

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

THAD U. BALTIMORE, ETHEL  
BALTIMORE, MARY C. LONDON, and  
FREDERIC A. CONTRERAS

Plaintiffs,

v.

TOYOTA MOTOR CREDIT  
CORPORATION,

Defendant.

Case No. CV 01-05564-FMC (Mcx)

**SETTLEMENT AGREEMENT**

This Settlement Agreement is entered into between Thad U. Baltimore, Ethel Baltimore, Mary C. London, Frederic A. Contreras, Robert DeMent, Lillian Allen, Leonel G. Herra, Damisha Romby, Jaime Medina, Teresa Gonzales, and Charles Amangbo (collectively, the “Class Representatives”), on behalf of themselves and the Class Members, and Toyota Motor Credit Corporation (“TMCC” or the “Company”).

**1. Introduction**

**1.1** Thad U. Baltimore, Ethel Baltimore, Mary C. London, and Frederic A. Contreras are the current plaintiffs in the action entitled *Baltimore, et al. v. Toyota Motor Credit Corporation* (United States District Court for the Central District of California Civil Action No. 01-05564-FMC (Mcx)) (the “*Baltimore Action*”).

1.2 Leonel G. Herra, Damisha Romby, Jaime Medina, Teresa Gonzales, and Charles Amangbo are the plaintiffs in the coordinated action entitled *Finance Charge Markup Cases* (Superior Court of the State of California for the County of San Francisco J.C.C.P. No. 4346).

1.3 The *Baltimore* Action asserts that TMCC violated the Equal Credit Opportunity Act, 15 U.S.C. § 1691, *et seq.*, and its implementing regulations (collectively, the “ECOA”) in connection with the financing of automobiles involving African-American and Hispanic automobile purchasers.

1.4 The *Finance Charge Markup Cases* assert that TMCC violated the Unruh Civil Rights Act, California Civil Code § 51, *et seq.*, and the Unfair Competition Law, California Business & Professions Code § 17200, *et seq.*, in connection with the financing of automobiles involving African-American and Hispanic automobile purchasers.

1.5 The *Baltimore* and *Finance Charge Markup Cases* assert similar claims and have been settled on the basis of coordinated negotiations. For settlement purposes, all claims in the Actions will be consolidated and asserted together in the *Baltimore* Action.

1.6 For administrative convenience and given the different procedural postures of the *Baltimore* Action and the *Finance Charge Markup Cases*, the Parties agree to seek approval of the Settlement by the Court in the *Baltimore* Action.

1.7 TMCC has denied and continues to deny all liability with respect to any and all facts and claims alleged in the *Baltimore* Action and the *Finance Charge Markup Cases* (collectively referred to as the “Actions” or the “Litigation”).

1.8 The Parties and their counsel recognize the risks and costs inherent in litigation. This Litigation is over four years old and has been expensive and time consuming. In the interest of avoiding the expense, delay, inconvenience, and risk of further litigation in the trial and

appellate courts, the Parties desire to resolve the dispute and to fully, finally, and forever resolve, discharge, and settle the Litigation.

1.9 The Parties intend to seek an Order from the Court in the *Baltimore* Action certifying a class in the Litigation under Federal Rule of Civil Procedure 23(b)(2) and (b)(3) for settlement purposes only. TMCC does not concede that class certification is appropriate for any other purpose. If the Court does not approve this Settlement Agreement without material modification, and/or the Settlement embodied herein does not become effective according to its terms upon the Effective Date, the Settlement Class, if certified, shall automatically be decertified, the Parties shall be returned to the *status quo ante*, and the Actions shall proceed as if this Settlement Agreement had never been negotiated or executed and no class had been certified. In the event that the Settlement does not become effective, TMCC shall have the right to object to class certification on all available bases as if this Settlement Agreement had never been negotiated or executed, and this Settlement Agreement and its existence shall be inadmissible to establish any fact relevant to class certification or any alleged liability of TMCC for the matters alleged in the Actions or for any other purpose. Although the Settlement Class will be certified under Federal Rule of Civil Procedure 23(b)(2) and (b)(3), members of the Settlement Class shall be permitted to opt-out of the Settlement, subject to the limitations on opt-outs set forth below.

1.10 The Parties intend to seek entry of the Preliminary Approval Order attached hereto as Exhibit 1 and the Final Judgment attached hereto as Exhibit 4 approving this Settlement Agreement. For the purposes of this Settlement, the Class Members will be defined as set forth below and in the Third Amended Complaint, which is being contemporaneously filed with this Settlement Agreement. The Parties' agreement is based on the representations, mutual

promises, obligations, and good and valuable consideration set forth in this Settlement Agreement.

## 2. **Definitions**

As used in this Settlement Agreement, the terms set forth in this Section in boldface type will have the following meanings:

**2.1 Annual Percentage Rate or APR.** The measure of the cost of credit, expressed as a yearly rate, as defined in Regulation Z, 12 C.F.R. part 226, implementing the Truth in Lending Act, 15 U.S.C. § 1601, *et seq.*

**2.2 Buy Rate.** The minimum percentage rate at which TMCC approves credit and agrees to accept assignment of a Contract from a dealer, as reflected in TMCC rate sheets.

**2.3 Claim Form.** The claim form to be provided to Eligible Claimants, in the form agreed to by the parties and approved by the Court.

**2.4 Class Complaint.** The Third Amended Complaint to be filed by plaintiffs in the *Baltimore* Action, upon approval of the Court, which shall add as named class representatives Robert DeMent, Lillian Allen and the plaintiffs from the *Finance Charge Markup Cases*, include the legal claims from the *Finance Charge Markup Cases*, and define the Settlement Class as set forth below.

