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13 Attorneys for Plaintiff and all others similarly situated

14 **UNITED STATES DISTRICT COURT**
15 **NORTHERN DISTRICT OF CALIFORNIA**

16
17 Mark R Ciabattari, and all other persons
similarly situated,

18 Plaintiffs,

19 vs.

20 Toyota Motor Sales, U.S.A., Inc., a California
21 corporation, et al,

22 Defendants.
23
24
25

) Case No. C-05-04289 SC

) **(proposed) ORDER APPROVING CLASS
ACTION SETTLEMENT & AWARD OF
ATTORNEY'S FEES, EXPENSES &
INCENTIVE AWARDS**

) Hearing Date: November 17, 2006
Time: 10:00 AM
Courtroom: 1, Hon. Samuel Conti

26
27 The Court has before it plaintiffs' motion for final approval of a settlement of seven (7)
28 related class action cases filed against defendants Toyota Motor Sales, U.S.A., Inc., Toyota Motor

1 North America, Inc. (collectively, "Toyota"); Goodyear Dunlop Tires North America, LTD
2 ("Dunlop"); and Bridgestone Firestone North American Tire, LLC ("Bridgestone") in which
3 plaintiffs allege that the run flat tires on plaintiffs' and class members' 2004 and 2005 Toyota
4 Sienna All Wheel Drive vans wore prematurely and unevenly. Also before the Court are plaintiffs'
5 request for an award of attorney's fees, expenses and incentive awards.
6

7 This Court has jurisdiction pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332.

8 After a hearing held on July 7, 2006, this Court preliminarily approved the settlement of
9 these actions. At that time, this Court preliminarily certified the following Settlement Class:

10 All persons residing in the United States who currently own or lease, or previously own or
11 leased, a Toyota Sienna vehicle, model year 2004, 2005 or 2006, produced on or before
12 September 17, 2005, that came factory equipped with Run-Flat tires.

13 Persons affiliated with the defendants, the judge to whom the case is assigned, and persons who
14 timely exclude themselves were excluded from the class.

15 The order appointed Mark Ciabattari and the other named plaintiffs as representative
16 plaintiffs. The order also appointed the law firms of Kemnitzer, Anderson, Barron & Ogilvie LLP;
17 Shepherd, Finkelman, Miller & Shah LLC; and Bernstein Nachman & Feinberg as Lead Counsel.

18 Defendant Toyota was directed to handle claims as provided in the settlement. A third party
19 administrator was directed to provide notice as set forth in the settlement agreement. The Court
20 approved the form and method of providing notice to the class via the Internet and direct mail.

21 Defendant Toyota was directed to use its best efforts to complete dissemination of the notices by
22 September 15, 2006. Toyota complied with the Court's Order.
23

24 The order set October 16, 2006, as the deadline for class members to exclude themselves.

25 The order directed plaintiffs to file their papers in support of final approval of the settlement
26 and to respond to any objections or motions to intervene and to make their request for an award of
27 attorney's fees and expenses by October 27, 2006.
28

1 The order further set November 17, 2006, at 10:00 AM as the date and time for hearing on
2 final approval of the settlement and for award of attorney's fees, expenses and incentive awards.

3 On November 17, 2006, this Court held a hearing on plaintiffs' motion for final approval of
4 the settlement and for an award of attorney's fees, expenses and incentive awards. Mark F
5 Anderson, James E Miller and Robin Nackman appeared for plaintiffs and the class members.
6 Thomas M Riordan appeared for Toyota, Ralph Robinson appeared for Dunlop and Colin P. Smith
7 appeared for Dunlop.
8

9 After reviewing the evidence and arguments presented by the parties, all the papers in the
10 Courts file on this matter, and after colloquy with counsel concerning the settlement, the Court finds
11 as follows:

- 12 1. The class has been adequately represented by competent, experienced counsel;
- 13 2. The class member were given the best notice practicable under the circumstances, and
14 that such notice meets the requirements of the Due Process Clause of the U.S.
15 Constitution, and all applicable statutes and rules of court;
- 16 3. The class members were was given ample opportunity to either exclude themselves or to
17 object to the settlement;
- 18 4. The objections raised by certain class members are without merit; and
- 19 5. The Court finds that the settlement is fair, reasonable and adequate;
- 20
- 21

22 Based on these findings, the Court finally approves the class settlement as provided in the class
23 settlement agreement. Further, the Court hereby certifies the following class:

24 All persons residing in the United States who currently own or lease, or previously own or
25 leased, a Toyota Sienna vehicle, model year 2004, 2005 or 2006, produced on or before
September 17, 2005, that came factory equipped with Run-Flat tires.

26 Further, the Court grants the dismissal with prejudice of this action, and orders Class Counsel to
27 seek the dismissal with prejudice of the related cases pending in the other courts.
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1 The Court also finds that Class Counsel's request for an award of attorney's fees and
2 expenses in the amount of \$945,000 is fair and reasonable and therefore hereby approved. The
3 Court further finds that the request for approval of incentive awards of \$5,000 to each of the nine (9)
4 class representatives for a total amount of \$45,000 is fair and reasonable and is hereby approved.

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6 Finally, the Court shall retain jurisdiction over this matter to the extent necessary to
7 effectuate the settlement.

8 Dated: November 17, 2006.

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12 Judge of the U.S. District Court
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