

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

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

IN RE TOYOTA MOTOR  
CORPORATION SECURITIES  
LITIGATION

Master File No. CV 10-922 DSF (AJWx)

**ORDER PRELIMINARILY  
APPROVING SETTLEMENT,  
CERTIFYING CLASS,  
PROVIDING FOR NOTICE AND  
SCHEDULING SETTLEMENT  
HEARING**

1           WHEREAS, Lead Plaintiff Maryland State Retirement and Pension System  
2 (“Lead Plaintiff”), on behalf of itself and the Class (as hereinafter defined), and  
3 Defendants Toyota Motor Corporation, Toyota Motor North America, Inc.,  
4 Toyota Motor Sales, U.S.A., Inc. (“Toyota”), Katsuaki Watanabe, Fujio Cho,  
5 Yoshimi Inaba, James E. Lentz III, Irving A. Miller, Robert S. Carter and Robert  
6 C. Daly (the “Individual Defendants” and together with Toyota, the “Defendants”)  
7 (collectively, the “Settling Parties”) have entered into a settlement of the claims  
8 asserted in the above-captioned action (the “Action”), the terms of which are set  
9 forth in the Amended Stipulation of Settlement dated as of December 19, 2012  
10 (the “Stipulation” or the “Settlement”), which is subject to review under Rule  
11 23(e) of the Federal Rules of Civil Procedure, and which, together with the  
12 Exhibits thereto, sets forth the terms and conditions of the proposed Settlement of  
13 the claims asserted in the Action with prejudice; and

14           WHEREAS, the Court having read and considered the Stipulation and  
15 Exhibits thereto, including the proposed (i) Notice; (ii) Claim Form; (iii)  
16 Summary Notice; and (iv) Judgment, and submissions relating thereto, and finding  
17 that substantial and sufficient ground exists for entering this Order.

18           NOW, THEREFORE, IT IS HEREBY ORDERED:

19           1.     This order (the “Preliminary Approval Order” or “Notice Order”)  
20 hereby incorporates by reference the definitions in the Stipulation, and all terms  
21 used herein shall have the same meanings as set forth in the Stipulation.

22           2.     The Court hereby preliminarily approves the Settlement as being fair,  
23 just, reasonable and adequate to the Class, pending a final hearing on the  
24 Settlement.

25           3.     Pending further order of the Court, all litigation activity, except that  
26 contemplated herein, in the Stipulation, in the Notice or in the Judgment, is hereby  
27 stayed and all hearings, deadlines and other proceedings in this Action, except the  
28 Settlement Hearing, are hereby taken off calendar.

1                   **CLASS CERTIFICATION**

2           4.     The Court hereby certifies, for settlement purposes only, pursuant to  
3 Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure, a Class defined  
4 as follows:

5                 All Persons (other than those Persons who timely and validly request  
6 exclusion from the Class) who purchased or otherwise acquired the  
7 American Depositary Shares of Toyota Motor Corporation during the  
8 period from May 10, 2005, through and including February 2, 2010,  
9 excluding the Defendants and their Related Persons.

10           5.     Pursuant to Rule 23 of the Federal Rules of Civil Procedure, and for  
11 the purposes of the Settlement only, Lead Plaintiff is appointed as the Class  
12 Representative and Bernstein Litowitz Berger & Grossmann LLP is appointed as  
13 Lead Counsel for the Class.

14           6.     Lead Counsel has the authority to enter into the Stipulation on behalf  
15 of Lead Plaintiff and the Class, and is authorized to act on behalf of Lead Plaintiff  
16 and the Class, with respect to all acts or consents required by or that may be given  
17 pursuant to the Stipulation, such as other acts that are reasonably necessary to  
18 consummate the Settlement.

19           7.     The Court approves the firm of Epiq Class Action & Claims  
20 Solutions, Inc. (“Claims Administrator”) to supervise and administer the notice  
21 procedure, as well as the processing of claims as more fully set forth below:

22                 a.     No later than January 7, 2013, the Claims Administrator shall  
23 cause a copy of the Notice and Proof of Claim, annexed hereto as Exhibits  
24 A-1 and A-2, respectively, to be mailed by first-class mail, postage prepaid,  
25 to all members of the Class at the address of each such person as set forth in  
26 the records of Toyota or its transfer agent or who are identified by further  
27 reasonable efforts as set forth in the Stipulation (the “Notice Date”);

28                 b.     A summary notice (the “Summary Notice”), annexed hereto as  
Exhibit A-3, shall be published once in the national edition of *The*

1            *Investor's Business Daily* and over the *PR Newswire* no later than January  
2            22, 2013; and

3            c.        The Notice, the Summary Notice, and the Claim Form shall  
4            also be placed on the Claims Administrator's website, on or before the  
5            Notice Date.

