

24TH JUDICIAL DISTRICT COURT FOR THE PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. 583-318

DIVISION "O"

SARAH AND JEFF MECKSTROTH,
Individually and as Representatives of the Class of Persons Similarly Situated

VERSUS

TOYOTA MOTOR SALES, U.S.A., INC.
and CLIFTON LEBLANC LEXUS OF NEW ORLEANS

FILED:

2/7/07

Schlice Borne

DEPUTY CLERK

FINAL ORDER AND JUDGMENT

Except as otherwise expressly provided below or as the context otherwise requires, all capitalized terms used in this Final Order and Judgment shall have the meanings and/or definitions given them in the settlement agreement ("SA", "Agreement" or "Settlement Agreement") entered into by or on behalf of the Settlement Class, and Toyota, adopting the terms and conditions of the SA, all of which were preliminarily approved by this Court's order dated September 29, 2006 temporarily certifying and defining the Settlement Class, preliminarily approving the Settlement Agreement, and approving the Notice Administrator and the form and manner of notice (the "Order of Certification"). The original of the SA is filed in these proceedings as Exhibit A to the Joint Motion for Preliminary Approval of Proposed Settlement signed by or on behalf of the Settlement Class and Toyota.

There came for hearing commencing on the 7th day of February, 2007, (a) the motion of the Settlement Class, as conditionally certified for settlement purposes only in the captioned litigation pursuant to the Order of Certification, appearing through Class Counsel and Toyota seeking (i) entry of a final order and judgment finally approving the terms of the Settlement Agreement and the settlement contained therein and all exhibits thereto as fair, reasonable and adequate in accordance with Article 591, *et seq.*, of the Louisiana Code of Civil Procedure; (ii) dismissal with prejudice and release of all Settled Claims of the Settlement Class that were asserted or that could have been asserted in the Third Supplemental and Amending Petition filed on behalf of the Settlement Class in these proceedings against Toyota and the Released Parties, while reserving all other claims including but not limited to those claims of those individuals and entities who previously properly and timely exercised their right to be excluded from (opted out of) the Settlement Class as temporarily certified and defined by the Order of Certification; (iii) a finding that the objections to the fairness, reasonableness and adequacy of the settlement, if any, are without merit; (iv) a finding that the notice given to the Releasing Persons and the Settlement Class and other interested persons of the proposed settlement and all related procedures and hearings complies with all requirements of state and federal constitutions, laws, and rules, including, but not limited to, due process; (v) a bar order precluding Releasing Persons and members of the Settlement Class from prosecuting and/or filing actions related to a Settled

Claim; and (vi) the issuance of related orders for the effectuation of the settlement; and (b) the motion of the Settlement Class, appearing through Class Counsel, seeking entry of this Final Order and Judgment.

Having (I) reviewed the proposed Settlement Agreement between the Settlement Class and Toyota, including all attached exhibits thereto; (ii) afforded all parties to the Action, including the Plaintiffs and all Releasing Persons, the opportunity to be heard on the terms and conditions of the proposed settlement at the Fairness Hearing commencing on February 7, 2007; (iii) ordered the issuance of proper, comprehensive, and adequate notice consistent with due process of law; (iv) reviewed the record of this proceeding, including, without limitation, this Court's previous orders, including, among others, this Court's order granting preliminary approval of the settlement and conditionally certifying the Settlement Class for settlement purposes only and this Court's order finally certifying the Settlement Class as defined in the Settlement Agreement as a class; (v) considered all factors which pertain to the approval or disapproval of the proposed settlement of a class action; (vi) considered all the evidence introduced at the hearing; (vii) considered the representations and argument of Class Counsel, counsel for Toyota, and counsel for the objectors; (viii) considered the relevant law, including, without limitation, Rule 591, *et seq.*, of the Louisiana Code of Civil Procedure; and (ix) considered the parties' proposed Findings of Fact and Conclusions of Law; and based on this Court's Findings of Fact and Conclusions of Law issued in this matter;