**2.5 Class Counsel.** The phrase “Class Counsel” refers collectively to plaintiffs’ counsel in the *Baltimore* Action and plaintiffs’ counsel in the *Finance Charge Markup Cases*, which are defined as follows:

**2.5.1 Baltimore Counsel.**

Darnley D. Stewart of Bernstein Litowitz Berger & Grossman LLP in New York, New York; Clint W. Watkins of the Law Office of Clint Watkins in Brentwood, Tennessee; Michael

E. Terry of Terry & Gore P.C. in Nashville, Tennessee; Wyman O. Gilmore of Gilmore Law Office in Grove Hill, Alabama; and Stuart T. Rossman of the National Consumer Law Center in Boston, Massachusetts.

**2.5.2 Finance Charge Markup Cases Counsel.**

Bill Lann Lee, Michael W. Sobol, and Lori E. Andrus of Lieff, Cabraser, Heimann & Bernstein LLP, San Francisco, California; John T. Crowder, Jr., Richard T. Dorman, Robert T. Cunningham, Jr., and R. Edwin Lamberth of Cunningham, Bounds, Yance, Crowder & Brown L.L.C., Mobile, Alabama; Frederic D. Woocher, and Michael J. Strumwasser, Strumwasser & Woocher, Santa Monica, California; Oren M. Sellstrom, Lawyers' Committee for Civil Rights, San Francisco, California; Reginald Terrell, Terrell Law Group, Richmond, California; and C. Donald Amangbo, Amangbo & Associates, PLC, Oakland, California.

**2.6 Class Representatives.** The phrase "Class Representatives" refers collectively to the *Baltimore* Action Class Representatives (*i.e.*, Thad U. Baltimore, Ethel Baltimore, Mary C. London, Robert DeMent, Lillian Allen and Frederic A. Contreras) together with the *Finance Charge Markup Cases* Class Representatives (*i.e.*, Leonel G. Herra, Damisha Romby, Jaime Medina, Teresa Gonzales, and Charles Amangbo).

**2.7 Confidential Information.** All "Confidential Information" designated pursuant to the Protective Order dated December 6, 2001 in the *Baltimore* Action and all documents and things produced as discovery materials by the Parties or any third party or any of the Parties' expert witnesses, during the course of this Litigation, including, without limitation, all deal jackets, contract information, customer information, electronic data, data dictionaries, dealer bulletins, credit information, account information, marketing materials, internal memoranda, and other communications, audio recordings, and all reproductions of these discovery materials,

whether photocopies, scanned copies, electronic copies, and printouts or copies created by any other method of reproduction. Notwithstanding the above, all documents and information described in this Paragraph that were filed in the public record during the course of this Litigation, unless filed under seal or designated "Confidential Information" pursuant to the Protective Order dated December 6, 2001 in the *Baltimore* Action, shall not be deemed Confidential Information.

**2.8 Contract.** A motor vehicle retail installment sale contract entered into between a motor vehicle dealership and a vehicle purchaser.

**2.9 *Baltimore* Court or Court.** The United States District Court for the Central District of California, Western District.

**2.10 *Finance Charge Markup Cases* Court or Superior Court.** The Superior Court of the State of California for the County of San Francisco.

**2.11 ECOA.** Equal Credit Opportunity Act, 15 USC § 1691, *et seq.*, and its implementing Regulation B, 12 C.F.R. part 202.

**2.12 Effective Date.** Five days after the last of the following dates: (i) the entry of Final Judgment approving the Settlement; (ii) the final disposition of any related appeals, and in the case of no appeal or review being filed, expiration of the applicable appellate period; and (iii) the dismissal with prejudice of the *Finance Charge Markup Cases*.

**2.13 Eligible Claimant.** A member of the Settlement Class who meets the criteria set forth in subparagraphs A.) or B.) of Paragraph 7.6.

**2.14 Final Judgment.** The Final Judgment and Order of Dismissal With Prejudice to be rendered by the Court consistent with this Settlement Agreement in the form attached hereto as Exhibit 4.

**2.15 Mailed Notice.** The Notice of Proposed Class Action Settlement attached hereto as Exhibit 2.

**2.16 Notice.** The Mailed Notice and Publication Notice.

**2.17 Parties.** The Class Representatives, on behalf of themselves and the Class Members, and TMCC.

**2.18 Preliminary Approval.** The date upon which the Court signs the Preliminary Approval Order.

**2.18.1 Preliminary Approval Order.** The Order of Preliminary Approval of Settlement in the form attached hereto as Exhibit 1.

**2.19 Publication Notice.** The Summary Notice of Proposed Class Action Settlement attached hereto as Exhibit 3.

**2.20 Released Claims.** The claims referred to in Paragraphs 6.1, 6.2 and 6.3 of this Settlement Agreement.

**2.21 Settlement.** The full and final compromise, settlement, and dismissal of the Litigation consistent with the terms of this Settlement Agreement.

**2.22 Settlement Agreement.** This document, including the text and exhibits, which has been signed by the Class Representatives, Class Counsel, and TMCC or its counsel.

**2.23 Settlement Class or Class Members.** All African-American and Hispanic customers of TMCC who entered into a retail installment contract (excluding lease contracts) that was assigned to TMCC in the United States between January 1, 1990 and the date of Preliminary Approval of the Settlement in this Litigation.

**2.24 Special Rate Programs.** Rate programs available from time to time for the purchase of new or used automobiles in which the APR is less than or equal to TMCC's standard Buy Rate.

**2.25 Term.** Unless otherwise specified, this Settlement Agreement is effective for a three (3) year period beginning on the Effective Date.

