FILE START

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

JEAN BOOKOUT; CHARLES SCHWARZ, individually and as Personal Representative of the Estate of Barbara Schwarz, deceased; RICHARD FORRESTER BRANDT as Personal Representative of the Estate of Barbara Schwarz, deceased,	)	
Plaintiffs,	)	CJ -2008-7969
vs.	)	**CIVIL ACTION NO.**
TOYOTA MOTOR CORPORATION; TOYOTA MOTOR SALES USA, INC.; TOYOTA MOTOR ENGINEERING AND MANUFACTURING NORTH AMERICA, INC.; and DUB RICHARDSON TOYOTA,	)	
Defendants.	)	

FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA.

SEP - 2 2008

PATRICIA PRESLEY, COURT CLERK

by _____ DEPUTY

PETITION

Plaintiffs, for their causes of action against Defendants, allege and state as follows:

Facts Common to All Counts

1. On or about September 20, 2007, Plaintiff Jean Bookout was a resident of Yukon, Oklahoma. At the aforesaid time and place, Plaintiff was injured during a vehicular accident while driving a 2005 Toyota Camry.

2. On or about September 20, 2007, the Plaintiff's decedent, Barbara Schwarz, was a resident of Yukon, Oklahoma. At the aforesaid time and place, Plaintiff's decedent was killed during a vehicular accident while riding as a front seat passenger in a 2005 Toyota Camry driven by Mrs. Bookout.

3. Charles Schwarz is the spouse and Personal Representative of the Estate of Barbara Schwarz and brings this action to recover for the benefit of the decedent's survivors and estate.

4. Richard Forrester Brandt is the Personal Representative of the Estate of Barbara Schwarz and brings this action to recover for the benefit of the decedent's survivors and estate.

5. At all times relevant herein, Toyota Motor Corporation (hereinafter "TMC"), was a foreign corporation doing business in Oklahoma.

6. At all times relevant herein, Toyota Motors Sales USA, Inc. (hereinafter "TMS"), was a foreign corporation doing business in Oklahoma.

7. At all times relevant herein, Toyota Motor Engineering and Manufacturing North America, Inc. (hereinafter "Toyota North America"), was a foreign corporation doing business in Oklahoma.

8. At all times relevant herein, Defendant Dub Richardson Toyota (hereinafter "Dub Richardson"), was an Oklahoma corporation with its principal place of business in Oklahoma City, Oklahoma.

COUNT ONE

(Products Liability/Failure to Warn)

9. At the aforesaid time and place, and for sometime prior thereto, TMC, TMS, Toyota North America and Dub Richardson Toyota., were engaged in the business of designing, manufacturing, distributing, marketing and/or selling Toyota Camrys throughout the United States, including the State of Oklahoma, for use by the general

TOY-RQ-05E-00003871

public. During that period of time, the Defendants, for valuable consideration, designed, manufactured, distributed, marketed and/or sold the 2005 Toyota Camry which injured the Plaintiff and the Plaintiffs' decedent. At the time the Plaintiff and the Plaintiffs' decedent were injured, the 2005 Toyota Camry was being used in a manner that was foreseeable, but said vehicle was defective and unreasonably dangerous to the human body. The defective condition of the Toyota Camry was known to the Defendants, but they failed to properly and/or adequately warn consumers of the risks/hazards associated with the use of its product.

10. The defective condition of the 2005 Toyota Camry caused the vehicle to suddenly and unexpectedly accelerate as the driver was traveling down the interstate. The vehicle continued to accelerate despite the driver applying the brakes, including the emergency brake, and attempting to slow the vehicle and proximately caused Mrs. Bookout's injuries and the decedent Mrs. Schwarz's injuries and death, and renders said Defendants liable to Plaintiff and Plaintiff's decedent pursuant to Oklahoma's manufacturer's product liability law.

11. At the time of the incident made the basis of this suit, the subject vehicle was unreasonably dangerous and/or defective in its design, manufacture, marketing, distribution and warnings. As a proximate result of the defective and/or unreasonably dangerous condition of the subject vehicle, the Plaintiff Mrs. Bookout suffered injuries as described herein and Plaintiff's decedent Mrs. Schwarz was caused to receive injuries that caused her death as herein described.

TOY-RQ-05E-00003872

12. As a proximate result of the defective and/or unreasonably dangerous condition of the subject vehicle, the Plaintiff Mrs. Bookout suffered serious and permanent injuries which will affect her for the rest of her life, including but not limited to, multiple contusions and abrasions and she is unable to perform normal daily activities; she has undergone and will continue to undergo medical and other treatment for her condition; Mrs. Bookout has incurred and will continue to incur medical expenses relating to her injury. She has been permanently disfigured and disabled. She has suffered and will continue to suffer in the future severe pain and mental anguish and she has lost the enjoyment of life; and she has otherwise been injured and damaged.

13. As a proximate result of the defective and/or unreasonably dangerous condition of the subject vehicle, the Plaintiff's decedent was caused to suffer injuries that resulted in her death. As a result, the Plaintiff is entitled to recover damages including, but not limited to, the following:

a. the value of lost support and services;

b. medical and funeral expenses;

c. mental anguish and grief suffered by the Plaintiff and the surviving children of the decedent;

d. net accumulation of income of the Estate of Barbara Schwarz;

e. the mental pain and suffering by decedent;

f. the pecuniary loss of the decedent to the next of kin;

g. the grief and loss of companionship of the children of the decedent; and

TOY-RQ-05E-00003873

h. exemplary damages.

WHEREFORE, Plaintiff demands judgment against each of the Defendants, for compensatory and punitive damages in an amount in excess of $10,000.00, to be assessed by a jury together with interest from the date of the filing of this petition, and the costs of this proceeding.

COUNT TWO

(Breach of Warranty)

14. The Plaintiffs hereby adopt by reference each and every allegation in paragraphs 1 through 13 as if fully set out herein.

15. The Defendants impliedly warranted that the Toyota Camry and/or its component parts involved in the occurrence made the basis of this Petition were reasonably fit and suitable for the purposes for which it was intended to be used. The Plaintiffs claim that the Defendants breached said implied warranties of merchantability in that said 2005 Toyota Camry and/or its component parts were not reasonably fit and suitable for the purposes for which they were intended to be used, but to the contrary, said 2005 Toyota Camry and/or its component parts, particularly the fuel and throttle components of the vehicle, were unmerchantable and not of commercially appropriate quality. The Plaintiffs further claim that as a proximate result of the aforesaid breach of warranty by said Defendants, Plaintiff Mrs. Bookout was caused injuries as described herein and Plaintiff's decedent Mrs. Schwarz was caused to receive injuries that caused her death as herein described.

TOY-RQ-05E-00003874

16. As a proximate result of the defective and/or unreasonably dangerous condition of the subject vehicle, the Plaintiff Mrs. Bookout suffered serious and permanent injuries which will affect her for the rest of her life, including but not limited to, multiple contusions and abrasions and she is unable to perform normal daily activities; she has undergone and will continue to undergo medical and other treatment for her condition; Mrs. Bookout has incurred and will continue to incur medical expenses relating to her injury. She has been permanently disfigured and disabled. She has suffered and will continue to suffer in the future severe pain and mental anguish and she has lost the enjoyment of life; and she has otherwise been injured and damaged.

17. As a proximate result of the aforesaid conduct of each of the Defendants, the Plaintiff's decedent was caused to suffer injuries that resulted in her death. As a result, the Plaintiff is entitled to recover damages including, but not limited to, the following:

a. the value of lost support and services;

b. medical and funeral expenses;

c. mental anguish and grief suffered by the Plaintiff and the surviving children of the decedent;

d. net accumulation of income of the Estate of Barbara Schwarz;

e. the mental pain and suffering by decedent;

f. the pecuniary loss of the decedent to the next of kin;

g. the grief and loss of companionship of the children of the decedent; and

TOY-RQ-05E-00003875

h. exemplary damages.

WHEREFORE, Plaintiff demands judgment against each of the Defendants, for compensatory and punitive damages in an amount in excess of $10,000.00, to be assessed by a jury together with interest from the date of the filing of this petition, and the costs of this proceeding.

COUNT THREE

(Negligence and Wantonness)

18. The Plaintiffs hereby adopt by reference each and every allegation of paragraphs 1 through 17 as if fully set out herein.

19. At the aforesaid time and place, and for some time prior thereto, the Defendants undertook a duty to design, manufacture, distribute and/or sell the Toyota Camry and/or its component parts in a reasonably safe condition for its intended use by the Plaintiff Mrs. Bookout and the Plaintiff's decedent and the general public. The Defendants negligently, willfully and/or wantonly designed, manufactured, sold, tested, repaired, warned and/or performed maintenance on the subject vehicle, as well as the Toyota Camry product line, in that the Camry was defective and unreasonably dangerous when used as intended despite Defendants' knowledge that the Camry was defective and unreasonably dangerous.

20. The defective condition of the Camry and/or its component parts was a proximate cause of the injuries of Plaintiff Mrs. Bookout and of the injuries and death of Plaintiff's decedent Mrs. Schwarz, and renders said Defendants liable to the Plaintiffs.

TOY-RQ-05E-00003876

21. As a proximate result of the aforesaid wrongful, negligent, willful and/or wanton conduct of each of the Defendants, the Plaintiff Mrs. Bookout suffered serious and permanent injuries which will affect her for the rest of her life, including but not limited to, multiple contusions and abrasions and she is unable to perform normal daily activities; she has undergone and will continue to undergo medical and other treatment for her condition; Mrs. Bookout has incurred and will continue to incur medical expenses relating to her injury. She has been permanently disfigured and disabled. She has suffered and will continue to suffer in the future severe pain and mental anguish and she has lost the enjoyment of life; and she has otherwise been injured and damaged.

22. As a proximate result of the aforesaid wrongful, negligent, willful and/or wanton conduct of each of the Defendants, Mrs. Schwarz was caused to receive injuries that resulted in her death. As a result, the Plaintiffs are entitled to recover damages in excess of $10,000.00, including, but not limited to, the following:

a. the value of lost support and services;

b. medical and funeral expenses;

c. mental anguish and grief suffered by the Plaintiff and the surviving children of the decedent;

d. net accumulation of income of the Estate of Barbara Schwarz;

e. the mental pain and suffering by decedent;

f. the pecuniary loss of the decedent to the next of kin;

g. the grief and loss of companionship of the children of the decedent; and

TOY-RQ-05E-00003877

h. exemplary damages.

WHEREFORE, Plaintiffs demand judgment against each of the Defendants, for compensatory and punitive damages in an amount in excess of $10,000.00, to be assessed by a jury together with interest from the date of the filing of this petition, and the costs of this proceeding.

COUNT FOUR

(Deceit)

23. The Plaintiffs hereby adopt by reference each and every allegation of paragraphs 1 through 22 as if fully set out herein.

24. The Defendants negligently, willfully, wantonly and/or intentionally deceived the general public, including the Plaintiff and the Plaintiff's decedent, regarding the safety and/or crashworthiness of the 2005 Toyota Camry. Defendants represented that the 2005 Toyota Camry was reasonably safe for its intended purpose when, in fact, the Defendants knew or should have known that the 2005 Toyota Camry was defective and/or unreasonably dangerous when put to its intended use, or when subjected to foreseeable events.

25. Further, the Defendants suppressed the dangerous characteristics of the 2005 Toyota Camry's fuel and throttle system. The failure of the Defendants to disclose the lack of safety of the Camry's fuel and throttle system and the likelihood of severe injury or death when involved in a collision, misled the general public, the Plaintiff and the Plaintiff's decedent to purchase and use the 2005 Toyota Camry to their detriment.

TOY-RQ-05E-00003878

26. As a proximate result of the Defendants' deceit and suppression of facts, the Plaintiff was induced to purchase and use the 2005 Toyota Camry and suffer damages, including but not limited to, multiple contusions and abrasions and she is unable to perform normal daily activities; she has undergone and will continue to undergo medical and other treatment for her condition; Mrs. Bookout has incurred and will continue to incur medical expenses relating to her injury. She has been permanently disfigured and disabled. She has suffered and will continue to suffer in the future severe pain and mental anguish and she has lost the enjoyment of life; and she has otherwise been injured and damaged.

27. As a proximate result of the Defendants' deceit and suppression of facts, the Plaintiff's decedent was induced to use the 2005 Toyota Camry and suffer damages, including injuries that caused the decedent's death, as a proximate result of said conduct by Defendants. As a result, the Plaintiff is entitled to recover damages in excess of $10,000.00, including, but not limited to, the following:

a. the value of lost support and services;

b. medical and funeral expenses;

c. mental anguish and grief suffered by the Plaintiff and the surviving children of the decedent;

d. net accumulation of income of the Estate of Barbara Schwarz;

e. the mental pain and suffering by decedent;

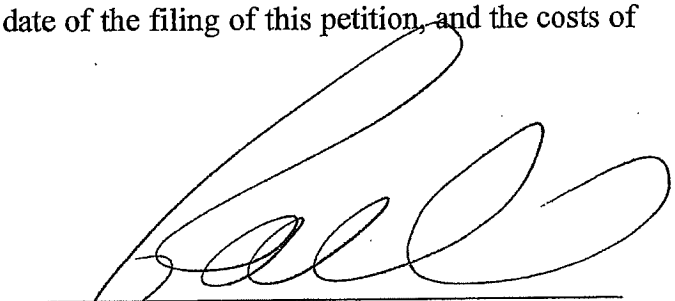
f. the pecuniary loss of the decedent to the next of kin;

TOY-RQ-05E-00003879

g. the grief and loss of companionship of the children of the decedent; and

h. exemplary damages.

WHEREFORE, Plaintiff demands judgment against each of the Defendants, for compensatory and punitive damages in an amount in excess of $10,000.00, to be assessed by a jury together with interest from the date of the filing of this petition, and the costs of this proceeding.



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JURY TRIAL DEMANDED
ATTORNEY LIEN CLAIMED

TOY-RQ-05E-00003880

SERVE DEFENDANTS BY CERTIFIED MAIL:

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1 Toyota-Cho
Toyota City
Aichi Prefecture
Japan 471-8571

TOYOTA MOTOR SALES USA, INC..
19001 S. Western Avenue
Torrance, CA 90501

TOYOTA MOTOR ENGINEERING AND MANUFACTURING NORTH AMERICA, INC.
25 Atlantic Avenue
Erlanger, KY 41018

DUB RICHARDSON TOYOTA (Registered Agent)
The Corporation Company
120 N. Robinson, STE 735
Oklahoma City, OK 73102

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IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

JEAN BOOKOUT; CHARLES SCHWARZ, individually and as Personal Representative of the Estate of Barbara Schwarz, deceased; RICHARD FORRESTER BRANDT as Personal Representative of the Estate of Barbara Schwarz, deceased,	)	
Plaintiffs,	)	
vs.	)	**CASE NO. CJ-2008-7969**
TOYOTA MOTOR CORPORATION; TOYOTA MOTOR SALES USA, INC.; TOYOTA MOTOR ENGINEERING AND MANUFACTURING NORTH AMERICA, INC.; DUB RICHARDSON TOYOTA and AISAN INDUSTRY CO., LTD.,	)	
Defendants.	)	

PLAINTIFFS' AMENDED PETITION

Plaintiffs amend their petition by adding Aisan Industry Co., Ltd., as a Party Defendant and by alleging the following:

Facts Common to All Counts

1. On or about September 20, 2007, Plaintiff Jean Bookout was a resident of Yukon, Oklahoma. At the aforesaid time and place, Plaintiff was injured during a vehicular accident while driving a 2005 Toyota Camry.

2. On or about September 20, 2007, the Plaintiff's decedent, Barbara Schwarz, was a resident of Yukon, Oklahoma. At the aforesaid time and place, Plaintiff's decedent

EXHIBIT
A

was killed during a vehicular accident while riding as a front seat passenger in a 2005 Toyota Camry driven by Mrs. Bookout.

3. Charles Schwarz is the spouse and Personal Representative of the Estate of Barbara Schwarz and brings this action to recover for the benefit of the decedent's survivors and estate.

4. Richard Forrester Brandt is the Personal Representative of the Estate of Barbara Schwarz and brings this action to recover for the benefit of the decedent's survivors and estate.

5. At all times relevant herein, Toyota Motor Corporation (hereinafter "TMC"), was a foreign corporation doing business in Oklahoma.

6. At all times relevant herein, Toyota Motors Sales USA, Inc. (hereinafter "TMS"), was a foreign corporation doing business in Oklahoma.

7. At all times relevant herein, Toyota Motor Engineering and Manufacturing North America, Inc. (hereinafter "Toyota North America"), was a foreign corporation doing business in Oklahoma.

8. At all times relevant herein, Defendant Dub Richardson Toyota (hereinafter "Dub Richardson"), was an Oklahoma corporation with its principal place of business in Oklahoma City, Oklahoma.

9. At all times relevant herein, Defendant Aisan Industry Co., Ltd. (hereinafter "Aisan Industry") was a Japanese corporation with its principal place of business located in Aichi, Japan but had sufficient contacts with the State of Oklahoma to give this Court jurisdiction over Defendant Aisan Industry. Aisan Industry is believed to have designed,

engineered, tested, manufactured, distributed, and marketed certain component parts of the 2005 Toyota Camry.

COUNT ONE

(Products Liability/Failure to Warn)

10. At the aforesaid time and place, and for sometime prior thereto, TMC, TMS, Toyota North America, Dub Richardson Toyota and Aisan Industry, were engaged in the business of designing, manufacturing, distributing, marketing and/or selling Toyota Camrys and their component parts throughout the United States, including the State of Oklahoma, for use by the general public. During that period of time, the Defendants, for valuable consideration, designed, manufactured, distributed, marketed and/or sold the 2005 Toyota Camry and/or its component parts which injured the Plaintiff and the Plaintiffs' decedent. At the time the Plaintiff and the Plaintiffs' decedent were injured, the 2005 Toyota Camry was being used in a manner that was foreseeable, but said vehicle was defective and unreasonably dangerous to the human body. The defective condition of the Toyota Camry was known to the Defendants, but they failed to properly and/or adequately warn consumers of the risks/hazards associated with the use of its product.

11. The defective condition of the 2005 Toyota Camry and/or its component parts caused the vehicle to suddenly and unexpectedly accelerate as the driver was traveling down the interstate. The vehicle continued to accelerate despite the driver applying the brakes, including the emergency brake, and attempting to slow the vehicle and proximately caused Mrs. Bookout's injuries and the decedent Mrs. Schwarz's

injuries and death, and renders said Defendants liable to Plaintiff and Plaintiff's decedent pursuant to Oklahoma's manufacturer's product liability law.

12. At the time of the incident made the basis of this suit, the subject vehicle was unreasonably dangerous and/or defective in its design, manufacture, marketing, distribution and warnings. As a proximate result of the defective and/or unreasonably dangerous condition of the subject vehicle, the Plaintiff Mrs. Bookout suffered injuries as described herein and Plaintiff's decedent Mrs. Schwarz was caused to receive injuries that caused her death as herein described.

13. As a proximate result of the defective and/or unreasonably dangerous condition of the subject vehicle, the Plaintiff Mrs. Bookout suffered serious and permanent injuries which will affect her for the rest of her life, including but not limited to, multiple contusions and abrasions and she is unable to perform normal daily activities; she has undergone and will continue to undergo medical and other treatment for her condition; Mrs. Bookout has incurred and will continue to incur medical expenses relating to her injury. She has been permanently disfigured and disabled. She has suffered and will continue to suffer in the future severe pain and mental anguish and she has lost the enjoyment of life; and she has otherwise been injured and damaged.

14. As a proximate result of the defective and/or unreasonably dangerous condition of the subject vehicle, the Plaintiff's decedent was caused to suffer injuries that resulted in her death. As a result, the Plaintiff is entitled to recover damages including, but not limited to, the following:

a. the value of lost support and services;

b. medical and funeral expenses;

c. mental anguish and grief suffered by the Plaintiff and the surviving children of the decedent;

d. net accumulation of income of the Estate of Barbara Schwarz;

e. the mental pain and suffering by decedent;

f. the pecuniary loss of the decedent to the next of kin;

g. the grief and loss of companionship of the children of the decedent; and

h. exemplary damages.

WHEREFORE, Plaintiff demands judgment against each of the Defendants, for compensatory and punitive damages in an amount in excess of $10,000.00, to be assessed by a jury together with interest from the date of the filing of this petition, and the costs of this proceeding.

COUNT TWO

(Breach of Warranty)

15. The Plaintiffs hereby adopt by reference each and every allegation in paragraphs 1 through 14 as if fully set out herein.

16. The Defendants impliedly warranted that the Toyota Camry and/or its component parts involved in the occurrence made the basis of this Petition were reasonably fit and suitable for the purposes for which it was intended to be used. The Plaintiffs claim that the Defendants breached said implied warranties of merchantability in that said 2005 Toyota Camry and/or its component parts were not reasonably fit and

suitable for the purposes for which they were intended to be used, but to the contrary, said 2005 Toyota Camry and/or its component parts, particularly the fuel and throttle components of the vehicle, were unmerchantable and not of commercially appropriate quality. The Plaintiffs further claim that as a proximate result of the aforesaid breach of warranty by said Defendants, Plaintiff Mrs. Bookout was caused injuries as described herein and Plaintiff's decedent Mrs. Schwarz was caused to receive injuries that caused her death as herein described.

17. As a proximate result of the defective and/or unreasonably dangerous condition of the subject vehicle, the Plaintiff Mrs. Bookout suffered serious and permanent injuries which will affect her for the rest of her life, including but not limited to, multiple contusions and abrasions and she is unable to perform normal daily activities; she has undergone and will continue to undergo medical and other treatment for her condition; Mrs. Bookout has incurred and will continue to incur medical expenses relating to her injury. She has been permanently disfigured and disabled. She has suffered and will continue to suffer in the future severe pain and mental anguish and she has lost the enjoyment of life; and she has otherwise been injured and damaged.

18. As a proximate result of the aforesaid conduct of each of the Defendants, the Plaintiff's decedent was caused to suffer injuries that resulted in her death. As a result, the Plaintiff is entitled to recover damages including, but not limited to, the following:

a. the value of lost support and services;

b. medical and funeral expenses;

c. mental anguish and grief suffered by the Plaintiff and the surviving children of the decedent;

d. net accumulation of income of the Estate of Barbara Schwarz;

e. the mental pain and suffering by decedent;

f. the pecuniary loss of the decedent to the next of kin;

g. the grief and loss of companionship of the children of the decedent; and

h. exemplary damages.

WHEREFORE, Plaintiff demands judgment against each of the Defendants, for compensatory and punitive damages in an amount in excess of $10,000.00, to be assessed by a jury together with interest from the date of the filing of this petition, and the costs of this proceeding.

COUNT THREE

(Negligence and Wantonness)

19. The Plaintiffs hereby adopt by reference each and every allegation of paragraphs 1 through 18 as if fully set out herein.

20. At the aforesaid time and place, and for some time prior thereto, the Defendants undertook a duty to design, manufacture, distribute and/or sell the Toyota Camry and/or its component parts in a reasonably safe condition for its intended use by the Plaintiff Mrs. Bookout and the Plaintiff's decedent and the general public. The Defendants negligently, willfully and/or wantonly designed, manufactured, sold, tested, repaired, warned and/or performed maintenance on the subject vehicle, as well as the

Toyota Camry product line, in that the Camry was defective and unreasonably dangerous when used as intended despite Defendants' knowledge that the Camry was defective and unreasonably dangerous.

21. The defective condition of the Camry and/or its component parts was a proximate cause of the injuries of Plaintiff Mrs. Bookout and of the injuries and death of Plaintiff's decedent Mrs. Schwarz, and renders said Defendants liable to the Plaintiffs.

22. As a proximate result of the aforesaid wrongful, negligent, willful and/or wanton conduct of each of the Defendants, the Plaintiff Mrs. Bookout suffered serious and permanent injuries which will affect her for the rest of her life, including but not limited to, multiple contusions and abrasions and she is unable to perform normal daily activities; she has undergone and will continue to undergo medical and other treatment for her condition; Mrs. Bookout has incurred and will continue to incur medical expenses relating to her injury. She has been permanently disfigured and disabled. She has suffered and will continue to suffer in the future severe pain and mental anguish and she has lost the enjoyment of life; and she has otherwise been injured and damaged.

23. As a proximate result of the aforesaid wrongful, negligent, willful and/or wanton conduct of each of the Defendants, Mrs. Schwarz was caused to receive injuries that resulted in her death. As a result, the Plaintiffs are entitled to recover damages in excess of $10,000.00, including, but not limited to, the following:

a. the value of lost support and services;

b. medical and funeral expenses;

c. mental anguish and grief suffered by the Plaintiff and the surviving children of the decedent;

d. net accumulation of income of the Estate of Barbara Schwarz;

e. the mental pain and suffering by decedent;

f. the pecuniary loss of the decedent to the next of kin;

g. the grief and loss of companionship of the children of the decedent; and

h. exemplary damages.

WHEREFORE, Plaintiffs demand judgment against each of the Defendants, for compensatory and punitive damages in an amount in excess of $10,000.00, to be assessed by a jury together with interest from the date of the filing of this petition, and the costs of this proceeding.

COUNT FOUR

(Deceit)

24. The Plaintiffs hereby adopt by reference each and every allegation of paragraphs 1 through 23 as if fully set out herein.

25. The Defendants negligently, willfully, wantonly and/or intentionally deceived the general public, including the Plaintiff and the Plaintiff's decedent, regarding the safety and/or crashworthiness of the 2005 Toyota Camry. Defendants represented that the 2005 Toyota Camry was reasonably safe for its intended purpose when, in fact, the Defendants knew or should have known that the 2005 Toyota Camry was defective

and/or unreasonably dangerous when put to its intended use, or when subjected to foreseeable events.

26. Further, the Defendants suppressed the dangerous characteristics of the 2005 Toyota Camry's fuel and throttle system. The failure of the Defendants to disclose the lack of safety of the Camry's fuel and throttle system and the likelihood of severe injury or death when involved in a collision, misled the general public, the Plaintiff and the Plaintiff's decedent to purchase and use the 2005 Toyota Camry to their detriment.

27. As a proximate result of the Defendants' deceit and suppression of facts, the Plaintiff was induced to purchase and use the 2005 Toyota Camry and suffer damages, including but not limited to, multiple contusions and abrasions and she is unable to perform normal daily activities; she has undergone and will continue to undergo medical and other treatment for her condition; Mrs. Bookout has incurred and will continue to incur medical expenses relating to her injury. She has been permanently disfigured and disabled. She has suffered and will continue to suffer in the future severe pain and mental anguish and she has lost the enjoyment of life; and she has otherwise been injured and damaged.

28. As a proximate result of the Defendants' deceit and suppression of facts, the Plaintiff's decedent was induced to use the 2005 Toyota Camry and suffer damages, including injuries that caused the decedent's death, as a proximate result of said conduct by Defendants. As a result, the Plaintiff is entitled to recover damages in excess of $10,000.00, including, but not limited to, the following:

a. the value of lost support and services;

b. medical and funeral expenses;

c. mental anguish and grief suffered by the Plaintiff and the surviving children of the decedent;

d. net accumulation of income of the Estate of Barbara Schwarz;

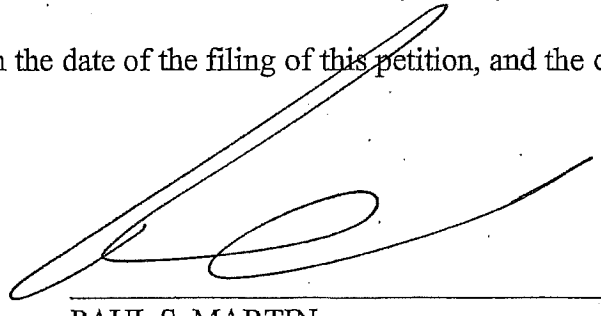
e. the mental pain and suffering by decedent;

f. the pecuniary loss of the decedent to the next of kin;

g. the grief and loss of companionship of the children of the decedent; and

h. exemplary damages.

