

SETTLEMENT AGREEMENT AND RELEASE

This SETTLEMENT AGREEMENT AND RELEASE is entered into this 22nd day of December, 2009, by and between Justin Bauer (“Plaintiff”), acting on behalf of himself and the Settlement Class (as defined herein), and Defendant Toyota Motor Sales, U.S.A., Inc. (“TMS”).

WHEREAS, Plaintiff has filed a complaint alleging:

- a. A cause of action for declaratory relief setting forth the rights and duties of the parties;
- b. A cause of action for unlawful, unfair, fraudulent and deceptive practices in violation of California’s Unfair Competition Law (Cal. Bus. & Prof. Code §§ 17200, *et seq.*);
- c. A cause of action for deceptive business practices in violation of California's Consumers Legal Remedies Act (Cal. Civ. Code §§ 1750, *et seq.*);
- d. A cause of action for breach of express warranty; and
- e. A cause of action for violation of California’s Song-Beverly Consumer Warranty Act (Cal. Civ. Code §§ 1790, *et seq.*).

All of these causes of action arise out of Plaintiff’s allegations that the windshields of Model Year 2004-2006 Scion xB vehicles are affected by “one or more defects that cause their windshields to have an inordinate and dangerous propensity to crack under circumstances that would not cause non-defective windshields to crack” and that TMS’ failure to disclose this information to the consuming public violated the statutes described above.

WHEREAS, TMS denies each and every one of Plaintiff’s allegations, denies any wrongdoing of any kind, and asserts that it has a number of dispositive legal and factual defenses to those claims;

WHEREAS, Plaintiff and TMS agree that this Settlement Agreement shall not be deemed or construed to be an admission or evidence of any violation of any statute or law or any liability or wrongdoing by TMS or of the truth of the claims or allegations alleged in the Class Action or otherwise;

WHEREAS, the Parties and their respective counsel are thoroughly familiar with the factual and legal issues presented by their respective claims and defenses and recognize the uncertainties as to the ultimate outcome in the Class Action, and the likelihood that any final result could require years of further complex litigation and substantial expense;

WHEREAS Plaintiff and Class Counsel acknowledge that Class Counsel have conducted sufficient investigation and discovery to enter into this Settlement Agreement;

WHEREAS, Plaintiff and Class Counsel have concluded that it is in the best interests of the Settlement Class to enter into this Settlement Agreement in order to avoid the uncertainties of litigation, particularly complex litigation such as this, and to assure that the substantial benefits reflected herein are obtained for the Settlement Class, and further, that the settlement set forth herein to be fair, reasonable, adequate, and in the best interests of the Settlement Class;

WHEREAS, despite believing that it is not liable for the claims asserted herein and that it has dispositive defenses thereto, TMS has agreed to enter into this Settlement Agreement to avoid further expense, inconvenience, and the burden of protracted litigation, to avoid the distraction and diversion of its personnel and resources, to avoid the risk of litigation, and to put to rest this controversy with its valued customers;

WHEREAS, this Settlement Agreement was entered into following discovery by the Parties regarding the design, manufacture and performance of Model Year 2004-2006 Scion xB front windshields;

WHEREAS, this Settlement Agreement is the product of extensive arms-length discussions and negotiations between counsel for TMS and Class Counsel over more than twelve months, including two settlement conferences before the presiding Judge;

WHEREAS, counsel for TMS and Class Counsel agree that the settlement contemplated by this Settlement Agreement is a fair, reasonable and adequate resolution;

WHEREAS, the Parties desire to compromise and settle all issues and claims concerning windshield cracking in 2006 Scion xBs that have been brought, or that could have been brought, against TMS in the Class Action; and

WHEREAS, the Parties desire and intend to seek court approval of the Settlement of the Class Action as set forth in this Settlement Agreement and, upon such judicial approval, the Parties intend also to seek a Final Order and Judgment from the Court dismissing the claims of Plaintiff and Settlement Class Members with prejudice;

NOW, THEREFORE, it is agreed that in consideration of the promises and mutual covenants set forth in this Settlement Agreement and the entry by this Court of a Final Order and Judgment approving the terms and conditions of the Settlement as set forth in this Settlement Agreement, and providing for dismissal of the claims asserted in the Class Action, on the merits and with prejudice as to Plaintiff and Settlement Class Members and without prejudice as to others, the Class Action shall be settled and compromised under the terms and conditions contained herein.