Having further considered all of the objections presented to the fairness, reasonableness, and adequacy of the proposed settlement and concluded that these objections are not meritorious; and

Having determined and concluded that the proposed settlement is fair, reasonable and adequate and in the best interests of the Settlement Class, based upon all of the relevant factors, which include the following: (I) there was no fraud or collusion among the settling Parties; (ii) the probability of further complex, extensive, and costly litigation extending over a period of many years; (iii) the probability of the Settlement Class' likelihood of success on the merits and benefit to the Settlement Class if the litigation should ultimately be successful; (iv) the potential range of recovery; and (v) the approval of the settlement by the Class representative(s) and by experienced Class Counsel.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

(1) The Settlement Agreement and the settlement contained therein, including (I) any amendments or corrections, (ii) all terms and conditions thereto, and (iii) all attached exhibits, are now finally approved by the Court pursuant to applicable law, including Article 591, *et seq.*, of the Louisiana Code of Civil Procedure, as fair, reasonable and adequate and in the best interests of the Settlement Class;

(2) Each and every term, provision, condition and agreement of the Settlement Agreement, including but not limited to, the termination of rights pursuant to Section XIII of the Settlement Agreement, including all exhibits and amendments thereto, are hereby made part of this Final Order and Judgment as if copied herein *in extenso* and shall be effective, implemented and enforced as provided therein;

(3) The notice provided to all Settlement Class Members of the temporary certification of the Settlement Class, the proposed settlement, and the Fairness Hearing complies with the Order of Certification;

(4) Notices given to Settlement Class Members and all other interested parties throughout this proceeding with respect to the certification of the Settlement Class, the proposed settlement and all related procedures and hearings - - including, without limitation, the notices to the Settlement Class Members - - were reasonably calculated under all the circumstances and have been sufficient, both as to form and content, to apprise interested parties of the pendency of the Action, the certification of the Settlement Class, the Settlement Agreement and its contents, Settlement Class Members' right to be represented by private counsel, at their own costs, and Settlement Class Members' right to appear in Court to have their objections heard, and to afford Settlement Class Members an opportunity to object. Such notices complied with all requirements of the federal and state constitutions, including the due process clause and Article 591, *et seq.*, of the Louisiana Code of Civil Procedure, and constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all potential members of the Settlement Class as certified and defined by the Order of Certification;

(5) The objections made to certification of the Settlement Class and/or approval of the Settlement Agreement, including any objections to due process, constitutionality, procedures, and compliance with law (including, but not limited to, the adequacy of notice and the fairness of the proposed Settlement Agreement), lack merit and are hereby overruled;

(6) The representatives of the Settlement Class and Class Counsel have fairly and adequately represented all Settlement Class Members and protected the interests of the Settlement Class;

(7) The Settlement Agreement was the result of extensive and intensive arms-length negotiations among highly experienced counsel, with full knowledge of the risks inherent in this litigation;

(8) The Settlement Agreement was fair, reasonable and adequate in light of the complexity, expense and likely duration of the litigation, in light of the risks involved in certifying a litigation class and in light of the risks involved in establishing liability and damages;

(9) The Settlement Agreement was entered into in good faith, at arms length, and without collusion;

(10) The amount of discovery and independent investigation conducted in this litigation to date, and the factual record compiled, suffices to enable the parties to make an informed decision as to the fairness and adequacy of the proposed Settlement Agreement;

(11) The temporary certification of the Settlement Class pursuant to the Order of Certification is hereby confirmed, including the approval of Class Representatives and Class Counsel, and this Court finds that all of the prerequisites for a settlement class under Louisiana Code of Civil Procedure Article 591, *et seq.*, are satisfied;

(12) The Court herein adopts and makes part of this Judgment its Findings of Fact and Conclusions of Law;

