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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

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2  
3 Mark R Ciabattari, and all other persons  
similarly situated,

4  
5 Plaintiffs,

6 vs.

7 Toyota Motor Sales, U.S.A., Inc., a California  
corporation;  
8 Toyota Motor North America, Inc.,  
9 Goodyear Dunlop Tires North America, LTD.,  
LLC, an Ohio limited liability corporation; and  
10 Bridgestone Firestone North American Tire,  
LLC, a Delaware limited liability company,

11 Defendants.

) Case No. C05-04289 SC

) CLASS ACTION

) ~~Proposed~~ PRELIMINARY  
APPROVAL ORDER Re: CLASS  
ACTION SETTLEMENT

) **Date: July 7, 2006**

) **Time: 10:00**

) **Courtroom: 1**

) **Hon. Samuel Conti**

12 The Parties having filed a joint motion for an order preliminarily approving the  
13 Settlement Agreement and Release (“Agreement”) entered into by Plaintiffs, represented by  
14 Mark Ciabattari (collectively “Plaintiffs”) and Defendants, Toyota Motor Sales, U.S.A., Inc.,  
15 (“TMS”), Toyota Motor North American, Inc., Goodyear Dunlop Tires North American, LTD,  
16 and Bridgestone Firestone North American Tire, LLC (“Defendants”), the Court having  
17 reviewed such motion and the Agreement and exhibits attached thereto and the supporting papers  
18 submitted therewith, and the Court being fully advised:

19 **IT IS HEREBY ORDERED THAT:**

20 1. The Agreement and the settlement set forth therein are preliminarily approved as  
21 fair, reasonable and adequate to allow dissemination of class notice.

22 2. For the purposes of settlement only, pursuant to Rule 23 of Federal Rules of Civil  
23 Procedure, the Court certifies that this action may proceed as a class action on behalf of a  
24 Settlement Class as follows:

25 All persons residing in the United States who currently own or lease, or  
26 previously owned or leased, a Toyota Sienna vehicle, model year 2004, 2005 or  
27 2006, produced on or before September 17, 2005, that came factory equipped  
with Run-Flat Tires.

1 Excluded from the Class are (1) Defendants and their parents, subsidiaries,  
2 affiliates, officers, and directors; (2) the judge to whom this case is assigned and  
3 any member of the judge's immediate family; and (3) persons who have  
submitted a timely and valid request for exclusion from the Settlement Class.

4 3. The declaration that this litigation may be maintained for settlement purposes only as a  
5 class action and the appointment of Class Counsel shall be without force or effect if: (a) the  
6 Court does not give final approval to the Agreement and enter the Final Order and Judgment  
7 substantially in the form described in Paragraph 31 of the Agreement, or (b) this Court's  
8 approval of the Settlement Agreement and/or entry of the Final Order and Judgment are reversed  
9 on appeal.

10 4. Plaintiff, Mark Ciabattari, and the named Plaintiffs in the six related actions  
11 referenced in the Agreement, which also are parties to the settlement are hereby appointed  
12 representative Plaintiffs.

13 5. Kemnitzer, Anderson, Barron & Ogilve, LLP, Shepherd, Finkelman, Miller &  
14 Shah, LLC, and Bernstein Nackman & Feinberg are hereby appointed Lead Class Counsel.

15 6. Hilsoft Notifications is hereby approved as the Settlement Administrator.

16 7. TMS is approved to handle claims for reimbursement as provided in the  
17 Agreement.