I. DEFINITIONS

Whenever the following capitalized terms are used in this Settlement Agreement and in the Exhibits annexed hereto (in addition to any definitions elsewhere in this Settlement Agreement), they shall have the following meanings:

- A. “Automobile Glass Repair Facility” means an entity that offers to repair or replace automobile windshields for a fee, regardless of whether (1) the business does the work itself or contracts with a third-party to perform the work, and/or (2) also offers other services. For example, a Scion dealership is an Automobile Glass Repair Facility.
- B. “Claimant” means a person who seeks benefits pursuant to this Settlement Agreement.
- C. “Claim Form” means a document substantially in the form of Exhibit 1 hereto, which may be submitted by a Settlement Class Member to initiate a claim for benefits under this Settlement Agreement.
- D. “Class Action” means the lawsuit pending as *Bauer v. Toyota Motor Sales USA, Inc.*, Case No. BC375017, in the Superior Court of California, County of Los Angeles.
- E. “Class Counsel” refers to the law firm of Fazio | Micheletti LLP, Jeffrey L. Fazio, Dina E. Micheletti, 2140 Camino Ramon, Suite 315, Bishop Ranch Business Park, Building 6, San Ramon, CA 94583.
- F. “Class Notice” refers to the notice to the Settlement Class of the pendency of this litigation and of this Settlement. It shall consist of both a “Short Form Notice,” substantially in the form of Exhibit 2 hereto, and a “Long Form Notice,” which shall be available on the internet and upon request, substantially in the form of Exhibit 3 hereto.
- G. “Class Vehicles” means 2006 model-year Scion xBs.

- H. “Court” means the Superior Court of the State of California for Los Angeles County.
- I. “Effective Date of Settlement” means the date on which all appellate rights with respect to the Final Order and Judgment have expired or have been exhausted in such a manner as to affirm the Final Order and Judgment.
- J. “Extended Warranty” shall refer to the extension of the warranty for MY 2006 Scion xB vehicles, as applied to cracked windshields, to six years or 60,000 miles from the date of original retail sale or lease of the vehicle, whichever shall occur first.
- K. “Fairness Hearing” means the hearing held by the Court in which the Court considers whether this Settlement Agreement, including its Exhibits, should be approved as fair, adequate and reasonable; whether the Final Order should be entered; and whether the application of Class Counsel for payment of attorneys’ fees, costs and expenses should be approved.
- L. “Notice of Intention to Appear” is a notice in which Settlement Class Members inform the Court, Class Counsel and TMS of their intention to appear at the Fairness Hearing and contest all or part of this Settlement Agreement.
- M. “Order for Preliminary Approval” means an order substantially in the form attached as Exhibit 4 hereto, and which certifies the Settlement Class for purposes of settlement only, appoints class counsel, sets a Fairness Hearing and directs that Class Notice be provided to the Settlement Class.
- N. “Parties” means TMS, Plaintiff, and the Settlement Class Members.
- O. “Plaintiff” means Justin Bauer.

- P. The “Preliminary Approval Date” is the date one business day after the Court grants preliminary approval to this Settlement Agreement and directs TMS to provide the Class Notice to Settlement Class Members on the terms specified herein.
- Q. “Released Claims” shall collectively mean all claims, demands, rights, liabilities and causes of action relating to the Windshield Cracking Condition in Class Vehicles whatsoever that were or could have been brought by the Settlement Class in the Class Action, known or unknown, matured or unmatured, whether at law or in equity, whether before a local, state or federal court, tribunal, administrative agency or commission, and whether now liquidated or unliquidated, whether or not concealed or hidden, asserted or that might have been asserted, including under any federal, state or local consumer-protection statute or administrative rule or regulation, or under any other state or federal statute, rules, or regulations, by Plaintiff or any Settlement Class Member (together with their predecessors, successors, representatives, parents, subsidiaries and affiliates, and the heirs, executors, administrators, successors and assignees) against TMS or the Released Parties, arising out of, based upon, or related to the Windshield Cracking Condition in Class Vehicles, including any and all claims arising out of, based upon or related to the Settlement or resolution of the Class Action, provided that nothing in this Release is intended to relieve TMS or the Released parties for liability for breach of the settlement agreement. “Released Claims” shall also include, but not be limited to, all claims or causes of action that relate to the design, testing, manufacture, distribution, sale, advertising, service or

repair of Class Vehicles relating to the Windshield Cracking Condition. The “Released Claims” shall also include, but is not limited to, all claims made, or that could have been made, in tort or contract alleging breach of warranty or violation of California’s Unfair Competition Law, Consumer Legal Remedies Act or Song-Beverly Consumer Warranty Act as they pertain to the Windshield Cracking Condition in Class Vehicles. “Released Claims” shall include all claims in equity, including, but not limited to, restitution, rescission of contract, disgorgement of profits and injunctive relief as they pertain to the Windshield Cracking Condition in Class Vehicles. “Released Claims” shall include, but is not limited to, any causes of action that might be brought under any similar or comparable state or local laws in the United States, the District of Columbia or any U.S. territory as they pertain to the Windshield Cracking Condition in Class Vehicles. “Released Claims” does not include any claims arising out of, based upon or related to personal injury or wrongful death, regardless of whether the claim is brought in an action or matter making allegations pertaining to the Windshield Cracking Condition or its effects, and regardless of whether such claims arose before or after the Settlement. “Released Claims” also does not include claims arising out of a breach of this Settlement Agreement. Additionally, notwithstanding the foregoing, Released Claims do not include claims against dealers for the dealer’s own negligence or other conduct independent of Toyota’s in connection with the installation or repair of windshields in Class Vehicles.