**3. Return of Confidential Information and Other Discovery**

The Parties, on behalf of themselves, their counsel, and their expert witnesses and consultants, as well as others retained by them, acknowledge that they have received Confidential Information during the course of the Litigation. Not later than thirty (30) days after the Effective Date, the Parties and their counsel will discard all Confidential Information and will certify under oath that they and their expert witnesses and consultants do not retain any copies, summaries, compilations, or indices of any such information. The Parties also will not use any of the Confidential Information learned or obtained in this Litigation for any other purpose. Notwithstanding the above, all documents and information described in this Paragraph that were filed in the public record during the course of this Litigation (unless filed under seal or designated "Confidential Information" pursuant to the Protective Order dated December 6, 2001 in the *Baltimore* Action) will not be subject to the provisions of this Paragraph. In addition, the firm of Bernstein Litowitz Berger & Grossmann LLP may retain copies of all deposition transcripts and exhibits for a period of seven (7) years. The provisions of this Paragraph shall take precedence over Paragraph 10 of the Protective Order dated December 6, 2001 in the *Baltimore* Action relating to the return and/or destruction of any "Confidential Information" designated pursuant to such Protective Order.



#### 4. Non-Disparagement Clause

The Parties and/or their counsel shall not issue press releases or make other public statements regarding the Settlement prior to final approval of the Settlement by the *Baltimore* Court unless the Parties agree to such press releases or public statements in advance. The Parties and/or their counsel shall make no statements to any third party regarding the Settlement prior to entry of the Preliminary Approval Order unless such statements are required by law. The Class Representatives and Class Counsel shall refrain from disparaging TMCC publicly or in the media or taking any action designed to harm the public perception of TMCC regarding any issue related to the Litigation. TMCC and its counsel agree to refrain from disparaging Class Counsel and the Class Representatives, publicly or in the media, regarding any issue related to the Litigation. The Parties may make public statements to the Courts as necessary to obtain approval of the Settlement by the Courts. This provision shall not prohibit Class Counsel from communicating with Settlement Class members regarding the Litigation or the Settlement, provided, however, that Class Counsel must comply with all confidentiality agreements and any protective orders in the Actions in communicating with Settlement Class members.

#### 5. Denial of Liability

TMCC expressly denies any wrongdoing or liability. The Court has not made any finding of any unlawful discrimination resulting from TMCC's business practices, and TMCC believes that there is no basis for any finding of liability against TMCC based on any of the liability theories alleged in the Litigation. This Settlement Agreement represents the compromise of disputed claims. It reflects the Parties' recognition that continued litigation of these claims would severely burden all concerned and would require a massive commitment of time, resources, and money. The Settlement Agreement does not constitute, is not intended to

constitute, and shall not under any circumstances be deemed to constitute, an admission by any Party as to the merits, validity, or accuracy, or lack thereof, of any of the allegations or claims in this Litigation. The Settlement Agreement does not constitute a waiver of any defenses that TMCC may be entitled to assert in this Litigation or any future or other litigation.

## **6. Released Claims**

**6.1 Class Representatives.** The Class Representatives consent to the dismissal of the Actions with prejudice. The Class Representatives, on behalf of themselves and their assignees, agents, and representatives, and all those acting on their behalf with respect to their TMCC account(s), also forever release, waive, discharge, and agree to the dismissal of, with prejudice, all claims, whether known or unknown and suspected or unsuspected, against TMCC (defined here to include all of its parents, subsidiaries, affiliates, agents, predecessors, successors, vendors, assignors, assignees, and/or assigns) for equitable, declaratory, injunctive, or monetary relief that were alleged or could have been alleged based on the facts forming the basis for the Actions, including under the ECOA, the Unruh Civil Rights Act, California Civil Code § 51, *et seq.*, the Unfair Competition Law, California Business & Professions Code § 17200, *et seq.*, or any other federal or state statute, local ordinance, or common law theory, including but not limited to any anti-discrimination statute, deceptive or unfair practices statute, or any other statutory scheme.

**6.2 Class Members.** The Class Representatives, on behalf of themselves and the Class Members, consent to the dismissal of the Actions with prejudice. The Class Members, on behalf of themselves and their assignees, agents, and representatives, and all those acting on their behalf with respect to their TMCC account(s), also forever release, waive, discharge, and agree to the dismissal of, with prejudice, all claims, whether known or unknown and suspected or

unsuspected, against TMCC (defined here to include all of its parents, subsidiaries, affiliates, agents, predecessors, successors, vendors, assignors, assignees, and/or assigns) for equitable, declaratory, injunctive, or monetary relief that were alleged or could have been alleged based on the facts forming the basis for the Actions, including under the ECOA, the Unruh Civil Rights Act, California Civil Code § 51, *et seq.*, the Unfair Competition Law, California Business & Professions Code § 17200, *et seq.*, or any other federal or state statute, local ordinance, or common law theory, including but not limited to any anti-discrimination statute, deceptive or unfair practices statute, or any other statutory scheme.

**6.3 Unknown Claims.** Without limiting the foregoing, the Released Claims specifically extend to claims that the members of the Settlement Class do not know or suspect to exist in their favor at the time that the Settlement, and the releases contained therein, becomes effective. This Paragraph constitutes a waiver of Section 1542 of the California Civil Code and of any other laws to similar effect. 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 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

The Class Representatives understand and acknowledge, and each member of the Settlement Class shall be deemed to understand and acknowledge, the significance of this waiver of California Civil Code Section 1542 and/or of any other applicable law relating to limitations on releases. In connection with such waiver and relinquishment, the Class Representatives acknowledge, and each member of the Settlement Class shall be deemed to acknowledge, that they are aware that they may hereafter discover facts in addition to, or different from, those facts which they now know or believe to be true with respect to the subject matter of this Settlement

Agreement, but that it is their intention to release fully, finally, and forever all Released Claims, and in furtherance of such intention, the release of the Released Claims shall be and remain in effect notwithstanding the discovery or existence of any such additional or different facts.