18 8. Approval is hereby given to the form of and the provisions for disseminating the  
19 class notice (as set forth in Paragraphs 24 and 25 of the Agreement and Exhibits 2 and 3 thereto)  
20 to Settlement Class Members, which the Court hereby finds constitutes valid, due, and sufficient  
21 notice to Settlement Class Members in full compliance with the requirements of applicable law,  
22 Rule 23 of the Federal Code of Civil Procedure, and the Due Process Clause of the United States  
23 Constitution. The Court finds that the class notice to be given constitutes the best notice  
24 practicable under the circumstances, including individual notice to all Settlement Class Members  
25 whose most current available address can reasonably be found in TMS' own vehicle sales  
26 database and an R.L. Polk & Co. database of registered owners and/or lessees of the Class  
27 Vehicles. Where necessary, R.L. Polk & Co. is authorized to obtain vehicle registration  
28 information concerning current or former owners or lessees of the Class Vehicles from the

1 appropriate state agencies for the sole purpose of providing mailed class notice, and the relevant  
2 state agencies shall make the appropriate vehicle registration data available to R.L. Polk & Co.  
3 for this purpose only. The costs of providing class notice to the Settlement Class Members shall  
4 be borne by Defendants. Further, the Court authorizes the parties to make minor revisions to the  
5 notice as they may jointly deem necessary or appropriate, without the necessity of further Court  
6 action or approval.

7 9. A final approval hearing shall be held by this Court to consider and finally  
8 determine:

9 a. Whether the class settlement should be finally approved as fair, reasonable  
10 and adequate;

11 b. Whether attorneys' fees and expenses should be awarded to Plaintiffs'  
12 counsel, as provided in Paragraph 34 of the Agreement;

13 c. Whether incentive awards should be awarded to the representative  
14 plaintiffs, as provided in Paragraph 34 of the Agreement; and

15 d. Whether any objections to the Agreement and settlement set forth therein  
16 have merit.

17 The final approval hearing described in this paragraph may be postponed, adjourned, or  
18 continued by order of the Court without further notice to the Class Members.

19 10. Any class member who does not request exclusion, and who objects to approval  
20 of the proposed settlement in compliance with the requirements of the Agreement, may appear at  
21 the final approval hearing in person or through counsel to show cause why the proposed  
22 settlement should not be approved as fair, reasonable, and adequate.

23 11. However, no person (other than representatives of the named parties) may be  
24 heard at the final approval hearing, or file papers or briefs, unless on or before the date set forth  
25 in the class notice, such person files with the Clerk of the Court and serves on Lead Class  
26 Counsel and Counsel for TMS, as provided in Paragraph 52 of the Agreement, a timely written  
27 objection and notice of intent to appear, in accordance with the procedures specified in the class  
28 notice. Any class member who does not make his or her objection to the settlement in the

1 manner provided herein and in the Agreement and in compliance with applicable law, shall be  
2 deemed to have waived such objection or right to intervene for purposes of appeal, collateral  
3 attack or otherwise.

4 12. Any class member who desires exclusion therefrom must mail, by the date set  
5 forth in the class notice, a written request for exclusion to the addresses set forth in the class  
6 notice. All persons who properly submit requests for exclusion shall not be part of the settlement  
7 and shall have no rights with respect to the settlement.

8 13. If the Agreement is finally approved, the Court shall enter a final order and  
9 judgment approving the Agreement. Said final order and judgment shall be fully binding with  
10 respect to all class members who did not request exclusion by the date set forth in the class  
11 notice, in accordance with the terms of the class notice and the Agreement.

12 14. All discovery and other pretrial proceedings in this action and any other action  
13 asserting like claims against Defendants are stayed and suspended until further order of this  
14 Court, except as otherwise agreed to by the parties or as may be necessary to implement the  
15 Agreement or this order. Further, after consideration of issues relating to comity and the  
16 complexity of this Litigation, the Court finds that simultaneous proceedings in other fora relating  
17 to the claims in this action would jeopardize this Court's ability to rule on the proposed Class  
18 Settlement, would substantially increase the cost of litigation, would create risk of conflicting  
19 results, would waste Court resources, and could prevent the Plaintiffs and Settlement Class  
20 Members from benefiting from any negotiated settlement. Permitting another court to interfere  
21 with this Court's consideration or disposition of this case would seriously impair this Court's  
22 flexibility and authority to decide this case. The Court, therefore, finds that an order protecting  
23 its jurisdiction is necessary in aid of this Court's jurisdiction.