- R. “Released Parties” means TMS, Toyota Motor Corporation and authorized Toyota distributors in Hawaii and U.S. Territories, and each of such foregoing entities’

present and former officers, directors, employees, agents, heirs, executors, administrators, successors, reorganized successors, spin-offs assignees, subsidiaries, affiliates, parents, divisions, and predecessors, and further includes the suppliers, vendors, dealers, and sub-distributors of TMS, Toyota Motor Corporation and authorized Toyota distributors in Hawaii and U.S. Territories.

- S. “Request to Opt Out” means a written request that a person be excluded from membership in the Settlement Class.
- T. “Scope of the Extended Warranty” shall refer to the Extended Warranty’s limitation to coverage for MY 2006 Scion xB vehicles as limited to all windshield cracks to Genuine Toyota windshields unless it is obvious that the crack was caused by something that would normally cause a windshield to crack (*e.g.*, a collision with another vehicle or stationary object, a natural disaster, vandalism, a baseball, or the like). Cracks in windshields that are not Genuine Toyota windshields are not within the Scope of the Extended Warranty.
- U. “Settlement” refers to the terms of this Settlement Agreement described herein.
- V. “Settlement Administrator” refers to Rosenthal & Company LLC, which shall administer the Class Notice, processing of all claims submitted by class members, and all other aspects of the administration of the Settlement.
- W. “Settlement Agreement” refers to this Settlement Agreement and Release including its Exhibits.
- X. “Settlement Class” refers to:

1. All residents of the United States, the District of Columbia or any U.S. territory who are or were a registered owner or lessee of a 2006 MY Scion xB on or before the Preliminary Approval Date.
 2. Persons who purchase or lease a 2006 MY Scion xB after the Preliminary Approval Date are not part of the Settlement Class.
 3. Specifically excluded from the “Settlement Class” are each of the following:
 - a. TMS and its subsidiaries, affiliates, officers, directors and employees;
 - b. Persons who have claimed personal injuries as a result of the Windshield Cracking Condition;
 - c. Persons who have filed separate, non-class legal actions against TMS asserting claims relating to the Windshield Cracking Condition;
 - d. Persons who have pursued a claim against, and reached a verdict against or settled with TMS from individual claims substantially similar to those alleged in the Class Action relating to the Windshield Cracking Condition;
 - e. Persons who validly opt out of the Settlement Agreement by timely filing a valid Request to Opt Out.
- Y. “Settlement Class Members” means all persons or entities who fit the Settlement Class definition specified in Paragraph I.X. above.
- Z. “TMS” means Defendant Toyota Motor Sales, U.S.A., Inc.

AA. “Windshield Cracking Condition” means Plaintiff’s allegation that the 2006 Scion xB front windshields have a propensity to crack either without impact to their surface by any foreign object or by a light impact of a foreign object.

II. TERMS OF SETTLEMENT AGREEMENT AND RELEASE

- A. This Settlement Agreement is for settlement purposes only, and neither the fact of, nor any provision contained in, this Settlement Agreement nor any action taken hereunder shall constitute, or be construed as, any admission of the validity of any claim or any factual allegation that was or could have been made in the Class Action or by Plaintiff or any Settlement Class Members in the Class Action, or of any wrongdoing, fault, violation of law, or liability of any kind on the part of TMS or any admission by TMS of any claim or allegation made in any action or proceeding against TMS. This Settlement Agreement shall not be offered or be admissible in evidence by or against TMS or the Released Parties, or cited or referred to in any other action or proceeding for any purpose, except (1) in any action or proceeding brought by or against the Parties to enforce or otherwise implement the terms of this Settlement Agreement, or (2) in any action involving Plaintiff, Settlement Class Members, Released Parties, or any of them, to support a defense of res judicata, collateral estoppel, release, or other theory of claim preclusion, issue preclusion, or similar defense.
- B. Rosenthal shall perform all services relating to administration of the Class Notice, claims for reimbursement that are submitted by Claimants and full and final resolution of disputes regarding coverage under the extended warranty described herein.