## 7. Classwide Settlement Relief

**7.1 Commitment to ECOA Principles.** TMCC restates its long-standing commitment to the principles embodied in the ECOA.

**7.2 Contract Disclosure.** Unless otherwise prohibited by law, within thirty (30) days following the Effective Date, and thereafter during the Term of the Settlement Agreement, TMCC will include the following disclosures in all Contract forms it prepares and distributes to dealers:

***THE ANNUAL PERCENTAGE RATE MAY BE NEGOTIATED WITH THE DEALER. THE DEALER MAY ASSIGN THIS CONTRACT AND RETAIN ITS RIGHT TO RECEIVE A PART OF THE FINANCE CHARGE.***

Where allowed by applicable law, the disclosure will be set forth in bold-font, italicized, 10-point type on the front side of the contract near the customer's signature line. It is expressly understood that the foregoing disclosures are only required to be included in form Contracts prepared by TMCC and are not required to be included in any non-TMCC form contracts used by dealers and assigned to TMCC. The disclosure will also be included in Spanish in any Spanish translations of Contracts that TMCC produces and distributes to dealers.

**7.3 Limit On Difference Between APR and Buy Rate.** Within thirty (30) days following the Effective Date and thereafter during the Term of the Settlement Agreement, TMCC will not acquire any Contract or accept for assignment any Contract with a term of 60 months or fewer if the APR is more than two and one-half percentage points (2.5%) above the Buy Rate; TMCC will not acquire any Contract or accept for assignment any Contract with a

term of greater than 60 months up to and including 71 months if the APR is more than two percentage points (2.0%) above the Buy Rate; and TMCC will not acquire any Contract or accept for assignment any Contract with a term equal to or greater than 72 months if the APR is more than one and three-quarters of a percentage point (1.75%) above the Buy Rate.

**7.4 Consumer Education and Assistance Programs.** Within ninety (90) days following the Effective Date, TMCC shall make a *cy pres* contribution in the aggregate amount of \$750,000 to a not-for-profit entity or entities proposed by Class Counsel and mutually agreed upon by the Parties to be used for charitable or consumer-education purposes with a focus on minorities. The Parties agree that the money will not be used to fund efforts to bring or continue any affirmative suits against TMCC. TMCC's name may not be used by the recipients absent TMCC's prior written approval. Not later than fifteen days prior to the preliminary approval hearing, Class Counsel shall provide written notice to TMCC of the proposed recipients selected and the amount to be contributed to each. In the event that TMCC objects to any recipient designated by Class Counsel, the Parties shall attempt in good faith to resolve this dispute informally before Preliminary Approval and, in the event the dispute cannot be resolved, shall jointly submit the dispute to the Court for final determination. For good cause, the Parties may subsequently seek to identify an alternative recipient of the *cy pres* contribution.

**7.5 Diversity Marketing Initiative.** Following the Effective Date, TMCC will launch a Diversity Marketing Initiative ("DMI") involving preapproved firm offers of credit ("DMI Preapprovals") to Identified Preapproval Candidates, as defined in Paragraph 7.5.1. The objectives of the DMI include: (1) to provide consumer education to Class Members and other African-American and Hispanic consumers by informing them of the Special Rate Programs for which they are eligible; and (2) to provide Class Members and other African-American and

Hispanic consumers information to facilitate comparison shopping and/or to allow them to consummate a Special Rate Program Contract with a dealership that can assign the Contract to TMCC.

**7.5.1 Identified Preapproval Candidates.** TMCC will use the list of customers determined to be likely to be African-American or Hispanic pursuant to Paragraph 11.1, which it may supplement with other available marketing sources, to identify Class Members, current or former owners of Toyota or Lexus vehicles, and other consumers who are reasonably likely to be African-American or Hispanic and who will receive DMI Preapprovals (“Identified Preapproval Candidates” or “IPCs”). Without limiting TMCC’s discretion to choose the marketing sources it deems to be the most effective, Class Counsel will suggest at least two examples of available marketing sources with the capability to identify African-American and Hispanic marketing prospects, including marketing sources that identify Hispanics by surname. TMCC is specifically authorized by the Court to use the list of customers determined to be likely to be African-American or Hispanic pursuant to Paragraph 11.1 along with other available marketing sources to identify IPCs in connection with the DMI. By agreeing to use this information for the purpose of the DMI, TMCC is not in any way conceding that the means used to identify African-American and Hispanic consumers for purposes of the DMI constitute reasonably reliable means of identifying Class Members.

**7.5.2 Firm Offers of Credit.** TMCC will offer a minimum of 850,000 DMI Preapprovals to IPCs, offering credit at or below TMCC’s then-current Buy Rate (which cannot be marked up) with respect to such customers. DMI Preapprovals shall be provided over a period of not more than five years to IPCs. To the extent possible, DMI Preapprovals will be made available in the first instance to members of the Settlement Class.

Screening of IPCs for issuance of pre-approved firms offers of credit is subject to TMCC's normal credit-screening parameters, which may change from time to time. IPCs receiving the DMI Preapprovals must meet TMCC's credit-risk criteria for the acquisition of Contracts in place at the time of the particular offering. TMCC may also implement procedures designed to limit the issuance of multiple offers to the same individual in any given time period.