WHEREFORE, Plaintiff demands judgment against each of the Defendants, for compensatory and punitive damages in an amount in excess of $10,000.00, to be assessed by a jury together with interest from the date of the filing of this petition, and the costs of this proceeding.



PAUL S. MARTIN
Attorney for Plaintiffs

OF COUNSEL:

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Montgomery, Alabama 36103-4160
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graham.esdale@beasleyallen.com

CERTIFICATE OF SERVICE

I hereby certify that I have filed the original of the foregoing document with the Court and served a copy of same upon all counsel of record as listed below by fax and by United States Mail, first class, postage prepaid on this 2nd day of September, 2009.

Paul S. Martin

Mr. James A. Jennings, III
Jennings, Cook & Teague, P.C.
Suite 1000, 204 N. Robinson Avenue
Oklahoma City, OK 73102-6801
405 609-6000
405 609-6501 fax

FILE START

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF PENNSYLVANIA

ROBERT ELMES	
	NO.: 2:08-cv-1300
Plaintiff,	Electronically Filed
v.	Carl R. Schiffman, Esquire PA. I.D. #23626
TOYOTA MOTOR MANUFACTURING, KENTUCKY, INC., TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC., and TOYOTA MOTOR SALES U.S.A., INC.	
	Schiffman & Wojdowski 1300 Fifth Avenue
Defendants.	Pittsburgh, PA 15219 412-288-9444 412-288-9455 schifwojdo@hotmail.com

COMPLAINT

AND NOW, comes the Plaintiff Robert Elmes by and through his attorneys, Schiffman & Wojdowski and Carl R. Schiffman, Esquire and files the following Complaint and in support thereof avers as follows:

1. The Plaintiff Robert Elmes is an individual and a resident and citizen of the Commonwealth of Pennsylvania residing at 188 Friar Lane, McMurray, Washington County, Pennsylvania 15317.

2. Defendant, Toyota Motor Manufacturing, Kentucky, Inc. is a corporation organized and existing under the laws of the state of Kentucky and is a citizen and resident of the state of Kentucky with a place of business at 25 Atlantic Avenue, Erlanger, Kentucky 41018 which nevertheless at all relevant times traded and did business in the Commonwealth of Pennsylvania and County of Westmoreland.

3. Defendant, Toyota Motor Engineering & Manufacturing North America, Inc. is a corporation organized and existing under the laws of the state of Kentucky and is a citizen and resident of the state of Kentucky with a place of business at 25 Atlantic Avenue, Erlanger, Kentucky 41018 which nevertheless at all relevant times traded and did business in the Commonwealth of Pennsylvania and County of Westmoreland.

4. The Defendant, Toyota Motor Sales USA Inc. is a corporation organized and existing under the laws of the State of California and is a resident and citizen of the state of California with its principal place of business located at 19001 South Western Ave, Torrance, California 90509 which nevertheless at all relevant times traded and did business in the Commonwealth of Pennsylvania and County of Washington.

5. This Court is granted jurisdiction in this action pursuant to 28 U.S.C. §1332 because (a) the case involves citizens in different states, and (b) the amount in controversy is in excess of Seventy-five Thousand ($75,000.00) Dollars.

6. On or about September 21, 2006 at approximately 4:45 p.m., the Plaintiff, Robert Elmes was operating a 2002 Toyota Camry, vehicle identification number 4T1BE32K32U600593, that was purchased as a new vehicle and was owned by him.

7. At the above stated date, the Plaintiff pulled up to a drive through window at Citizens Bank located at 3907 Washington Road, McMurray, Pennsylvania, 15317.

8. The Plaintiff stopped his vehicle and moved the shifter into the "park" position.

9. The Plaintiff, intending to leave Citizens Bank, placed his foot upon the brake of the aforementioned vehicle, and shifted the vehicle from the "park" setting to the "drive" setting.

10. Suddenly and without warning, the subject vehicle rapidly and uncontrollably accelerated to a high rate of speed.

11. The Plaintiff attempted to stop the automobile by depressing the brake but the motor vehicle would not stop.

12. The subject motor vehicle, despite this Plaintiff's attempts to stop the vehicle and steer it from pedestrians, violently collided with a heavy steel light pole at the intersection of East McMurray Road and Washington Road.

COUNT I
ROBERT ELMES v. TOYOTA MOTOR MANUFACTURING, KENTUCKY, INC.

13. Plaintiff hereby incorporates by reference paragraphs 1 through 12 as though the same were more fully set forth at length herein.

14. At all times relevant to this action, this Defendant was engaged in the business of designing, manufacturing, selling and/or supplying motor vehicles and was a seller as defined by the Restatement (Second) Torts §402A as adopted by the Supreme Court of Pennsylvania.

15. The motor vehicle was expected to and did reach the Plaintiff and was used by him without substantial change in the condition in which it was manufactured for sale.

16. This Defendant breached the duties owed to the Plaintiff as mandated by designing, manufacturing, and/or selling the motor vehicle in a defective condition rendering it unreasonably dangerous to the ultimate user of the said product.

17. The motor vehicle was defective in that it did not have protection from sudden acceleration and/or was designed in a manner to promote unwanted acceleration.

18. The motor vehicle was defective because it failed to have all features and accouterments to render it safe for use.

19. The motor vehicle was further defective in that it failed to be properly labeled and have proper warnings.

20. As the sole, direct, legal and proximate result of the breach of the mandates of §402A by this Defendant, this Plaintiff has sustained the following injuries, some of which may be permanent in nature:

a. Multiple severe lacerations and abrasions;

b. Multiple contusions;

c. Acetabular fracture transverse posterior wall (right side), with surrounding hematoma, necessitating internal fixation and surgery;

d. TCL ligament tear;

e. PCL tear involving both anterolateral posteromedial bundles;

f. High-grade posterolateral corner tear;

g. Strain of the lateral gastrocnemius;

h. Medial meniscal tear with medial compartment chondrosis;

i. Compartment degenerative arthrosis of right knee with pin tract in the femur;

j. Pulmonary contusions;

k. Right pneumothorax;

l. Anterolateral intramuscular chest wall hematoma;

m. Traumatic pancreatitis;

n. Hemarthrosis;

o. Posterior femoral head subluxation;

p. Pleural effusion;

q. Two column comminuted fracture of the right acetabulum;

r. Hematoma in lower intercostal muscles;

s. Multiple rib fractures;

t. Enhanced susceptibility to arthritis; and,

u. Other serious injuries.

21. As the sole, direct, legal and proximate result of the breach of the mandates of §402A by this Defendant, the Plaintiff has sustained the following damages:

a. He has suffered and will continue to suffer great pain, suffering, mental anguish and embarrassment;

b. He has incurred and may incur further medical bills for treatment and surgery;

c. He has had to undergo extensive medical procedures and surgeries and may need further medical treatment, including hospitalizations and surgeries;

d. He has been disfigured;

e. He has been unable to enjoy the ordinary pleasures of life;

f. He has been unable to perform his normal daily activities, including employment; and

g. His general health, strength and vitality have been impaired.

WHEREFORE, the Plaintiff Robert Elmes demands judgment in his favor and against the Defendant TOYOTA MOTOR MANUFACTURING, KENTUCKY, INC. for an amount in excess of Seventy-Five Thousand ($75,000.00) Dollars, exclusive of interest and costs.

COUNT II
ROBERT ELMES v. TOYOTA MOTOR MANUFACTURING, KENTUCKY, INC.

22. Plaintiff hereby incorporates by reference paragraphs 1 through 21 as though the same were more fully set forth at length herein.

23. This Defendant was negligent in the following particulars:

a. In manufacturing, designing, and/or selling a motor vehicle with multiple interconnections of main voltage sources;

b. In manufacturing, designing, and/or selling a motor vehicle with numerous components ground to the same point rendering the vehicle subject to electromagnectic interference;

c. In manufacturing, designing, and/or selling a motor vehicle without using twisted pair conductors and shielded cables to eliminate both conducted and radiated electromagnetic interference;

d. In manufacturing, designing, and/or selling a motor vehicle without adequate protection against sudden acceleration or unintended acceleration;

e. In manufacturing, designing, and/or selling a motor vehicle without proper research and development to prevent sudden acceleration; and

f. In failing to warn of the dangers of sudden acceleration when it knew or should have known of these dangers.

24. As the sole, direct, legal and proximate result of the negligence of this Defendant as aforesaid, this Plaintiff has sustained the injuries and damages previously set forth.

WHEREFORE, the Plaintiff, Robert Elmes, demands judgment in his favor and against the Defendant TOYOTA MOTOR MANUFACTURING, KENTUCKY, INC. for an amount in excess of Seventy-Five Thousand ($75,000.00) Dollars, exclusive of interest and costs.

COUNT III
ROBERT ELMES v. TOYOTA MOTOR MANUFACTURING, KENTUCKY, INC.

25. Plaintiff hereby incorporates by reference paragraphs 1 through 24 as though the same were more fully set forth at length herein.

26. At all times relevant hereto this Defendant was a "merchant" within the meaning of the Pennsylvania Uniform Commercial Code.

27. Being within the ambit of the foreseeable operation and use of the aforesaid motor vehicle, the Plaintiff relied upon this Defendant's implied warranties of merchantability and fitness for use for which the vehicle was intended to be used and which were extended in accordance with the Pennsylvania Uniform Commercial Code.

28. The Plaintiff also relied upon any express warranties this Defendant made concerning the subject vehicle.

29. As the sole, direct, legal and proximate result of the breaches by this Defendant of the implied warranties, said warranties having been made by agents, servants and/or employees of this Defendant, acting within the scope of their employment and authority and/or implied by law, and/or any express warranties made by this defendant, the Plaintiff Robert Elmes has sustained the injuries and damages previously set forth.

WHEREFORE, the Plaintiff Robert Elmes demands judgment in his favor and against the Defendant TOYOTA MOTOR MANUFACTURING, KENTUCKY, INC. for an amount in excess of Seventy-Five Thousand ($75,000.00) Dollars, exclusive of interest and costs.

COUNT IV
ROBERT ELMES v. TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC.

30. Plaintiff hereby incorporates by reference paragraphs 1 through 29 as though the same were more fully set forth at length herein.

31. At all times relevant to this action, this Defendant was engaged in the business of designing, manufacturing, selling and/or supplying motor vehicles and was a seller as defined by the Restatement (Second) Torts §402A as adopted by the Supreme Court of Pennsylvania.

32. The motor vehicle was expected to and did reach the Plaintiff and was used by him without substantial change in the condition in which it was manufactured for sale.

33. This Defendant breached the duties owed to the Plaintiff as mandated by designing, manufacturing, and/or selling the motor vehicle in a defective condition rendering it unreasonably dangerous to the ultimate user of the said product.

34. The motor vehicle was defective in that it did not have protection from sudden acceleration and/or was designed in a manner to promote unwanted acceleration.

35. The motor vehicle was defective because it failed to have all features and accouterments to render it safe for use.

36. The motor vehicle was further defective in that it failed to be properly labeled and have proper warnings.

37. As the sole, direct, legal and proximate result of the breach of the mandates of §402A by this Defendant, the Plaintiff has sustained the injuries and damages previously set forth in detail herein.

WHEREFORE, the Plaintiff Robert Elmes demands judgment in his favor and against the Defendant TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC. for an amount in excess of Seventy-Five Thousand ($75,000.00) Dollars, exclusive of interest and costs.

COUNT V
ROBERT ELMES v. TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC.

38. Plaintiff hereby incorporates by reference paragraphs 1 through 37 as though the same were more fully set forth at length herein.

39. This Defendant was negligent in the following particulars:

a. In manufacturing, designing, and/or selling a motor vehicle with multiple interconnections of main voltage sources;

b. In manufacturing, designing, and/or selling a motor vehicle with numerous components ground to the same point rendering the vehicle subject to electromagnectic interference;

c. In manufacturing, designing, and/or selling a motor vehicle without using twisted pair conductors and shielded cables to eliminate both conducted and radiated electromagnetic interference;

d. In manufacturing, designing, and/or selling a motor vehicle without adequate protection against sudden acceleration or unintended acceleration; and

e. In manufacturing, designing, and/or selling a motor vehicle without proper research and development to prevent sudden acceleration; and

f. In failing to warn of the dangers of sudden acceleration when it knew or should have known of these dangers.

40. As the sole, direct, legal and proximate result of the negligence of this Defendant as aforesaid, this Plaintiff has sustained the injuries and damages previously set forth in detail herein.

WHEREFORE, the Plaintiff Robert Elmes demands judgment in his favor and against the Defendant TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC. for an amount in excess of Seventy-Five Thousand ($75,000.00) Dollars, exclusive of interest and costs.

COUNT VI
ROBERT ELMES v. TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC.

41. Plaintiff hereby incorporates by reference paragraphs 1 through 40 as though the same were more fully set forth at length herein.

42. At all times relevant hereto this Defendant was a "merchant" within the meaning of the Pennsylvania Uniform Commercial Code.

43. Being within the ambit of the foreseeable operation and use of the aforesaid motor vehicle, the Plaintiff relied upon this Defendant's implied warranties of merchantability and fitness for use for which the vehicle was intended to be used and which were extended in accordance with the Pennsylvania Uniform Commercial Code.

44. The Plaintiff also relied upon any express warranties this Defendant made concerning the subject vehicle.

45. As the sole, direct, legal and proximate result of the breaches by this Defendant of the implied warranties, said warranties having been made by agents, servants and/or employees of this Defendant, acting within the scope of their employment and authority and/or implied by law, and/or any express warranties made by this defendant, the Plaintiff Robert Elmes has sustained the injuries and damages previously set forth.

WHEREFORE, the Plaintiff Robert Elmes demands judgment in his favor and against the Defendant TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC. for an amount in excess of Seventy-Five Thousand ($75,000.00) Dollars, exclusive of interest and costs.

COUNT VII
ROBERT ELMES v. TOYOTA MOTOR SALES U.S.A., INC.

46. Plaintiff hereby incorporates by reference paragraphs 1 through 45 as though the same were more fully set forth at length herein.

47. At all times relevant to this action, this Defendant was engaged in the business of designing, manufacturing, selling and/or supplying motor vehicles and was a seller as defined by the Restatement (Second) Torts §402A as adopted by the Supreme Court of Pennsylvania.

48. The motor vehicle was expected to and did reach the Plaintiff and was used by him without substantial change in the condition in which it was manufactured for sale.

49. This Defendant breached the duties owed to the Plaintiff as mandated by designing, manufacturing, and/or selling the motor vehicle in a defective condition rendering it unreasonably dangerous to the ultimate user of the said product.

50. The motor vehicle was defective in that it did not have protection from sudden acceleration and/or was designed in a manner to promote unwanted acceleration.

51. The motor vehicle was defective because it failed to have all features and accouterments to render it safe for use.

52. The motor vehicle was further defective in that it failed to be properly labeled and have proper warnings.

53. As the sole, direct, legal and proximate result of the breach of the mandates of §402A by this Defendant, the Plaintiff has sustained the injuries and damages previously set forth in detail herein.

WHEREFORE, the Plaintiff Robert Elmes demands judgment in his favor and against the Defendant TOYOTA MOTOR SALES U.S.A., INC. an amount in excess of Seventy-Five Thousand ($75,000.00) Dollars, exclusive of interest and costs.

COUNT VIII
ROBERT ELMES v. TOYOTA MOTOR SALES U.S.A., INC.

54. Plaintiff hereby incorporates by reference paragraphs 1 through 53 as though the same were more fully set forth at length herein.

55. This Defendant was negligent in the following particulars:

a. In manufacturing, designing, and/or selling a motor vehicle with multiple interconnections of main voltage sources;

b. In manufacturing, designing, and/or selling a motor vehicle with numerous components ground to the same point rendering the vehicle subject to electromagnectic interference;

c. In manufacturing, designing, and/or selling a motor vehicle without using twisted pair conductors and shielded cables to eliminate both conducted and radiated electromagnetic interference;

d. In manufacturing, designing, and/or selling a motor vehicle without adequate protection against sudden acceleration or unintended acceleration; and

e. In manufacturing, designing, and/or selling a motor vehicle without proper research and development to prevent sudden acceleration; and

f. In failing to warn of the dangers of sudden acceleration when it knew or should have known of these dangers.

56. As the sole, direct, legal and proximate result of the negligence of this Defendant as aforesaid, this Plaintiff has sustained the injuries and damages previously set forth in detail herein.

WHEREFORE, the Plaintiff Robert Elmes demands judgment in his favor and against the Defendant TOYOTA MOTOR SALES U.S.A., INC. for an amount in excess of Seventy-Five Thousand ($75,000.00) Dollars, exclusive of interest and costs.

COUNT IX
ROBERT ELMES v. TOYOTA MOTOR SALES U.S.A., INC.

57. Plaintiff hereby incorporates by reference paragraphs 1 through 56 as though the same were more fully set forth at length herein.

58. At all times relevant hereto this Defendant was a "merchant" within the meaning of the Pennsylvania Uniform Commercial Code.

59. Being within the ambit of the foreseeable operation and use of the aforesaid motor vehicle, the Plaintiff relied upon this Defendant's implied warranties of merchantability and fitness for use for which the vehicle was intended to be used and which were extended in accordance with the Pennsylvania Uniform Commercial Code.

60. The Plaintiff also relied upon any express warranties this Defendant made concerning the subject vehicle.

61. As the sole, direct, legal and proximate result of the breaches by this Defendant of the implied warranties, said warranties having been made by agents, servants and/or employees of this Defendant, acting within the scope of their employment and authority and/or implied by law, and/or any express warranties made by this defendant, the Plaintiff Robert Elmes has sustained the injuries and damages previously set forth.

WHEREFORE, the Plaintiff Robert Elmes demands judgment in his favor and against the Defendant TOYOTA MOTOR SALES U.S.A., INC. for an amount in excess of Seventy-Five Thousand ($75,000.00) Dollars, exclusive of interest and costs.

COUNT X
ROBERT ELMES v. TOYOTA MOTOR MANUFACTURING, KENTUCKY, INC., TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC., and TOYOTA MOTOR SALES U.S.A., INC.

62. Plaintiff hereby incorporates by reference paragraphs 1 through 61 as though the same were more fully set forth at length herein.

63. As the direct, legal, and proximate result of the joint and/or several breaches of the mandates of Restatement (Second) Torts §402A by these Defendants, joint and/or several negligence of the Defendants, and joint and/or several breaches of the implied and/or express warranties by these Defendants as aforesaid, the Plaintiff, Robert Elmes, has sustained the injuries and damages previously set forth.

WHEREFORE, the Plaintiff, Rober Elmes, demands judgment in his favor and against the Defendants, TOYOTA MOTOR MANUFACTURING, KENTUCKY, INC., TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC., and TOYOTA MOTOR SALES U.S.A., INC. both jointly and/or severally for an amount in excess of Seventy-Five Thousand ($75,000.00) Dollars, exclusive of interest and costs.

Respectfully submitted,
SCHIFFMAN & WOJDOWSKI

/s/Carl R. Schiffman
Carl R. Schiffman, Esq.
Attorney for the Plaintiffs

VERIFICATION

The undersigned, Robert Elmes, Plaintiff named herein, and being authorized to make this Verification, having read the foregoing COMPLAINT verify that the averments are based on information furnished to counsel, which information has been gathered by counsel in the course of this lawsuit. The language is that of counsel and not of signers. Signers verify that they have read the foregoing, and that it is true and correct to the best of the signers' knowledge, information and belief. To the extent that the contents of the foregoing document are that of counsel, verifiers have relied upon counsel in making this verification. This verification is made subject to the penalties of 18 PA C.S.A. § 4904, relating to unsworn falsification to authorities.

Date: 9/16/ 2008 */s/ Robert Elmes*

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF PENNSYLVANIA

ROBERT ELMES, No. 2:08-CV-1300

Plaintiff,

v.

TOYOTA MOTOR MANUFACTURING, KENTUCKY, INC., TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC. and TOYOTA MOTOR SALES U.S.A., INC.,

Defendants.

RESPONSES AND OBJECTIONS OF TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC. TO PLAINTIFF'S INTERROGATORIES

AND NOW, comes the defendant, Toyota Motor Engineering & Manufacturing North America, Inc., ("TEMA") by and through its counsel, Clem C. Trischler, Esquire of Pietragallo Gordon Alfano Bosick & Raspanti, LLP, and files these Responses and Objections to plaintiff's Interrogatories:

PREFATORY STATEMENT

TEMA was established in 2006 to integrate Toyota's research and development and manufacturing operations in North America. These functions were previously handled by Toyota Technical Center, U.S.A., Inc. ("TTC") and Toyota Motor Manufacturing North America, Inc. ("TMMNA").

TEMA is headquartered in Erlanger, Kentucky. It is organized into three functional centers: The Toyota Technical Center continues to direct North American research and development from TEMA's facilities in Ann Arbor, Michigan; The Toyota Operations Center

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supports Toyota's manufacturing operations throughout North America from TEMA's offices in Erlanger, Kentucky; and, The Toyota Planning Center conducts planning and administration functions for Toyota's North American manufacturing and research and development operations from TEMA's Erlanger, Kentucky location.

TEMA conducts engineering design, development, and testing for certain vehicles in North America, works with North American suppliers to evaluate parts and materials and conducts powertrain design, tuning, evaluation, environmental safety, and emissions certification. TEMA also engages in prototype development and materials and technical research for certain vehicles in North America.

TEMA does not manufacture, assemble, sell to the public, or provide after sales services of Toyota vehicles.

GENERAL OBJECTIONS

TEMA generally objects to the plaintiff's Interrogatories for the following reasons:

1. This litigation involves negligence, strict liability and warranty claims which have been asserted against TEMA stemming from its distribution and sale of a U.S. model 2002 Toyota Camry, more specifically identified as Vehicle Identification No.: 4T1BE32K32U600593. Notwithstanding this fact, these Interrogatories seek information concerning other products. TEMA objects to the discovery requests on the basis that they are overly broad, unduly burdensome, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence insofar as plaintiff seeks to discover information concerning any vehicle other than the U.S. model 2002 Toyota Camry in question.

2. The Complaint in this action alleges that the vehicle's throttle control system in the subject 2002 Toyota Camry was defective in that "it did not have protection from sudden acceleration and/or was designed in a manner to promote unwanted acceleration." While TEMA

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disputes this contention, TEMA objects to any discovery which seeks information concerning any part, component, system, assembly or sub-assembly of this vehicle which would not relate to the plaintiff's allegation. To the extent these discovery requests seek information concerning any part, component or system of the vehicle other than relevant components of the vehicle's throttle and braking systems, TEMA submits that these discovery requests are overly broad, irrelevant and beyond the scope of discovery permitted under the Federal Rules of Civil Procedure.

3. Throughout these Interrogatories, plaintiff seeks information and seeks to compel TEMA to produce "any" and/or "each and every" information or documentation of a given nature, type or description. TEMA submits that such a broad-based and all-encompassing request is overly broad, unduly burdensome and violates the Federal Rules of Civil Procedure.

4. This litigation stems from an incident that reportedly occurred on September 21, 2006. Notwithstanding this fact, plaintiff seeks information without limitation in time, and TEMA objects to these discovery requests on the basis that any Interrogatory which seeks information post-dating this incident is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

5. Throughout the discovery requests, plaintiff seeks the discovery of information which is confidential, proprietary and privileged. TEMA objects to the production and disclosure of any document which is proprietary and any trade secret in nature, and submits that such discovery should only take place and should be governed by the proffered Stipulation of Confidentiality and Protective Order which has been entered.

6. Plaintiff further seeks information concerning alleged post-manufacturing design changes, post-accident design changes and lawsuits, claims or accidents involving the product at issue or supposed similar products. TEMA submits that these various requests are irrelevant, not

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reasonably calculated to the lead to the discovery of admissible evidence and beyond the scope of discovery permitted under the Federal Rules of Civil Procedure.

7. TEMA objects to the extent these Interrogatories ask TEMA to produce documents protected by the attorney-client privilege or the work product doctrine and to the extent it requires TEMA to produce any materials generated by outside entities/consultants/experts/attorneys for the purposes of, or in connection with, this or other litigation.

8. TEMA objects to the extent these Interrogatories ask about confidential, proprietary and competitively sensitive information that could irreparably harm Toyota if disclosed to competitors.

9. TEMA has responded to these Interrogatories without waiving the following:

a. The right to object to the use of any of these Responses in this action or any other action because of privilege, relevance, materiality or any other appropriate grounds;

b. The right to object to any other Interrogatory involving or related to the subject matter of these Responses; and

c. The right to revise, correct, supplement or clarify any of the Responses as may be warranted by TEMA's ongoing investigation in the defense of this action.

10. In searching for information responsive to the discovery, TEMA is conducting a reasonable search of records kept in the ordinary course of business where information, documents or other things potentially responsive to this discovery were most likely to be found. TEMA is speaking with those persons who are most likely to know of documents or things responsive to the discovery. Therefore, to the extent these Interrogatories impose a greater

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burden upon TEMA by asking for more information, TEMA objects that the discovery is overly broad, unduly burdensome and asks for information that is not relevant and not reasonably calculated to lead to the discovery of admissible evidence. TEMA also, to the extent appropriate, redacted e-mail addresses due to privacy issues.

SPECIFIC RESPONSES AND OBJECTIONS TO PLAINTIFF'S INTERROGATORIES

1. Please state what actions including but not limited to its design, manufacture, assembling, selling, distributing, importing, advertising, servicing, repairing, altering, or maintaining Defendant or its agents or employees performed with respect to the product (please see Definition Section for definition of "product.").

ANSWER: Toyota Motor Corporation had overall design responsibility for the 2002 Toyota Camry including the electronic throttle control system identified as Vehicle Identification No.: 4T1E3232U600593 and Toyota Motor Manufacturing Kentucky, Inc. ("TMMK") manufactured in part and assembled in part the 2002 Camry. TEMA was not responsible for the overall design of the electronic throttle control system. TEMA was involved in the design of certain exterior components (bumper, grille, lamps) and interior (seats, seat belts, interior trim, instrument panel), wire-harness design, and evaluation activities for the subject Camry. TEMA was also involved in the design, development, and evaluation of certain components of the chassis and suspension system, and conducted part quality testing.

2. Please state the basis for any complaints either oral or written, either made directly to you filed in any Court of Law, or filed in any governmental agency by or on behalf of any users of the product or similar products (as defined in the Definitions Section) for a period of five (5) years prior to the date of Plaintiff's accident until the present time regarding alleged sudden acceleration and/or the electronic throttle system and/or difficulty in braking, and for each state:

a. when these complaints were made;

b. by whom these complaints were made;

c. to whom these complaints were made;

d. the outcome of these complaints; and

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e. the number, term and court or government agency where any lawsuits or complaints were filed.

ANSWER: TEMA objects to this Interrogatory on the basis that it is overly broad, unduly burdensome, irrelevant in its scope and not reasonably calculated to lead to the discovery of admissible evidence. Additionally, TEMA does not maintain or generate the requested information in the ordinary course of business. TEMA also objects to this Interrogatory on the basis that it is not sufficiently limited in time and scope or to the at-issue vehicle. TEMA further objects to this Interrogatory on the basis that it is vague in that the term "difficulty in braking" is subject to numerous and varied interpretations. Finally, TEMA objects to this Interrogatory on the basis that it is so broad and potentially all-encompassing in its scope as to seek information protected by the attorney-client privilege and attorney work product doctrine. Subject to and without waiving these objections, TEMA refers plaintiff to TMS's response to this interrogatory.