6            8.        The Court approves the form, substance and requirements of the  
7            Notice and Summary Notice (together, the "Notices") and the Claim Form, and  
8            finds that the procedures established for publication, mailing and distribution of  
9            such Notices substantially in the manner and form set forth in Paragraph 7 of this  
10            Order meet the requirements of Rule 23 of the Federal Rules of Civil Procedure,  
11            Section 21D(a)(7) of the Securities Exchange Act of 1934 (the "Exchange Act"),  
12            as amended by the Private Securities Litigation Reform Act of 1995 (the  
13            "PSLRA"), 15 U.S.C. § 78u-4(a)(7), the Constitution of the United States, and any  
14            other applicable law, and constitute the best notice practicable under the  
15            circumstances.

16            9.        No later than December 28, 2012, Toyota provided or caused to be  
17            provided to the Claims Administrator (at no cost to the Settlement Fund, Lead  
18            Counsel or the Claims Administrator) any lists it or its agent(s) has that identify  
19            potential Class Members (including names and addresses), in electronic form.

20            10.        No later than February 4, 2013, Lead Counsel shall cause to be filed  
21            with the Clerk of this Court affidavits or declarations of the person or persons  
22            under whose general direction the mailing of the Notice and the publication of the  
23            Summary Notice shall have been made, showing that such mailing and publication  
24            have been made in accordance with this Order.

25            11.        Nominees who purchased or otherwise acquired Toyota Motor  
26            Corporation American Depositary Shares ("ADS's") for beneficial owners who  
27            are Class Members are directed to: (a) request within fourteen (14) days of receipt  
28            of the Notice additional copies of the Notice and the Claim Form from the Claims  
                 Administrator for such beneficial owners; or (b) send a list of the names and

1 addresses of such beneficial owners to the Claims Administrator within fourteen  
2 (14) days after receipt of the Notice. If a nominee elects to send the Notice to  
3 beneficial owners, such nominee is directed to mail the Notice within fourteen  
4 (14) days of receipt of the additional copies of the Notice from the Claims  
5 Administrator, and upon such mailing, the nominee shall send a statement to the  
6 Claims Administrator confirming that the mailing was made as directed, and the  
7 nominee shall retain the list of names and addresses for use in connection with any  
8 possible future notice to the Class. Upon full compliance with this Order,  
9 including the timely mailing of Notice to beneficial owners, such nominees may  
10 seek reimbursement of their reasonable expenses actually incurred in complying  
11 with this Order by providing the Claims Administrator with proper documentation  
12 supporting the expenses for which reimbursement is sought and reflecting  
13 compliance with these instructions, including timely mailing of the Notice, if the  
14 nominee elected or elects to do so. Such properly documented expenses incurred  
15 by nominees in compliance with the terms of this Order shall be paid from the  
16 Settlement Fund.

17 **HEARING: RIGHT TO BE HEARD**

18 12. The Court will hold a settlement hearing (the “Settlement Hearing”)  
19 on March 11, 2013, at 1:30 p.m., in the United States District Court for the Central  
20 District of California, Western Division, 255 East Temple Street, Courtroom 840,  
21 Los Angeles, California, for the following purposes: (i) to determine whether the  
22 Court should grant final certification of the Class solely for purposes of the  
23 Settlement; (ii) to determine whether the proposed Settlement is fair, reasonable,  
24 adequate and in the best interests of the Class and should be approved by the  
25 Court; (iii) to determine whether the Judgment, in the form attached as Exhibit B  
26 to the Stipulation, should be entered dismissing and releasing the Released Claims  
27 against the Released Persons; (iv) to rule upon the Plan of Allocation; (v) to rule  
28 upon Lead Counsel’s application for an award of attorneys’ fees and

1 reimbursement of litigation expenses; and (vi) to consider any other matters that  
2 may properly be brought before the Court in connection with the Settlement.