IPCs receiving DMI Preapprovals will be advised that they are preapproved for credit up to a specified dollar amount for the purchase of a new or, if applicable, used Toyota or Lexus vehicle. IPCs receiving DMI Preapprovals will be specifically informed of the specific APR that they are eligible for, based upon the pre-approved criteria and as permitted by federal law, which may vary based on the term of the credit transaction chosen. The DMI Preapproval will specify that the recipient is preapproved with respect to vehicle financing at a participating TMCC dealership for a period of not less than 90 days. Accompanying the DMI Preapprovals will be information communicating the current availability of one or more Special Rate Programs. The IPCs do not need to receive the DMI Preapprovals simultaneously, nor must their DMI Preapprovals include the same dollar amount or reference the same Special Rate Program or all vehicles available. The DMI Preapprovals will be nontransferable. DMI Preapproval materials will include a toll-free telephone number that may be called to obtain a Spanish-language translation of the DMI Preapproval and related information.

The DMI Preapprovals may be contingent on conditions, including but not limited to: the IPC's presentation of a preapproval certificate to a participating TMCC dealership; the IPC's signature on the certificate together with valid proof of identity; and compliance with the parameters of the DMI Preapproval offer regarding, among other things, dollar limits, rate,

monthly term, and other disclosed criteria; and no material change in circumstances such as the filing of a new bankruptcy.

Class Counsel and the Class Members agree that (1) the DMI does not violate ECOA or any other state or federal statute or regulation prohibiting discrimination on the basis of race or ethnicity or any other statute, regulation, or common law, and (2) they are estopped from contending in any future litigation that the DMI violates the ECOA or any other state or federal statute or regulation prohibiting discrimination on the basis of race or ethnicity or any other statute, regulation, or common law.

**7.6 Monetary Relief.** In addition to the relief described above, members of the Settlement Class who meet the criteria described in Subparagraphs A.) or B.) of this Paragraph and timely submit a valid Claim Form shall be eligible for a monetary award pursuant to a claims process. Claim Forms shall be mailed to Eligible Claimants by first-class mail, postage prepaid, within forty-five (45) days after the Effective Date. Completed Claim Forms must be received by the settlement administrator within ninety (90) days after the Effective Date in order to be considered timely and must be completed in full in order to be considered valid. Within forty-five (45) days following the last day for timely receipt of completed Claim Forms, TMCC or the settlement administrator shall mail by first-class mail, postage prepaid, a certificate of credit or check, as applicable, to each Eligible Claimant who timely submits a valid Claim Form. The certificates of credit issued by TMCC to Eligible Claimants shall not expire. TMCC will not be required to track the use of the certificates of credit or to issue replacement certificates. Only one claim may be made per account. Disputes regarding the validity of Claim Forms will, in the first instance, be addressed informally between counsel for the Parties and, if necessary, resolved by the Court.



**A.)** Eligible Claimants who: (i) were the primary accountholder on a Contract assigned to TMCC at any time on or after November 2, 1998; (ii) as of the date of Preliminary Approval, paid \$750 or more above the applicable Buy Rate in total finance charges on the Contract; (iii) as of the date of Preliminary Approval, made at least one year of payments to TMCC on the Contract; and (iv) whose account was not charged off or subject to a bankruptcy, shall recover as follows:

(1) for those Eligible Claimants who paid between \$750 and \$1,000 over the applicable Buy Rate, a choice of either a \$150 certificate of credit applicable toward their next financing with TMCC or a check for \$100;

(2) for Eligible Claimants who paid between \$1,001 and \$2,000 over the applicable Buy Rate, a choice of either a \$250 certificate of credit applicable toward their next financing with TMCC or a \$150 check; and

(3) for Eligible Claimants who paid \$2,001 or more over the applicable Buy Rate, a choice of either a \$400 certificate of credit applicable toward their next financing with TMCC or a check for \$225.

**B.)** Alternatively, Eligible Claimants who: (i) entered into a Contract that was assigned to TMCC within the twelve (12) months before Preliminary Approval; (ii) as of thirty (30) days prior to Preliminary Approval paid \$150 or more above the applicable Buy Rate in total finance charges on the Contract; and (iii) whose account was not charged off or subject to a bankruptcy, shall be eligible to choose between a \$50 certificate of credit applicable towards their next financing with TMCC or a check for \$25. If, however, their recovery would be greater under the formulation set forth in 7.7 A.) above, they shall be entitled to recover the greater of the two amounts.

C.) All Eligible Claimants are eligible to opt-out of the Settlement (the “Opt-Out Right”). Each Eligible Claimant wishing to exercise an Opt-Out Right must submit a written letter, signed by the Eligible Claimant, that includes the following information: (i) his or her name, address, and telephone number; (ii) his or her minority status; (iii) his or her TMCC account number and social security number; and (iv) whether such Eligible Claimant is represented by counsel and if so, the name, address and telephone number of his or her lawyer. A copy of the letter must be sent to the settlement administrator as set forth in the Notice and postmarked on or before the last day of the opt-out period (to be determined by the *Baltimore* Court). The settlement administrator and/or its agent shall promptly forward copies of any such letter to Class Counsel, and TMCC and shall file a list of all such Eligible Claimants who exercise an Opt-Out Right with the Court under seal. If the number of members of the Settlement Class who opt-out exceeds 2,000, TMCC may terminate the Settlement in its sole discretion, and the Parties shall be returned to the *status quo ante* as if the Settlement had not been negotiated or entered into.