3. Please state the basis for any complaints either oral or written, either made directly to you filed in any Court of Law, or filed in any governmental agency by or on behalf of any users of comparable products (as defined in the Definitions Section) for a period of five (5) years prior to the date of Plaintiff's accident until the present time regarding alleged sudden acceleration and/or the electronic throttle system and/or difficulty in braking, and for each state:

a. when these complaints were made;

b. by whom these complaints were made;

c. to whom these complaints were made;

d. the outcome of these complaints; and

e. the number, term and court or government agency where any lawsuits or complaints were filed.

ANSWER: TEMA objects to this Interrogatory on the basis that it is overly broad, unduly burdensome, irrelevant in its scope and not reasonably calculated to lead to the discovery of admissible evidence. TEMA also objects to this Interrogatory on the basis that it is not sufficiently limited in time and scope or to the at-issue vehicle. TEMA further objects to this Interrogatory on the basis that it is vague and ambiguous as phrased as the term "difficulty in braking" is undefined and is subject to numerous and varied interpretations. Finally, TEMA objects to this Interrogatory on the basis that it so broad and potentially all-encompassing in its scope as to seek information protected by the attorney-client privilege and attorney work product doctrine. See Response of TEMA to Interrogatory No. 2.

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4. Please state, with specificity, the results of each and every investigation by the National Highway Safety Administration of sudden acceleration of similar or comparable products (as defined in the Definitions section) and for each investigation, state the outcome and the number of the investigation.

ANSWER: TEMA objects to this Interrogatory on the basis that it is overly broad, unduly burdensome and irrelevant insofar as plaintiff seeks information concerning "similar or comparable products." See TEMA's General Objections. Without waiving any of these objections, TEMA states that the 2002 Toyota Camry was designed to meet or exceed all applicable Federal Motor Vehicle Safety Standards ("FMVSS") and TEMA states that this vehicle did, in fact, meet or exceed all applicable provisions of the FMVSS. By way of further response, TEMA refers plaintiff to TMS' Responses to this Interrogatory.

5. Please state, with specificity, the results of each and every investigation by the National Highway Safety Administration of sudden acceleration of comparable or similar products (as defined in the Definitions Section) which have an electronic throttle control system similar to the one in the product, and for each investigation, state the outcome and the number of the investigation.

ANSWER: TEMA objects to this Interrogatory on the basis that it is overly broad, unduly burdensome and irrelevant insofar as plaintiff seeks information concerning "similar or comparable products." See TEMA's General Objections. Without waiving any of these objections, TEMA states that the 2002 Toyota Camry was designed to meet or exceed all applicable Federal Motor Vehicle Safety Standards ("FMVSS") and TEMA states that this vehicle did, in fact, meet or exceed all applicable provisions of the FMVSS. By way of further response, TEMA refers plaintiff to TMS' Responses to this Interrogatory.

6. Please state, with specificity, the results of each and every investigation by the National Highway Safety Administration of difficulty braking in similar or comparable products (as defined in the Definitions Section) and for each investigation state the outcome and the number of the investigation.

ANSWER: TEMA objects to this Interrogatory on the basis that it is overly broad, unduly burdensome and irrelevant insofar as plaintiff seeks information concerning "similar or comparable products." See TEMA's General Objections. Without waiving any of these objections, TEMA states that the 2002 Toyota Camry was designed to meet or exceed all applicable Federal Motor Vehicle Safety Standards ("FMVSS") and TEMA states that this vehicle did, in fact, meet or exceed all applicable provisions of the FMVSS. By way of further response, TEMA refers plaintiff to TMS' Responses to this Interrogatory.

7. Please state, with specificity, the results of each and every investigation by the National Highway Safety Administration of difficulty braking in comparable or similar products (as defined in the Definitions Section) and for each investigation, state the outcome and the number of the investigation.

ANSWER: TEMA objects to this Interrogatory on the basis that it is overly broad, unduly burdensome and irrelevant insofar as plaintiff seeks information concerning "similar or comparable products." See TEMA's General Objections. Without waiving any of these objections, TEMA states that the 2002 Toyota Camry was designed to meet or exceed all applicable Federal Motor Vehicle Safety Standards ("FMVSS") and TEMA states that this vehicle did, in fact, meet or exceed all applicable provisions of the FMVSS. By way of further response, TEMA refers plaintiff to TMS' Responses to this Interrogatory.

8. Please set forth, with specificity:

a. whether all complaints or negative comments are recorded;

b. the manner in which you track or note complaints; and

c. the name and address of the person(s) of those entrusted with the job of keeping records of complaints.

ANSWER: TEMA objects to this Interrogatory on the basis that it lacks a specific subject or area of inquiry and it is therefore vague, ambiguous and incapable of a precise or accurate response. Further, TEMA objects to this Interrogatory on the basis that it is not limited in any manner of form. See the General Objections which are incorporated by reference.

9. If similar products or comparable products (as defined in the Definitions Section) were investigated or tested for problems with sudden acceleration, problems with the electronic throttle system or difficulty with braking by you, by independent investigation, independent testing, or testing performed by others, not previously identified, please state:

a. when you first became aware of such defect or hazard;

b. what was the nature of such defect or hazardous condition; and

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c. any precautions taken by you prior to the alleged occurrence to prevent injury to any user of the product.

ANSWER: TEMA objects to this Interrogatory on the basis that it is overly broad, unduly burdensome, irrelevant in its scope and not reasonably calculated to lead to the discovery of admissible evidence. In particular, TEMA objects to this Interrogatory insofar as the plaintiff seeks to discovery information concerning "similar products or comparable products." See TEMA's General Objections. TEMA further objects to this Interrogatory on the basis that the term "difficulty with braking" is vague, ambiguous and subject to numerous and varied interpretations. In addition, TEMA objects to the form of this Interrogatory to the extent it improperly and incorrectly assumes the existence of some defect in the product. Without waiving any of these objections, please refer to the Response of TEMA to Interrogatory No. 4.

10. Please state what alterations were made subsequent to the date of the accident in the design and/or manufacture of this product which would affect the product, similar products, or comparable products regarding the acceleration of the vehicle and its ability to stop including but not limited to any changes to the electronic throttle system and the reason(s) for such alternations.

ANSWER: TEMA objects to this Interrogatory on the basis that it is overly broad, unduly burdensome, irrelevant in its scope and not reasonably calculated to lead to the discovery of admissible evidence. In particular, and insofar as this Interrogatory seeks information regarding design changes incorporated or adopted after the date of the sale of this motor vehicle or the date of this accident, TEMA submits that this Interrogatory is irrelevant and beyond the scope of proper discovery. Without waiving any of these objections, please see Prefatory Statement.

11. Please state with specificity what actions of the plaintiff or any other individual or entity you believe may have caused or contributed to the accident which is the basis of the Complaint filed in this action.

ANSWER: TEMA objects to this Interrogatory on the basis that it violates the attorney-client privilege and work product doctrine and seeks to discover information that is protected from discovery under Rule 26(b) of the Federal Rules of Civil Procedure. In particular, TEMA objects to this Interrogatory as plaintiff seeks to discover the mental impressions, opinions, conclusions and work product from counsel and consulting experts. Without waiving these objections, TEMA states that the incident in question was directly and proximately caused by the negligence and careless conduct of Robert Elmes. This claim will be supported by expert testimony to be disclosed in a time and manner required by this Court's Case Management Order.

TOY-RQ-05E-00003918

Respectfully submitted,

PIETRAGALLO GORDON ALFANO
BOSICK & RASPANTI, LLP

BY: Clem C. Trischler

Clem C. Trischler, Esquire
Pa. ID #52957

One Oxford Centre, 38th Floor
Pittsburgh, PA 15219
(412) 263-2000

Attorney for Defendant,
Toyota Motor Engineering & Manufacturing North America, Inc.

TOY-RQ-05E-00003919

Elmes v Toyota
TEMA

VERIFICATION

I, Deborah Greenman, the undersigned, say as follows:

I have read the response of Defendant Toyota Motor Engineering & Manufacturing North America, Inc. (TEMA) to Plaintiff's Interrogatories in the *Elmes v Toyota, et al* matter and know the contents thereof.

I am Managing Counsel for TEMA and am authorized to make this verification on behalf of the above-named Toyota defendant, a party to this action. I have read the responses and I am informed and believe that the matters stated therein are true. My information and belief is based on the statements, reports, and records of other employees of TEMA upon whom I customarily rely.

Executed on February 12, 2010.

Deborah A. Greenman
Managing Counsel

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the within RESPONSES AND OBJECTIONS OF TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC. TO PLAINTIFF'S INTERROGATORIES have been served on counsel of record listed below by hand delivery, this 15th day of February, 2010:

Carl R. Schiffman, Esquire
Schiffman & Wodjowski
1300 Fifth Avenue
Pittsburgh, PA 15219
Counsel for Plaintiff

Clem C. Trischler

Clem C. Trischler, Esquire

#1651293

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF PENNSYLVANIA

ROBERT ELMES, No. 2:08-CV-1300

Plaintiff,

v.

TOYOTA MOTOR MANUFACTURING, KENTUCKY, INC., TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC. and TOYOTA MOTOR SALES U.S.A., INC.,

Defendants.

RESPONSES AND OBJECTIONS OF TOYOTA MOTOR MANUFACTURING KENTUCKY, INC. TO PLAINTIFF'S INTERROGATORIES

AND NOW, comes the defendant, Toyota Motor Manufacturing Kentucky, Inc., ("TMMK") by and through its counsel, Clem C. Trischler, Esquire of Pietragallo Gordon Alfano Bosick & Raspanti, LLP, and files these Responses and Objections to plaintiff's Interrogatories:

PREFATORY STATEMENT

Toyota Motor Manufacturing, Kentucky, Inc. ("TMMK") is the manufacturer of certain Toyota vehicles in the continental United States. TMMK does not design, developmentally test, distribute, or market Toyota motor vehicles in the ordinary course of business. TMMK understands that Toyota Motor Corporation, which is located in Japan, was responsible for the overall design and developmental testing of the subject model vehicle. TMMK would have assembled the subject vehicle into its final form in accordance with such design. As a separate and distinct corporation, TMMK can only respond to plaintiffs' discovery within its particular area.

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GENERAL OBJECTIONS

TMMK generally objects to the plaintiff's Interrogatories for the following reasons:

1. This litigation involves negligence, strict liability and warranty claims which have been asserted against TMMK stemming from its distribution and sale of a U.S. model 2002 Toyota Camry, more specifically identified as Vehicle Identification No.: 4T1BE32K32U600593. Notwithstanding this fact, these Interrogatories seek information concerning other products. TMMK objects to the discovery requests on the basis that they are overly broad, unduly burdensome, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence insofar as plaintiff seeks to discover information concerning any vehicle other than the U.S. model 2002 Toyota Camry in question.

2. The Complaint in this action alleges that the vehicle's throttle control system in the subject 2002 Toyota Camry was defective in that "it did not have protection from sudden acceleration and/or was designed in a manner to promote unwanted acceleration." While TMMK disputes this contention, TMMK objects to any discovery which seeks information concerning any part, component, system, assembly or sub-assembly of this vehicle which would not relate to the plaintiff's allegation. To the extent these discovery requests seek information concerning any part, component or system of the vehicle other than relevant components of the vehicle's throttle and braking systems, TMMK submits that these discovery requests are overly broad, irrelevant and beyond the scope of discovery permitted under the Federal Rules of Civil Procedure.

3. Throughout these Interrogatories, plaintiff seeks information and seeks to compel TMMK to produce "any" and/or "each and every" information or documentation of a given

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nature, type or description. TMMK submits that such a broad-based and all-encompassing request is overly broad, unduly burdensome and violates the Federal Rules of Civil Procedure.

4. This litigation stems from an incident that reportedly occurred on September 21, 2006. Notwithstanding this fact, plaintiff seeks information without limitation in time, and TMMK objects to these discovery requests on the basis that any Interrogatory which seeks information post-dating this incident is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

5. Throughout the discovery requests, plaintiff seeks the discovery of information which is confidential, proprietary and privileged. TMMK objects to the production and disclosure of any document which is proprietary and any trade secret in nature, and submits that such discovery should only take place and should be governed by the proffered Stipulation of Confidentiality and Protective Order which has been entered.

6. Plaintiff further seeks information concerning alleged post-manufacturing design changes, post-accident design changes and lawsuits, claims or accidents involving the product at issue or supposed similar products. TMMK submits that these various requests are irrelevant, not reasonably calculated to the lead to the discovery of admissible evidence and beyond the scope of discovery permitted under the Federal Rules of Civil Procedure.

7. TMMK objects to the extent these Interrogatories ask TMMK to produce documents protected by the attorney-client privilege or the work product doctrine and to the extent it requires TMMK to produce any materials generated by outside entities/consultants/experts/attorneys for the purposes of, or in connection with, this or other litigation.

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8. TMMK objects to the extent these Interrogatories ask about confidential, proprietary and competitively sensitive information that could irreparably harm Toyota if disclosed to competitors.

9. TMMK has responded to these Interrogatories without waiving the following:

a. The right to object to the use of any of these Responses in this action or any other action because of privilege, relevance, materiality or any other appropriate grounds;

b. The right to object to any other Interrogatory involving or related to the subject matter of these Responses; and

c. The right to revise, correct, supplement or clarify any of the Responses as may be warranted by TMMK's ongoing investigation in the defense of this action.

10. In searching for information responsive to the discovery, TMMK is conducting a reasonable search of records kept in the ordinary course of business where information, documents or other things potentially responsive to this discovery were most likely to be found. TMMK is speaking with those persons who are most likely to know of documents or things responsive to the discovery. Therefore, to the extent these Interrogatories impose a greater burden upon TMMK by asking for more information, TMMK objects that the discovery is overly broad, unduly burdensome and asks for information that is not relevant and not reasonably calculated to lead to the discovery of admissible evidence. TMMK also, to the extent appropriate, redacted e-mail addresses due to privacy issues.

TOY-RQ-05E-00003925

SPECIFIC RESPONSES AND OBJECTIONS TO PLAINTIFF'S INTERROGATORIES

1. Please state what actions including but not limited to its design, manufacture, assembling, selling, distributing, importing, advertising, servicing, repairing, altering, or maintaining Defendant or its agents or employees performed with respect to the product (please see Definition Section for definition of "product.").

ANSWER: The 2002 Toyota Camry identified as Vehicle Identification No.: 4T1BE32K32U600593 was manufactured in part and assembled in part by TMMK at its business address of 1001 Cherry Blossom Way, Georgetown, Kentucky 40324. Upon information and belief, the subject vehicle was distributed to an authorized independent retail dealer, Rohrich Toyota.

2. Please state the basis for any complaints either oral or written, either made directly to you filed in any Court of Law, or filed in any governmental agency by or on behalf of any users of the product or similar products (as defined in the Definitions Section) for a period of five (5) years prior to the date of Plaintiff's accident until the present time regarding alleged sudden acceleration and/or the electronic throttle system and/or difficulty in braking, and for each state:

a. when these complaints were made;

b. by whom these complaints were made;

c. to whom these complaints were made;

d. the outcome of these complaints; and

e. the number, term and court or government agency where any lawsuits or complaints were filed.

ANSWER: TMMK objects to this Interrogatory on the basis that it is overly broad, unduly burdensome, irrelevant in its scope and not reasonably calculated to lead to the discovery of admissible evidence. Additionally, TMMK does not maintain or generate this information in the ordinary course of business. TMMK also objects to this Interrogatory on the basis that it is not sufficiently limited in time and scope or to the at-issue vehicle. TMMK further objects to this Interrogatory on the basis that it is vague in that the term "difficulty in braking" is subject to numerous and varied interpretations. Finally, TMMK objects to this Interrogatory on the basis that it is so broad and potentially all-encompassing in its scope as to seek information protected by the attorney-client privilege and attorney work product doctrine. Subject to and without waiving these objections, TMMK refers plaintiff to Toyota Motor Sales, U.S.A., Inc.'s response to this request.

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3. Please state the basis for any complaints either oral or written, either made directly to you filed in any Court of Law, or filed in any governmental agency by or on behalf of any users of comparable products (as defined in the Definitions Section) for a period of five (5) years prior to the date of Plaintiff's accident until the present time regarding alleged sudden acceleration and/or the electronic throttle system and/or difficulty in braking, and for each state:

a. when these complaints were made;

b. by whom these complaints were made;

c. to whom these complaints were made;

d. the outcome of these complaints; and

e. the number, term and court or government agency where any lawsuits or complaints were filed.

ANSWER: TMMK objects to this Interrogatory on the basis that it is overly broad, unduly burdensome, irrelevant in its scope and not reasonably calculated to lead to the discovery of admissible evidence. TMMK also objects to this Interrogatory on the basis that it is not sufficiently limited in time and scope or to the at-issue vehicle. TMMK further objects to this Interrogatory on the basis that it is vague and ambiguous as phrased as the term "difficulty in braking" is undefined and is subject to numerous and varied interpretations. Finally, TMMK objects to this Interrogatory on the basis that it so broad and potentially all-encompassing in its scope as to seek information protected by the attorney-client privilege and attorney work product doctrine. See Response of TMMK to Interrogatory No. 2.

4. Please state, with specificity, the results of each and every investigation by the National Highway Safety Administration of sudden acceleration of similar or comparable products (as defined in the Definitions section) and for each investigation, state the outcome and the number of the investigation.

ANSWER: TMMK objects to this Interrogatory on the basis that it is overly broad, unduly burdensome and irrelevant insofar as plaintiff seeks information concerning "similar or comparable products." See TMS' General Objections. Without waiving any of these objections, TMMK states that the 2002 Toyota Camry was designed to meet or exceed all applicable Federal Motor Vehicle Safety Standards ("FMVSS") and TMMK states that this vehicle did, in fact, meet or exceed all applicable provisions of the FMVSS. Without waiving aforementioned objections, TMMK does not have responsive information, if any, for this Interrogatory. By way of further response, TMMK refers plaintiff to TMS' Response to this Interrogatory.

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5. Please state, with specificity, the results of each and every investigation by the National Highway Safety Administration of sudden acceleration of comparable or similar products (as defined in the Definitions Section) which have an electronic throttle control system similar to the one in the product, and for each investigation, state the outcome and the number of the investigation.

ANSWER: TMMK objects to this Interrogatory on the basis that it is overly broad, unduly burdensome and irrelevant insofar as plaintiff seeks information concerning "similar or comparable products." See TMS' General Objections. Without waiving any of these objections, TMMK states that the 2002 Toyota Camry was designed to meet or exceed all applicable Federal Motor Vehicle Safety Standards ("FMVSS") and TMMK states that this vehicle did, in fact, meet or exceed all applicable provisions of the FMVSS. Without waiving aforementioned objections, TMMK does not have responsive information, if any, for this Interrogatory. By way of further response, TMMK refers plaintiff to TMS' Response to this Interrogatory.

6. Please state, with specificity, the results of each and every investigation by the National Highway Safety Administration of difficulty braking in similar or comparable products (as defined in the Definitions Section) and for each investigation state the outcome and the number of the investigation.

ANSWER: TMMK objects to this Interrogatory on the basis that it is overly broad, unduly burdensome and irrelevant insofar as plaintiff seeks information concerning "similar or comparable products." See TMS' General Objections. Without waiving any of these objections, TMMK states that the 2002 Toyota Camry was designed to meet or exceed all applicable Federal Motor Vehicle Safety Standards ("FMVSS") and TMMK states that this vehicle did, in fact, meet or exceed all applicable provisions of the FMVSS. Without waiving aforementioned objections, TMMK does not have responsive information, if any, for this Interrogatory. By way of further response, TMMK refers plaintiff to TMS' Response to this Interrogatory.

7. Please state, with specificity, the results of each and every investigation by the National Highway Safety Administration of difficulty braking in comparable or similar products (as defined in the Definitions Section) and for each investigation, state the outcome and the number of the investigation.

ANSWER: TMMK objects to this Interrogatory on the basis that it is overly broad, unduly burdensome and irrelevant insofar as plaintiff seeks information concerning "similar or comparable products." See TMS' General Objections. Without waiving any of these objections, TMMK states that the 2002 Toyota Camry was designed to meet or exceed all applicable Federal Motor Vehicle Safety Standards ("FMVSS") and TMMK states that this vehicle did, in fact, meet or exceed all applicable provisions of the FMVSS. Without waiving aforementioned objections, TMMK does not have responsive information, if any, for this Interrogatory. By way of further response, TMMK refers plaintiff to TMS' Response to this Interrogatory.

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8. Please set forth, with specificity:

a. whether all complaints or negative comments are recorded;

b. the manner in which you track or note complaints; and

c. the name and address of the person(s) of those entrusted with the job of keeping records of complaints.

ANSWER: TMMK objects to this Interrogatory on the basis that it lacks a specific subject or area of inquiry and it is therefore vague, ambiguous and incapable of a precise or accurate response. Further, TMMK objects to this Interrogatory on the basis that it is not limited in any manner of form. See the General Objections which are incorporated by reference.

9. If similar products or comparable products (as defined in the Definitions Section) were investigated or tested for problems with sudden acceleration, problems with the electronic throttle system or difficulty with braking by you, by independent investigation, independent testing, or testing performed by others, not previously identified, please state:

a. when you first became aware of such defect or hazard;

b. what was the nature of such defect or hazardous condition; and

c. any precautions taken by you prior to the alleged occurrence to prevent injury to any user of the product.

ANSWER: TMMK objects to this Interrogatory on the basis that it is overly broad, unduly burdensome, irrelevant in its scope and not reasonably calculated to lead to the discovery of admissible evidence. In particular, TMMK objects to this Interrogatory insofar as the plaintiff seeks to discovery information concerning "similar products or comparable products." See TMMK's General Objections. TMMK further objects to this Interrogatory on the basis that the term "difficulty with braking" is vague, ambiguous and subject to numerous and varied interpretations. In addition, TMMK objects to the form of this Interrogatory to the extent it improperly and incorrectly assumes the existence of some defect in the product. Without waiving any of these objections, please refer to the Response of TMMK to Interrogatory No. 4.

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10. Please state what alterations were made subsequent to the date of the accident in the design and/or manufacture of this product which would affect the product, similar products, or comparable products regarding the acceleration of the vehicle and its ability to stop including but not limited to any changes to the electronic throttle system and the reason(s) for such alternations.

ANSWER: TMMK objects to this Interrogatory on the basis that it is overly broad, unduly burdensome, irrelevant in its scope and not reasonably calculated to lead to the discovery of admissible evidence. In particular, and insofar as this Interrogatory seeks information regarding design changes incorporated or adopted after the date of the sale of this motor vehicle or the date of this accident, TMMK submits that this Interrogatory is irrelevant and beyond the scope of proper discovery. Without waiving any of these objections, please see Prefatory Statement.

11. Please state with specificity what actions of the plaintiff or any other individual or entity you believe may have caused or contributed to the accident which is the basis of the Complaint filed in this action.

ANSWER: TMMK objects to this Interrogatory on the basis that it violates the attorney-client privilege and work product doctrine and seeks to discover information that is protected from discovery under Rule 26(b) of the Federal Rules of Civil Procedure. In particular, TMMK objects to this Interrogatory as plaintiff seeks to discover the mental impressions, opinions, conclusions and work product from counsel and consulting experts. Without waiving these objections, TMMK states that the incident in question was directly and proximately caused by the negligence and careless conduct of Robert Elmes. This claim will be supported by expert testimony to be disclosed in a time and manner required by this Court's Case Management Order.

Respectfully submitted,

PIETRAGALLO GORDON ALFANO
BOSICK & RASPANTI, LLP

BY: Clem C. Trischler

Clem C. Trischler, Esquire
Pa. ID #52957

One Oxford Centre, 38th Floor
Pittsburgh, PA 15219
(412) 263-2000

Attorney for Defendant,
Toyota Motor Manufacturing Kentucky, Inc.

TOY-RQ-05E-00003930

Elmes v Toyota
TEMA

VERIFICATION

I, Vinodh Venugopal, the undersigned, say as follows:

I have read the Response and Objections of Defendant Toyota Motor Manufacturing Kentucky, Inc. (TMMK) to Plaintiff's Interrogatories in the *Robert Elmes v Toyota, et al* matter and know the contents thereof.

I am, the General Manager, TMMK Quality Control, and am authorized to make this verification on behalf of the above-named Toyota defendant, a party to this action. I have read the responses and I am informed and believe that the matters stated therein are true. My information and belief is based on the statements, reports, and records of other employees of TEMA upon whom I customarily rely.

Executed on February 11, 2010.

V. Venugopal

Vinodh Venugopal
General Manager, TMMK Quality Control

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the within RESPONSES AND OBJECTIONS OF TOYOTA MOTOR MANUFACTURING KENTUCKY, INC. TO PLAINTIFF'S INTERROGATORIES have been served on counsel of record listed below by hand delivery, this 15th day of February, 2010:

Carl R. Schiffman, Esquire
Schiffman & Wodjowski
1300 Fifth Avenue
Pittsburgh, PA 15219
Counsel for Plaintiff

Clem C. Trischler

Clem C. Trischler, Esquire

#1651255

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF PENNSYLVANIA

ROBERT ELMES, No. 2:08-CV-1300

Plaintiff,

v.

TOYOTA MOTOR MANUFACTURING, KENTUCKY, INC., TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC. and TOYOTA MOTOR SALES U.S.A., INC.,

Defendants.

RESPONSES AND OBJECTIONS OF TOYOTA MOTOR SALES, U.S.A., INC. TO PLAINTIFF'S INTERROGATORIES

AND NOW, comes the defendant, Toyota Motor Sales, U.S.A., Inc., ("TMS") by and through its counsel, Clem C. Trischler, Esquire of Pietragallo Gordon Alfano Bosick & Raspanti, LLP, and files these Responses and Objections to plaintiff's Interrogatories:

PREFATORY STATEMENT

TMS is the authorized importer and distributor, in certain geographic areas, of Toyota, Lexus and Scion motor vehicles in the continental United States. TMS does not manufacture, design, assemble or test Toyota, Lexus or Scion motor vehicles in the ordinary course of its business and, therefore, did not design, manufacture, developmentally test or assemble the subject vehicle. Accordingly, TMS does not maintain information or documentation to completely and accurately respond to many of these Interrogatories regarding testing, design and/or manufacture of the subject vehicle. As set forth in TMS' Rule 26 Initial Disclosure Statement, TMS does not, in the normal course of business, generate or maintain some of the information and/or documents responsive to these Interrogatories. However, TMS requested

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certain design and testing information from Toyota Motor Corporation ("TMC") about the design of the vehicle involved in this case, and produced those materials pursuant to Rule 26 Initial Disclosures. The information so obtained and produced was not within the original possession, custody or control of TMS, nor does TMS have the ability to compel the production of any additional materials from TMC that may be responsive to these Interrogatories.

GENERAL OBJECTIONS

TMS generally objects to the plaintiff's Interrogatories for the following reasons:

1. This litigation involves negligence, strict liability and warranty claims which have been asserted against TMS stemming from its distribution and sale of a U.S. model 2002 Toyota Camry, more specifically identified as Vehicle Identification No.: 4T1BE32K32U600593. Notwithstanding this fact, these Interrogatories seek information concerning other products. TMS objects to the discovery requests on the basis that they are overly broad, unduly burdensome, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence insofar as plaintiff seeks to discover information concerning any vehicle other than the U.S. model 2002 Toyota Camry in question.

2. The Complaint in this action alleges that the vehicle's throttle control system in the subject 2002 Toyota Camry was defective in that "it did not have protection from sudden acceleration and/or was designed in a manner to promote unwanted acceleration." While TMS disputes this contention, TMS objects to any discovery which seeks information concerning any part, component, system, assembly or sub-assembly of this vehicle which would not relate to the plaintiff's allegation. To the extent these discovery requests seek information concerning any part, component or system of the vehicle other than relevant components of the vehicle's throttle and braking systems, TMS submits that these discovery requests are overly broad, irrelevant and beyond the scope of discovery permitted under the Federal Rules of Civil Procedure.