C. In consideration of the releases and the dismissal of the Class Action under the terms of this Settlement Agreement, TMS agrees as follows with respect to Settlement Class Members:

1. The warranty for MY 2006 Scion xB vehicles, as applied to cracked windshields, will be extended to six years or 60,000 miles from the date of original retail sale or lease of the vehicle, whichever shall occur first.
2. The Extended Warranty for MY 2006 Scion xB vehicles shall cover all windshield cracks to Genuine Toyota windshields unless it is obvious that the crack was caused by something that would normally cause a windshield to crack (*e.g.*, a collision with another vehicle or stationary object, a natural disaster, vandalism, a baseball, or the like).
3. For purpose of this Settlement Agreement, no diagnostic procedure (including but not limited to the pen test or its equivalent) other than a visual inspection shall be used to evaluate eligibility for coverage.
4. Cracks in windshields that are not Genuine Toyota windshields are not within the Scope of the Extended Warranty. Windshields are presumed to be Genuine Toyota windshields absent evidence to the contrary.
5. Each Settlement Class Member will be eligible to seek either (1) reimbursement for the cost to repair or replace **one** windshield of a

2006 MY Scion xB provided that the repair or replacement was within the scope of the warranty specified above and the windshield was a Genuine Toyota windshield, met the “covered” scope of cracks above, and was either repaired or replaced on or before the Effective Date of Settlement, or (2) one windshield replacement within the extended-warranty period applicable to his or her 2006 MY Scion xB (subject to the same limitations regarding Genuine Toyota windshields and scope of warranty coverage above). So, for example, if a Settlement Class Member who is a former owner of a 2006 MY Scion xB seeks to be reimbursed for a windshield he paid to replace prior to the Effective Date of Settlement and a Settlement Class Member who is the current owner of that same vehicle seeks to be reimbursed for the cost of replacing a windshield she paid to replace prior to the Effective Date of Settlement (or seeks a free windshield replacement under the terms of the extended warranty), both Settlement Class Members’ claims would be honored provided those claims otherwise qualify under the terms of the settlement. Conversely, if one or both of the Settlement Class Members described in this example had borne the cost of repairing or replacing more than one windshield, neither Settlement Class Member would be eligible for reimbursement for any more than a single repair or replacement.

6. For purposes of this Settlement Agreement, persons who live at the same address or are members of the same family shall be treated as the same Settlement Class Member, even if there is a purported transfer of ownership of the vehicle.
7. For repairs or replacements of cracked windshields taking place after the Effective Date of Settlement, Settlement Class Members must present their vehicle to an authorized Toyota dealership for determination of warranty coverage and, if applicable, windshield replacement. Settlement Class Members may appeal any refusal to provide such warranty coverage to Rosenthal, whose decision is final, binding, and may not be appealed. TMS agrees that it shall notify Toyota dealers of the existence and the terms of the Extended Warranty and shall inform the dealers of their obligation to honor the Extended Warranty. TMS shall use reasonable efforts in good faith to assure the extended warranty is honored by its dealers. The availability of the appeal process is not intended as a substitute for the good-faith requirement.
8. For repairs or replacements of cracked windshields that took place prior to the Effective Date of Settlement, TMS will reimburse the Settlement Class Member for the actual cost of one such repair or replacement of windshields (including the cost of labor) that occurred within six years or 60,000 miles from the date of original retail sale or lease of the vehicle, whichever occurred first,

provided the repair or replacement is within the Scope of the Extended Warranty. To qualify for such reimbursement, the Claimant must present (a) a statement under oath (by certifying on the claim form) that the expenditure was made for a windshield repair a 2006 MY Scion xB and that they believe their claim meets all the requirements for reimbursement; (b) proof of title and registration for the vehicle if the claimant is not on the list of presumptive Settlement Class Members as determined according to Paragraph IID below; and (c) either:

(1.)Cancelled check or credit card statement showing the expenditure AND a repair order or receipt showing the expenditure was made for a windshield repair to 2006 MY Scion xB; or

(2.)If no cancelled check or credit card statement is available, a repair order or receipt showing the expenditure was made for a windshield repair to 2006 MY Scion xB and that the receipt or work order was paid, and a statement under oath from the claimant that the repair was paid for in cash or that they don't otherwise have a cancelled check or credit card statement and that they made reasonable efforts but were unable to obtain a copy; or

(3.)If no repair order or receipt is available, a cancelled check or credit card statement showing the expenditure to an

Automobile Glass Repair Facility, a statement from the repair facility indicating that a receipt or repair order is not available and a statement under oath from the Claimant that they don't have an original or copy of the repair order or receipt and that they made reasonable efforts but were unable to obtain a copy; or

(4.) If no repair order or receipt is available, a cancelled check or credit card statement showing an expenditure to an Automobile Glass Repair Facility, a statement under oath from the Claimant that they don't have an original or copy of the repair order or receipt and that they made reasonable efforts but were unable to obtain a copy of the repair order, and evidence satisfactory to Rosenthal indicating that a receipt or repair order is not available.