**8. Payments to Class Representatives.**

TMCC will not oppose and, subject to Court approval, will pay, the following incentive awards totaling \$95,000 to the Class Representatives within thirty (30) days after the Effective Date. These payments shall be based on the Class Representatives’ respective level of participation in the Litigation including, but not limited to, whether the Class Representative’s deposition was taken:

Thad U. Baltimore and Ethel Baltimore: \$15,000

Mary C. London: \$10,000

Frederic A. Contreras: \$10,000

Robert DeMent: \$5,000

Lillian Allen: \$5,000

Leonel G. Herra: \$10,000

Damisha Romby: \$10,000

Jaime Medina: \$10,000

Teresa Gonzales: \$10,000

Charles Amamgbo: \$10,000

TMCC's agreement to make these payments shall in no way be construed as an admission by TMCC that the Class Representatives suffered any monetary or other damages. The Settlement shall not be conditioned upon Court approval of payments to the Class Representatives under this Paragraph.

**9. Attorneys' Fees and Litigation Expenses and Reimbursements**

Class Counsel intend to request approval of attorneys' fees and litigation-related reimbursements in an amount not to exceed an aggregate amount of Ten Million Six Hundred Thousand (\$10,600,000.00) Dollars. TMCC will not oppose any such request and will pay any fees and litigation-related reimbursements approved by the Court in an amount that does not exceed Ten Million Six Hundred Thousand (\$10,600,000.00) Dollars within thirty (30) days after the later of (i) the Effective Date or (ii) the date that the award of fees and expenses becomes final and non-appealable. TMCC will also not appeal any approval of fees and litigation-related expenses that does not exceed an aggregate amount of Ten Million Six Hundred Thousand (\$10,600,000.00) Dollars. The Settlement shall not be conditioned upon Court approval of the fees and expenses sought by Class Counsel. The amount paid pursuant to this

Paragraph shall be in full satisfaction of all claims by all counsel for plaintiffs in the *Baltimore* Action and the *Finance Charge Markup Cases* for attorneys' fees and expenses.

#### **10. Dismissal of Litigation**

Promptly after execution of this Settlement Agreement, the Parties will submit this Settlement Agreement to the *Baltimore* Court for approval and apply to the Court for entry of the Preliminary Approval Order. In connection with that submission, TMCC, the Class Representatives, and the Class Members stipulate to entry of the following orders:

**10.1 Order of Preliminary Approval of Settlement.** Entry of the Preliminary Approval Order in the form attached hereto as Exhibit 1 granting preliminary approval of the Settlement Agreement, setting a Fairness Hearing for final approval, and providing for Notice, in the forms attached hereto as Exhibits 2 and 3, in the manner set forth in the Settlement Agreement.

**10.2 Order of Final Approval of the Settlement.** Entry of the Final Judgment granting final approval of the Settlement Agreement and dismissal of the Litigation with prejudice, in the form attached hereto as Exhibit 4.

#### **11. Notice and Settlement Administration**

**11.1 Notice.** Mailed Notice will be provided to all customers of TMCC who entered into a Contract that was assigned to TMCC in the United States between January 1, 1990 and the date of Preliminary Approval whose addresses can be reasonably obtained from TMCC's existing database and who are determined to be likely to be African-American or Hispanic according to criteria supplied by Class Counsel. Class Counsel shall provide TMCC with all criteria to be utilized for identifying African-American and Hispanic customers from TMCC's

database. Class Counsel shall fully cooperate with TMCC in using the supplied criteria to compile the list of Class Members.

Within seventy-five (75) days after Preliminary Approval, the settlement administrator shall cause copies of the Mailed Notice to be mailed to each customer determined to be likely to be African-American or Hispanic according to Class Counsel's criteria. In the event that TMCC is unable, despite diligent efforts, to assemble the list of Class Members and the settlement administrator is unable to mail the Mailed Notice within this time period, TMCC may request a fifteen (15) day extension of time from Class Counsel, which shall not be unreasonably refused. If good cause exists, this deadline may be further extended by agreement of the Parties or order of the Court. Mailed Notice shall go to the primary account holder's address and shall be deemed sufficient notice to all obligors on an account. TMCC will use the list of Class Members exclusively for the purpose of the Settlement and will not use such information for any other purpose, except that TMCC may share such information with its parents, affiliates, or subsidiaries, to the extent permitted by federal or state law.

On or before the last day to complete mailing of the Mailed Notice, the Parties shall cause the Publication Notice to be published one time each in *USA Today*, *La Opinion* (Los Angeles, California), *El Diario* (New York, New York), *El Nuevo Herald* (Miami, Florida) and *Diario Estrella* (Dallas/Ft. Worth, Texas). The Publication Notice published in *La Opinion*, *El Diario*, *El Nuevo Herald*, and *Diario Estrella* will be in both Spanish and English.

**11.2 Settlement Administration.** All costs associated with the notice and claims administration shall be paid by TMCC. The Parties shall jointly select a settlement administrator. In the event that the Parties cannot agree on the selection of a settlement

administrator after attempting in good faith to resolve the dispute informally before Preliminary Approval, the Parties shall jointly submit the dispute to the Court for final determination.

**12. Exception for Compliance with Legislative/Regulatory Requirements**

If any state or federal legislative or regulatory body or agency adopts legislation, regulations, or rules that govern the pricing or disclosure components of the credit transactions that are included within the terms of this Settlement Agreement, TMCC must still comply with the terms of this Settlement Agreement unless such compliance would conflict with any such legislation, regulations, or rules. In such event, TMCC's compliance with such legislation, regulations, or rules shall be deemed to constitute satisfaction of the relevant terms of the Settlement Agreement, provided that, regardless of the terms of any such legislation, regulations, or rules, TMCC will not acquire any Contract during the term of the Settlement Agreement that contains an APR for which the difference between the Buy Rate and the APR is greater than permitted by Paragraph 7.3 of the Settlement Agreement.