3 13. Papers in support of the Settlement, the Plan of Allocation and Lead  
4 Counsel's application for attorneys' fees and reimbursement of litigation expenses  
5 shall be filed no later than February 4, 2013. Reply papers shall be filed no later  
6 than March 4, 2013.

7 14. Any member of the Class may appear at the Settlement Hearing and  
8 show cause why the proposed Settlement embodied in the Stipulation should or  
9 should not be approved as fair, reasonable, adequate and in the best interests of the  
10 Class, or why the Judgment should or should not be entered thereon, and/or to  
11 present opposition to the Plan of Allocation or to the application of Lead Counsel  
12 for attorneys' fees and reimbursement of litigation expenses. However, no Class  
13 Member or any other person shall be heard or entitled to contest the approval of  
14 the terms and conditions of the Settlement, the Judgment, the terms of the Plan of  
15 Allocation or the application by Lead Counsel for an award of attorneys' fees and  
16 reimbursement of litigation expenses, unless that Class Member or Person (i) has  
17 served written objections, by hand or first-class mail, including the basis therefor,  
18 as well as copies of any papers and/or briefs in support of his, her or its position  
19 upon the following counsel for receipt no later than February 19, 2013:

20  
21 **Lead Counsel for the Class:**

22 BERNSTEIN LITOWITZ BERGER  
23 & GROSSMANN LLP

24 Blair A. Nicholas  
25 Niki L. Mendoza  
26 12481 High Bluff Drive, Suite 300  
27 San Diego, California 92130-3582  
28

1 **Counsel for Defendants:**

2 GIBSON, DUNN & CRUTCHER LLP

3 Kay E. Kochenderfer

4 Gareth Evans

5 333 South Grand Avenue

6 Los Angeles, California 90071

7 and (ii) filed said objections, papers and briefs with the Clerk of the United States  
8 District Court for the Central District of California, Western Division. Any  
9 objection must include: (a) the full name, address, and phone number of the  
10 objecting Class Member; (b) a list of all of the Class Member's Class Period  
11 transactions in Toyota ADS's, including dates and prices paid and received, and  
12 including brokerage confirmation receipts or other competent documentary  
13 evidence of such transactions; (c) a written statement of all grounds for the  
14 objection accompanied by any legal support for the objection; (d) copies of any  
15 papers, briefs or other documents upon which the objection is based; (e) a list of  
16 all persons who will be called to testify in support of the objection; (f) a statement  
17 of whether the objector intends to appear at the Settlement Hearing; and (g) a list  
18 of other cases in which the objector or the objector's counsel have appeared either  
19 as settlement objectors or as counsel for objectors in the preceding five years. If  
20 the objector intends to appear at the Settlement Hearing through counsel, the  
21 objection must also state the identity of all attorneys who will appear on his, her or  
22 its behalf at the Settlement Hearing. Pursuant to the Court's Standing Order For  
23 Cases Assigned To Judge Dale S. Fischer, a member of the Class who wishes to  
24 object may file an application to file such objection under seal so that, if the  
25 application is granted, personal or private information is not made publicly  
26 available. An application to file documents under seal must meet the  
27 requirements of Local Rule 79-5. Documents that are not confidential or  
28 privileged in their entirety should not be filed under seal if the confidential  
portions can be redacted and filed separately with a reasonable amount of effort.

1 The objecting Class member should file both a complete version of the objection  
2 and supporting documents under seal, and a redacted version for public viewing,  
3 omitting only such portions as the Court has ordered may be filed under seal. Any  
4 Class Member who does not make his, her or its objection in the manner provided  
5 for herein shall be deemed to have waived such objection and shall forever be  
6 foreclosed from making any objection to the fairness or adequacy of the  
7 Settlement as reflected in the Stipulation, to the Plan of Allocation or to the  
8 application by Lead Counsel for an award of attorneys' fees and reimbursement of  
9 litigation expenses. The manner in which a notice of objection should be  
10 prepared, filed and delivered shall be stated in the Notice. By objecting to the  
11 Settlement, the Plan of Allocation and/or the application by Lead Counsel for an  
12 award of attorneys' fees and reimbursement of litigation expenses, or otherwise  
13 requesting to be heard at the Settlement Hearing, a person or entity shall be  
14 deemed to have submitted to the jurisdiction of the Court with respect to the  
15 person's or entity's objection or request to be heard and the subject matter of the  
16 Settlement.