(13) Under the terms and conditions of this Final Order and Judgment and the Settlement Agreement, all Settled Claims of the Settlement Class Members and Releasing Persons, as set forth in the Settlement Agreement, against each of the Released Parties, are hereby dismissed upon the Effective Date of Settlement, with prejudice; provided however, that such dismissal shall in no way affect claims other than the Settled Claims (including the rights of Settlement Class Members who exercised their exclusion (opt-out) rights pursuant to Section VIII of the Settlement Agreement to pursue any claims they may have against the Defendant), which claims are excluded and expressly preserved;

(14) The Action shall not be dismissed in its entirety, but shall remain open to facilitate the jurisdiction retained by the Court in paragraphs 16 and 17, below;

(15) Upon the Effective Date, each and every Releasing Person (and all Persons claiming by, through, or on behalf of a Releasing Person), are hereby finally and permanently barred and enjoined from instituting, maintaining or prosecuting any actions against the Released Parties with respect to any and all Settled Claims, except to the extent otherwise provided in the Settlement Agreement;

(16) Upon the Effective Date, the Released Parties are hereby finally released from and all Settled Claims by, through or on behalf of a Releasing Person;

(17) Notwithstanding any other provision of this Final Order and Judgment and/or the Settlement Agreement, the Court reserves exclusive jurisdiction over the Action, the Parties, the Settlement Class Members, the Third Party Evaluator and the Settlement Agreement solely for the purpose of administering, supervising, construing and enforcing the Settlement Agreement. A request for review of a decision by the Third Party Evaluator shall be made by filing such request in the Action, which proceeding shall remain open and is not subject to abandonment;

(18) Pursuant to and consistent with the Settlement Agreement, this Court appoints J. Robert Ates as Third Party Evaluator. The Third Party Evaluator may not be removed by any

Party/Person absent a finding by the Court that “good cause” exists for such removal. The Court shall retain exclusive jurisdiction over the Third Party Evaluator as to issues raised by Parties/Persons regarding any act or omission of the Third Party Evaluator, and issues regarding the reasonableness of his fees and/or expenses.

(19) The Court’s retention of jurisdiction as set forth above shall not effect the finality of this Final Order and Judgment. Further, the Court hereby makes an express determination that there is no just reason for delay. Accordingly, this Final Order and Judgment is immediately appealable;

(20) If (a) this Final Order and Judgment and/or the Settlement Agreement is materially modified in any way absent mutual written consent of Class Counsel and Defendant’s Counsel (such modification may not be materially adverse to the Settlement Class), or (b) if this Final Order and Judgment is reversed on appeal and the reversal becomes final, then notwithstanding any other provision herein or in the Settlement Agreement, (i) all Parties and Settlement Class Members shall be restored to their respective positions immediately prior to the date on which the Settlement Agreement is signed by all Parties, (ii) dismissal of the Settled Claims shall be deemed null and void, and those claims shall be reinstated *status quo ante*; (iii) Plaintiffs’ Third Amended Petition and Defendant’s Answer thereto shall be null and void *nunc pro tunc* to the respective date(s) of filing of each pleading, and shall be deemed stricken from the record and with no effect; (iv) the Settlement Agreement shall have no effect on the rights of the Parties or the Settlement Class Members to (a) take action in support of or in opposition to class certification in the Action or any other action, or (b) prosecute or defend the Action, or any other action; (v) notwithstanding any other provision herein, unless previously expired, all statutes of limitation and/or repose for all claims asserted in the Action (including those asserted in the Third Amended Petition) shall be deemed to have been tolled from the date of signature of this Agreement by all parties until the date of reinstatement and reactivation, or for such longer period as the law, order of the Court or other agreement may provide without reference to this Agreement; (vi) the Settlement Agreement shall terminate and shall have no further force or effect except as set forth in Section XIII thereof (including specifically the recognition that the provisions of Section IV(2) of the Settlement Agreement shall survive termination of the Settlement Agreement); (vii) the Order of Certification and this Final Order and Judgment shall become null and void, and in such event, this Final Order and Judgment, and the Order of Certification shall have no force and effect (except as set forth in this paragraph 19), and (viii) in all events, nothing in the Final Order and Judgment or in the Order of Certification shall constitute, be construed as, or be admissible as evidence of an admission by any Released Party that the Action or any other proposed class action, can be or is properly certified for trial or

litigation purposes of under Article 591, *et seq.*, of the Louisiana Code of Civil Procedure, Rule 23 of the Federal Rules of Civil Procedure, or any similar statute or rule;