TOY-RQ-05E-00003934

3. Throughout these Interrogatories, plaintiff seeks information and seeks to compel TMS to produce "any" and/or "each and every" information or documentation of a given nature, type or description. TMS submits that such a broad-based and all-encompassing request is overly broad, unduly burdensome and violates the Federal Rules of Civil Procedure.

4. TMS is the authorized importer and distributor of Toyota motor vehicles in certain geographic areas of the continental United States, including the subject 2002 Toyota Camry in question. As a distributor of Toyota motor vehicles, TMS played no role in the design, manufacture or pre-production testing of this motor vehicle. Thus, TMS objects to any request that seeks to compel it to identify, describe or produce documents or information relating to the design, manufacture or testing of this motor vehicle or any of its components on the basis that such request is overly broad, unduly burdensome and seeks the production of documents or materials which are not within the control of TMS. Nevertheless, notwithstanding this objection, TMS has produced in accordance with Rule 26 Disclosures certain design and testing information from TMC.

5. This litigation stems from an incident that reportedly occurred on September 21, 2006. Notwithstanding this fact, plaintiff seeks information without limitation in time, and TMS objects to these discovery requests on the basis that any Interrogatory which seeks information post-dating this incident is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

6. Throughout the discovery requests, plaintiff seeks the discovery of information which is confidential, proprietary and privileged. TMS objects to the production and disclosure of any document which is proprietary and any trade secret in nature, and submits that such discovery should only take place and should be governed by the proffered Stipulation of Confidentiality and Protective order which has been entered.

TOY-RQ-05E-00003935

7. Plaintiff further seeks information concerning alleged post-manufacturing design changes, post-accident design changes and lawsuits, claims or accidents involving the product at issue or supposed similar products. TMS submits that these various requests are irrelevant, not reasonably calculated to the lead to the discovery of admissible evidence and beyond the scope of discovery permitted under the Federal Rules of Civil Procedure.

8. TMS objects to the extent these Interrogatories ask TMS to produce documents protected by the attorney-client privilege or the work product doctrine and to the extent it requires TMS to produce any materials generated by outside entities/consultants/experts/attorneys for the purposes of, or in connection with, this or other litigation.

9. TMS objects to the extent these Interrogatories ask about confidential, proprietary and competitively sensitive information that could irreparably harm Toyota if disclosed to competitors.

10. TMS has responded to these Interrogatories without waiving the following:

a. The right to object to the use of any of these Responses in this action or any other action because of privilege, relevance, materiality or any other appropriate grounds;

b. The right to object to any other Interrogatory involving or related to the subject matter of these Responses; and

c. The right to revise, correct, supplement or clarify any of the Responses as may be warranted by TMS' ongoing investigation in the defense of this action.

11. In searching for information responsive to the discovery, TMS is conducting a reasonable search of records kept in the ordinary course of business where information,

TOY-RQ-05E-00003936

documents or other things potentially responsive to this discovery were most likely to be found. TMS is speaking with those persons who are most likely to know of documents or things responsive to the discovery. Therefore, to the extent these Interrogatories impose a greater burden upon TMS by asking for more information, TMS objects that the discovery is overly broad, unduly burdensome and asks for information that is not relevant and not reasonably calculated to lead to the discovery of admissible evidence. TMS also, to the extent appropriate, redacted e-mail addresses due to privacy issues.

SPECIFIC RESPONSES AND OBJECTIONS TO PLAINTIFF'S INTERROGATORIES

1. Please state what actions including but not limited to its design, manufacture, assembling, selling, distributing, importing, advertising, servicing, repairing, altering, or maintaining Defendant or its agents or employees performed with respect to the product (please see Definition Section for definition of "product.").

ANSWER: Please see Prefatory Statement. The subject 2002 Toyota Camry identified as Vehicle Identification No.: 4T1BE32K32U600593 was distributed by TMS to an authorized independent retail dealer, Rohrich Toyota. TMS advertised Toyota brand motor vehicles for retail sale in the United States, including the subject vehicle. The vehicle in question was designed by Toyota Motor Corporation and manufactured in part and assembled in part in the United States by Toyota Motor Manufacturing Kentucky, Inc. ("TMMK"), 1001 Cherry Blossom Way, Georgetown, Kentucky 40324.

2. Please state the basis for any complaints either oral or written, either made directly to you filed in any Court of Law, or filed in any governmental agency by or on behalf of any users of the product or similar products (as defined in the Definitions Section) for a period of five (5) years prior to the date of Plaintiff's accident until the present time regarding alleged sudden acceleration and/or the electronic throttle system and/or difficulty in braking, and for each state:

a. when these complaints were made;

b. by whom these complaints were made;

c. to whom these complaints were made;

d. the outcome of these complaints; and

TOY-RQ-05E-00003937

e. the number, term and court or government agency where any lawsuits or complaints were filed.

ANSWER: TMS objects to this Interrogatory on the basis that it is overly broad, unduly burdensome, irrelevant in its scope and not reasonably calculated to lead to the discovery of admissible evidence. TMS also objects to this Interrogatory on the basis that it is not sufficiently limited in time and scope or to the at-issue vehicle. TMS further objects to this Interrogatory on the basis that it is vague in that the term "difficulty in braking" is subject to numerous and varied interpretations. Additionally, as phrased it may require TMS to review thousands of Customer Relations reports for which a manual review is necessary and the burden of this search may far outweigh any relevance of the materials ultimately produced. Finally, TMS objects to this Interrogatory on the basis that it is so broad and potentially all-encompassing in its scope as to seek information protected by the attorney-client privilege and attorney work product doctrine. Without waiving aforementioned objections, TMS will search for and make available for Plaintiffs' counsel's inspection, those personal injury and property damage lawsuit complaints, personal injury and property damage initial claim letters (or if there is no claim letter, Customer Relations contacts if available) where it was alleged that a U.S. model 2002-2006 Toyota Camry, Toyota Solara, Lexus ES300 or Lexus ES330 experienced sudden acceleration, unintended acceleration or unexpected acceleration. By producing such information and documents, TMS does not in any manner admit or imply that the incidents occurred under the same or similar circumstances as the incident giving rise to this lawsuit, or that the documents are relevant or admissible. In fact, TMS specifically contends that each of the incidents is not relevant and not admissible for any purpose.

3. Please state the basis for any complaints either oral or written, either made directly to you filed in any Court of Law, or filed in any governmental agency by or on behalf of any users of comparable products (as defined in the Definitions Section) for a period of five (5) years prior to the date of Plaintiff's accident until the present time regarding alleged sudden acceleration and/or the electronic throttle system and/or difficulty in braking, and for each state:

a. when these complaints were made;

b. by whom these complaints were made;

c. to whom these complaints were made;

d. the outcome of these complaints; and

e. the number, term and court or government agency where any lawsuits or complaints were filed.

ANSWER: TMS objects to this Interrogatory on the basis that it is overly broad, unduly burdensome, irrelevant in its scope and not reasonably calculated to lead to the discovery of admissible evidence. TMS also objects to this Interrogatory on the basis that it is not sufficiently limited in time and scope or to the at-issue vehicle. TMS further objects to this Interrogatory on the basis that it is vague and ambiguous as phrased as the term

TOY-RQ-05E-00003938

"difficulty in braking" is undefined and is subject to numerous and varied interpretations. Finally, TMS objects to this Interrogatory on the basis that it so broad and potentially all-encompassing in its scope as to seek information protected by the attorney-client privilege and attorney work product doctrine. See also the Response and objections of TMS to Interrogatory No. 2.

4. Please state, with specificity, the results of each and every investigation by the National Highway Safety Administration of sudden acceleration of similar or comparable products (as defined in the Definitions section) and for each investigation, state the outcome and the number of the investigation.

ANSWER: TMS objects to this Interrogatory on the basis that it is overly broad, unduly burdensome and irrelevant insofar as plaintiff seeks information concerning "similar or comparable products." See TMS' General Objections. Without waiving any of these objections, TMS states that the 2002 Toyota Camry was designed to meet or exceed all applicable Federal Motor Vehicle Safety Standards ("FMVSS") and TMS states that this vehicle did, in fact, meet or exceed all applicable provisions of the FMVSS. Without waiving aforementioned objections, TMS is aware of certain investigations undertaken by the National Highway Transportation Safety Administration ("NHTSA") involving the 2002 Camry. Each of these investigations were closed by the Agency with no finding of a defect trend. The documents relating to the investigation are a matter of public record which are available to plaintiff at NHTSA.gov. TMS objects to this Interrogatory on the basis that it is burdensome and unreasonable insofar as plaintiff seeks to compel the production of public records that are equally available to each party.

5. Please state, with specificity, the results of each and every investigation by the National Highway Safety Administration of sudden acceleration of comparable or similar products (as defined in the Definitions Section) which have an electronic throttle control system similar to the one in the product, and for each investigation, state the outcome and the number of the investigation.

ANSWER: TMS objects to this Interrogatory on the basis that it is overly broad, unduly burdensome and irrelevant insofar as plaintiff seeks information concerning "similar or comparable products." See TMS' General Objections. Without waiving any of these objections, TMS states that the 2002 Toyota Camry was designed to meet or exceed all applicable Federal Motor Vehicle Safety Standards ("FMVSS") and TMS states that this vehicle did, in fact, meet or exceed all applicable provisions of the FMVSS. Without waiving aforementioned objections, TMS is aware of certain investigations undertaken by the National Highway Transportation Safety Administration ("NHTSA") involving the 2002 Camry. Each of these investigations were closed by the Agency with no finding of a defect trend. The documents relating to the investigation are a matter of public record which are available to plaintiff at NHTSA.gov. TMS objects to this Interrogatory on the basis that it is burdensome and unreasonable insofar as plaintiff seeks to compel the production of public records that are equally available to each party.

TOY-RQ-05E-00003939

6. Please state, with specificity, the results of each and every investigation by the National Highway Safety Administration of difficulty braking in similar or comparable products (as defined in the Definitions Section) and for each investigation state the outcome and the number of the investigation.

ANSWER: TMS objects to this Interrogatory on the basis that it is overly broad, unduly burdensome and irrelevant insofar as plaintiff seeks information concerning "similar or comparable products." See TMS' General Objections. Without waiving any of these objections, TMS states that the 2002 Toyota Camry was designed to meet or exceed all applicable Federal Motor Vehicle Safety Standards ("FMVSS") and TMS states that this vehicle did, in fact, meet or exceed all applicable provisions of the FMVSS. Without waiving aforementioned objections, TMS is aware of certain investigations undertaken by the National Highway Transportation Safety Administration ("NHTSA") involving the 2002 Camry. Each of these investigations were closed by the Agency with no finding of a defect trend. The documents relating to the investigation are a matter of public record which are available to plaintiff at NHTSA.gov. TMS objects to this Interrogatory on the basis that it is burdensome and unreasonable insofar as plaintiff seeks to compel the production of public records that are equally available to each party.

7. Please state, with specificity, the results of each and every investigation by the National Highway Safety Administration of difficulty braking in comparable or similar products (as defined in the Definitions Section) and for each investigation, state the outcome and the number of the investigation.

ANSWER: TMS objects to this Interrogatory on the basis that it is overly broad, unduly burdensome and irrelevant insofar as plaintiff seeks information concerning "similar or comparable products." See TMS' General Objections. Without waiving any of these objections, TMS states that the 2002 Toyota Camry was designed to meet or exceed all applicable Federal Motor Vehicle Safety Standards ("FMVSS") and TMS states that this vehicle did, in fact, meet or exceed all applicable provisions of the FMVSS. Without waiving aforementioned objections, TMS is aware of certain investigations undertaken by the National Highway Transportation Safety Administration ("NHTSA") involving the 2002 Camry. Each of these investigations were closed by the Agency with no finding of a defect trend. The documents relating to the investigation are a matter of public record which are available to plaintiff at NHTSA.gov. TMS objects to this Interrogatory on the basis that it is burdensome and unreasonable insofar as plaintiff seeks to compel the production of public records that are equally available to each party.

8. Please set forth, with specificity:

a. whether all complaints or negative comments are recorded;

b. the manner in which you track or note complaints; and

c. the name and address of the person(s) of those entrusted with the job of keeping records of complaints.

ANSWER: TMS objects to this Interrogatory on the basis that it lacks a specific subject or area of inquiry and it is therefore vague, ambiguous and incapable of a precise or accurate response. Further, TMS objects to this Interrogatory on the basis that it is not limited in any manner of form. See the General Objections which are incorporated by reference. Without waiving aforementioned objections, see TMS's response and objections to Interrogatory No. 2.

9. If similar products or comparable products (as defined in the Definitions Section) were investigated or tested for problems with sudden acceleration, problems with the electronic throttle system or difficulty with braking by you, by independent investigation, independent testing, or testing performed by others, not previously identified, please state:

a. when you first became aware of such defect or hazard;

b. what was the nature of such defect or hazardous condition; and

c. any precautions taken by you prior to the alleged occurrence to prevent injury to any user of the product.

ANSWER: TMS objects to this Interrogatory on the basis that it is overly broad, unduly burdensome, irrelevant in its scope and not reasonably calculated to lead to the discovery of admissible evidence. In particular, TMS objects to this Interrogatory insofar as the plaintiff seeks to discovery information concerning "similar products or comparable products." See TMS' General Objections. TMS further objects to this Interrogatory on the basis that the term "difficulty with braking" is vague, ambiguous and subject to numerous and varied interpretations. In addition, TMS objects to the form of this Interrogatory to the extent it improperly and incorrectly assumes the existence of some defect in the product. Without waiving any of these objections, please refer to the Response of TMS to Interrogatory No. 4.

10. Please state what alterations were made subsequent to the date of the accident in the design and/or manufacture of this product which would affect the product, similar products, or comparable products regarding the acceleration of the vehicle and its ability to stop including but not limited to any changes to the electronic throttle system and the reason(s) for such alternations.

ANSWER: TMS objects to this Interrogatory on the basis that it is overly broad, unduly burdensome, irrelevant in its scope and not reasonably calculated to lead to the discovery of admissible evidence. In particular, and insofar as this Interrogatory seeks information regarding design changes incorporated or adopted after the date of the sale of this motor vehicle or the date of this accident, TMS submits that this Interrogatory is irrelevant and beyond the scope of proper discovery. Without waiving any of these objections, please see Prefatory Statement.

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11. Please state with specificity what actions of the plaintiff or any other individual or entity you believe may have caused or contributed to the accident which is the basis of the Complaint filed in this action.

ANSWER: TMS objects to this Interrogatory on the basis that it violates the attorney-client privilege and work product doctrine and seeks to discover information that is protected from discovery under Rule 26(b) of the Federal Rules of Civil Procedure. In particular, TMS objects to this Interrogatory as plaintiff seeks to discover the mental impressions, opinions, conclusions and work product from counsel and consulting experts. Without waiving these objections, TMS states that the incident in question was directly and proximately caused by the negligence and careless conduct of Robert Elmes. This claim will be supported by expert testimony to be disclosed in a time and manner required by this Court's Case Management Order.

Respectfully submitted,

PIETRAGALLO GORDON ALFANO
BOSICK & RASPANTI, LLP

BY: _____
Clem C. Trischler, Esquire
Pa. ID #52957

One Oxford Centre, 38th Floor
Pittsburgh, PA 15219
(412) 263-2000

Attorney for Defendant,
Toyota Motor Sales, U.S.A., Inc.

TOY-RQ-05E-00003942

VERIFICATION

STATE OF CALIFORNIA)
)
LOS ANGELES COUNTY)

I, JERRY J. KOYANAGI, say as follows:

I am Director, Automotive Accounting, of Toyota Motor Sales, U.S.A., Inc. ("TMS"). I have read RESPONSES AND OBJECTIONS OF TOYOTA MOTOR SALES, U.S.A., INC. TO PLAINTIFF'S INTERROGATORIES, in the case entitled, ROBERT ELMES , V. TOYOTA MOTOR MANUFACTURING KENTUCKY, INC., TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC. and TOYOTA MOTOR SALES, U.S.A., INC.

I am authorized to make this Verification for and on behalf of TMS. I am informed and believe that the contents thereof are true and correct. My information and belief is based on the statements, reports, and records of other employees of TMS upon whom I customarily rely.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this 11TH day of February, 2010, at Torrance, California.

JERRY J. KOYANAGI

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the within RESPONSES AND OBJECTIONS OF TOYOTA MOTOR SALES, U.S.A., INC. TO PLAINTIFF'S INTERROGATORIES have been served on counsel of record listed below by hand delivery, this 15th day of February, 2010:

Carl R. Schiffman, Esquire
Schiffman & Wodjowski
1300 Fifth Avenue
Pittsburgh, PA 15219
Counsel for Plaintiff

Clem C. Trischler, Esquire

#1651090

FILE START

STATE OF INDIANA)
) SS:
COUNTY OF LAKE)

FILED IN THE LAKE SUPERIOR COURT
CLERK'S OFFICE
SITTING AT GARY, INDIANA
2008 SEP 17 PM 1 03
THOMAS R. PINEPOT
CLERK LAKE SUPERIOR COURT

MICHAEL WEAVER and
SOFIA WEAVER

Plaintiffs,

vs.

GURLEY LEEP AUTOMOTIVE SALES d/b/a TOYOTA of MERRILLVILLE and TOYOTA MOTOR NORTH AMERICA, Inc)

Defendants.

45D04080 9CT 00222
CAUSE NO.45D04-_____

PLAINTIFFS' COMPLAINT FOR DAMAGES

Come now the Plaintiffs, MICHAEL WEAVER and SOFIA WEAVER, by and through their attorneys, and for their Complaint against the Defendants allege and state as follows:

OPERATIVE FACTS

1. That MICHAEL WEAVER and SOFIA WEAVER (hereinafter referred to as "Plaintiffs"), at all times relevant to this action were residents of the State of Indiana, County of Jasper.

2. That Defendant GURLEY LEEP AUTOMOTIVE SALES d/b/a TOYOTA of MERRILLVILLE (hereinafter referred to as "Toyota of Merrillville"), was at all times relevant to this action a business organized under the laws of the State of Indiana and with its principle place of business located in Merillville, Indiana.

3. That Defendant TOYOTA MOTOR NORTH AMERICA, Inc. (hereinafter referred to as "Toyota") was at all times relevant to this action a business organized under the laws of the State of California and with its principle place of business located in

TOY-RQ-05E-00003946

Torrance, California.

4. That on or about the 1st day of January, 2008, the Plaintiffs were occupants of a Toyota Tundra, model year 2006.

5. That while traveling northbound on CR 700 W in Jasper County, Indiana, the vehicle in which the Plaintiffs were traveling suddenly and without warning accelerated, despite Michael Weaver not depressing the gas pedal of said vehicle, causing the vehicle to spin out of control and wreck.

6. That the Plaintiffs were severely injured in the aforementioned wreck, causing them to suffer physical injury, pain and suffering, emotional trauma and distress, hospital and medical bills, and other economic and non-economic damages.

COUNT I-NEGLIGENCE

7. That the accident and resulting injuries sustained by Plaintiffs were the result of Defendant Toyota of Merrillville's negligent, careless and/or reckless actions including but not limited to the following Defendant Toyota of Merrillville's failure to remedy or correct the problem with the sudden acceleration of Plaintiffs' vehicle despite having been made aware of the situation and claiming to have remedied the problem.

8. That the accident and resulting injuries sustained by Plaintiffs were the result of Toyota's negligent, careless and/or reckless actions including but not limited to the negligent design of the Tundra, its accelerator components, and or other parts which would affect the acceleration of said vehicle.

9. That each Defendants' negligent, careless, and/or reckless actions were the direct and proximate cause of the Plaintiffs' personal injuries, pain and suffering, emotional trauma and distress, hospital and medical bills, and other economic and non-

TOY-RQ-05E-00003947

economic damages.

10. That the Plaintiffs are entitled to an award of damages against the Defendants in an amount reasonably calculated to compensate them for their injuries, damages, and other losses they have suffered as a proximate result of the aforementioned negligence of the Defendants.

COUNT II-PRODUCT LIABILITY

Come now the Plaintiffs, MICHAEL WEAVER and SOFIA WEAVER, by and through their attorneys, and for their Complaint against the Defendants further allege and state as follows:

1-10. Plaintiffs incorporate by reference paragraphs 1-10 of Plaintiffs' Complaint, and further allege as follows.

11. That Toyota sold, leased, or otherwise put into the stream of commerce a product in a defective and unreasonably dangerous condition to any user or consumer or the user or consumer's property.

12. That the Plaintiffs are in the class of persons that the seller should reasonably foresee as being subject to harm caused by the defective and unreasonably dangerous condition of the subject accelerator components of the subject Toyota Tundra.

13. That the Defendants are sellers engaged in the business of selling vehicles.

14. That the vehicles are expected by the Defendants to reach the consumer/user without substantial alteration in the condition in which the product is sold by the Defendants.

15. That the vehicle purchased by the Plaintiffs did remain in a substantially unchanged condition between the time of purchase and the date of the accident.

16. As a direct result of the defective and unreasonably dangerous condition of the subject vehicle, the Plaintiffs suffered personal injuries, pain and suffering, emotional trauma and distress, hospital and medical bills, and other economic and non-

TOY-RQ-05E-00003948

economic damages.

17. That the Plaintiffs are entitled to an award of damages against the Defendants in an amount reasonably calculated to compensate them for their injuries, damages, and other losses they have suffered as a result of the aforementioned negligence of the Defendants.

WHEREFORE, the Plaintiffs demand compensatory damages against the Defendants in an amount to be proven at trial, together with costs herein, and for all other just and proper relief in the premises.

COUNT III - BREACH OF EXPRESS AND IMPLIED WARRANTIES

Come now the Plaintiffs, MICHAEL WEAVER and SOFIA WEAVER, by and through their attorneys, and for their Complaint against the Defendants further allege and state as follows:

1-17. Plaintiffs incorporate by reference paragraphs 1-17 of Plaintiffs' Complaint, and further allege as follows.

18. That warranties, expressed and implied, were made to the Plaintiffs by the Defendants regarding the qualities and characteristics of the subject vehicle.

19. That the expressed and implied warranties made by the Defendants became part of the basis of the bargain for the purchase of the vehicle by the Plaintiffs from the Defendants.

20. That the subject vehicles failed to comply and conform with the expressed and implied warranties made by the Defendants; thus constituting a breach of said warranties.

21. As a direct result of the breach of said warranties, the Plaintiffs suffered personal injuries, pain and suffering, emotional trauma and distress, hospital and medical bills,

TOY-RQ-05E-00003949

and other economic and non-economic damages.

22. That the Plaintiffs are entitled to an award of damages against the Defendants in an amount reasonably calculated to compensate them for their injuries, damages, and other losses they have suffered as a result of the aforementioned breach of warranties by the Defendants.

WHEREFORE, the Plaintiffs demand compensatory damages against the Defendants in an amount to be proven at trial, together with costs herein, and for all other just and proper relief in the premises.

Respectfully submitted,

Ryan A. Bratcher, #22909-64
Bratcher & Vanderground, P.C.
Attorneys for Plaintiff
9120 Connecticut, Suite F
Merrillville, IN 46410
(219) 796-0082

JURY DEMAND

Come now the Plaintiffs, by counsel, and demand trial by jury upon all issues which are triable to a jury in the State of Indiana.

Respectfully submitted,

Ryan A. Bratcher, #22909-64
Bratcher & Vanderground, P.C.
Attorneys for Plaintiff
9120 Connecticut, Suite F
Merrillville, IN 46410
(219) 796-0082

TOY-RQ-05E-00003950

STATE OF INDIANA)
) SS:
COUNTY OF LAKE)

IN THE LAKE SUPERIOR COURT

SITTING AT GARY, INDIANA

RECEIVED
NOV 12 2008
LEGAL DEPT.

MICHAEL WEAVER and
SOFIA WEAVER

Plaintiffs,

vs.

GURLEY LEEP AUTOMOTIVE SALES d/b/a TOYOTA of MERRILLVILLE and TOYOTA MOTOR SALES, U.S.A., Inc.

Defendants.

CAUSE NO.45D04-0809-CT-00222

FIRST AMENDED COMPLAINT

Come now the Plaintiffs, MICHAEL WEAVER and SOFIA WEAVER, by and through their attorneys, and for their Complaint against the Defendants allege and state as follows:

OPERATIVE FACTS

1. That MICHAEL WEAVER and SOFIA WEAVER (hereinafter referred to as "Plaintiffs"), at all times relevant to this action were residents of the State of Indiana, County of Jasper.

2. That Defendant GURLEY LEEP AUTOMOTIVE SALES d/b/a TOYOTA of MERRILLVILLE (hereinafter referred to as "Toyota of Merrillville"), was at all times relevant to this action a business organized under the laws of the State of Indiana and with its principle place of business located in Merillville, Indiana.

3. That Defendant TOYOTA MOTOR SALES, U.S.A., Inc. (hereinafter referred to as "Toyota") was at all times relevant to this action a business organized under the laws

of the State of California and with its principle place of business located in Torrance, California.

4. That on or about the 1st day of January, 2008, the Plaintiffs were occupants of a Toyota Tundra, model year 2006.

5. That while traveling northbound on CR 700 W in Jasper County, Indiana, the vehicle in which the Plaintiffs were traveling suddenly and without warning accelerated, despite Michael Weaver not depressing the gas pedal of said vehicle, causing the vehicle to spin out of control and wreck.

6. That the Plaintiffs were severely injured in the aforementioned wreck, causing them to suffer physical injury, pain and suffering, emotional trauma and distress, hospital and medical bills, and other economic and non-economic damages.

COUNT I-NEGLIGENCE

7. That the accident and resulting injuries sustained by Plaintiffs were the result of Defendant Toyota of Merrillville's negligent, careless and/or reckless actions including but not limited to the following Defendant Toyota of Merrillville's failure to remedy or correct the problem with the sudden acceleration of Plaintiffs' vehicle despite having been made aware of the situation and claiming to have remedied the problem.

8. That the accident and resulting injuries sustained by Plaintiffs were the result of Toyota's negligent, careless and/or reckless actions including but not limited to the negligent design of the Tundra, its accelerator components, and or other parts which would affect the acceleration of said vehicle.

TOY-RQ-05E-00003952

9. That each Defendants' negligent, careless, and/or reckless actions were the direct and proximate cause of the Plaintiffs' personal injuries, pain and suffering, emotional trauma and distress, hospital and medical bills, and other economic and non-economic damages.

10. That the Plaintiffs are entitled to an award of damages against the Defendants in an amount reasonably calculated to compensate them for their injuries, damages, and other losses they have suffered as a proximate result of the aforementioned negligence of the Defendants.

COUNT II-PRODUCT LIABILITY

Come now the Plaintiffs, MICHAEL WEAVER and SOFIA WEAVER, by and through their attorneys, and for their Complaint against the Defendants further allege and state as follows:

1-10. Plaintiffs incorporate by reference paragraphs 1-10 of Plaintiffs' Complaint, and further allege as follows.

11. That Toyota sold, leased, or otherwise put into the stream of commerce a product in a defective and unreasonably dangerous condition to any user or consumer or the user or consumer's property.

12. That the Plaintiffs are in the class of persons that the seller should reasonably foresee as being subject to harm caused by the defective and unreasonably dangerous condition of the subject accelerator components of the subject Toyota Tundra.

13. That the Defendants are sellers engaged in the business of selling vehicles.

14. That the vehicles are expected by the Defendants to reach the consumer/user without substantial alteration in the condition in which the product is sold by the Defendants.

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15. That the vehicle purchased by the Plaintiffs did remain in a substantially unchanged condition between the time of purchase and the date of the accident.

16. As a direct result of the defective and unreasonably dangerous condition of the subject vehicle, the Plaintiffs suffered personal injuries, pain and suffering, emotional trauma and distress, hospital and medical bills, and other economic and non-economic damages.

