FINAL JUDGMENT
AND DISMISSAL**

DATE: July 15, 2010
TIME: 1:30 p.m.
DEPT: 324

Hon. Emilie H. Elias

1 Plaintiffs' Motion for Final Approval of Class Action Settlement came on for hearing on
2 July 15, 2010 before the Honorable Emile H. Elias. All parties appeared through counsel, as
3 stated on the record. The Court, having considered the memoranda and declarations submitted in
4 support of (1) Plaintiff's Motion for Final Approval of Settlement Agreement, and (2) Plaintiff's
5 Motion for Attorney Fees, Litigation Expenses And Incentive Award ("Motions") and all of the
6 submissions and arguments with respect to the Motions, having provisionally certified by an
7 Order dated January 4, 2010 ("Preliminary Approval Order"), a Settlement Class pursuant to the
8 California Code of Civil Procedure, and GOOD CAUSE APPEARING, the Court finds, orders
9 and adjudges as follows:¹

10 1. This action was filed by plaintiff Justin Bauer on July 27, 2007, seeking
11 declaratory relief and alleging Defendant Toyota Motor Sales, U.S.A., Inc. ("TMS") engaged in
12 unlawful, unfair, fraudulent and deceptive practices in violation of California's Unfair
13 Competition Law (Cal. Bus. & Prof. Code §§ 17200, *et seq.*) and California's Consumers Legal
14 Remedies Act (Cal. Civ. Code §§ 1750, *et seq.*), breached express warranties, and violated
15 California's Song-Beverly Consumer Warranty Act (Cal. Civ. Code §§ 1790, *et seq.*). Each of
16 these claims is based on Plaintiff's allegations that TMS failed to disclose and actively concealed
17 from consumers that the windshields of Model Year 2004-2006 Scion xB vehicles ("Class
18 Vehicles") are affected by design and manufacturing defects that cause the windshields to have
19 an inordinate propensity to crack with little or no impact by road debris or other objects normally
20 encountered while driving.

21 2. TMS contests each and every claim and contention alleged by the plaintiff in this
22 action, denies and continues to deny any wrongdoing or legal liability arising out of any conduct
23 alleged in this action, and is prepared to defend this action.

24 3. This matter satisfies the prerequisites for the certification of a nationwide class
25 solely for settlement purposes. *See e.g., 7-Eleven Owner for Fair Franchising v. Southland*

26 _____
27 ¹ All words with initial capital letters used in this Order have the meaning ascribed to
28 them in the Settlement Agreement, which is incorporated herein by reference.

1 *Corp.*, 85 Cal. App. 4th 1135, 1160-62 (2000); *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794,
2 1805-06 (1996).

3 4. Plaintiff, the proposed class, and TMS have been represented in this action by
4 experienced and qualified attorneys.

5 5. This action had been vigorously litigated for over two years, and the parties have
6 engaged in discovery, including vehicle examinations and the exchange of documents.

7 6. The Settlement Agreement was arrived at as a result of arms'-length negotiations
8 conducted in good faith by counsel for the parties. The Settlement Agreement shall not be
9 deemed or construed to be an admission or evidence of any violation of any statute or law or any
10 liability or wrongdoing by TMS or of the truth of the claims or allegations alleged in the Class
11 Action or otherwise.

12 7. The Settlement Agreement has the full support of the members of the Settlement
13 Class because no Class Member has objected to it.

14 8. This case presents difficult and complex issues as to liability and damages as to
15 which there are substantial grounds for difference of opinion.

16 9. The Settlement, as set forth in the Settlement Agreement, is fair, reasonable and
17 adequate in light of the complexity, expense and duration of litigation and the risks involved in
18 establishing liability, damages and in maintaining the class action through trial and appeal.

19 10. The promises and commitments of the parties under the terms of the Settlement
20 Agreement constitute fair and valuable consideration given in exchange for the releases of the
21 Released Claims against the Released Parties as those terms are defined in the Settlement
22 Agreement.

23 11. Notice to the Settlement Class has been provided via First-Class mail and by
24 publication in *USA Today* in accordance with this Court's Preliminary Approval Order, and that
25 such notice constitutes the best notice practicable under the circumstances, and satisfies the
26 requirements of due process. The notice apprised the members of the Settlement Class of the
27 pendency of the litigation, of all material elements of the proposed settlement, of the *res judicata*
28 effect of approval of the settlement on the members of the Settlement Class, and of their

1 opportunity to exclude themselves from the Settlement Class, to object to the settlement, and to
2 appear at the Fairness Hearing. Full opportunity has been afforded to the members of the
3 Settlement Class to participate in the Fairness Hearing. Accordingly, the Court determines that
4 all members of the Settlement Class (except those who excluded themselves from the settlement)
5 are bound by this Order and Final Judgment. A list of those persons who have excluded
6 themselves from the settlement is attached hereto as Exhibit A. To protect the privacy interests
7 of consumers who have opted out of the Settlement Class, their addresses and Vehicle
8 Identification Numbers have been excluded from Exhibit A.

9 **IT IS THEREFORE ORDERED, ADJUDGED AND DECREED AS FOLLOWS:**

10 12. Plaintiffs' Motion for Final Approval of Class Action Settlement is **GRANTED**.

11 13. The Court hereby appoints Jeffrey L. Fazio and Dina E. Micheletti of Fazio |
12 Micheletti LLP as Class Counsel.