9. Claims for reimbursement of repairs or replacements of cracked windshields must be postmarked no later than 30 days following the Effective Date of Settlement, and received by Rosenthal no more than 10 days thereafter. Claims received by Rosenthal beyond these deadlines need not be paid.

10. Rosenthal will process all claims for reimbursement pursuant to this Settlement Agreement. In the event Rosenthal determines that a claim is deficient or otherwise problematic, Rosenthal may allow Class Members one opportunity to provide curative information,

which will be considered before Rosenthal makes a final decision as to the validity of a claim. All denials may be appealed once unless Rosenthal determines a claim to be incurable (*e.g.*, the claim pertains to a vehicle that is not a class vehicle). Rosenthal's decision as to whether a claim satisfies this Settlement Agreement and qualifies for reimbursement under the warranty is final, binding, and may not be appealed.

- D. Presumptive Settlement Class Members will be determined in advance with the following process: TMS will provide R.L. Polk & Co. ("Polk") with VIN numbers of all MY 2006 Scion xB vehicles. Polk will then perform a vehicle history search with each state's DMV, and work with Rosenthal and national change of address databases to identify all owners and prior owners of the specified VINs. All persons so identified will be sent the Short Form Notice and receipt of such notice will be deemed presumptive proof of membership in the Settlement Class. If a Claimant claims current or prior ownership and that person is not on the list of Settlement Class Members identified by Polk, that Claimant will have the burden of proving membership in the Settlement Class by providing proof of title and registration to the vehicle at the time of the windshield replacement. TMS shall pay all costs associated with Class Notice.
- E. In addition to the other benefits provided to the Settlement Class, TMS has agreed to pay the reasonable fees and litigation expenses of Class Counsel, up to and not to exceed \$300,000, and an incentive award to Plaintiff Justin Bauer in the amount of \$6,500. Class Counsel will file with the Court a motion for judicial

approval of up to \$300,000 award for Class Counsel's fees and litigation expenses and an incentive award to Plaintiff Justin Bauer in the amount of \$6,500; TMS agrees to not oppose such a motion and to pay for reasonable fees and expenses and the incentive award in the amount approved by the Court not to exceed \$300,000 for fees and expenses and \$6,500 for the incentive award. TMS shall pay such fees within fifteen (15) business days following the Effective Date of Settlement.

- F. Subject to Court approval, it is agreed by the Parties that the Settlement Class will be deemed, for the purpose of this Settlement only, to be certified as a class. Neither this Settlement Agreement nor any certification order issued pursuant to this Paragraph shall constitute an admission by TMS in this or any other proceeding.
- G. Class Counsel and/or counsel for TMS shall present to the Court a motion for preliminary approval of this Settlement Agreement after the execution of this Settlement Agreement, along with the (Proposed) "Order for Preliminary Approval," attached hereto as Exhibit 4, on or about December 22, 2009.
- H. TMS shall disseminate Class Notice to the Settlement Class as follows:
 - 1. The Short Form Notice (in substantially the same form set forth in Exhibit 2) shall be disseminated by Rosenthal by first-class mail to persons and entities who fall within the Settlement Class definition who are identified by Polk. The Short Form Notice shall also be sent by Rosenthal by first-class mail to each Settlement Class Member whose identity becomes known to Rosenthal after the

initial mailing. If any Short Form Notice is returned along with an advisory identifying a forwarding address, Rosenthal shall cause the Short Form Notice to be mailed to the forwarding address. If no forwarding address is available, Rosenthal will attempt to obtain an updated address by conducting an address search using LexisNexis' "Accurint" databases.

2. The Short Form Notice (in substantially the same form set forth in Exhibit 2) shall also be published in one weekday edition of the USA Today.
3. The Long Form Notice shall be posted on the Internet on a website maintained by Rosenthal. The Long Form Class Notice shall remain posted on that website through December 31, 2010. The web address shall be provided on the Short Form Notice.
4. TMS, through the services of the Rosenthal, shall maintain a toll free telephone number. The toll free number will be included in the Short Form Notice.
5. TMS shall pay all costs related to the administration of this Settlement Agreement, including all costs related to the preparation, distribution, and administration of all forms of Class Notice, the costs of the physical preparation of individual notice (including duplication and printing) and the charges of Rosenthal.
6. In the event that the Court determines that the proposed Class Notice is insufficient, TMS will modify the manner in which Class

Notice is prepared and/or distributed in a manner that satisfies the Court's criteria. A ruling that the proposed Class Notice is insufficient shall not constitute valid grounds to terminate this Settlement Agreement.