17. That the Plaintiffs are entitled to an award of damages against the Defendants in an amount reasonably calculated to compensate them for their injuries, damages, and other losses they have suffered as a result of the aforementioned negligence of the Defendants.

WHEREFORE, the Plaintiffs demand compensatory damages against the Defendants in an amount to be proven at trial, together with costs herein, and for all other just and proper relief in the premises.

COUNT III - BREACH OF EXPRESS AND IMPLIED WARRANTIES

Come now the Plaintiffs, MICHAEL WEAVER and SOFIA WEAVER, by and through their attorneys, and for their Complaint against the Defendants further allege and state as follows:

1-17. Plaintiffs incorporate by reference paragraphs 1-17 of Plaintiffs' Complaint, and further allege as follows.

18. That warranties, expressed and implied, were made to the Plaintiffs by the Defendants regarding the qualities and characteristics of the subject vehicle.

19. That the expressed and implied warranties made by the Defendants became part of the basis of the bargain for the purchase of the vehicle by the Plaintiffs from the

TOY-RQ-05E-00003954

Defendants.

20. That the subject vehicles failed to comply and conform with the expressed and implied warranties made by the Defendants; thus constituting a breach of said warranties.

21. As a direct result of the breach of said warranties, the Plaintiffs suffered personal injuries, pain and suffering, emotional trauma and distress, hospital and medical bills, and other economic and non-economic damages.

22. That the Plaintiffs are entitled to an award of damages against the Defendants in an amount reasonably calculated to compensate them for their injuries, damages, and other losses they have suffered as a result of the aforementioned breach of warranties by the Defendants.

WHEREFORE, the Plaintiffs demand compensatory damages against the Defendants in an amount to be proven at trial, together with costs herein, and for all other just and proper relief in the premises.

Respectfully submitted,

Ryan A. Bratcher, #22909-64
Bratcher & Vanderground, P.C.
Attorneys for Plaintiff
9120 Connecticut, Suite B
Merrillville, IN 46410
(219) 796-0082

TOY-RQ-05E-00003955

JURY DEMAND

Come now the Plaintiffs, by counsel, and demand trial by jury upon all issues which are triable to a jury in the State of Indiana.

Respectfully submitted,

Ryan A. Bratcher, #22909-64
Bratcher & Vanderground, P.C.
Attorneys for Plaintiff
9120 Connecticut, Suite B
Merrillville, IN 46410
(219) 796-0082

TOY-RQ-05E-00003956

FILE START

DISTRICT COURT OF THE COUNTY OF SUFFOLK
FIRST DISTRICT : CIVIL PART

----------X

LIBERTY MUTUAL INSURANCE COMPANY a/s/o ANDREA KATZ ,

Plaintiff,

-against-

LEXUS,

Defendant.

----------X

Index No.:

SUMMONS

The Basis of Venue is
The Location of the Accident

Plaintiff Resides at:
2950 Expressway Drive South, Suite 100
P.O. Box 9004
Islandia, New York 11722

To the above named Defendant:

YOU ARE HEREBY SUMMONED and required to appear in the District Court of the County of Suffolk, First District, at the office of the Clerk of the said Court at 3105-1 Veterans Memorial Highway, Ronkonkoma, in the County of Suffolk, State of New York, by serving an answer to the annexed Complaint upon plaintiff's attorney, at the address stated below, or if there is no attorney, upon the Plaintiff, at the address stated above, within the time provided by law as noted below; upon your failure to answer, judgment will be taken against you for the relief demanded in the complaint, together with the costs of this action.

Dated: Farmingdale, New York
August 21, 2008

CARMAN, CALLAHAN & INGHAM, LLP.

CHRISTOPHER G. PERSAD, ESQ.
Attorneys for Plaintiff
LIBERTY MUTUAL INSURANCE COMPANY
a/s/o ANDREA KATZ
266 Main Street
Farmingdale, New York 11735
(516) 249-3450 – Tel.
(516) 843-6390 – Fax
File No.: 1089-16926

Defendant(s) Address(es):
Lexus
19001 South Western Avenue
Torrance, California 90501

LEGAL SERVICES
OCT - 7 2008
GROUP RECEIVED

NOTE: The law or rules of court provide that:

*(A) If this summons is served by its delivery to you, or (for a corporation) an agent authorized to receive service, personally within the County of **Suffolk**, you must answer within 20 days after such service; or (B) If this Summons is served otherwise than as designated in subdivision (s) above, you are allowed 30 days to answer after proof of service is filed with the Clerk of the Court. (C) You are required to file a copy of your answer, together with proof of service with the clerk of the district in which the action is brought within ten days of the*

AS AND A FIRST CAUSE OF ACTION

A statement of the nature and substance of the plaintiff's cause of action as follows:

This action arises out of an automobile incident which occurred on May 23, 2008 as a result of the defendant's negligence, breach of warranty and/or defective product. The Defendant had a duty to manufacture a product which was reasonably safe and which would perform as intended. The Defendant breached its duty by manufacturing and/or designing an automobile, i.e. Plaintiff's subrogor's vehicle, which was unreasonably safe and which failed to perform as intended, resulting in an engine fire. The Plaintiff's subrogor's vehicle, a 2003 Lexus ES300 sustained damage in the amount of $12,554.35 as a result of said incident. The foregoing incident and damages were caused solely by Defendant's negligence and/or defective product.

Liberty Mutual Insurance Company a/s/o Andrea Katz seeks to recover $12,554.35 in property damage expenses it paid to its insured, Andrea Katz.

The loss was due solely to the negligence of the Defendant, its agents, servants and/or employees in manufacturing, designing, selling and delivering the improper and defective "2003 Lexus ES300", which was defective, and/or carelessly designed, unsafe, and which was inherently dangerous. Defendant was also negligent in failing to make proper precautions and safeguards, in failing to see that the "2003 Lexus ES300" was reasonably safe for the use for which it was intended. Defendant negligently manufactured, sold and distributed the subject motor vehicle in a careless, dangerous and improper manner with latent defects not observable to the user.

AS AND FOR A SECOND CAUSE OF ACTION

At all times hereinafter mentioned, the Defendant, its agents, servants and/or employees expressly and impliedly warranted to the general public and to this plaintiff that the "2003 Lexus ES300" was safe for the use intended.

Upon information and belief, the Defendant, its agents, servants and/or employees breached the express warranty in that the "2003 Lexus ES300" motor vehicle was not fit for the purposes for whish it was intended, was not of merchantable quality, was unsafe for use and contained latent defects.

That all of the foregoing was caused by the breach of warranty of the Defendant, and the Plaintiff, LIBERTY MUTUAL has been damaged in the sum of TWELVE THOUSAND FIVE HUNDRED FIFTY FOUR DOLLARS and THIRTY FIVE CENTS (12,554.35).

WHEREFORE, Plaintiff, LIBERTY MUTUAL INSURANCE COMPANY a/s/o ANDREA KATZ, demands judgment against the Defendant, LEXUS, on the First Cause of Action in the sum of TWELVE THOUSAND FIVE HUNDRED FIFTY FOUR DOLLARS and THIRTY FIVE CENTS (12,554.35).on the Second Cause of Action in the sum of TWELVE THOUSAND FIVE HUNDRED FIFTY FOUR DOLLARS and THIRTY FIVE CENTS (12,554.35).together with the costs and disbursements of this action.

Dated: Farmingdale, New York
August 21, 2008

CARMAN, CALLAHAN & INGHAM, LLP

By: _____
CHRISTOPHER G. PERSAD, ESQ.
Attorneys for Plaintiff
LIBERTY MUTUAL INSURANCE
COMPANY a/s/o ANDREA KATZ
266 Main Street
Farmingdale, New York 11735
(516) 249-3450 – Tel.
(516) 843-6390 – Fax.
File No.: 1089-16926

DISTRICT COURT OF THE COUNTY OF SUFFOLK
FIRST DISTRICT : CIVIL PART

Index No.: CEC/08 013816

----------X

LIBERTY MUTUAL INSURANCE COMPANY a/s/o ANDREA KATZ ,

Plaintiff,

-against-

LEXUS,

Defendant.

----------X

AMENDED SUMMONS

The Basis of Venue is
The Location of the Accident

Plaintiff Resides at:
2950 Expressway Drive South, Suite 100
P.O. Box 9004
Islandia, New York 11722

To the above named Defendant:

YOU ARE HEREBY SUMMONED and required to appear in the District Court of the County of Suffolk, First District, at the office of the Clerk of the said Court at 3105-1 Veterans Memorial Highway, Ronkonkoma, in the County of Suffolk, State of New York, by serving an answer to the annexed Complaint upon plaintiff's attorney, at the address stated below, or if there is no attorney, upon the Plaintiff, at the address stated above, within the time provided by law as noted below; upon your failure to answer, judgment will be taken against you for the relief demanded in the complaint, together with the costs of this action.

Dated: Farmingdale, New York
December 10, 2008

CARMAN, CALLAHAN & INGHAM, LLP.

CHRISTOPHER G. PERSAD, ESQ.
Attorneys for Plaintiff
LIBERTY MUTUAL INSURANCE COMPANY
a/s/o ANDREA KATZ
266 Main Street
Farmingdale, New York 11735
(516) 249-3450 – Tel.
(516) 843-6390 – Fax
File No.: 1089-16926

Defendant(s) Address(es):
Lexus
19001 South Western Avenue
Torrance, California 90501

NOTE: The law or rules of court provide that:
*(A) If this summons is served by its delivery to you, or (for a corporation) an agent authorized to receive service, personally within the County of **Suffolk**, you must answer within 20 days after such service; or (B) If this Summons is served otherwise than as designated in subdivision (s) above, you are allowed 30 days to answer after proof of service is filed with the Clerk of the Court. (C) You are required to file a copy of your answer, together with proof of service with the clerk of the district in which the action is brought within ten days of the*

AS AND AN AMENDED FIRST CAUSE OF ACTION

A statement of the nature and substance of the plaintiff's cause of action as follows:

This action arises out of an automobile incident which occurred on May 23, 2008 as a result of the defendant's negligence, breach of warranty and/or defective product. The Defendant had a duty to manufacture a product which was reasonably safe and which would perform as intended. The Defendant breached its duty by manufacturing and/or designing an automobile, i.e. Plaintiff's subrogor's vehicle, which was unreasonably safe and which failed to perform as intended, resulting in the sudden acceleration of said vehicle. The Plaintiff's subrogor's vehicle, a 2003 Lexus ES300 which sustained damage in the amount of $12,554.35 as a result of said incident. The foregoing incident and damages were caused solely by Defendant's

negligence and/or defective product. Liberty Mutual Insurance Company a/s/o Andrea Katz seeks to recover $12,554.35 in property damage expenses it paid to its insured, Andrea Katz.

The loss was due solely to the negligence of the Defendant, its agents, servants and/or employees in manufacturing, designing, selling and delivering the improper and defective "2003 Lexus ES300", which was defective, and/or carelessly designed, unsafe, and which was inherently dangerous. Defendant was also negligent in failing to make proper precautions and safeguards, in failing to see that the "2003 Lexus ES300" was reasonably safe for the use for which it was intended. Defendant negligently manufactured, sold and distributed the subject motor vehicle in a careless, dangerous and improper manner with latent defects not observable to the user.

AS AND FOR AN AMENDED SECOND CAUSE OF ACTION

At all times hereinafter mentioned, the Defendant, its agents, servants and/or employees expressly and impliedly warranted to the general public and to this plaintiff that the "2003 Lexus ES300" was safe for the use intended.

Upon information and belief, the Defendant, its agents, servants and/or employees breached the express warranty in that the "2003 Lexus ES300" motor vehicle was not fit for the purposes for whish it was intended, was not of merchantable quality, was unsafe for use and contained latent defects.

That all of the foregoing was caused by the breach of warranty of the Defendant, and the Plaintiff, Liberty Mutual has been damaged in the sum of $12,554.35.

WHEREFORE, Plaintiff, Liberty Mutual Insurance Company a/s/o Andrea Katz demands judgment against the Defendant, Lexus, on the First Cause of Action in the sum of $12,554.35, and on the Second Cause of Action in the sum of $12,554.35 together with the costs and disbursements of this action.

Dated: Farmingdale, New York
December 10, 2008

CARMAN, CALLAHAN & INGHAM, LLP

By: _____
CHRISTOPHER G. PERSAD, ESQ.
Attorneys for Plaintiff
LIBERTY MUTUAL INSURANCE
COMPANY a/s/o ANDREA KATZ
266 Main Street
Farmingdale, New York 11735
(516) 249-3450 – Tel.
(516) 843-6390 – Fax.
File No.: 1089-16926

FILE START

RECEIVED
NOV 17 2008
By

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW
9 Quakerbridge Plaza
P.O. Box 049
Trenton, New Jersey 08625-0049
(609) 588-6584

A copy of the administrative law judge's decision is enclosed.

This decision was mailed to the parties on NOV 3 2008.

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
SETTLEMENT
OAL DKT. NO. CMA 8967-08
AGENCY DKT. NO. N/A

JAMES O'SHEA III,
Petitioner,
v.
TOYOTA MOTOR SALES USA, INC.,
Respondent.

James O'Shea III, petitioner, pro se

Orville Walls, Esq., for the respondent (Campbell, Campbell, Edwards & Conroy, attorneys)

Record Closed: October 29, 2008 Decided: October 30, 2008

BEFORE **RONALD W. REBA**, ALJ:

This matter was transmitted to the Office of Administrative Law (OAL) on October 9, 2008, for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13.

TOY-RQ-05E-00003964

The parties have agreed to a settlement and have prepared a settlement agreement indicating the terms thereof, which is attached and fully incorporated herein.

I have reviewed the record and the settlement terms and I **FIND**:

1. The parties have voluntarily agreed to the settlement as evidenced by their signatures or their representatives' signatures.

2. The settlement fully disposes of all issues in controversy and is consistent with the law.

I **CONCLUDE** that this agreement meets the requirements of N.J.A.C. 1:1-19.1, and that the settlement should be approved. I approve the settlement and therefore **ORDER** that the parties comply with the settlement terms and that these proceedings be concluded.

I hereby **FILE** my initial decision with the **DIRECTOR OF THE DIVISION OF CONSUMER AFFAIRS** for consideration.

TOY-RQ-05E-00003965

This recommended decision may be adopted, modified or rejected by the **DIRECTOR OF THE DIVISION OF CONSUMER AFFAIRS,** who by law is authorized to make a final decision in this matter. If the Director of the Division of Consumer Affairs does not adopt, modify or reject this decision within fifteen days, this recommended decision shall become a final decision in accordance with N.J.S.A. 56:12-37(b).

OCTOBER 30, 2008
DATE

Ronald W. Reba
RONALD W. REBA, ALJ

Date Received at Agency:

NOV 3 2008

DATE

Mailed to Parties:

OFFICE OF ADMINISTRATIVE LAW

/cad

TOY-RQ-05E-00003966

[redacted]

v.

Toyota Motor Sales, U.S.A., Inc.

OAL Docket No.
CMALH 08967-2008

Release

It is hereby agreed to by & between [redacted] Petitioner, & Toyota Motor Sales, U.S.A., Inc., Respondent, that the above captioned matter has settled. In consideration for the release of all Lemon Law claims in reference to the 2008 Toyota Camry, VIN 4T1BK46K58U[redacted] Toyota Motor Sales, U.S.A., Inc. agrees to the following:

1) Toyota will pay Petitioner $1000;
2) Toyota will provide Petitioner an extended 72 mos./100,000 mile Warranty with $0 deductible
3) Toyota will replace Petitioner's CD player; and
4) Toyota will have the Field Technical Specialist inspect Petitioner's vehicle.
5) Toyota will continue to honor Warranty.

In consideration for the preceding, Petitioner [redacted] agrees to release all Lemon Law claims against Toyota Motor Sales, U.S.A., Inc. This is a full & complete Release of all Lemon Law claims by Petitioner.

Nothing in this release shall be construed as an admission of liability by Toyota Motor Sales, U.S.A., Inc.

[redacted] 10/29/08

Petitioner, [redacted]

10/29/08

Attorney for Toyota Motor Sales, U.S.A., Inc.

FILE START

Court of Common Pleas of Philadelphia County
Trial Division

Civil Cover Sheet

For Prothonotary Use Only (Docket Number)

DECEMBER 2008 **000256**

E-Filing Number: 0857104

PLAINTIFF'S NAME	DEFENDANT'S NAME
RONALD HOBBS	TOYOTA MOTOR SALES, USA, INC.
PLAINTIFF'S ADDRESS	**DEFENDANT'S ADDRESS**
917 SPRUCE STREET EASTON PA 18042	19001 SOUTH WESTERN AVENUE TORRANCE CA 90501
PLAINTIFF'S NAME	**DEFENDANT'S NAME**
PLAINTIFF'S ADDRESS	**DEFENDANT'S ADDRESS**
	LEGAL SERVICES
PLAINTIFF'S NAME	**DEFENDANT'S NAME** DEC - 5 2008
PLAINTIFF'S ADDRESS	**DEFENDANT'S ADDRESS** RECEIVED

TOTAL NUMBER OF PLAINTIFFS	TOTAL NUMBER OF DEFENDANTS	COMMENCEMENT OF ACTION
1	1	☒ Complaint ☐ Petition Action ☐ Notice of Appeal ☐ Writ of Summons ☐ Transfer From Other Jurisdictions

AMOUNT IN CONTROVERSY

☒ $50,000.00 or less
☐ More than $50,000.00

COURT PROGRAMS

☒ Arbitration	☐ Mass Tort	☐ Commerce	☐ Settlement
☐ Jury	☐ Savings Action	☐ Minor Court Appeal	☐ Minors
☐ Non-Jury	☐ Petition	☐ Statutory Appeals	☐ W/D/Survival
☐ Other:			

CASE TYPE AND CODE

10 - CONTRACTS OTHER

STATUTORY BASIS FOR CAUSE OF ACTION

RELATED PENDING CASES (LIST BY CASE CAPTION AND DOCKET NUMBER)

FILED
PRO PROTHY
DEC 01 2008
S. MASCIULLI

IS CASE SUBJECT TO COORDINATION ORDER? YES NO

TO THE PROTHONOTARY:

Kindly enter my appearance on behalf of Plaintiff/Petitioner/Appellant: RONALD HOBBS

Papers may be served at the address set forth below.

NAME OF PLAINTIFF'S/PETITIONER'S/APPELLANT'S ATTORNEY	ADDRESS
CRAIG T. KIMMEL	30 E BUTLER PIKE AMBLER PA 19002
PHONE NUMBER	**FAX NUMBER**
(215) 5408888 ex116	(215) 5408817
SUPREME COURT IDENTIFICATION NO.	**E-MAIL ADDRESS**
57100	ctkphillyefile@lemonlaw.com
SIGNATURE OF FILING ATTORNEY OR PARTY	**DATE SUBMITTED**
CRAIG KIMMEL	Monday, December 01, 2008, 04:00 pm

FINAL COPY (Approved by the Prothonotary Clerk)

USTED ESTA ORDENADO COMPARECER EN Arbitration Hearing 1810 JFK Blvd. 5th fl. at 09:30 AM - 07/24/2009
You must still comply with the notice below. USTED TODAVIA DEBE CUJPLIR CON EL AVISO PARA DEFENDERSE.
This matter will be heard by a Board of Arbitrators at the time, date and place specified but if one or more parties is not present at the hearing the matter may be heard at the same time and date before a judge of the court without the absent party or parties. There is no right to a trial de novo or an appeal from a decision entered by a Judge.

Craig Thor Kimmel, Esquire
Identification No. 57100
Robert A. Rapkin, Esquire
Identification No. 61628
KIMMEL & SILVERMAN, P.C.
30 East Butler Pike
Ambler, PA 19002
(215) 540-8888

ATTORNEYS FOR PLAINTIFF

THIS IS AN ARBITRATION MATTER. ASSESSMENT OF DAMAGES HEARING REQUESTED.

Filed and Attested by PROTHONOTARY 01 DEC 2008 04:00 pm S. MASCIULLI

LEGAL SERVICES
DEC - 5 2008
GROUP RECEIVED

RONALD A. HOBBS
917 Spruce Street
Easton, PA 18042

v.

TOYOTA MOTOR SALES, U.S.A., INC.
19001 South Western Avenue
Torrance, CA 90501

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

CIVIL ACTION

NOTICE TO DEFEND
CODE: 1900

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

PHILADELPHIA BAR ASSOCIATION
LAWYER REFERRAL & INFORMATION SERVICE
ONE READING CENTER
PHILADELPHIA, PA 19107
TELEPHONE: 215-238-1701

AVISO

Le han demandado a usted en la corte. Si usted quiere defenderse de estas de estas demandas expuestas an las paginas signientes, usted tiene veinte (20) dias de plazo al partir de ia fecha de la demanda y ia notificacion. Hace falta asentar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, le corte tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notificacion. Ademas, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u ostros derechos importantes para usted.

LLEVE ESTA DEMANDA A UN ABOGADO INMEDIATAMENTE, SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFICIENTE DE PAGAR TAL SERVICIO. VAYA EN PERSONA O LLAME POR TELEFONO A LA OFICINA CUYA DIRECCION SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.

SERVICIO DE REFERENCIA LEGAL
ONE READING CENTER
FILADELFIA, PA 19107
TELEFONO: 215-238-1701

Case ID: 081200256

Craig Thor Kimmel, Esquire
Identification No. 57100
Robert A. Rapkin, Esquire
Identification No. 61628
KIMMEL & SILVERMAN, P.C.
30 East Butler Pike
Ambler, PA 19002
(215) 540-8888

ATTORNEYS FOR PLAINTIFF

THIS IS AN ARBITRATION MATTER. ASSESSMENT OF DAMAGES HEARING IS REQUESTED.

RONALD A. HOBBS
917 Spruce Street
Easton, PA 18042

v.

TOYOTA MOTOR SALES, U.S.A., INC.
19001 South Western Avenue
Torrance, CA 90501

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

CIVIL ACTION

LEGAL SERVICES
DEC - 5 2008
GROUP RECEIVED

COMPLAINT
CODE: 1900

1. Plaintiff, Ronald A. Hobbs, is an adult individual citizen and legal resident of the Commonwealth of Pennsylvania, 917 Spruce Street, Easton, PA 18042.

2. Defendant, Toyota Motor Sales, U.S.A., Inc., is a corporation qualified to do and regularly conduct business in the Commonwealth of Pennsylvania, with its address and principal place of business located at Attention: Legal Department, 19001 South Western Avenue, Torrance, CA 90501, and can be served at this address.

BACKGROUND

3. On or about October 03, 2007, Plaintiff purchased a new 2007 Toyota Tundra, manufactured and warranted by Defendant, bearing the Vehicle Identification Number 5TBBT54157S454163.

4. The vehicle was purchased in the Commonwealth of Pennsylvania and is registered in the Commonwealth of Pennsylvania.

5. The contract price of the vehicle, including registration charges, document fees, sales tax, finance and bank charges, but excluding other collateral charges not specified, yet defined by the

Case ID: 081200256

Lemon Law, totaled more than $38,226.89. A true and correct copy of the contract is attached hereto, made a part hereof, and marked Exhibit "A".

6. In consideration for the purchase of said vehicle, Defendant issued to Plaintiff several warranties, guarantees, affirmations or undertakings with respect to the material or workmanship of the vehicle and/or remedial action in the event the vehicle fails to meet the promised specifications.

7. The above-referenced warranties, guarantees, affirmations or undertakings are/were part of the basis of the bargain between Defendant and Plaintiff.

8. The parties' bargain includes an express 3-year / 36,000 mile warranty, as well as other guarantees, affirmations and undertakings as stated in Defendant's warranty materials and owner's manual.

9. However, as a result of the ineffective repair attempts made by Defendant through its authorized dealer(s), the vehicle is rendered substantially impaired, unable to be utilized for its intended purposes, and is worthless to Plaintiff.

10. During the first 12 months and/or 12,000 miles, Plaintiff complained on at least three (3) occasions about defects and or non-conformities to the following vehicle components: Engine, Transmission and Body Trim. True and correct copies of all invoices in Plaintiff possession are attached hereto, made a part hereof, and marked Exhibit "B".

COUNT I
PENNSYLVANIA AUTOMOBILE LEMON LAW

11. Plaintiff hereby incorporates all facts and allegations set forth in this Complaint by reference as if fully set forth at length herein.

12. Plaintiff is a "Purchaser" as defined by 73 P.S. §1952.

13. Defendant is a "Manufacturer" as defined by 73 P.S. §1952.

14. Dick Milham Ford Toyota is and/or was at the time of sale a Motor Vehicle Dealer in the business of buying, selling, and/or exchanging vehicles as defined by 73 P.S. §1952.

15. On or about October 03, 2007, Plaintiff took possession of the above mentioned vehicle and experienced nonconformities as defined by 73 P.S §1951 et seq., which substantially impair the use, value and/or safety of the vehicle.

16. The nonconformities described violate the express written warranties issued to Plaintiff by Defendant.

17. Section 1955 of the Pennsylvania Automobile Lemon Law provides:

> If a manufacturer fails to repair or correct a nonconformity after a reasonable number of attempts, the manufacturer shall, at the option of the purchaser, replace the motor vehicle... or accept return of the vehicle from the purchaser, and refund to the purchaser the full purchase price, including all collateral charges, less a reasonable allowance for the purchasers use of the vehicle, not exceeding $.10 per mile driven or 10% of the purchase price of the vehicle, whichever is less.

18. Section 1956 of the Pennsylvania Automobile Lemon Law provides a presumption of a reasonable number of repair attempts if:

> (1) The same nonconformity has been subject to repair three times by the manufacturer, its agents or authorized dealers and the nonconformity still exists; or
>
> (2) The vehicle is out-of-service by reason of any nonconformity for a cumulative total of thirty or more calendar days.

19. Plaintiff has satisfied the above definition as the vehicle has been subject to repair more than three (3) times for the same nonconformity, and the nonconformity remained uncorrected.

20. In addition, the above vehicle has or will be out-of-service by reason of the nonconformities complained of for a cumulative total of thirty (30) or more calendar days.

21. Plaintiff has delivered the nonconforming vehicle to an authorized service and repair facility of the Defendant on numerous occasions as outlined below.

22. After a reasonable number of attempts, Defendant was unable to repair the nonconformities.

23. Plaintiff avers the vehicle has been subject to additional repair attempts for defects and conditions for which Defendant's warranty dealer did not provide or maintain itemized statements as required by 73 P.S. § 1957.

24. Plaintiff avers that such itemized statements, which were not provided as required by 73 P.S. § 1957 also include technicians' notes of diagnostic procedures and repairs, and Defendant's Technical Service Bulletins relating to this vehicle.

25. Plaintiff avers the vehicle has been subject to additional repair attempts for defects and conditions for which Defendant's warranty dealer did not provide the notification required by 73 P.S. § 1957.

26. Plaintiff has and will continue to suffer damages due to Defendant's failure to comply with the provisions of 73 P.S. §§ 1954 (repair obligations), 1955 (manufacturer's duty for refund or replacement), and 1957 (itemized statements required).

27. Pursuant to 73 P.S. § 1958, Plaintiff seeks relief for losses due to the vehicle's nonconformities, including the award of reasonable attorneys' fees and all court costs.

WHEREFORE, Plaintiff respectfully demands judgment against Defendant in an amount equal to the price of the subject vehicle, plus all collateral charges, attorneys' fees, and court costs.

COUNT II
MAGNUSON-MOSS (FTC) WARRANTY IMPROVEMENT ACT

28. Plaintiff hereby incorporates all facts and allegations set forth in this Complaint by reference as if fully set forth at length herein.

29. Plaintiff may or may have resorted to Defendant's informal dispute settlement procedure, to the extent said procedure complies with 16 CFR 703.