13 14. This action is certified as a class action for purpose of settlement only. The Court
14 finds that the class satisfies the requirements of California Code of Civil Procedure section 382
15 and Civil Code section 1781 within the context of this settlement. Specifically, the Court finds
16 that (1) the class is ascertainable, and a well-defined community of interest exists among the
17 class members; (2) in light of the parties' settlement of this matter, questions of law and fact
18 common to the class members predominate over issues affecting only individual members; (3)
19 class representative Justin Bauer's claims are typical of those of the class; and (4) class
20 representative Justin Bauer has adequately represented the interests of all class members and Mr.
21 Bauer has been represented by capable and experienced counsel. Certification of the class is also
22 efficient and in the interests of judicial economy.

23 15. The Settlement Class consists of all residents of the United States, the District of
24 Columbia or any U.S. territory who are or were a registered owner or lessee of a 2006 MY Scion
25 xB on or before January 4, 2010;

26 16. The "Settlement Class" **does not include** (a) persons who purchase or lease a
27 2006 MY Scion xB after the date of this order; (b) TMS and its subsidiaries, affiliates, officers,
28 directors and employees; (c) persons who have claimed personal injuries as a result of the

1 alleged windshield condition; (d) persons who have filed separate, non-class legal actions against
2 TMS asserting claims relating to the alleged windshield condition; (e) persons who have pursued
3 a claim against, and reached a verdict against or settled with TMS from individual claims
4 substantially similar to those alleged in this action relating to the alleged windshield condition;
5 and (f) persons who validly opt out of the settlement by timely filing a valid Request to Opt Out.

6 17. The Settlement Agreement is finally approved as fair, reasonable and adequate
7 and in the best interests of the Settlement Class, and the parties are directed to consummate the
8 settlement in accordance with the terms of the Settlement Agreement.

9 18. Upon the Effective Date of Settlement, this action is hereby dismissed on the
10 merits with prejudice.

11 19. Class Counsel have filed a Motion for an Award of Attorney Fees and Litigation
12 Expenses to Class Counsel, And Incentive Award to Class Representatives ("Fee Motion"), for
13 an award of attorneys' fees and expenses to be paid by TMS pursuant to an agreement by the
14 parties. The Court **GRANTS** Class Counsel's Fee Motion and awards Class Counsel attorneys'
15 fees and expenses of \$300,000 as fair, reasonable, and appropriate. The Court further awards
16 Class Representative Justin Bauer \$6,500 as an incentive award in recognition of his contribution
17 to the prosecution and resolution of this action, to be paid in accordance with the terms of the
18 parties' agreement.

19 20. By this order and judgment, upon the Effective Date of Settlement, all members
20 of the Settlement Class release TMS, Toyota Motor Corporation and authorized Toyota
21 distributors in Hawaii and U.S. Territories, and each of such foregoing entities' present and
22 former officers, directors, employees, agents, heirs, executors, administrators, successors,
23 reorganized successors, spin-offs assignees, subsidiaries, affiliates, parents, divisions, and
24 predecessors, and further includes the suppliers, vendors, dealers, and sub-distributors of TMS,
25 Toyota Motor Corporation and authorized Toyota distributors in Hawaii and U.S. Territories
26 (collectively, "Released Parties") from the Released Claims, as that term is defined by the
27 Settlement Agreement.

28 21. No person shall have any claim against Plaintiff, Class Counsel, TMS, TMS's

1 Counsel, or the Released Parties or their agents based upon administration of the Settlement
2 substantially in accordance with the terms of the Settlement Agreement or any order of the Court
3 or appellate court.

4 Without affecting the finality of this judgment, the Court retains jurisdiction over this
5 action, including the administration and consummation of the settlement. In addition,
6 without affecting the finality of this judgment, the Court retains jurisdiction over
7 Defendant, and each member of the Settlement Class as defined in this Order is hereby
deemed to have submitted irrevocably to the exclusive jurisdiction of this Court for any
suit, action, proceeding or dispute arising out of or relating to this Order or the Settlement
Agreement.

8 22. The Court finds that there is no reason for delay, and directs the Clerk to enter
9 judgment, and directs the Defendant to commence providing, to Settlement Class Members, the
10 benefits provided by the Settlement Agreement in accordance with the terms of the Settlement
11 Agreement.

12 23. If for any reason the Settlement Agreement becomes null and void before the
13 Effective Date of Settlement (including, without limitation, the exhaustion of any judicial
14 review, or requests for judicial review from this Final Judgment and Order of Dismissal), then
15 the certification of the Settlement Class shall be deemed vacated and the Parties shall return to
16 the *status quo ante* in the Action, without prejudice to the right of any party to assert any right or
17 position that it could have asserted if the Settlement Agreement had never been reached or
18 proposed to the Court.

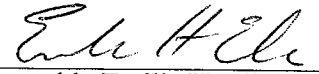
19 24. Neither the Settlement of this action nor the Settlement Agreement shall be
20 interpreted as an admission of liability or wrongdoing by any of the Released Parties or an
21 admission of the strength or weakness of the claims asserted in this action. Neither the
22 Settlement nor the Settlement Agreement shall be offered or be admissible in any proceeding for
23 any purpose, except (1) in any action or proceeding brought by or against the Parties to enforce
24 or otherwise implement the terms of the Settlement or the Settlement Agreement, or (2) in any
25 action involving Plaintiff, Settlement Class Members, Released Parties, or any of them, to
26 support a defense of res judicata, collateral estoppel, release, or any other theory of claim
27 preclusion, issue preclusion, or similar defense.

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ENTERED this 15 day of July, 2010.

BY THE COURT:



The Honorable Emilie H. Elias
Judge of the Superior Court