- I. TMS, through Rosenthal, shall begin dissemination of the Short Form Notice by April 26, 2010. Class Counsel and counsel for TMS will request that the Court schedule a Fairness Hearing to obtain final approval of the settlement on or about July 15, 2010.
- J. Persons who wish to be excluded from the Settlement Class must submit a written Request to Opt Out by sending it by U.S. mail to Rosenthal at the address listed in the Class Notice. Any Request to Opt Out must be postmarked on or before the deadline specified in the Class Notice, which shall be June 30, 2010, unless extended by Court order. Rosenthal shall provide Class Counsel and TMS with a list of names and addresses of all persons who submit Requests to Opt Out, as part of the report described in Paragraph II.Q, below, and, upon request by Class Counsel or TMS, shall provide copies of the completed Requests to Opt Out.
 1. Persons submitting a Request to Opt Out must (i) set forth his/her full name and current address, (ii) identify the model year of his/her vehicle as well as the Vehicle Identification Number of his/her vehicle, and (iii) specifically state his/her desire to be excluded from the Settlement Class.
 2. The Court shall deem that persons falling within the Settlement Class definition who do not submit a Request to Opt Out in

compliance with the deadlines and other specifications set forth in the Class Notice shall remain Settlement Class Members and shall be bound by all proceedings, orders, and judgments of this Court pertaining to the Settlement Class.

K. Any Settlement Class Member who wishes to object to the proposed Settlement must send a written objection to the Settlement (“Objection”) to Rosenthal and Class Counsel at the address listed in the Class Notice by U.S. mail, first class postage paid. Any Objection must be postmarked on or before the deadline specified in the Class Notice, which shall be June 30, 2010, unless extended by Court order. Only Settlement Class Members may object to the Settlement.

1. In his/her Objection, an objecting Settlement Class Member must (i) set forth his/her full name, current address, and telephone number, (ii) identify the model year of his/her vehicle, as well as the Vehicle Identification Number of his/her vehicle, (iii) set forth a statement of the position(s) the objector wishes to assert, (iv) state the factual and legal grounds therefor, and (v) provide copies of any other documents that the objector wishes to submit in support of his/her position.
2. All Objections must also be served on Class Counsel, by directing them to Fazio | Micheletti LLP, Jeffrey L. Fazio, Dina E. Micheletti, 2140 Camino Ramon, Suite 315, Bishop Ranch Business Park, Building 6, San Ramon, CA 94583, and on counsel for TMS, Kenneth R. Chiate, Quinn Emanuel Urquhart Oliver &

Hedges LLP, 865 South Figueroa Street, 10th Floor, Los Angeles, California 90017.

3. Any Settlement Class Member who does not submit an Objection in compliance with this Paragraph and the provisions specified in the Class Notice shall not be permitted to object to the Settlement.
4. Any objecting Settlement Class Member may appear at the Fairness Hearing, in person or by counsel, and be heard on the fairness of the proposed Settlement and to show cause why the Settlement or any aspect of the Settlement should not be approved; provided, however, that all objecting Settlement Class Members must file with the Clerk of the Court and serve upon TMS and Class Counsel, a Notice of Intention to Appear at the Fairness Hearing by the deadline specified in the Class Notice, which shall be June 30, 2010, unless extended by Court order. The Notice of Intention to Appear must include copies of any papers, exhibits, or other evidence that the objecting Settlement Class Member (or his/her counsel) will present to the Court in connection with the Fairness Hearing. Any Settlement Class Member who does not provide a Notice of Intention to Appear in compliance with the deadlines and other specifications set forth in the Class Notice, or who has not filed an Objection in compliance with the deadlines and other specifications set forth in this Paragraph and the Class

Notice, shall be precluded from being heard at the Fairness Hearing.

L. At the Fairness Hearing, the Parties will request entry of a Final Order and Judgment which, at a minimum, contains provisions:

1. certifying the Settlement Class solely for purposes of this Settlement Agreement;
2. approving the Settlement Agreement as fair, reasonable, and adequate;
3. declaring the Settlement Agreement to be binding on TMS, Plaintiff and all Settlement Class Members;
4. dismissing all claims asserted in the Class Action, on the merits and with prejudice as to Plaintiff and Settlement Class Members, and without prejudice as to others;
5. finding that the Class Notice as described in this Settlement Agreement and its Exhibits constitutes the best notice practicable under the circumstances to all persons within the definition of the Settlement Class and fully complied with California law, the United States Constitution, and any other applicable law;
6. forever discharging TMS from the Released Claims; provided, however, that nothing in this subparagraph is intended to bar Plaintiff or Settlement Class Members from seeking to enforce or otherwise implement this Settlement Agreement or from pursuing claims based upon, or related to personal injury or wrongful death,

regardless of whether the claim is brought in an action or matter making allegations pertaining to the Windshield Cracking Condition or its effects, and regardless of whether such claims arose before or after the Settlement; and

7. awarding Class Counsel reasonable attorneys' fees and litigation expenses not to exceed \$300,000.00.