30. Plaintiff avers that the Federal Trade Commission (FTC) has determined that no automobile manufacturer complies with 16 CFR 703. See, Fed. Reg. 15636, Vol. 62, No. 63 (Apr. 2, 1997).

31. Plaintiff is a "Consumer" as defined by 15 U.S.C. §2301(3).

TOY-RQ-05E-00003975

32. Defendant is a "supplier", "warrantor", and a "service contractor" as defined by 15 U.S.C. § 2301 (4),(5) and (8).

33. The subject vehicle is a "consumer product" as defined by 15 U.S.C. § 2301(1).

34. By the terms of its written warranties, affirmations, promises, or service contracts, Defendant agreed to perform effective repairs at no charge for parts and/or labor.

35. The Magnuson-Moss Warranty Improvement Act requires Defendant to be bound by all warranties implied by state law. Said warranties are imposed on all transactions in the state in which the vehicle was delivered.

36. Defendant has made attempts on several occasions to comply with the terms of its express warranties; however, such repair attempts have been ineffective.

37. The Magnuson-Moss Warranty Improvement Act, 15 U.S.C. §2310(d)(2) provides:

> If a consumer finally prevails on an action brought under paragraph (1) of this subsection, he may be allowed by the court to recover as part of the judgment a sum equal to the amount of aggregate amount of costs and expenses (including attorney fees based upon actual time expended), determined by the court to have been reasonably incurred by the Plaintiff for, or in connection with the commencement and prosecution of such action, unless the court, in its discretion shall determine that such an award of attorney's fees would be inappropriate.

38. Plaintiff has afforded Defendant a reasonable number of opportunities to conform the vehicle to the aforementioned express warranties, implied warranties and contracts.

39. As a direct and proximate result of Defendant's failure to comply with the express written warranties, Plaintiff has suffered damages and, in accordance with 15 U.S.C. §2310(d)(1), Plaintiff is entitled to bring suit for such damages and other legal and equitable relief.

40. Defendant's failure is a breach of Defendant's contractual and statutory obligations constituting a violation of the Magnuson-Moss Warranty Improvement Act, including but not limited to: breach of express warranties; breach of implied warranty of merchantability; breach of implied warranty of fitness for a particular purpose; breach of contract; and constitutes an Unfair Trade Practice.

TOY-RQ-05E-00003976

41. Plaintiff avers that Defendant's warranty was not provided to Plaintiff until after the vehicle was delivered, making any and all limitations, disclaimers and/or alternative dispute provisions ineffective for a failure of consideration.

42. Plaintiff avers Defendant's Dispute Resolution Program was not in compliance with 16 CFR 703 for the model year of the subject vehicle.

43. Plaintiff avers that Defendant's warranty did not require Plaintiff to first resort to a Dispute Resolution Program before filing suit.

44. Plaintiff avers that upon successfully prevailing upon the Magnuson-Moss claim herein, all attorney fees are recoverable and are demanded against Defendant.

WHEREFORE, Plaintiff respectfully demands judgment against Defendant in an amount equal to the price of the subject vehicle, plus all collateral charges, incidental and consequential damages, reasonable attorneys' fees, and all court costs.

COUNT III
PENNSYLVANIA UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAW

45. Plaintiff hereby incorporates all facts and allegations set forth in this Complaint by reference as if fully set forth at length herein.

46. Plaintiff is a "Person" as defined by 73 P.S. §201-2(2).

47. Defendant is a "Person" as defined by 73 P.S. §201-2(2).

48. Section 201-9.2(a) of the Act authorizes a private cause of action for any person "who purchases or leases goods or services primarily for personal, family or household purposes."

49. Section 1961 of the Pennsylvania Automobile Lemon Law, provides that a violation of its provisions shall automatically constitute a violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Act, 73 P.S. 201-1 et seq.

50. In addition, the Pennsylvania Unfair Trade Practices and Consumer Protection Act, 73 P.S. §201-2(4), defines "unfair or deceptive acts or practices" to include the following conduct:

Case ID: 081200256

(vii). Representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another;

(xiv). Failing to comply with the terms of any written guarantee or warranty given to the buyer at, prior to, or after a contract for the purchase of goods or services is made;

(xv). Knowingly misrepresenting that services, replacements or repairs are needed if they are not needed;

(xvi). Making repairs, improvements or replacements on tangible, real or personal property of a nature or quality inferior to or below the standard of that agreed to in writing;

(xvii). Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding.

51. Plaintiff avers Defendant has violated these, as well as other provisions, of 73 P.S. §201-2 et seq.

52. Section 201-3.1 of the Act provides that the Automotive Industry Trade Practice rules and regulations adopted by the Attorney General for the enforcement of this Act shall constitute additional violations of the Act.

53. Defendant's conduct surrounding the sale and servicing of the subject vehicle falls within the aforementioned definitions of "unfair or deceptive acts or practices."

54. The Act also authorizes the Court, in its discretion, to award up to three (3) times the actual damages sustained for violations.

WHEREFORE, Plaintiff respectfully demands judgment against Defendant in an amount not in excess of Fifty Thousand Dollars ($50,000.00), together with all collateral charges, attorneys' fees, all court costs and treble damages.

KIMMEL & SILVERMAN, P.C.

By: /s/
CRAIG THOR KIMMEL, ESQUIRE
Attorney for Plaintiff
30 East Butler Pike
Ambler, Pennsylvania 19002
(215) 540-8888

Case ID: 081200256

V E R I F I C A T I O N

Craig Thor Kimmel, states that he is the attorney for the Plaintiff herein; that he is acquainted with the facts set forth in the foregoing Complaint; that same are true and correct to the best of his knowledge, information and belief; and that this statement is made subject to the Penalties of 18 Pa. C.S.A. §4904, relating to unsworn falsifications to authorities.

/s/
CRAIG THOR KIMMEL, ESQUIRE
Attorney for Plaintiff

TOY-RQ-05E-00003979

USTED ESTA ORDENADO COMPARECER EN Arbitration Hearing 1810 JFK Blvd. 5th fl. at 09:30 AM - 07/24/2009
You must still comply with the notice below. USTED TODAVIA DEBE CUJPLIR CON EL AVISO PARA DEFENDERSE.
This matter will be heard by a Board of Arbitrators at the time, date and place specified but, if one or more parties is not present at the hearing, the matter may be heard at the same time and date before a judge of the court without the absent party or parties.
There is no right to a trial denovo on appeal from a decision entered by a Judge.

Filed and Attested by
PROTHONOTARY
01 DEC 2008 04:00 pm
S. MASCIULLI

Case ID: 081200256

DICK MILHAM FORD-TOYOTA-SCION

...RED INFORMATI... CONTAINED ON A SEPARATE DISCLOSURE STATE...NT IS MADE A PART OF THIS ORDER FORM

RETAIL ORDER FOR A MOTOR VEHICLE

DEAL #:74116

10/03/2007
DATE

MILHAM
TOYOTA SCION

...Milham.COM • PHONE (610) 253-9191 • FAX (610) 250-8769
3810 Hecktown Rd • EASTON, PA. 18045

RONALD A HOBBS
PURCHASER'S NAME

917 SPRUCE ST
STREET ADDRESS

EASTON | PA | 18042
CITY | STATE | ZIP

E-MAIL | (610)258-2032 RES. PHONE | (973)921-1900 BUS. PHONE

...ENTER MY ORDER FOR THE FOLLOWING: ☐ DEMO ☐ RENTAL ☑ NEW ☐ USED ☐ CAR ☐ TRUCK

MILEAGE 14 YEAR 2007 MAKE TOYOTA TR...

...DEL OR ...RIES TUNDRA 4X4 BODY TYPE DCAB SR5 V8 COLOR RADIANT RED TRIM GRAY TO BE DELIVERED ON/OR ABOUT 10/03/2007

...SERIAL 5TBBT541575454163 SALESMAN ANTHONY PROSCIA STOCK NO. T23450

INS. POLICY NO. IF PURCHASED	EFF. DATE	EXP. DATE	INS. CO.	INS. AGENT	PHONE
	/ /	/ /			

CASH DELIVERED PRICE OF UNIT	$ 30200.00	BALANCE FORWARD FROM LEFT COLUMN ▲	$ 30399.00
EQUIPPED AS PER WINDOW LABEL			
ETCH 5000	199.00		
			2000.00
TOTAL FORWARD TO RIGHT COLUMN ▲	$ 30399.00		

USED CAR TRADE-IN AND/OR OTHER CREDITS

MAKE OF TRADE-IN JEEP	MILEAGE 54497	GAP INS	400.00
YEAR 2006	MODEL COMMANDER	BODY 4 DOOR WA	CASH SALE PRICE OF DESCRIBED VEHICLE $ 28799.00
MVI OR SERIAL NO. 1J8HG48KX6C175567			ALLOWANCE FOR TRADE-IN * 13800.00
NAME OF REGISTRANT RONALD A HOBBS			BALANCE DUE 14999.00
TITLE NO. OF TRADE-IN 647748723O1	LICENSE NO. GCH8532		SALES TAX 899.94
BALANCE OWED TO	LICENSE EXP. DATE 07 / 31 / 2008		LUXURY TAX
ADDRESS	PHONE:		P.T.A. TAX 5.00
CITY	STATE		PAYOFF OF TRADE-IN • 22124.00
USED TRADE-IN ALLOWANCE *	$ 13800.00		TITLE FEE $ 22.50 ENCUMBRANCE FEE $ 5.00 27.50
BALANCE OWED ON TRADE-IN GOOD UNTIL / / BY: •	22124.00		TRANS FEE $ N/A REGISTRATION FEE $ 81.00 81.00
NET ALLOWANCE FOR TRADE-IN	$ -8324.00		NOTARY FEE • N/A
REBATE	2000.00		MESSENGER FEE N/A
DOWN PAYMENT −	$ 0.00		TEMP. PLATE FEE 10.00
			DOCUMENTARY FEE * 55.00
			ON LINE DLR SERVICE FEE 25.45
			SUB TOTAL $
			SERVICE CONTRACT $ N/A TAX N/A N/A
			TOTAL CASH PRICE $
			DEPOSIT PAID ■ N/A
			CASH DUE AT DELIVERY $
			BALANCE FINANCED $

CUSTOMER'S AS IS STATEMENT ACKNOWLEDGEMENT

THIS MOTOR VEHICLE IS SOLD AS IS WITHOUT ANY WARRANTY EITHER EXPRESSED OR IMPLIED. THE PURCHASER WILL BEAR THE ENTIRE EXPENSE OF REPAIRING OR CORRECTING ANY DEFECTS THAT PRESENTLY EXIST OR THAT MAY OCCUR IN THE VEHICLE.

Customer's Signature _____

If you cancel this purchase agreement or refuse to take delivery of the vehicle, ordered, except as permitted by law, you shall, at our option, forfeit as damages _____

Purchaser hereby acknowledges to the above clause.

Customer's Signature _____

CONTRACTUAL DISCLOSURE STATEMENT FOR USED VEHICLE ONLY
THE INFORMATION YOU SEE ON THE FEDERAL TRADE COMMISSION WINDOW FORM FOR THIS VEHICLE IS PART OF THIS CONTRACT. INFORMATION ON THE WINDOW FORM OVERRIDES ANY CONTRARY PROVISIONS IN THE CONTRACT OF SALE.

THERE ARE NO WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING THE IMPLIED WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, MADE BY THE SELLER HEREIN, OR THE MANUFACTURER, ON THE VEHICLE OR CHASSIS DESCRIBED ON THE FACE HEREOF EXCEPT IN THE CASE OF A NEW VEHICLE OR CHASSIS. THE PRINTED NEW VEHICLE WARRANTY DELIVERED TO PURCHASER WITH SUCH VEHICLE OR CHASSIS AND HEREBY MADE A PART HEREOF AS THOUGH FULLY SET FORTH HEREIN IS THE ONLY WARRANTY APPLICABLE TO SUCH NEW VEHICLE OR CHASSIS AND IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN THE CASE OF A USED VEHICLE OR CHASSIS, THE APPLICABILITY OF AN EXISTING MANUFACTURER'S WARRANTY THEREON, IF ANY, SHALL BE DETERMINED SOLELY BY THE TERMS OF SUCH WARRANTY. ASK SALESPERSON FOR COPY OF COMPLETE WARRANTY.

THIS CONTRACT IS NOT BINDING UPON EITHER THE DEALER OR THE PURCHASER UNTIL SIGNED BY AN AUTHORIZED DEALER REPRESENTATIVE. YOU, THE BUYER MAY CANCEL THIS CONTRACT AND RECEIVE A FULL REFUND ANY TIME BEFORE RECEIPT OF A COPY OF THIS CONTRACT SIGNED BY AN AUTHORIZED DEALER REPRESENTATIVE BY GIVING WRITTEN NOTICE OF CANCELLATION TO DEALER. WE CANNOT INCREASE THE CONTRACT PRICE OF A MOTOR VEHICLE AFTER THE CONTRACT HAS BEEN ACCEPTED BY THE DEALER OR THE AUTHORIZED DEALER REPRESENTATIVE UNLESS THE INCREASE IS DUE TO THE PASSAGE OF A LAW OR REGULATION OF THE UNITED STATES OR THE COMMONWEALTH WHICH REQUIRES THE ADDITION OF NEW EQUIPMENT TO CERTAIN VEHICLES, OR, IN THE CASE OF FOREIGN MADE VEHICLES, IS DUE TO A REVALUATION OF THE UNITED STATES DOLLAR VIS-A-VIS THE CURRENCY OF THE COUNTRY OF MANUFACTURE, HOWEVER, WE HAVE THE RIGHT TO REAP... VEHICLE IF THE DEALER CAN ESTABLISH THAT THE VEHICLE HAS SUFFERED DAMAGE OR SERIOUS MECHANICAL DETERIORATION SINCE THE DATE OF TH... LIVERY TO THE DEALER OR UNLESS PARTS OR ACCESSORIES, OR BOTH, INCLUDING TIRES, HAVE BEEN REMOVED OR REPLACED WITH PARTS OR ACCESS... CHARGE REPRESENTS COSTS AND PROFIT TO THE SELLER/DEALER FOR ITEMS SUCH AS INSPECTING, CLEANING, SALES TAX, AND PREPARING DOCUME... FY THAT I AM 18 YEARS OF AGE OR OLDER, AND HEREBY ACKNOWLEDGE A COPY OF THIS ORDER. ...EED PRICE INCLUDES ALL DEALER AND FACTORY INCENTIVES, PROMOTIONS, AND REBATES.

DEALER'S AUTHORIZED SIGNATURE _____

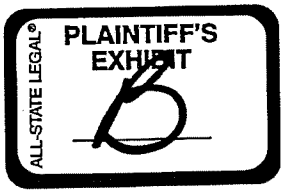
CUSTOMER'S SIGNATURE Ronald A Hobbs ID: 081200356 DATE 10/3/07

ALL-STATE LEGAL®

PLAINTIFF'S EXHIBIT A

CUSTOMER NAME RONALD A HOBBS SERIAL NO. 5TBBT54157S454163
TOTAL R/O'S 8 TOTAL SERV. DAYS 8 MAKE TT TOYOTA TRUCK

LN#	RO.NO.	RO. DATE..	MILES.	ADV/TECH	J#	T	OPERATION CODE.	DESCRIPTION.....
1	359438	10/27/2008	36990	A	8277			
				T	8325	1 W	07TOZ	TRANSMISSION
				T	8325	2 W	06TOZ	*ENGINE REPAIR
				T	8325	3 C	30TOZ1LOF	*LUBE,OIL & FILT
2	355524	09/17/2008	32262	A	8318			
				T	8378	1 C	07TOZ	TRANSMISSION
				T	8378	2 C	85TOZZLOF	*LUBE,OIL & FILT
				T	8378	3 C	85TOZZ31VISUAL	31 POINT CHECK
3	343770	05/31/2008	20286	A	8318			
				T	8336	1 W	20TOZZBT	BODY TRIM
				T	8336	2 C	30TOZ1	*PA. STATE INSPE
				T	8336	3 C	30TOZ10	*EMISSIONS INSP
				T	8336	4 C	80TOZZ31VISUAL	31 POINT CHECK
4	335927	03/17/2008	14520	A	8318			
				T	8345	1 W	06TOZ	*ENGINE REPAIR
				T	8345	2 W	07TOZ	TRANSMISSION
5	333464	02/21/2008	12209	A	8318			
				T	8239	1 C	10TOZ	*ELECTRICAL
				T	8239	2 C	22TOZZ31VISUAL	31 POINT CHECK
				T	8239	3 C	30TOZ1LOF	*LUBE,OIL & FILT
6	324593	11/17/2007	5103	A	8277			
				T	8325	1 C	85TOZA1	FIRST SERVICE
				T	8325	2 C	85TOZZ31VISUAL	31 POINT CHECK
				T	8325	3 W	10TOZ	*ELECTRICAL
7	314948	08/13/2007	11	A	8298			
				T	7271	1 I	06TOZ	*ENGINE REPAIR
8	308521	06/06/2007	5	A	7371			
				T	8316	1 W	50TOZPDI	NEW VEHICLE INSP
				T	8316	2 I	50TOZPSIUPD	UP-DATE P.S.I.
				T	8316	3 I	30TOZ10A	EMISSIONS EXEMPT



Case ID: 081200256

PEEL STICKER AT TOP OF ENVELOPE TO THE RIGHT OF THE RETURN ADDRESS. FOLD AT DOTTED LINE

CERTIFIED MAIL™

7008 1140 0003 1775 2772

FIRST CLASS MAIL

KIMMEL & SILVERMAN
P.C.
30 East Butler Pike, Ambler, PA 19002

HQ11
Route: HQ
Location: HQ11
12/05/08 13:03 1 of 1
120514130345

Toyota Motor Sales, USA
19001 S. Western Avenue
Torrance, CA 90509

HQ11

TOYOTA INSPECTED

TOY-RQ-05E-00003983

TOYOTA

Debbie Core
Senior Legal Assistant
Legal and Corporate Responsibility

Toyota Motor Sales, U.S.A., Inc.
19001 South Western Avenue
Torrance, CA 90501
310 468-4966 Direct Dial
310 381-8478 Fax

August 5, 2009

VIA UPS NEXT DAY

Dennis P. Ziemba, Esq.
Eckert, Seamans, Cherin & Mellott, LLC
1515 Market Street – Ninth Floor
Philadelphia, PA 19102

RE: *Ronald A. Hobbs v. Toyota Motor Sales, U.S.A., Inc.*

Dear Dennis:

I enclose Toyota Motor Sales, U.S.A., Inc.'s check number **384097** in the amount of **$4,000.00** made payable to ***"Ronald A. Hobbs and his attorneys Kimmel & Silverman".***

This check represents full and final satisfaction of this defendant's settlement with respect to the above referenced matter. Please proceed to disburse once you have received the executed Settlement Agreement and Release and appropriate court dismissal documents. I also ask that you forward the same to me as soon as possible so that I may close my file on this matter.

Should you have any questions or comments with reference to the foregoing, please do not hesitate to contact the undersigned.

Very truly yours,

Robyn Brown for *Debbie Core*

/rab

Enclosure as stated above

REFERENCE	DATE	V	CHER	GROSS	DISCOUNT	NET	HDL CD
HOBBS	07/22/2009		11180082	4,000.00	0.00	4,000.00	DJ
X10 L6 SETTLEMENT - RONALD HOBBS (DC)							

VENDOR NO.: 0091097872 CHECK NO.: 0000384097 DATE: 8/5/2009 TOTAL NET AMOUNT: $4,000.00

Please detach this statement before depositing check

TOYOTA MOTOR SALES. USA. INC.
19001 S. WESTERN AVENUE - TORRANCE, CA 90509

This check is tendered in payment of items listed

FOLD FOLD

Security features included. Details on back.

TOYOTA MOTOR SALES, USA, INC.
19001 S. WESTERN AVENUE - TORRANCE, CA 90509

UBOC DISBURSEMENT SERVICES
BOSTON, MA 02108

53-292
113

0000384097

DATE: 08/05/2009

PAY Four thousand and xx/100ths Dollars

$4,000.00

TO THE ORDER OF *RONALD A HOBBS AND HIS ATTORNEYS, KIMMEL & SILVERMAN*

TOYOTA MOTOR SALES, USA, INC.

Matsuno

⑈0000384097⑈ ⑆011302920⑆ ⑈9080006397⑈960000

TOYOTA

CHECK REQUEST

Date Created : 7/31/2009
AP Business Unit: 101
Preparer Name : Brown,Robyn
Check Request (Voucher) number : 11180082
Invoice Nbr: HOBBS
Invoice Date: 7/22/2009

Vendor Number : 0091097872
Invoice Nbr: HOBBS
Revised Invoice Nbr: _____
Voucher Number : 11180082

Comments : SETTLEMENT - HOBBS V TMS
RUSH - HOLD CHECK FOR PICKUP
DO NOT MAIL - CONTACT ROBYN 65264
Vendor Number : 0091097872
Vendor Name : RONALD A HOBBS AND HIS ATTORNEYS,
Vendor Address : KIMMEL & SILVERMAN

Check Comments : X10 L6 SETTLEMENT - RONALD HOBBS (DC)

Line	Distrib Line	Business Unit - GL	Dept ID	Account	Project	Product	Amount
1	1	101	322004	611550	LGL00034		4,000.00

MERCH TOTAL	4,000.00
SALES TAX	0.00
FREIGHT	0.00
GRAND TOTAL	**$ 4,000.00**

7-31-09
* Approval Signature | Date

ALIENE PABOOJIAN
SR. LEGAL ASSISTANT

* Approval Signature, Printed Name, and Title are Required Fields.

SETTLEMENT
Cash Settlements

All Cash Settlements must be pre-authorized by TMS.

- Once a case has settled, please submit a written check request to the TMS Case Manager (with a copy to **Robyn Brown**) for **each** individual check using the attached form.
- Plea se note that we will need a completed W-9 for all plaintiff attorneys who wish to be included on the settlement check.

TMS LEMON LAW / WARRANTY CHECK REQUEST FORM

DATE:	July 21, 2009
MATTER NAME:	Ronald A. Hobbs v. Toyota Motor Sales, U.S.A., Inc.
TMS CASE MANAGER:	Debbie Core, Senior Legal Assistant
CHECK AMOUNT:	$4,000.00
PAYABLE TO:	Ronald A. Hobbs and his attorneys, Kimmel & Silverman

LIENHOLDER (if applicable)
ADDRESS (NOT a P.O. Box)
CITY, STATE, ZIP
TELEPHONE NUMBER:
ACCOUNT NUMBER:

The Following Forms are Attached

Completed W-9 form (if payable to a firm or attorney) -
Copy of Letterhead (if payable to a firm or attorney) -

The Deadline for this Check is:

X Date: As soon as possible
Date until which payoff is good: _____

Please send this check to

X TMS' Local Counsel Dennis Ziemba @ Eckert Seaman et al
ISG (if settlement is a repurchase) _____

1544473_1

FILED
15 OCT 2009 01:57 pm
Civil Administration

RONALD A. HOBBS	:	COURT OF COMMON PLEAS PHILADELPHIA COUNTY
v.	:	CIVIL ACTION - LAW
	:	
	:	DECEMBER TERM, 2008
TOYOTA MOTOR SALES, U.S.A., INC.	:	NO. 0256

ORDER

AND NOW, this 9th day of December 2009, upon consideration of plaintiff, Ronald A. Hobbs's, Motion to Relist Matter for Arbitration, and defendant's Response, a hearing is scheduled for January 7, 2010 at 1:30 PM in Court Room 426 City Hall.

BY THE COURT:

_____, J.

Hobbs Vs Toyota Motor S-ORDER
08120025600017

DOCKETED
DEC 10 2009
T. DUGAN

Case ID: 081200256
Control No.: 09102460

COPIES SENT PURSUANT TO Pa.R.C.P. 236(b) T. DUGAN 12/11/2009

TOY-RQ-05E-00003988

ECKERT SEAMANS

Eckert Seamans Cherin & Mellott, LLC
Two Liberty Place
50 South 16th Street
22nd Floor
Philadelphia, PA 19102

TEL 215 851 8400
FAX 215 851 8383
www.eckertseamans.com

Heather Russell Fine
Direct Dial: (215) 851-8529
hfine@eckertseamans.com

July 21, 2009

VIA E-MAIL

Ms. Debbie Core
Senior Legal Assistant
Toyota Motor Sales, U.S.A., Inc.
19001 South Western Avenue
Torrance, CA 90501

RE: Ronald A. Hobbs v. Toyota Motor Sales, U.S.A., Inc.
Court of Common Pleas – Philadelphia County – Civil Division
Docket No.: 000256 December Term, 2008
TMS Case No.: 2008-12-45982
Our File No.: 296055-00136

Dear Ms. Core:

Please be advised that we recently resolved the above referenced matter. Plaintiff has agreed to dismiss this civil action with prejudice in exchange for $4,000.00. We are preparing a Release for execution by plaintiff. Upon receipt of an executed Release, we will forward a copy to you for your files.

Thank you once again for your assistance in this matter. Please contact me if you have any questions or need additional information.

Sincerely,

HEATHER RUSSELL FINE

HRF:mg
cc: Dennis P. Ziemba
m0748184.

TOY-RQ-05E-00003989

C

HFine@eckertseamans .com
03/25/2009 09:35 AM

To Debbie_Core@Toyota.com
cc dziemba@eckertseamans.com
bcc
Subject Hobbs v TMS: Deposition Summary

Dear Debbie:

Attached please find a deposition summary in this matter.

Thank you,
Heather

Heather Russell Fine, Esq.

Eckert Seamans Cherin & Mellott, LLC
Two Liberty Place
50 South 16th Street, 22nd Floor
Philadelphia, PA 19102

215.851.8529 phone
215.851.8383 fax
hfine@eckertseamans.com

This communication may contain federal tax advice. Recent IRS regulations require us to advise you that any discussion of federal tax issues in this communication was not intended or written to be used and cannot be used to avoid any penalty under federal tax law or to promote, market or recommend any transaction or matter addressed herein. Only formal, written tax opinions meeting these IRS requirements may be relied upon for the purpose of avoiding tax-related penalties. Please contact one of the Firm?s Tax partners if you have any questions regarding federal tax advice.

TMS HOBBS DEPOSITION SUMMARY (M0720869).DOC

FILED
15 OCT 2009 01:57 pm
Civil Administration

RONALD A. HOBBS	:	COURT OF COMMON PLEAS PHILADELPHIA COUNTY
v.	:	CIVIL ACTION - LAW
	:	
	:	DECEMBER TERM, 2008
TOYOTA MOTOR SALES, U.S.A., INC.	:	NO. 0256

ORDER

AND NOW, this day of 2009, upon consideration of plaintiff, Ronald A. Hobbs's, Motion to Relist Matter for Arbitration, and defendant's Response, if any, it is hereby **ORDERED** and **DECREED** that the Motion is **GRANTED**.

BY THE COURT:

_____, J.

KIMMEL & SILVERMAN, P.C.
Robert A. Rapkin, Esquire
Identification No.: 61628
30 East Butler Pike
Ambler, PA 19002
(215) 540-8888

Attorney for Plaintiff

RONALD A. HOBBS		:COURT OF COMMON PLEAS :PHILADELPHIA COUNTY
v.	:	CIVIL ACTION - LAW
	:	
	:	DECEMBER TERM, 2008
TOYOTA MOTOR SALES, U.S.A., INC.	:	NO. 0256

PLAINTIFF'S MOTION TO RELIST MATTER FOR ARBITRATION

Plaintiff, Ronald A. Hobbs, hereby moves this Honorable Court to Relist this Matter for Arbitration. In support of said Motion, plaintiff avers the following:

1. On or about October 3, 2007, plaintiff purchased a new 2007 Toyota Tundra manufactured and warranted by defendant.

2. To date, plaintiff has complained about reoccurring problems with the vehicle's transmission and unusual oil consumption. (See Exhibit A, the warranty repair records for the subject vehicle.)