24 15. In the event that the proposed settlement as provided in the Agreement is not  
25 approved by the Court, or entry of a final order and judgment does not occur for any reason, then  
26 the Agreement, all drafts, negotiations, discussions and documentation relating thereto, and all  
27 orders entered by the Court in connection therewith shall become null and void.

28 In such event, the Agreement and all negotiations and proceedings relating thereto shall  
[Proposed] Preliminary Approval Order – Ciabattari v. Toyota C05-04289 SC

1 be withdrawn without prejudice to any claims, defenses and rights of any and all Parties thereto,  
2 who shall be restored to their respective positions as of the execution of the Agreement.

3 16. The dates of performance of this Order are as follows:

4 a. The class notice shall be disseminated in accordance with Paragraphs 24  
5 and 25 of the Agreement. The parties shall use their best efforts to complete dissemination of  
6 notice by September 15, 2006.

7 b. Requests for exclusion must be received by October 16, 2006.

8 c. Objections to the settlement, requests for intervention and notices of  
9 intention to appear at the final approval hearing shall be deemed timely only if filed with the  
10 Court and served on Plaintiffs' counsel by October 16, 2006.

11 d. Plaintiffs' counsel shall tabulate requests for exclusion from prospective  
12 Settlement Class Members and shall report the names and addresses of such persons to the Court  
13 and to Defendants by October 27, 2006

14 e. Plaintiffs' counsel shall file and serve papers in support of final approval  
15 of the settlement, responding to any objections or motions to intervene, and requesting attorneys'  
16 fees, costs and expenses by October 27, 2006.

17 f. Defendants shall file papers, if any, in support of final approval of the  
18 settlement and responding to any objections or motions to intervene by November 3, 2006.

19 g. By November 3, 2006, Defendants shall certify to the Court that they have  
20 complied with the notice requirements set forth in the Agreement and this order.

21 h. The final approval hearing shall be held on November 17, 2006.

22 IT IS SO ORDERED.

23 ENTERED this 7 day of July 2006

BY THE COURT



Honorable Samuel Conti  
United States District Judge

26 Submitted by: \_\_\_\_\_  
27 Mark F. Anderson  
28 Attorneys for Plaintiff and the Class

**Grossman, Terry**

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**From:** ECF-CAND@cand.uscourts.gov  
**Sent:** Friday, July 07, 2006 10:57 AM  
**To:** efilng@cand.uscourts.gov  
**Subject:** Activity in Case 3:05-cv-04289-SC Ciabattari v. Toyota Motor Sales, U.S.A., Inc. et al "Order on Motion for Settlement"

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**U.S. District Court**

**California Northern District**

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The following transaction was received from tdm, COURT STAFF entered on 7/7/2006 at 10:57 AM and filed on 7/7/2006

**Case Name:** Ciabattari v. Toyota Motor Sales, U.S.A., Inc. et al  
**Case Number:** 3:05-cv-4289  
**Filer:**  
**Document Number:** 65

**Docket Text:**

PRELIMINARY APPROVAL ORDER Re: CLASS ACTION SETTLEMENT by Judge Samuel Conti granting [56] Motion for Settlement (tdm, COURT STAFF) (Filed on 7/7/2006)

The following document(s) are associated with this transaction:

**Document description:**Main Document

**Original filename:**G:\SCALL\PDFtoEFile\05-4289 PRELIMINARY APPROVAL ORDER.pdf

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[STAMP CANDStamp\_ID=977336130 [Date=7/7/2006] [FileNumber=2725169-0] [1e14b0ad65bd7b994c9eacfb7f3db3c8616b75f6fa56af0773692e41fbc54fa69d7c6351018ee3fe9bdc69f6b30b182630632d4c06a4499b51081eac6af602e4]]

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7/7/2006

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