M. Prior to the Fairness Hearing, the Parties shall submit a proposed Final Order and Judgment.

N. If either TMS or Plaintiff so elects, and either (a) preliminary approval of the Settlement Agreement and the Settlement described herein or the Final Judgment and Order is not obtained from the Court in substantially the form attached hereto; or (b) the Court fails to grant final approval to the Settlement; or (c) the Final Order and Judgment is reversed or modified on appeal; then this Settlement Agreement shall be null and void, shall have no further force and effect, and shall not be offered in evidence or used in any litigation 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 five (5) days of the event constituting the basis for the election to terminate. In the event of such election, this Settlement Agreement and all negotiations, proceedings, documents prepared, and statements made in connection herewith shall be without prejudice to the Parties, shall not be deemed or construed to be an admission or confession by any Party of any fact, matter, or

proposition of law, shall not be used in any manner for any purpose, and all Parties to the Class Action shall stand in the same position as if this Settlement Agreement had not been negotiated, made or filed with the Court. If the Settlement Agreement is terminated, any and all orders entered by the Court pursuant to the provisions of the Settlement Agreement shall be vacated *nunc pro tunc*. No reduction by any court of any award of attorneys' fees and/or expenses to Class Counsel shall be a basis for terminating this Settlement Agreement.

- O. In the event this Settlement Agreement is not approved by the Court or the Settlement is terminated or fails to become effective in accordance with its terms, all orders entered as of the date on which this Settlement was executed shall become operative and fully effective, as if the proceedings relating to this Settlement had not occurred.
- P. In the event that over 250 Settlement Class Members request exclusion from the Settlement Class, TMS may elect to terminate this Settlement Agreement by so notifying Class Counsel and the Court, not less than five (5) days prior to the Fairness Hearing. Class Counsel shall have the right to contact Settlement Class Members who file exclusion requests and to challenge the timeliness and validity of any exclusion request, as well as the right to request the withdrawal of any exclusion filed in error and any exclusion which a present or former Settlement Class Member wishes to withdraw for purposes of participating in the Settlement. The Court shall determine whether any of the contested exclusions is valid.
- Q. Rosenthal shall provide reports to Class Counsel on the progress of notice as set forth in this Paragraph. On or about July 5, 2010 , Rosenthal shall serve and file a

report describing all notice given to the Settlement Class, and a copy of each Request to Opt Out. After final approval of the settlement is entered, Rosenthal shall provide reports to Class Counsel that (a) summarize the claims for reimbursement, repairs, and replacements that Claimants have submitted within the preceding 90-day period that (b) state whether each claim has been approved or denied, and (c) if denied, a brief reason for the denial, and (d) information concerning the number of Claimants who challenge a denied claim and the results of any such challenge. These reports shall be submitted to Class Counsel on a periodic basis (but in no event less than quarterly) until the status of all claims have been reported.

- R. The parties to this Settlement Agreement agree to cooperate fully, to execute any and all supplementary documents reasonably necessary to effectuate the terms of this Settlement Agreement, and to take all additional actions which may be necessary or appropriate to obtain judicial approval of this Settlement Agreement and to give this Settlement Agreement full force and effect. The Parties agree that the Settlement embodied in this Settlement Agreement is fair and reasonable as to all Parties.
- S. The obligations under this Settlement Agreement shall be in full and final disposition of this action and of any and all Released Claims as against all Released Parties. On the Effective Date of Settlement, Plaintiff and the Settlement Class shall be deemed to have, and by operation of the Order and Final Judgment shall have fully, finally and forever released, relinquished, and discharged the Released Parties with respect to each and every Released Claim,

including unknown claims and shall forever be enjoined from prosecuting any claim or action against any of the Released Parties with respect to each and every Released Claim or unknown claim.

- T. The undersigned parties further understand and agree that, with respect to all such claims, causes of action, liabilities and/or demands against each other, this Settlement Agreement constitutes a general release. All parties have been advised of and fully understand the provisions of Section 1542 of the California Civil Code, and on that basis, expressly and specifically waive all rights under said statute and any law of any state or territory of the United States, federal law or principle of common law, or of international or foreign law, which is similar, comparable, or equivalent to Section 1542 of the California Civil Code.