17 15. If approved, all Class Members will be bound by the proposed  
18 Settlement provided for in the Stipulation, and by any judgment or determination  
19 of the Court affecting Class Members, regardless of whether or not a Class  
20 Member submits a Claim Form.

21 16. Any member of the Class may enter an appearance in the Action, at  
22 his, her or its own expense, individually or through counsel of his, her or its own  
23 choice. If they do not enter an appearance, they will be represented by Lead  
24 Counsel.

25 17. The Court reserves the right to (a) adjourn or continue the Settlement  
26 Hearing, or any adjournment or continuance thereof, without further notice to  
27 Class Members and (b) approve the Stipulation, the Plan of Allocation, or an  
28 award of attorneys' fees and reimbursement of litigation expenses with  
modification and without further notice to Class Members. The Court retains

1 jurisdiction of this Action to consider all further applications arising out of or  
2 otherwise relating to the proposed Settlement, and as otherwise warranted.

3 18. All Class Members shall be bound by all determinations and  
4 judgments in the Action concerning the Settlement, whether favorable or  
5 unfavorable to the Class.

6 **CLAIMS PROCESS**

7 19. In order to be entitled to potentially participate in the Settlement, a  
8 Class Member must complete and submit a Claim Form in accordance with the  
9 instructions contained therein. To be valid and accepted, Claim Forms submitted  
10 in connection with this Settlement must be postmarked no later than May 7, 2013.

11 20. Any Class Member who does not timely submit a valid Claim Form  
12 shall not be eligible to share in the Settlement Fund, unless otherwise ordered by  
13 the Court, but nonetheless shall be barred and enjoined from asserting any of the  
14 Released Claims against the Released Persons and shall be bound by any  
15 judgment or determination of the Court affecting the Class Members.

16 **REQUEST FOR EXCLUSION FROM THE CLASS**

17 21. Any requests for exclusion must be submitted for receipt no later  
18 than February 19, 2013. Any Class Member who wishes to be excluded from the  
19 Class must provide (a) the name, address and telephone number of the person or  
20 entity requesting exclusion; (b) the person's or entity's transactions in Toyota  
21 ADS's during the Class Period, including the dates, the number of Toyota ADS's  
22 purchased, acquired and/or sold or disposed of, the date of each purchase,  
23 acquisition or sale or disposal and the price paid and/or received; and (c) a  
24 statement that the person or entity wishes to be excluded from the Class. The  
25 Claims Administrator (or other person designated to receive exclusion requests)  
26 shall provide to Lead Counsel and Defendants' counsel copies of any request for  
27 exclusion from the Class within three (3) business days of receipt thereof. All  
28 persons who submit valid and timely requests for exclusion in the manner set forth  
in this paragraph shall have no rights under the Stipulation, shall not share in the

1 distribution of the Net Settlement Fund, and shall not be bound by the Stipulation  
2 or any Final Judgment.

3 22. Any member of the Class who does not request exclusion from the  
4 Class in the manner stated in this Order shall be deemed to have waived his, her or  
5 its right to be excluded from the Class, and shall forever be barred from requesting  
6 exclusion from the Class in this or any other proceeding, and shall be bound by  
7 the Settlement and the Judgment, including, but not limited to the release of the  
8 Released Claims against the Released Persons provided for in the Stipulation and  
9 the Judgment, if the Court approves the Settlement.

10 23. The Released Persons shall have no responsibility or liability  
11 whatsoever with respect to the Plan of Allocation or Lead Counsel's application  
12 for an award of attorneys' fees and reimbursement of litigation expenses. The  
13 Plan of Allocation and Lead Counsel's application for an award of attorneys' fees  
14 and reimbursement of litigation expenses will be considered separately from the  
15 fairness, reasonableness and adequacy of the Settlement. At or after the  
16 Settlement Hearing, the Court will determine whether Lead Plaintiff's proposed  
17 Plan of Allocation should be approved, and the amount of attorneys' fees and  
18 litigation expenses to be awarded. Any appeal from any orders relating to the Plan  
19 of Allocation or Lead Counsel's application for an award of attorneys' fees and  
20 litigation expenses, or any reversal or modification thereof, shall not operate to  
21 terminate or cancel the Settlement, or affect or delay the finality of the Judgment  
22 approving the Stipulation and the settlement of the Action set forth therein.