(21) Neither this Final Order and Judgment nor the Settlement Agreement nor the Order of Certification (nor any other document referred to herein or therein, nor any action taken to carry out this Final Order and Judgment or the Order of Certification) may be construed as, or may be used as an admission or concession by or against the Released Parties of the validity of any claim or any actual or potential fault, wrongdoing or liability whatsoever. Entering into or carrying out the Settlement Agreement, and any negotiations or proceedings related to it, shall not in any event be construed as, or deemed evidence of, an admission or concession as to the denials or defenses of the Released Parties and shall not be offered or received in evidence in any action or proceeding against the Released Parties in any court, administrative agency, or other tribunal for any purpose whatsoever, except as evidence of, or to enforce, the terms and provisions of this Final Order and Judgment, the Settlement Agreement, and the Order of Certification, which documents/pleadings may also be filed in any action against or by one or more of the Released Parties to support a defense of *res judicata*, collateral estoppel, release, waiver, good-faith settlement, judgment bar or reduction, full faith and credit, or any other theory of claim preclusion, issue preclusion or similar defense or counterclaim;

(22) The terms of the Settlement Agreement, this Final Order and Judgment, and the Order of Certification shall be binding on the Parties and all Releasing Persons, as well as their heirs, executors, and administrators, successors and assigns, and those terms shall have *res judicata* and other preclusive effect in all pending and future claims, lawsuits, or other proceedings maintained by or on behalf of any such Persons, to the extent those claims, lawsuits or other proceedings are based on a Settled claim(s);

(23) The Court expressly approves the releases set forth in the Settlement Agreement and makes part hereof and incorporates such releases as if fully set forth in this Final Order and Judgment;

(24) The petition of Class Counsel for award of attorney's fees and Costs is granted. Toyota shall pay Class Counsel attorney's fees in the aggregate amount of One Million Eight Hundred Thousand and No/100 Dollars (\$1,800,000.00) and Costs in the aggregate amount of One Hundred Fifty Thousand and No/100 Dollars (\$150,000.00).

(25) The request of the class representatives for compensation is approved. Toyota shall pay to a Class Counsel's trust account the amount of Fifty Thousand and No/100 Dollars (\$50,000.00) for the benefit of the class representatives.

(26) The information regarding the identity of Settlement Class Members provided by Toyota to the Notice Administrator will remain confidential. The Notice Administrator shall

retain a copy of the information regarding the identity of Settlement Class Members, and may not discard said information absent order of the Court on notice to Defendant's Counsel and Class Counsel;

(27) Nothing in this Final Order and Judgment shall preclude any action before the Court to enforce the terms of the Settlement Agreement; and

(28) The Parties are hereby authorized, without needing further approval from the Court, to agree to and adopt such amendments to, and extensions, modification and expansions of, the Settlement Agreement as are consistent with this Final Order and Judgment and do not limit the rights of the Settlement Class Members under the Settlement Agreement.

(29) Notice of Signing of Judgment herein is waived by defendants, Toyota Motor Sales, USA, Inc., et al. and by Class Counsel on behalf of the Class, except as to those objectors whose objections were timely filed but were dismissed.

Gretna, Louisiana, this 7th day of February, 2007.



JUDGE

A TRUE COPY OF THE ORIGINAL
ON FILE IN THE OFFICE
Schlice Borne
DEPUTY CLERK
24TH JUDICIAL DISTRICT COURT
BOZALZEVILLE, LA