Section 1542 provides as follows:

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

TMS, the Released Parties, Plaintiff and/or Settlement Class Members may hereafter discover facts in addition to or different from those which they now know or believe to be true, but hereby stipulate and agree that upon the entry of

the Order and Final Judgment, they do fully, finally, and forever settle and release any and all of the claims described in this Paragraph, whether known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden from existence, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such difference or additional facts. In no event, however, does Plaintiff or Settlement Class Members waive or intend to waive any claim for personal injury or wrongful death due to the Windshield Cracking Condition (other than crack to the windshield itself) against TMS or the Released Parties, regardless of whether such claim arose before or after the Settlement, and regardless of whether the claim is brought in an action or matter making allegations pertaining to the Windshield Cracking Condition. The Parties acknowledge that the foregoing waiver was bargained for and is a material element of the Settlement Agreement. The Parties also acknowledge that the foregoing waiver shall be null and void if (a) the Court does not grant final approval to the Settlement Agreement (b) the approval of the Settlement Agreement or the Settlement is reversed on appeal, or (c) the Final Order and Judgment is reversed on appeal.

U. No person shall have any claim against Plaintiff, Class Counsel, TMS, TMS' counsel, Polk, Rosenthal or the Released Parties or their agents based on administration of the Settlement Agreement substantially in accordance with the

terms of the Settlement Agreement or any order of the Court or any appellate court.

III. MISCELLANEOUS PROVISIONS

- A. This Settlement Agreement and its exhibits shall constitute the entire Settlement Agreement between the Parties and shall not be subject to any change, modification, amendment, or addition without the express written consent of counsel for all Parties to the Settlement Agreement. This Settlement Agreement supersedes and replaces all prior negotiations and proposed agreements, written or oral.
- B. This Settlement Agreement shall be binding upon and inure to the benefit of the Parties and Settlement Class Members hereof and their respective heirs, successors, and assignees.
- C. In the event any one or more of the provisions contained in this Settlement Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision if TMS and Class Counsel, on behalf of Plaintiff and Settlement Class Members, mutually elect to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Settlement Agreement.
- D. The Court shall retain continuing and exclusive jurisdiction over the Parties hereto, including Plaintiff and all Settlement Class Members, and over the administration and enforcement of the Settlement and the benefits to Plaintiff and Settlement Class Members hereunder. Any disputes or controversies arising with respect to the interpretation, enforcement, or implementation of this Settlement

Agreement must be resolved by noticed motion to the Court. Notwithstanding this Paragraph, all disputes about claims for reimbursement or future windshield repair or replacement under the extended warranty are subject to full and final resolution by Rosenthal alone in accordance with Paragraph II.C. above.

- E. All counsel or other persons executing this Settlement Agreement or any related settlement documents, warrant and represent that they have the full authority to do so.
- F. The Parties hereby agree and stipulate to stay all proceedings in this Class Action until the approval of this Settlement Agreement has been finally determined, except that the stay of proceedings shall not prevent the filing of any motions, affidavits, or other matters necessary to the Approval of this Settlement Agreement.
- G. TMS and Plaintiff acknowledge that they have been represented and advised by independent legal counsel throughout the negotiations that have culminated in the execution of this Settlement Agreement, and that they have voluntarily executed the Settlement Agreement with the consent and on the advice of counsel.
- H. This Settlement Agreement may be executed in counterpart by the parties hereto, and a facsimile or pdf signature shall be deemed an original signature for purposes of this Settlement Agreement.
- I. This Settlement Agreement shall be construed under and governed by the laws of the State of California.
- J. The Parties have negotiated and fully reviewed the terms of this Settlement Agreement, and the rule that uncertainty or ambiguity is to be construed against

the drafter shall not apply to the construction of this Settlement Agreement by a court of law or any other adjudicating body.

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

Class Counsel

Jeffrey L. Fazio
Dina E. Micheletti
Fazio | Micheletti LLP
2410 Camino Ramon, Suite 315
Bishop Ranch Business Park, Building 6
San Ramon, CA 94583

TMS' Counsel:

Kenneth R. Chiate
Jeffrey A. Boozell
Quinn Emanuel Urquhart Oliver & Hedges LLP
865 South Figueroa Street, 10th Floor
Los Angeles, California 90017

[SIGNATURES TO FOLLOW]

IN WITNESS THEREOF, the Parties hereto have executed this Settlement Agreement as follows:

ON BEHALF OF PLAINTIFF AND SETTLEMENT CLASS MEMBERS:

DATED: December ____, 2009

FAZIO | MICHELETTI LLP

By _____
Jeffrey L. Fazio
Dina E. Micheletti

DATED: December ____, 2009

By _____
Justin Bauer

ON BEHALF OF TOYOTA MOTOR SALES, U.S.A., INC.:

DATED: December ____, 2009

QUINN EMANUEL URQUHART OLIVER &
HEDGES, LLP

By _____
Kenneth R. Chiate
Jeffrey A. Boozell

DATED: December ____, 2009

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