**13. Notices**

Any communication, verification or notice sent by Class Counsel or a party in connection with this Settlement Agreement shall be effected by facsimile and overnight courier as follows:

**To Plaintiffs:**

National Consumer Law Center  
Attn: Stuart T. Rossman  
77 Summer Street, 10<sup>th</sup> Floor  
Boston, MA 02110-1006  
Fax: (617) 542-8028

Michael W. Sobol  
Lief Cabraser Heimann & Bernstein, LLP  
275 Battery Street, 30th Floor  
San Francisco, CA 94111

**To TMCC:**

Julia B. Strickland  
Stroock & Stroock & Lavan LLP  
2029 Century Park East, 18th Floor  
Los Angeles, CA 90067-3086  
Fax: (310) 556-5959

**With a Copy To:**

Toyota Motor Credit Corporation  
Legal Department  
Attn: Teri L. Paul, Esq.  
P.O. Box 2958, Mail Drop EF12

#### 14. Miscellaneous

**14.1 Entire Agreement.** This Settlement Agreement contains the entire agreement between the Parties and supersedes all prior understandings, agreements, or writings regarding the subject matter of this Settlement Agreement.

**14.2 No Liability by TMCC.** The Settlement Agreement does not constitute, is not intended to constitute, and will not under any circumstances be deemed to constitute an admission by any Party as to the merits, validity, or accuracy, or lack thereof, of any of the allegations or claims in this Litigation. The Settlement Agreement does not constitute a waiver of any defenses or affirmative defenses TMCC may be entitled to assert in any future or other litigation, including the applicable statute of limitations.

**14.3 Invalidity.** If the Settlement Agreement does not become effective or is limited or materially modified by any court, or is deemed null and void for any other reason, nothing in this Settlement Agreement will be deemed to waive any of the objections and defenses of TMCC (including its objections to class certification), and neither this Settlement Agreement nor any related proceedings relating to its approval will be admissible in any court regarding the propriety of class certification or any other issue that is the subject of this Litigation.

In the event any court disapproves or sets aside this Settlement Agreement or any material part for any reason, or holds that it will not enter or give effect to the Final Judgment without material modification, or holds that the entry of the Final Judgment or any material part should be overturned or modified in any material way, then:

(A) If all Parties do not agree jointly to appeal such ruling, this Settlement Agreement will become null and void, and the Litigation will continue, and the Parties stipulate

to a joint motion (i) that any and all orders entered pursuant to this Settlement Agreement be vacated, including, without limitation, class-certification and any order permitting the amending of the complaint, and (ii) that any and all dismissals pursuant to this Settlement Agreement be vacated; or

(B) if the Parties do agree to jointly appeal such ruling and if the Final Judgment or its equivalent in all material respects is not in effect after the termination of all proceedings arising out of such appeal, this Settlement Agreement will become null and void, and the Litigation will continue, and the Parties stipulate to a joint motion (i) that any and all orders entered pursuant to this Settlement Agreement be vacated, including, without limitation, class-certification and any order permitting the amending of the complaint, and (ii) that any and all dismissals pursuant to this Settlement Agreement be vacated.

**14.4 Amendment.** This Settlement Agreement may be amended or modified only by a written instrument signed by all Parties or their successors in interest, or their counsel.

**14.5 Signatures.** The Parties and their counsel may sign separate copies of this Settlement Agreement, which together will constitute one agreement. Each person executing this Settlement Agreement warrants that such person has the full authority to do so. In addition, signature by facsimile will constitute sufficient execution of this Settlement Agreement.

**14.6 Best Efforts.** The Parties agree that the terms of the Settlement Agreement reflect a good-faith settlement of disputed claims. Class Counsel consider the Settlement to be fair and reasonable and will use their best efforts to seek approval of the Settlement Agreement by the Court.



**15. Annual Certification**

On or before the annual anniversary date of the Effective Date, during the term of this Settlement Agreement, TMCC will provide a certification to Class Counsel stating: (i) the number of DMI Preapprovals since the Effective Date, a sample copy of which will be attached — but only until the full amount of all such offers have been issued; (ii) that all Contract forms produced and distributed by TMCC to dealerships included a disclosure complying with Paragraph 7.2, along with a sample copy; and (iii) that all Contracts acquired during the previous year comply with the limit on the difference between the APR and Buy Rate expressed in Paragraph 7.3.

**16. Stay/Bar of Other Proceedings**

All proceedings in the *Baltimore* Action shall be stayed following Preliminary Approval of the Settlement, except as may be necessary to implement the Settlement or comply with the terms of the Settlement. Pending final determination of whether the Settlement should be finally approved, including any appeals, the Parties will not pursue in the *Baltimore* Action any claims or defenses otherwise available to them in the Litigation. The Settlement further is expressly conditioned upon the entry by the Court in the *Baltimore* Action of an order, pending the Effective Date, enjoining all members of the Settlement Class directly, on a representative basis, or in any other capacity, from commencing or prosecuting against TMCC or any released party any action or proceeding in any court, arbitration forum or tribunal asserting any of the Released Claims.

All proceedings in the coordinated action entitled *Finance Charge Markup Cases* (Superior Court of the State of California for the County of San Francisco J.C.C.P. No. 4346) shall be stayed following Preliminary Approval of the Settlement, except as may be necessary to

implement the Settlement or comply with the terms of the Settlement. The *Finance Charge Markup Cases* will be dismissed with prejudice not later than immediately following Final Approval of the Settlement.

Approved as of January 18, 2006.