3. Defendant's authorized repair facility has repaired plaintiff's vehicle for the above problems on numerous occasions.

4. On or about December 1, 2008, plaintiff filed a complaint against defendant in this Honorable Court, citing the Pennsylvania Automobile Lemon

Law, the Magnuson-Moss (FTC) Warranty Improvement Act and the Pennsylvania Unfair Trade Practices and Consumer Protection Law.

5. An arbitration hearing was scheduled for July 24, 2009.

6. Prior to the scheduled arbitration, the parties were able to negotiate a cash settlement.

7. Plaintiff on July 20, 2009, was in the State of Georgia attending the funeral of a close family member and was not able to attend the arbitration, which was scheduled for July 24, 2009.

8. Mr. Scholer of plaintiff's counsel's firm telephoned plaintiff on July 20, 2009 to advise him of the offer to settle and plaintiff accepted.

9. A confirming letter was sent to plaintiff on July 21, 2009 by plaintiff's firm. Settlement documents including a release were sent to plaintiff by plaintiff's firm on or about July 22, 2009.

10. Plaintiff and Mr. Robert Rapkin had a telephone conversation on or about October 9, 2009, where as plaintiff stated that he changed his mind and he wanted to reject defendant's offer. Plaintiff indicated that the cash settlement was not the issue but the language in the release was not acceptable to him.

11. Plaintiff therefore does not want to accept that settlement.

12. There has been no meeting of the minds between plaintiff and defendant.

13. As there has been no agreement reached between plaintiff and defendant, plaintiff intends to go forward with arbitration.

14. Plaintiff will be severely prejudiced if he is not permitted to go forward with arbitration.

WHEREFORE, plaintiff requests this Honorable Court grant plaintiff's Motion to Relist matter for Arbitration.

Respectfully submitted,

KIMMEL & SILVERMAN, P.C.

By: _____

Robert A. Rapkin
Attorney for Plaintiff
30 E. Butler Pike
Ambler, PA 19002
(215) 540-8888

KIMMEL & SILVERMAN, P.C.
Robert A. Rapkin, Esquire
Identification No.: 61628
30 East Butler Pike
Ambler, PA 19002
(215) 540-8888

Attorney for Plaintiff

RONALD A. HOBBS	:	COURT OF COMMON PLEAS
	:	PHILADELPHIA COUNTY
v.	:	CIVIL ACTION - LAW
	:	
	:	DECEMBER TERM, 2008
TOYOTA MOTOR SALES, U.S.A., INC.	:	NO. 0256

BRIEF IN SUPPORT OF PLAINTIFF'S MOTION TO RELIST MATTER FOR ARBITRATION

I. FACTS

On or about October 3, 2007, plaintiff purchased a new 2007 Toyota Tundra manufactured and warranted by defendant. To date, plaintiff has complained about reoccurring problems with the vehicle's transmission and unusual oil consumption. (See Exhibit A, the warranty repair records for the subject vehicle.) Defendant's authorized repair facility has repaired plaintiff's vehicle for the above problems on numerous occasions.

On or about December 1, 2008, plaintiff filed a complaint against defendant in this Honorable Court, citing the Pennsylvania Automobile Lemon Law, the Magnuson-Moss (FTC) Warranty Improvement Act and the Pennsylvania Unfair Trade Practices and Consumer Protection Law. An arbitration hearing was scheduled for July 24, 2009.

Prior to the scheduled arbitration, the parties were able to negotiate a cash settlement. Plaintiff on July 20, 2009, was in the State of Georgia attending the funeral of a close family member and was not able to attend the arbitration hearing, which was scheduled for July 24, 2009. Mr. Scholer of plaintiff's counsel's firm telephoned plaintiff on July 20, 2009 to advise him of the offer to settle and plaintiff accepted. A confirming letter was sent to plaintiff on July 21, 2009 by plaintiff's firm. Settlement documents including a release were sent to plaintiff by plaintiff's firm on or about July 22, 2009. Plaintiff and Mr. Robert Rapkin had a telephone conversation on October 9, 2009 where as plaintiff stated that he changed his mind and wanted to reject defendant's offer. Plaintiff indicated that the cash settlement was not the issue but the language in the release was not acceptable to him.

Plaintiff does not want to accept that settlement. There has been no meeting of the minds between plaintiff and defendant. As there has been no agreement reached between plaintiff and defendant, plaintiff intends to go forward with arbitration. Plaintiff will be severely prejudiced if he is not permitted to go forward with arbitration.

Thus, plaintiff respectfully requests this Honorable Court enter plaintiff's proposed Order, thereby relisting this matter for arbitration.

II. LEGAL ARGUMENT

Plaintiff and defendant never had a meeting of the minds regarding the settlement of the instant matter, and therefore, the "settlement" should be stricken from the docket and the matter relisted for arbitration.

Prior to the scheduled arbitration, the parties were able to negotiate a cash settlement. Plaintiff does not want to accept that settlement.

The settlement entered on the docket was done so in error. Accordingly, the "settlement" should be stricken from the docket and the matter re-listed for arbitration.

III. CONCLUSION

In light of the foregoing, plaintiff, Ronald A. Hobbs, respectfully requests this Honorable Court grant plaintiff's Motion to Relist Matter for Arbitration.

Respectfully submitted,

KIMMEL & SILVERMAN, P.C.

By:
Robert A. Rapkin
Attorney for Plaintiff
30 E. Butler Pike
Ambler, PA 19002
(215) 540-8888

KIMMEL & SILVERMAN, P.C.
Robert A. Rapkin, Esquire
Identification No.: 61628
30 East Butler Pike
Ambler, PA 19002
(215) 540-8888

Attorneys for Plaintiff

RONALD A. HOBBS	:	COURT OF COMMON PLEAS
	:	PHILADELPHIA COUNTY
v.	:	CIVIL ACTION - LAW
	:	
	:	DECEMBER TERM, 2008
TOYOTA MOTOR SALES, U.S.A., INC.	:	NO. 0256

CERTIFICATE OF SERVICE

I, Robert A. Rapkin, Esquire, counsel for plaintiff, do hereby certify that I served all parties with true and correct copies of the foregoing Motion, by First Class Mail, Postage Pre-paid, addressed as follows:

Heather Fine, Esquire
Eckert Seamans Cherin & Meliott, LLC.
50 South 16th Street, 22nd Floor
Philadelphia, PA 19102

KIMMEL & SILVERMAN, P.C.

Date: 10-15-09

By: _____
Robert A. Rapkin, Esquire
Attorney for Plaintiff
30 E. Butler Pike
Ambler, PA 19002
(215) 540-8888

Case ID: 081200256
Control No.: 09102460

VERIFICATION

ROBERT A. RAPKIN, ESQUIRE states that he is the attorney for the plaintiff herein; that he is acquainted with the facts set forth in the foregoing Motion to Relist Matter for Arbitration; that same are true and correct to the best of his knowledge, information and belief; and that this statement is made subject to the Penalties of 18 Pa. C.S.A. §4904, relating to unsworn falsifications to authorities.

Robert A. Rapkin, Esquire
Attorney for Plaintiff
30 E. Butler Pike
Ambler, PA 19002
(215) 540-8888

DC

ROBERT M. SILVERMAN[*,*]
CRAIG THOR KIMMEL[**]

[*] Member, PA Bar
[*] Member, NJ Bar
[*] Member, DE Bar
[*] Member, NY Bar
[*] Member, MA Bar
[*] Member, MD Bar
[*] Member, OH Bar
[*] Member, MI Bar
[*] Member, NH Bar
[*] Member, CT Bar

KIMMEL & SILVERMAN
P.C.

1-800-LEMON LAW
www.lemonlaw.com

CORPORATE HEADQUARTERS
30 E. Butler Pike
Ambler, PA 19002
P (215) 540-8888
F (215) 540-8817

JACQUELINE C. HERRITT[**,*]
ROBERT A. RAPKIN[*]
MELISSA K. FIALA[**]
IRA P. SMADES[*]
DAVID L. LIEBERMAN[*,*]
ANGELA K. TROCCOLI[*,*]
FRED DAVIS[**]
AMY L. BENNECOFF[**]
CHRISTINA GILL ROSEMAN[**,*]
RICHARD A. SCHOLER[**]

WESTERN PA OFFICE, 210 Grant Street, Suite 202, Pittsburgh, PA 15219, P (412) 566-1001, F (412) 566-1005
NEW JERSEY OFFICE, Executive Quarters, 1930 E. Marlton Pike, Suite Q29, Cherry Hill, NJ 08003, P (856) 429-8334, F (856) 216-7344
DELAWARE OFFICE, 501 Silverside Road, Suite 118, Wilmington, DE 19809, P (302) 791-9373, F (302) 791-9476
CONNECTICUT OFFICE, 60 Hartford Pike, P.O. Box 325, Dayville, CT 06241, P (860) 866-4380, F (860) 263-0919
PLEASE REMIT ALL CORRESPONDENCE TO THE AMBLER OFFICE

December 2, 2008

LEGAL SERVICES
DEC - 5 2008
GROUP RECEIVED

CERTIFIED MAIL/RETURN RECEIPT REQUESTED

Toyota Motor Sales, U.S.A., Inc.
19001 South Western Avenue
Torrance, CA 90501

RE: Ronald A. Hobbs v. Toyota Motor Sales, U.S.A., Inc.
December Term 2008, No. 000256

Dear Sir/Madam:

Enclosed please find a copy of the Complaint which has been filed against Toyota Motor Sales, U.S.A., Inc. in the Court of Common Pleas, Philadelphia County, Pennsylvania. You are being served pursuant to the Pennsylvania Rules of Civil Procedure, Rule 403.

Please refer the attached to the legal department. **Note**: A responsive pleading is due 20 days after the receipt of the Complaint.

Very truly yours,

Craig Thor Kimmel

Craig Thor Kimmel, Esquire

CTK\rm

HOBBS, RONALD A.

CORRESPONDENCE

TOY-RQ-05E-00004001

HOBBS, RONALD A.

PLEADING

TOY-RQ-05E-00004002

FILE START

Michael Louis Kelly - State Bar No. 82063
mlk@kirtlandpackard.com
Behram V. Parekh - State Bar No. 180361
bvp@kirtlandpackard.com
Heather M. Peterson - State Bar No. 261303
hmp@kirtlandpackard.com
KIRTLAND & PACKARD LLP
2361 Rosecrans Avenue
Fourth Floor
El Segundo, California 90245
Telephone: (310) 536-1000
Facsimile: (310) 536-1001

Counsel for Plaintiffs and all others similarly situated

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ERIC KMETZ, and JOE MORRIS, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

TOYOTA MOTOR SALES, U.S.A., INC., TOYOTA MOTOR CORPORATION, and DOE DEFENDANTS 1-10

Defendants.

Case No. 2:09-CV-08478 AHM-FMO

Assigned to the Honorable A. Howard Matz

CLASS ACTION

FIRST AMENDED COMPLAINT FOR:

1. VIOLATION OF CALIFORNIA'S CONSUMERS LEGAL REMEDIES ACT;

2. VIOLATION OF THE UNFAIR COMPETITION LAWS;

3. VIOLATION OF THE FALSE ADVERTISING LAWS;

4. BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY;

5. BREACH OF IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE;

6. NEGLIGENCE

DEMAND FOR JURY TRIAL

LAW OFFICES
KIRTLAND & PACKARD LLP

Plaintiffs Eric Kmetz and Joe Morris ("Plaintiffs"), on behalf of themselves and all others similarly situated, allege the following upon information and belief based upon investigation of counsel and published reports, except to their own acts, which they allege upon personal knowledge:

JURISDICTION AND VENUE

1. This Court has diversity jurisdiction over this class action pursuant to 28 U.S.C. § 1332 as amended by the Class Action Fairness Act of 2005 because the matter in controversy exceeds $5,000,000, exclusive of interest and costs, and is a class action in which some members of the class are citizens of different states than the Defendants. *See* 28 U.S.C. § 1332(d)(2)(A).

2. This Court also has personal jurisdiction over Defendants because Defendants are authorized to do business, and currently do business, in this state.

3. Venue is proper in this jurisdiction pursuant to 28 U.S.C. § 1391 because Defendant Toyota Motor Sales, U.S.A., Inc. is headquartered in this District and is subject to personal jurisdiction and a substantial portion of the conduct complained of herein occurred in this District.

PARTIES

4. Plaintiff Eric Kmetz is a resident of Los Angeles County. Plaintiff purchased his Lexus IS 300 in 2001. Plaintiff purchased his vehicle from Jim Faulk Lexus, located in Los Angeles, California. Plaintiff's vehicle is equipped with Toyota's electronic throttle control system. Plaintiff has experienced sudden, unexpected acceleration of his vehicle while in the normal process of operating his vehicle. Plaintiff's vehicle has further suffered a diminution in resale value due to press reports and recalls related to the sudden, unexpected acceleration of Toyota and Lexus vehicles. Moreover, one of Toyota's main selling points for its vehicles is that such cars are reputed to be safe and reliable. Plaintiff Kmetz relied upon Toytota's carefully crafted reputation for safety and reliability in choosing his vehicle. But for Toyota's failure to

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disclose that its vehicles are susceptible to incidents of sudden, unintended acceleration, and thus such vehicles posed a significant risk of injury and death to vehicle occupants, other motorists, and pedestrians, Plaintiff Kmetz would not have purchased his vehicle, or would not have purchased his vehicle for the price paid.

5. Plaintiff Joe Morris is a resident of Orange County. Plaintiff owns and drives a Toyota Prius. Plaintiff purchased his vehicle from a dealership in Orange County, California. Plaintiff's vehicle is equipped with Toyota's electronic throttle control system. Plaintiff's vehicle has suffered a diminution in resale value due to press reports and recalls related to the sudden, unexpected acceleration of Toyota and Lexus vehicles. Further, one of Toyota's main selling points for its vehicles is that such cars are reputed to be safe and reliable. Plaintiff Morris relied upon Toytota's carefully crafted reputation for safety and reliability in choosing his vehicle. But for Toyota's failure to disclose that its vehicles are susceptible to incidents of sudden, unintended acceleration, and thus such vehicles posed a significant risk of injury and death to vehicle occupants, other motorists, and pedestrians, Plaintiff Morris would not have purchased his vehicle, or would not have purchased his vehicle for the price paid.

6. Defendant Toyota Motor Sales, U.S.A., Inc. ("TMS-USA") is, and at all relevant times was, a California Corporation headquartered in Los Angeles, California. Defendant TMS-USA is a wholly owned subsidiary of Toyota Motor Corporation, and is responsible for the manufacture, distribution, and sale of all Toyota and Lexus automobiles and trucks in the United States.

7. Defendant Toyota Motor Corporation ("TMC-Japan") is, and at all relevant times was, a Japanese Corporation with its headquarters in Japan. Toyota Motor Corporation, at all relevant times, wholly owned and controlled TMS-USA, and thus, conducted business in Los Angeles County and is subject to

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the personal jurisdiction of this Court.

8. The above named Defendants, and their subsidiaries and agents, are collectively referred to as "Toyota."

9. The true names and capacities of the Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are currently unknown to Plaintiffs, who therefore sue such Defendants by fictitious names. Each of the Defendants designated herein as a DOE is legally responsible for the unlawful acts alleged herein. Plaintiffs will seek leave of Court to amend this Complaint to reflect the true names and capacities of the DOE Defendants when such identities become known.

10. At all relevant times, each and every Defendant was acting as an agent and/or employee of each of the other Defendants and was acting within the course of scope of said agency and/or employment with the full knowledge and consent of each of the other Defendants. Each of the acts and/or omissions complained of herein were alleged and made known to, and ratified by, each of the other Defendants.

FACTUAL ALLEGATIONS

11. Toyota is currently the world's largest manufacturer of vehicles with net revenues in 2009 of over 227 billion dollars.

12. Toyota has carefully crafted and attempted to maintain a reputation for quality and safety in order to increase sales of its cars.

13. Evidence of this include various advertisements by Toyota regarding their vehicles crash safety ratings, design, quality, and resale value.

14. As the Los Angeles Times reported in a front page story on December 23, 2009:

> A peerless reputation for quality and safety has helped Toyota become the world's largest automaker. But even as its sales have soared, the company has delayed recalls,

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> kept a tight lid on disclosure of potential problems and attempted to blame human error in cases where owners claimed vehicles were defective. After Toyota this fall announced its biggest recall to address the sudden-acceleration problem, it insisted publicly that no defect existed. This drew a rare public rebuke from the National Highway Traffic Safety Administration, which chastised the automaker for making 'inaccurate and misleading statements.'

15. Toyota's carefully crafted attempts to minimize any public revelation of the problems with its vehicles are further discussed in that same Los Angeles Times article: "The automaker knew of a dangerous steering defect in vehicles, including the 4Runner sport utility vehicle, for years before issuing a recall in Japan in 2004." However, in 2004, it told U.S. regulators that no such recall was necessary in here because Toyota "has received field information from the Japanese market, but no similar information from the U.S. markets has been received." This statement to regulators was false, as "company records show that Toyota had received numerous complaints about the problem before that date," including ones as far back as the year 2000. In 2005, it was finally forced to recall over 1 million vehicles with that part, a full five years after it knew of such complaints in the United States. "Japanese police, in an investigation of the defect, said that Toyota employees had known about the problem *since 1992*, and should have initiated a recall immediately" (emphasis added).

16. The same Los Angeles Times article reports that a former Toyota lawyer who handled safety litigation, Dimitrios Biller, has sued Toyota alleging that it engaged in a "calculated conspiracy to prevent the disclosure of damaging evidence" as part of a scheme to "prevent evidence of its vehicles

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shortcomings from becoming known."

17. Beginning in the late 1990s, Toyota manufactured, distributed and sold vehicles with an electronic throttle control system ("ETC").

18. Unlike that of traditional throttle control systems, where a physical cable connected the accelerator pedal to the engine throttle, under the ETC system, the engine throttle is controlled by electronic signals sent from the gas pedal to the engine throttle. A sensor at the accelerator detects how far the gas pedal is depressed and transmits that information to a computer module which controls a motorized engine throttle. The computer module determines how far the accelerator is depressed, and, in turn, tells the engine throttle motor how far to open the throttle valve.

19. When Toyota first introduced the ETC, they continued to include a mechanical linkage between the accelerator and the engine throttle control.

20. Beginning with the 2001 model year, however, Defendants began manufacturing, distributing, and selling vehicles without such mechanical linkage.

21. Further, Defendants' ETC system also fails to include a failsafe measure incorporated by other vehicle manufacturers which instructs the ETC system to automatically reduce the engine to idle whenever the brakes are applied.

22. The combination of the lack of these two safety systems allows the ETC to set the engine throttle to any position regardless of the position of the accelerator, and with no mechanical or electronic failsafe mechanism to allow the driver to effectively stop or slow the car in such circumstances.

23. According to an article in the November 8, 2009 issue of the Los Angeles Times ("Times"), the Times located federal and other records of 19 fatalities and over 1,000 reports by owners involving the unintended acceleration of Toyota vehicles from the 2002 model year and newer.

24. The Times further quotes an independent safety expert as stating that he had

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identified nearly 2,000 sudden-acceleration cases for Toyota vehicles built since 2001.

25. The Times further states that other experts believe the numbers may be far higher, citing to a 2007 National Highway Traffic and Safety Administration ("NHTSA") survey of 600 Lexus owners that found that 10% complained they had experienced sudden acceleration.

26. The Times further states that when Toyota reported complaint data to NHTSA, Toyota eliminated all reports claiming that the sudden acceleration occurred for "a long duration" or more than a few seconds.

27. The Times further states that in an investigation of reports of sudden acceleration involving 2002 and 2003 Lexus ES and Camry models, Toyota eliminated all reports in five broad categories when responding to NHTSA's request, including all cases in which the drivers said they were unable to control a runaway engine by applying the brakes.

28. Thus, at all relevant times, Toyota had full knowledge of the numerous complaints regarding its vehicles, that such vehicles were susceptible to incidents of sudden, unintended acceleration, and thus such vehicles posed a significant risk of injury and death to vehicle occupants, other motorists, and pedestrians.

29. Regardless of this knowledge, Toyota has taken no steps to remedy this dangerous condition.

30. Toyota had a duty to disclose this vehicle defect because 1) it publicly created, through its marketing campaign, the image of its vehicles as safe and reliable; and 2) the vehicle defect causes Toyota's vehicles to become inherently dangerous products to the driver, passengers, and the general public.

CLASS ACTION ALLEGATIONS

31. Plaintiffs bring this action on behalf of themselves and all others similarly

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situated, as a member of the proposed nationwide plaintiff class and California class (collectively hereafter the "Class") defined as follows:

Nationwide class: All persons who reside in the United States and who presently own a Toyota vehicle equipped with an electronic throttle control system.

California class: All persons who reside in California or are California citizens and who presently own a Toyota vehicle equipped with an electronic throttle control system.

32. Specifically excluded from the proposed Class are Defendants, any entities in which Defendants have a controlling interest, and the officers, directors, affiliates, legal representatives, successors, subsidiaries and/or assigns of Defendant. Also specifically excluded from the proposed Class are any claims by any persons who have suffered or possess a right of action for personal injury or wrongful death as a result of the sudden unintended acceleration of their Toyota vehicle.

33. This action is brought and may be properly maintained as a class action pursuant to the provisions of Federal Rule of Civil Procedure 23(a)(1)-(4) and 23(b)(1)-(3). This action satisfies the numerosity, typicality, adequacy, predominance and superiority requirements of those provisions.

34. [Fed. R. Civ. P. 23(a)(1)] The Class is so numerous that the individual joinder of all of its members is impractical. While the exact number and identities of Class members are unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff is informed and believes the Class includes many thousands of members. Plaintiffs allege that the Class may be ascertained by the records maintained by Toyota and its network of dealerships, and/or through the records of public agencies.

35. [Fed. R. Civ. P. 23(a)(2)] Common questions of fact and law exist as to all members of the Class which predominate over any questions affecting only individual members of the Class. These common legal and factual questions,

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which do not vary from class member to class member, and which may be determined without reference to the individual circumstances of any class member, include, but are not limited to, the following:

a. Whether Toyota vehicles equipped with electronic throttle control systems cause sudden unintended acceleration;

b. Whether Toyota vehicles equipped with electronic throttle control systems are dangerous when used as designed due to such sudden unintended acceleration;

c. Whether Toyota vehicles equipped with electronic throttle control systems are dangerous when used as designed because they fail to incorporate safety systems that would allow drivers to control their vehicle in the case of sudden unintended acceleration;

d. Whether Toyota knew of the dangerous propensity of its vehicles equipped with an electronic throttle control system;

e. Whether Toyota failed to remedy the dangerous propensity of its vehicles equipped with an electronic throttle control system;

f. Whether Toyota vehicles equipped with ETC are unreasonably dangerous, constituting a breach of the implied warranty;

g. Whether Toyota vehicles equipped with ETC are not fit for their intended use, constituting a breach of the implied warranty;

h. Whether Toyota was negligent in the manufacture, distribution, and sale of vehicles equipped with ETC;

i. Whether Toyota's conduct described herein violated California's Unfair Competition Law;

j. Whether Toyota's conduct described herein violated California's False Advertising Act;

k. Whether Toyota's conduct described herein violated California's Consumer Legal Remedies Act;

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l. Whether Toyota's conduct described herein violated the Magnusson-Moss Consumer Warranty Act.

m. The nature and extent of damages and other remedies to which the conduct of Toyota entitles the Class members.

36. [Fed. R. Civ. P. 23(a)(3)] Plaintiffs' claims are typical of the claims of the members of the Class. Plaintiffs and all members of the Class have sustained injury and are facing irreparable harm arising out of Defendants' common course of conduct as complained of herein. The losses of each member of the Class were caused directly by Defendants' wrongful conduct as alleged herein.

37. [Fed. R. Civ. P. 23(a)(4)] Plaintiffs will fairly and adequately protect the interests of the members of the Class. Plaintiffs have retained attorneys experienced in the prosecution of class actions, including complex consumer and mass tort litigation.

38. [Fed. R. Civ. P. 23(b)(3)] A class action is superior to other available methods of fair and efficient adjudication of this controversy, since individual litigation of the claims of all Class members is impracticable. Even if every Class member could afford individual litigation, the court system could not. It would be unduly burdensome to the courts in which individual litigation of numerous issues would proceed. Individualized litigation would also present the potential for varying, inconsistent, or contradictory judgments and would magnify the delay and expense to all parties and to the court system resulting from multiple trials of the same complex factual issues. By contrast, the conduct of this action as a class action, with respect to some or all of the issues presented herein, presents fewer management difficulties, conserves the resources of the parties and of the court system, and protects the rights of each Class member.

39. [Fed. R. Civ. P. 23(b)(1)(A)] The prosecution of separate actions by

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thousands of individual Class members would create the risk of inconsistent or varying adjudications with respect to, among other things, the need for and the nature of proper notice which Defendants must provide to all Class members.

40. [Fed. R. Civ. P. 23(b)(1)(B)] The prosecution of separate actions by individual class members would create a risk of adjudications with respect to them that would, as a practical matter, be dispositive of the interests of the other Class members not parties to such adjudications or that would substantially impair or impede the ability of such non-party Class members to protect their interests.

41. [Fed. R. Civ. P. 23(b)(2)] Defendants have acted or refused to act in respects generally applicable to the Class, thereby making appropriate final and injunctive relief with regard to the members of the Class as a whole.

FIRST CAUSE OF ACTION

VIOLATION OF CALIFORNIA'S

CONSUMERS LEGAL REMEDIES ACT

(By Plaintiffs and the Class Against All Defendants)

42. Plaintiffs hereby incorporate, as if set forth in full, paragraphs 1 through 41 above.

43. The Defendants' acts and omissions violate the following portions of the California *Consumers Legal Remedies Act*:

- *Civil Code* § 1770(a)(5) "Representing that goods or services have ... characteristics ... uses, benefits ... which they do not have ..."
- *Civil Code* § 1770(a)(7) "Representing that goods or services are of a particular standard, quality, or grade ... if they are of another"
- *Civil Code* § 1770(a)(9) "Advertising goods or services

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with intent not to sell them as advertised."

44. Plaintiffs and the members of the Class risk irreparable injury as a result of the Defendants' acts and omission in violation of the CLRA and these violations present a continuing risk to the class and members of the public.

45. Plaintiffs have filed concurrently herewith the venue affidavit required by *Civil Code* § 1780(c). In addition Plaintiffs concurrently provided the notice to Defendants required under *Civil Code* § 1782(a) with the sending of a letter, sent via certified mail return receipt requested on November 24, 2009. Over 30 days have passed since the notice was given and Defendants have failed to take or agree to take the remedies asked for in the notice. Thus, Plaintiffs and the putative class are entitled to damages in addition to all other appropriate remedies.

46. Pursuant to *Civil Code* § 1780(a)(2) Plaintiffs seek an order enjoining Defendants from selling any vehicles with an electronic throttle control in the United States which has not been revised in such a manner as to eliminate the possibility of sudden unintended acceleration and to which have been added such safety measures that in the case of sudden unintended acceleration, the driver will be able to take measures to slow and stop the vehicle. Plaintiffs further seek restitution from Defendants for the cost paid for their inherently unsafe and dangerous vehicle. Plaintiffs, alternatively, seek a mandatory injunction against Defendants requiring them to repair and/or replace Plaintiffs' and the putative Class' vehicles, at Defendants' expense, to eliminate the possibility of sudden unintended acceleration and to add such safety measures that in the case of sudden unintended acceleration, the driver will be able to take measures to safely slow and stop the vehicle. Unless Defendants are enjoined from violations of the CLRA alleged herein, the members of the class and the general public, who lack an adequate remedy at law to deter Defendants' wrongful conduct, will be irreparably harmed.