23 24. Only Class Members and Lead Counsel shall have any right to any  
24 portion of, or any rights in the distribution of, the Settlement Fund, unless  
25 otherwise ordered by the Court or otherwise provided in the Stipulation.

26 25. All funds held by the Escrow Agent shall remain subject to the  
27 jurisdiction of the Court until such time as such funds shall be distributed pursuant  
28 to the Stipulation and/or further order of the Court.

1           26. As set forth in the Stipulation, pursuant to the terms of the Escrow  
2 Agreement between Lead Counsel and the Escrow Agent, Valley National Bank,  
3 dated December 17, 2012, the Escrow Agent may pay from the Settlement Fund  
4 the costs and expenses reasonably and actually incurred in connection with  
5 providing notice to the Class, locating Class Members, soliciting Class claims,  
6 assisting with the filing of claims, administering and distributing the Net  
7 Settlement Fund to Authorized Claimants, processing Proof of Claim forms, and  
8 paying Taxes or Tax Expenses, escrow fees and costs, if any. In the event the  
9 Court does not approve the Settlement, or if the Settlement otherwise fails to  
10 become effective, neither Lead Plaintiff nor Lead Counsel shall have any  
11 obligation to repay any amounts actually and properly incurred or disbursed for  
12 such purposes. Such payments, however, will be subject to Court approval and  
13 any amounts not approved by the Court must be refunded to the Settlement Fund.

14           27. Neither the Stipulation nor the settlement contained therein, nor any  
15 act performed or document executed pursuant to or in furtherance of the  
16 Stipulation or the settlement: (a) is or may be deemed to be or may be used as an  
17 admission of, or evidence of, the validity or invalidity of any Released Claim or of  
18 any wrongdoing or liability of the Defendants and the Released Persons; or (b) is  
19 or may be deemed to be or may be used as an admission of, or evidence of, any  
20 fault or omission of any of the Defendants and the Released Persons in any civil,  
21 criminal or administrative proceeding in any court, administrative agency or other  
22 tribunal. Defendants and the Released Persons may file the Stipulation and/or the  
23 Judgment in any action that may be brought against them in order to support a  
24 defense or counterclaim based on principles of res judicata, collateral estoppel,  
25 release, good faith settlement, judgment bar or reduction, or any other theory of  
26 claim preclusion or issue preclusion or similar defense or counterclaim.

27           28. Unless otherwise ordered by the Court and as set forth in the  
28 Stipulation, there shall be no payment of attorney's fees or expenses, until the  
Court has: (1) entered an order awarding attorney's fees expenses; and (2) entered

1 an order granting final approval of the Settlement, both of which orders must have  
2 become final and affirmed on appeal or *certiorari* or no longer be subject to review  
3 by appeal or *certiorari* and the time for any petition for rehearing, appeal or  
4 review, whether by *certiorari* or otherwise, must have expired before any payment  
5 of attorney's fees and expenses may be made. Furthermore, unless otherwise  
6 ordered by the Court, there shall be no distribution of any of the Net Settlement  
7 Fund to any Class Member until a Plan of Allocation is finally approved and is  
8 affirmed on appeal or *certiorari* or is no longer subject to review by appeal or  
9 *certiorari* and the time for any petition for rehearing, appeal or review, whether by  
10 *certiorari* or otherwise, has expired.

11 29. In the event that the Settlement fails to become effective in  
12 accordance with its terms, or if the Judgment is not entered or is reversed, vacated  
13 or materially modified on appeal (and, in the event of material modification, if any  
14 party elects to terminate the Settlement), this Order (except Paragraphs 26 and 28)  
15 shall be null and void, the Stipulation (except as otherwise provided therein) shall  
16 be deemed terminated, and the parties shall return to their positions without  
17 prejudice in any way, as provided for in the Stipulation.

18  
19 IT IS SO ORDERED.

20 1/3/13

21 DATED: \_\_\_\_\_



22  
23 \_\_\_\_\_  
24 HONORABLE DALE S. FISCHER  
25  
26  
27  
28