**Baltimore Class Counsel On Behalf of  
Class Members**

  
\_\_\_\_\_  
One of Their Attorneys

Darnley D. Stewart  
Bernstein, Litowitz, Berger & Grossman LLP

Clint W. Watkins  
Law Offices of Clint Watkins

Michael E. Terry  
Terry & Gore

Wyman O. Gilmore  
Gilmore Law Office

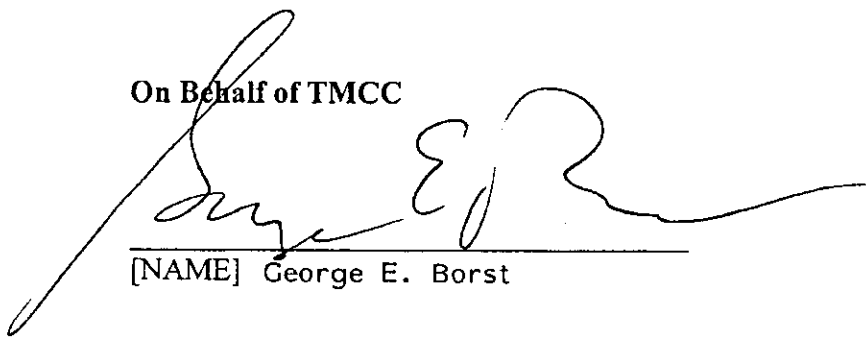
Stuart T. Rossman  
National Consumer Law Center

***Finance Charge Markup Cases Counsel***

\_\_\_\_\_  
**Michael W. Sobol**  
One of Their Attorneys

Bill Lann Lee  
Michael W. Sobol  
Lori E. Andrus  
Lieff Cabraser Heimann & Bernstein  
Embarcadero Center West  
275 Battery Street, 30th Floor  
San Francisco, CA 94111

**On Behalf of TMCC**

  
\_\_\_\_\_  
[NAME] George E. Borst

[TITLE] President & Chief Executive Officer

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Approved as of January 18, 2006.

**Baltimore Class Counsel On Behalf of  
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**On Behalf of TMCC**

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One of Their Attorneys

\_\_\_\_\_  
[NAME]

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[TITLE]


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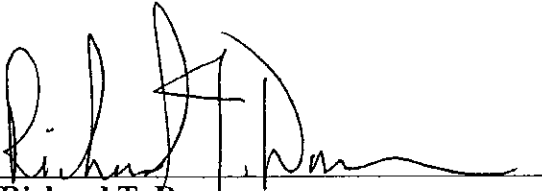
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***Finance Charge Markup Cases Counsel***

  
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One of Their Attorneys

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Robert T. Cunningham, Jr.  
R. Edwin Lamberth  
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& Brown, L.L.C.  
1601 Dauphin St.  
Mobile, AL 36604

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**Reginald Terrell**  
One of Their Attorneys

Terrell Law Group  
223 25<sup>th</sup> Street  
Richmond, CA 94804

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**C. Donald Amangbo**  
One of Their Attorneys

Amangbo & Associates  
1940 Embarcadero  
Oakland, CA 94606

**Signatures of the Class Representatives**

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Thad U. Baltimore

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Ethel Baltimore

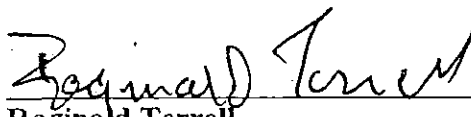
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Mary C. London

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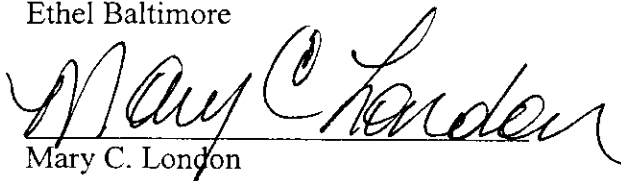
**Signatures of the Class Representatives**

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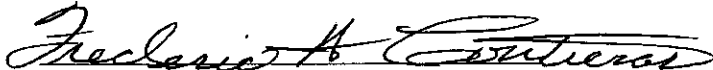
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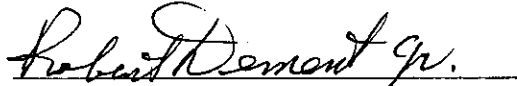
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Ethel Baltimore

  
Mary C. London



  
Frederic A. Contreras

  
Robert Dement

  
Lillian Allen

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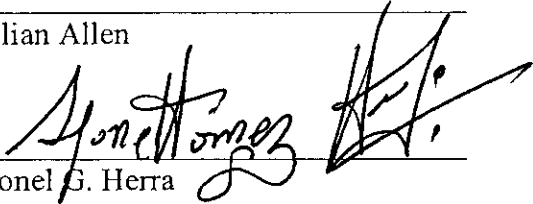
Robert Dement

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Lillian Allen

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Leonel G. Herra

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Damisha Romby

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Jaime Medina

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Teresa Gonzales

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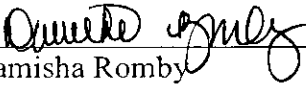
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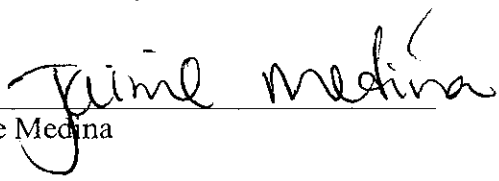
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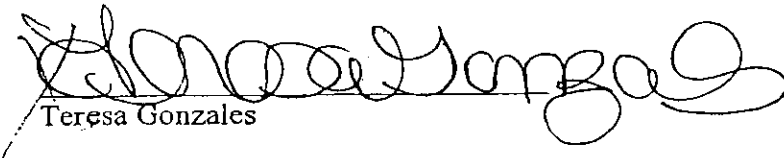
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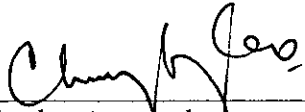
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