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47. Plaintiffs have suffered economic damage as a result of Defendant's violations of *Civil Code* § 1770 in that they now own a vehicle which is defective and inherently dangerous, regardless of the manifestation of the defect. Plaintiffs have further suffered economic damage in that their vehicle's resale value has been reduced. As the factual allegations make clear, Defendants have known of the inherently dangerous defect for a long period of time and have, during that time, not only failed to correct it, but actively suppressed evidence of its existence. Defendants' conduct is sufficiently blameworthy to merit the imposition of punitive damages pursuant to *Civil Code* § 1780(a)(4) to punish, deter, and make an example of Defendants. In addition, Plaintiffs and the class are entitled to an award of attorneys' fees and costs against Defendants pursuant to the provisions of *Civil Code* § 1780(d).

SECOND CAUSE OF ACTION

VIOLATION OF CALIFORNIA'S

UNFAIR COMPETITION LAW

(By Plaintiffs and the Class Against All Defendants)

48. Plaintiffs hereby incorporate, as if set forth in full, paragraphs 1 through 41 above.

49. California *Business and Professions Code* § 17200 *et seq.*, also known as the California Unfair Competition Law ("UCL"), prohibits acts of "unfair competition," including any unlawful, unfair, fraudulent or deceptive business act or practice as well as "unfair, deceptive, untrue or misleading advertising."

50. Defendants violated and continue to violate the UCL through one or more of the following unfair, unlawful, or fraudulent practices:

a. Selling to Plaintiffs and Class members vehicles which contain a defect or design which makes them inherently more dangerous than other similar vehicles;

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b. Failing to disclose to Plaintiffs and Class members that the vehicles sold to such consumers contain a defect or design which makes them inherently more dangerous than other similar vehicles;

c. Failing to remedy the defect or design which makes Defendants' vehicles inherently more dangerous than other similar vehicles;

d. Failing to manufacture, distribute, and sell a product which would perform in a safe manner when used in a reasonably foreseeable manner by a reasonable consumer;

e. Violating the other statutes and common law causes of action as alleged in the instant Complaint.

51. As a direct and proximate result of Defendants' illegal business practices, Plaintiffs and the members of the Class have suffered injury and have lost money or property.

52. Defendants' conduct has further injured Plaintiffs and Class members by impairing competition within the motor vehicle markets and preventing Plaintiffs and Class members from making fully informed decisions about the motor vehicles they purchase.

53. Plaintiffs respectfully request that the Court enjoin Defendants from engaging in the unlawful conduct alleged herein and require Defendants to a) stop selling any vehicles with an electronic throttle control in the United States which has not been revised in such a manner as to eliminate the possibility of sudden unintended acceleration and to which have been added such safety measures that in the case of sudden unintended acceleration, the driver will be able to take measures to slow and stop the vehicle; b) require Defendants to repair and/or replace Plaintiffs' and the putative Class' vehicles, at Defendants' expense, to eliminate the possibility of sudden unintended acceleration and to add such safety measures that, in the case of sudden unintended acceleration, would allow the driver to take measures to safely

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slow and stop the vehicle; c) in the interim time period, provide immediate notice to Plaintiffs and Class members of the potential for sudden unintended acceleration of their vehicle and provide instructions for how best to mitigate the situation were it to occur; d) require Defendants to notify all affected persons affected of the Court's injunction; e) require Defendants to provide restitution to Plaintiffs and Class members; f) award Plaintiffs and/or Class members reasonable attorneys' fees and expenses, and g) award such other relief as the Court may deem just and proper.

54. The illegal business practices described herein present a continuing threat to Plaintiffs, members of the Class, and members of the general public in that Defendants continue to engage in these practices, and will not cease doing so unless and until forced to do so by this Court. Defendants' conduct will continue to cause irreparable injury to Plaintiffs and the Class unless enjoined or restrained.

THIRD CAUSE OF ACTION

VIOLATION OF CALIFORNIA'S

FALSE ADVERTISING LAWS

(By Plaintiffs and the Class Against All Defendants)

55. Plaintiffs hereby incorporate, as if set forth in full, paragraphs 1 through 41 above.

56. *Business and Professions Code* § 17500 provides that "[i]t is unlawful for any ... corporation ... with intent ... to dispose of ... personal property ... to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated ... from this state before the public in any state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, including over the Internet, any statement ... which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be

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known, to be untrue or misleading...."

57. Defendants' representations, including statements made in Defendants' television, radio, and print advertising, websites, brochures, and all other written and oral materials disseminated by Defendants to promote their vehicles constitute advertising for purposes of this cause of action.

58. Such advertising contained statements which were false, misleading, or which omitted material information which Defendants were under a duty to disclose and which were known or should have been known to Defendants to be false, misleading, or deceptive.

59. As a direct and proximate result of Defendants' misleading advertising, Plaintiffs and the members of the putative Class have suffered injury in fact and have lost money or property.

60. The misleading advertising described herein presents a continuing threat to Plaintiffs, the Class, and members of the public in that Defendants persist and continue to engage in these practices, and will not cease doing so unless and until forced to do so by this Court. Defendants' conduct will continue to cause irreparable injury to plaintiff and the class unless enjoined or restrained.

FOURTH CAUSE OF ACTION

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

(By Plaintiffs and the Class Against All Defendants)

61. Plaintiffs hereby incorporate, as if set forth in full, paragraphs 1 through 41 above.

62. Defendants impliedly warrant that their vehicles are fit for the ordinary purpose for which the product is sold.

63. The ordinary purpose for which Defendants' vehicles are sold is to provide the purchaser with a vehicle that is capable of transporting the driver and passengers in reasonable safety, and without unduly endangering them or members of the public.

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64. Defendants breached their implied warranty of merchantability by selling a vehicle which has a propensity to suddenly and unintentionally accelerate, and which does not contain safety systems which would 1) prevent such acceleration from happening at all; and 2) which would allow a driver, in case of such acceleration, to safely slow and stop the vehicle.

65. Plaintiffs, and every member of the classes alleged herein, have been similarly damaged as a result of this breach of warranty.

FIFTH CAUSE OF ACTION

BREACH OF IMPLIED WARRANTY

OF FITNESS FOR A PARTICULAR PURPOSE

(By Plaintiffs and the Class Against All Defendants)

66. Plaintiffs hereby incorporate, as if set forth in full, paragraphs 1 through 41 above.

67. Toyota is, and at all relevant times has been, in the business of designing, manufacturing, distributing, and selling vehicles to consumers.

68. Toyota knew, at the time it sold its vehicles to consumers, that such vehicles would be used by Plaintiffs and putative Class members for the specific purpose of attempting to safely transport the driver and passengers from one point to another.

69. Toyota knew that consumers who purchased their vehicles relied upon Defendants' expertise and skill, judgment and knowledge in furnishing vehicles which were capable of transporting the driver and passengers of such vehicle without unreasonable risk of harm to them or to members of the general public.

70. Toyota's vehicles are not fit for that purpose in that their design or manufacture is so defective as to cause such vehicles to suddenly and unintentionally accelerate and, subsequent to such acceleration, provide an insufficient safety mechanism to allow the driver to slow and stop the vehicle

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safely.

71. Plaintiffs, and every member of the classes alleged herein, have been similarly damaged as a result of this breach of warranty.

SIXTH CAUSE OF ACTION

NEGLIGENCE

(By Plaintiffs and the Class Against All Defendants)

72. Plaintiffs hereby incorporate, as if set forth in full, paragraphs 1 through 41 above.

73. Defendants had a duty to their consumers, as a manufacturer of motor vehicles, to provide vehicles which, in their ordinary operation, would be safe. Defendants also had a duty to sufficiently test their vehicles' safety before selling hundreds or thousands of vehicles. Defendants had further duties once they were on notice by consumers of the propensity of their vehicles to suddenly and unintentionally accelerate, and of the inability of the driver to slow or stop such vehicles.

74. Defendants breached their duty to Plaintiffs and class members. Plaintiffs and class members have been and are currently dealing with vehicles that are inherently unsafe and more dangerous than similar vehicles manufactured by other companies.

75. Defendants' breach proximately caused the damages to Plaintiffs and class members, namely that Plaintiffs and Class members have been financially and economically damaged by owning vehicles which are inherently unsafe, and have also been further damaged in the potential risk of injury to themselves and others every time they operate their vehicles.

PRAYER FOR RELIEF

WHEREFORE, on behalf of themselves and all others similarly situated, Plaintiffs pray for the following relief:

1. An order certifying this action as a plaintiff class action, as set forth

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herein above;

2. For compensatory damages as to all causes of action where compensatory damages are available;

3. For restitution;

4. For disgorgement of all wrongfully obtained compensation;

5. For preliminary and permanent injunctive relief prohibiting Defendants from continuing the wrongful practices alleged in the Complaint;

6. For punitive damages;

7. For reasonable costs and attorneys' fees as permitted by law; and

8. For such other and further relief as the Court may deem proper.

DATED: January 19, 2009

Respectfully submitted,

KIRTLAND & PACKARD LLP

By: _____

MICHAEL LOUIS KELLY
BEHRAM V. PAREKH
HEATHER M. PETERSON

Counsel for Plaintiffs and all others similarly situated.

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DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury as to all claims so triable.

DATED: January 19, 2010

Respectfully submitted,

KIRTLAND & PACKARD LLP

By: _____

MICHAEL LOUIS KELLY
BEHRAM V. PAREKH
HEATHER M. PETERSON

Counsel for Plaintiffs and all others similarly situated.

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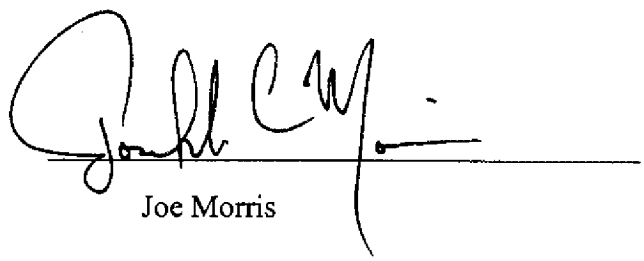
AFFIDAVIT OF JOE MORRIS

1. I, Joe Morris, submit this affidavit pursuant to §1780(d) of the Consumers Legal Remedies Act and declare the following.

2. I am a resident of Orange County, California, and am one of the named plaintiffs in the Complaint filed herewith.

3. I purchased a vehicle from Defendants, which is a subject of the Complaint, in Orange County, California.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct. Executed this 13th day of November, 2009, at Los Angeles, California.



Joe Morris

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AFFIDAVIT OF ERIC KMETZ

1. I, Eric Kmetz, submit this affidavit pursuant to §1780(d) of the Consumers Legal Remedies Act and declare the following.

2. I am a resident of Los Angeles County, California, and am one of the named plaintiffs in the Complaint filed herewith.

3. I purchased a vehicle from Defendants, which is a subject of the Complaint, in Los Angeles County, California.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct. Executed this 13th day of November, 2009, at Los Angeles, California.

Eric Kmetz

LAW OFF
KIRTLAND & R ARD LLP

PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I, the undersigned, am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 2361 Rosecrans Avenue, Fourth Floor, El Segundo, California 90245. I am "readily familiar" with my employer's practice of collection and processing of correspondence and documents for mailing with the United States Postal Service, mailing via overnight delivery, transmission by facsimile machine, and delivery by hand.

On January 19, 2010, I served a copy of each of the documents listed below by placing said copies for processing as indicated herein:

FIRST AMENDED COMPLAINT (CLASS ACTION)

(✓) OVERNIGHT DELIVERY: The correspondence or documents were placed in sealed, labeled packaging for overnight delivery with all charges to be paid by my employer on the above date for collection and mailing at my place of business to be deposited in a facility regularly maintained by the overnight delivery carrier, or delivered to a courier or driver authorized by the overnight delivery carrier to receive such packages, on this date in the ordinary course of business.

(✓) ELECTRONIC TRANSMISSION: The correspondence or documents were transmitted via email on this same date in the ordinary course of business. The transmission was reported as "sent" and a record of the transmission was recorded as outgoing (sent) mail by the transmitting email program.

PERSONS OR PARTIES SERVED:

** See attached service list **

( ) (State) I certify (or declare) under penalty of perjury that the foregoing is true and correct and that this declaration was executed on January 19, 2010.

(✓) (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

KATHERINE STUCZYNSKI

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KIRTLAND & PACKARD LLP

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Counsel for Plaintiffs and all others similarly situated

FILED

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CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

BY _____

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ERIC KMETZ, and JOE MORRIS, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

TOYOTA MOTOR SALES, U.S.A., INC., TOYOTA MOTOR CORPORATION, and DOE DEFENDANTS 1-10

Defendants.

Case No. CV09-8478 CAS(RNBx)

CLASS ACTION

COMPLAINT

1. VIOLATION OF CALIFORNIA'S CONSUMERS LEGAL REMEDIES ACT;

2. VIOLATION OF THE UNFAIR COMPETITION LAWS;

3. VIOLATION OF THE FALSE ADVERTISING LAWS;

4. BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY;

5. BREACH OF IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE;

6. NEGLIGENCE

DEMAND FOR JURY TRIAL

BY FAX

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TOY-RQ-05E-00004028

Plaintiffs Eric Kmetz and Joe Morris ("Plaintiffs"), on behalf of themselves and all others similarly situated, allege the following upon information and belief based upon investigation of counsel and published reports, except to their own acts, which they allege upon personal knowledge:

JURISDICTION AND VENUE

1. This Court has diversity jurisdiction over this class action pursuant to 28 U.S.C. § 1332 as amended by the Class Action Fairness Act of 2005 because the matter in controversy exceeds $5,000,000, exclusive of interest and costs, and is a class action in which some members of the class are citizens of different states than the Defendants. *See* 28 U.S.C. § 1332(d)(2)(A).

2. This Court also has personal jurisdiction over Defendants because Defendants are authorized to do business, and currently do business, in this state.

3. Venue is proper in this jurisdiction pursuant to 28 U.S.C. § 1391 because Defendant Toyota Motor Sales, U.S.A., Inc. is headquartered in this District and is subject to personal jurisdiction and a substantial portion of the conduct complained of herein occurred in this District.

PARTIES

4. Plaintiff Eric Kmetz is a resident of Los Angeles County. Plaintiff purchased his Lexus IS 300 in 2001. Plaintiff purchased his vehicle from Jim Faulk Lexus, located in Los Angeles, California. Plaintiff's vehicle is equipped with Toyota's electronic throttle control system. Plaintiff has experienced sudden, unexpected acceleration of his vehicle while in the normal process of operating his vehicle.

5. Plaintiff Joe Morris is a resident of Orange County. Plaintiff owns and drives a Toyota Prius. Plaintiff purchased his vehicle from a dealership in Orange County, California. Plaintiff's vehicle is equipped with Toyota's electronic throttle control system.

6. Defendant Toyota Motor Sales, U.S.A., Inc. ("TMS-USA") is, and at

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all relevant times was, a California Corporation headquartered in Los Angeles, California. Defendant TMS-USA is a wholly owned subsidiary of Toyota Motor Corporation, and is responsible for the manufacture, distribution, and sale of all Toyota and Lexus automobiles and trucks in the United States.

7. Defendant Toyota Motor Corporation ("TMC-Japan") is, and at all relevant times was, a Japanese Corporation with its headquarters in Japan. Toyota Motor Corporation, at all relevant times, wholly owned and controlled TMS-USA, and thus, conducted business in Los Angeles County and is subject to the personal jurisdiction of this Court.

8. The above named Defendants, and their subsidiaries and agents, are collectively referred to as "Toyota."

9. The true names and capacities of the Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are currently unknown to Plaintiffs, who therefore sue such Defendants by fictitious names. Each of the Defendants designated herein as a DOE is legally responsible for the unlawful acts alleged herein. Plaintiffs will seek leave of Court to amend this Complaint to reflect the true names and capacities of the DOE Defendants when such identities become known.

10. At all relevant times, each and every defendant was acting as an agent and/or employee of each of the other Defendants and was acting within the course of scope of said agency and/or employment with the full knowledge and consent of each of the other Defendants. Each of the acts and/or omissions complained of herein were alleged and made known to, and ratified by, each of the other Defendants.

FACTUAL ALLEGATIONS

11. Toyota is currently the world's largest manufacturer of vehicles with net revenues in 2009 of over 227 billion dollars.

12. Beginning in the late 1990s, Toyota manufactured, distributed and sold

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vehicles with an electronic throttle control system ("ETC").

13. Unlike that of traditional throttle control systems, where a physical cable connected the accelerator pedal to the engine throttle, under the ETC system, the engine throttle is controlled by electronic signals sent from the gas pedal to the engine throttle. A sensor at the accelerator detects how far the gas pedal is depressed and transmits that information to a computer module which controls a motorized engine throttle. The computer module determines how far the accelerator is depressed, and, in turn, tells the engine throttle motor how far to open the throttle valve.

14. When Toyota first introduced the ETC, they continued to include a mechanical linkage between the accelerator and the engine throttle control.

15. Beginning with the 2001 model year, however, Defendants began manufacturing, distributing, and selling vehicles without such mechanical linkage.

16. Further, Defendants' ETC system also fails to include a failsafe measure incorporated by other vehicle manufacturers which instructs the ETC system to automatically reduce the engine to idle whenever the brakes are applied.

17. The combination of the lack of these two safety systems allows the ETC to set the engine throttle to any position regardless of the position of the accelerator, and with no mechanical or electronic failsafe mechanism to allow the driver to effectively stop or slow the car in such circumstances.

18. According to an article in the November 8, 2009 issue of the Los Angeles Times ("Times"), the Times located federal and other records of 19 fatalities and over 1,000 reports by owners involving the unintended acceleration of Toyota vehicles from the 2002 model year and newer.

19. The Times further quotes an independent safety expert as stating that he had identified nearly 2,000 sudden-acceleration cases for Toyota vehicles built since 2001.

20. The Times further states that other experts believe the numbers may be

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far higher, citing to a 2007 National Highway Traffic and Safety Administration ("NHTSA") survey of 600 Lexus owners that found that 10% complained they had experienced sudden acceleration.

21. The Times further states that when Toyota reported complaint data to NHTSA, Toyota eliminated all reports claiming that the sudden acceleration occurred for "a long duration" or more than a few seconds.

22. The Times further states that in an investigation of reports of sudden acceleration involving 2002 and 2003 Lexus ES and Camry models, Toyota eliminated all reports in five broad categories when responding to NHTSA's request, including all cases in which the drivers said they were unable to control a runaway engine by applying the brakes.

23. Thus, at all relevant times, Toyota had full knowledge of the numerous complaints regarding its vehicles, that such vehicles were susceptible to incidents of sudden, unintended acceleration, and thus such vehicles posed a significant risk of injury and death to vehicle occupants, other motorists, and pedestrians.

24. Regardless of this knowledge, Toyota has taken no steps to remedy this dangerous condition.

CLASS ACTION ALLEGATIONS

25. Plaintiffs bring this action on behalf of themselves and all others similarly situated, as a member of the proposed nationwide plaintiff class and California class (collectively hereafter the "Class") defined as follows:

Nationwide class: All persons who reside in the United States and who presently own a Toyota vehicle equipped with an electronic throttle control system.

California class: All persons who reside in California or are California citizens and who presently own a Toyota vehicle equipped with an electronic throttle control system.

26. Specifically excluded from the proposed Class are Defendants, any entities in which Defendants have a controlling interest, and the officers, directors,

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affiliates, legal representatives, successors, subsidiaries and/or assigns of Defendant. Also specifically excluded from the proposed Class are any claims by any persons who have suffered or possess a right of action for personal injury or wrongful death as a result of the sudden unintended acceleration of their Toyota vehicle.

27. This action is brought and may be properly maintained as a class action pursuant to the provisions of Federal Rule of Civil Procedure 23(a)(1)-(4) and 23(b)(1)-(3). This action satisfies the numerosity, typicality, adequacy, predominance and superiority requirements of those provisions.

28. [Fed. R. Civ. P. 23(a)(1)] The Class is so numerous that the individual joinder of all of its members is impractical. While the exact number and identities of Class members are unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff is informed and believes the Class includes many thousands of members. Plaintiffs allege that the Class may be ascertained by the records maintained by Toyota and its network of dealerships, and/or through the records of public agencies.

29. [Fed. R. Civ. P. 23(a)(2)] Common questions of fact and law exist as to all members of the Class which predominate over any questions affecting only individual members of the Class. These common legal and factual questions, which do not vary from class member to class member, and which may be determined without reference to the individual circumstances of any class member, include, but are not limited to, the following:

a. Whether Toyota vehicles equipped with electronic throttle control systems cause sudden unintended acceleration;

b. Whether Toyota vehicles equipped with electronic throttle control systems are dangerous when used as designed due to such sudden unintended acceleration;

c. Whether Toyota vehicles equipped with electronic throttle control

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systems are dangerous when used as designed because they fail to incorporate safety systems that would allow drivers to control their vehicle in the case of sudden unintended acceleration;

d. Whether Toyota knew of the dangerous propensity of its vehicles equipped with an electronic throttle control system;

e. Whether Toyota failed to remedy the dangerous propensity of its vehicles equipped with an electronic throttle control system;

f. Whether Toyota vehicles equipped with ETC are unreasonably dangerous, constituting a breach of the implied warranty;

g. Whether Toyota vehicles equipped with ETC are not fit for their intended use, constituting a breach of the implied warranty;

h. Whether Toyota was negligent in the manufacture, distribution, and sale of vehicles equipped with ETC;

i. Whether Toyota's conduct described herein violated California's Unfair Competition Law;

j. Whether Toyota's conduct described herein violated California's False Advertising Act;

k. Whether Toyota's conduct described herein violated California's Consumer Legal Remedies Act;

l. Whether Toyota's conduct described herein violated the Magnusson-Moss Consumer Warranty Act.

m. The nature and extent of damages and other remedies to which the conduct of Toyota entitles the Class members.

30. [Fed. R. Civ. P. 23(a)(3)] Plaintiffs' claims are typical of the claims of the members of the Class. Plaintiffs and all members of the Class have sustained injury and are facing irreparable harm arising out of Defendants' common course of conduct as complained of herein. The losses of each member of the Class were caused directly by Defendants' wrongful conduct as alleged herein.

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31. [Fed. R. Civ. P. 23(a)(4)] Plaintiffs will fairly and adequately protect the interests of the members of the Class. Plaintiffs have retained attorneys experienced in the prosecution of class actions, including complex consumer and mass tort litigation.

32. [Fed. R. Civ. P. 23(b)(3)] A class action is superior to other available methods of fair and efficient adjudication of this controversy, since individual litigation of the claims of all Class members is impracticable. Even if every Class member could afford individual litigation, the court system could not. It would be unduly burdensome to the courts in which individual litigation of numerous issues would proceed. Individualized litigation would also present the potential for varying, inconsistent, or contradictory judgments and would magnify the delay and expense to all parties and to the court system resulting from multiple trials of the same complex factual issues. By contrast, the conduct of this action as a class action, with respect to some or all of the issues presented herein, presents fewer management difficulties, conserves the resources of the parties and of the court system, and protects the rights of each Class member.

33. [Fed. R. Civ. P. 23(b)(1)(A)] The prosecution of separate actions by thousands of individual Class members would create the risk of inconsistent or varying adjudications with respect to, among other things, the need for and the nature of proper notice which Defendant must provide to all Class members.

34. [Fed. R. Civ. P. 23(b)(1)(B)] The prosecution of separate actions by individual class members would create a risk of adjudications with respect to them that would, as a practical matter, be dispositive of the interests of the other Class members not parties to such adjudications or that would substantially impair or impede the ability of such non-party Class members to protect their interests.

35. [Fed. R. Civ. P. 23(b)(2)] Defendant has acted or refused to act in respects generally applicable to the Class, thereby making appropriate final and injunctive relief with regard to the members of the Class as a whole.

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FIRST CAUSE OF ACTION
VIOLATION OF CALIFORNIA'S
CONSUMERS LEGAL REMEDIES ACT

(Against All Defendants)

36. Plaintiffs hereby incorporate, as if set forth in full, paragraphs 1 through 34 above.

37. The Defendants' acts and omissions violate the following portions of the California *Consumers Legal Remedies Act*:

- *Civil Code* § 1770(a)(5) "Representing that goods or services have ... characteristics ... uses, benefits ... which they do not have ..."
- *Civil Code* § 1770(a)(7) "Representing that goods or services are of a particular standard, quality, or grade ... if they are of another"
- *Civil Code* § 1770(a)(9) "Advertising goods or services with intent not to sell them as advertised."

38. Plaintiffs and the members of the Class risk irreparable injury as a result of the Defendants' acts and omission in violation of the CLRA and these violations present a continuing risk to the class and members of the public.

39. Plaintiffs have filed concurrently herewith the venue affidavit required by *Civil Code* § 1780(c). In addition Plaintiffs are concurrently providing the notice to defendant required under *Civil Code* § 1782(a). If no appropriate correction, repair, replacement, or other remedy has been given, or has agreed to be given, to Plaintiffs and the putative class within 30 days of such letter, Plaintiffs will amend this Complaint to add a request for damages under this cause of action.

40. Pursuant to *Civil Code* § 1780(a)(2) Plaintiffs seek an order enjoining Defendants from selling any vehicles with an electronic throttle control in the United States which has not been revised in such a manner as to eliminate the

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possibility of sudden unintended acceleration and to which have been added such safety measures that in the case of sudden unintended acceleration, the driver will be able to take measures to slow and stop the vehicle. Plaintiffs further seek restitution from Defendants for the cost paid for their inherently unsafe and dangerous vehicle. Plaintiffs, alternatively, seek a mandatory injunction against Defendants requiring them to repair and/or replace Plaintiffs' and the putative Class' vehicles, at Defendants' expense, to eliminate the possibility of sudden unintended acceleration and to add such safety measures that in the case of sudden unintended acceleration, the driver will be able to take measures to safely slow and stop the vehicle. Unless Defendants are enjoined from violations of the CLRA alleged herein, the members of the class and the general public, who lack an adequate remedy at law to deter Defendants' wrongful conduct, will be irreparably harmed.

41. Plaintiffs have suffered economic damage as a result of defendant's violations of *Civil Code* § 1770 in that they now own a vehicle which is defective and inherently dangerous. Defendants' conduct is sufficiently blameworthy to merit the imposition of punitive damages pursuant to *Civil Code* § 1780(a)(4) to punish, deter, and make an example of Defendants. In addition, Plaintiffs and the class are entitled to an award of attorneys' fees and costs against Defendants pursuant to the provisions of *Civil Code* § 1780(d).

SECOND CAUSE OF ACTION

VIOLATION OF CALIFORNIA'S

UNFAIR COMPETITION LAW

(Against All Defendants)

42. Plaintiffs hereby incorporate, as if set forth in full, paragraphs 1 through 34 above.

43. California *Business and Professions Code* § 17200 *et seq.*, also known as the California Unfair Competition Law ("UCL"), prohibits acts of "unfair

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competition," including any unlawful, unfair, fraudulent or deceptive business act or practice as well as "unfair, deceptive, untrue or misleading advertising."

44. Defendants violated and continue to violate the UCL through one or more of the following unfair, unlawful, or fraudulent practices:

a. Selling to Plaintiffs and Class members vehicles which contain a defect or design which makes them inherently more dangerous than other similar vehicles;

b. Failing to disclose to Plaintiffs and Class members that the vehicles sold to such consumers contain a defect or design which makes them inherently more dangerous than other similar vehicles;

c. Failing to remedy the defect or design which makes Defendants' vehicles inherently more dangerous than other similar vehicles;

d. Failing to manufacture, distribute, and sell a product which would perform in a safe manner when used in a reasonably foreseeable manner by a reasonable consumer;

e. Violating the other statutes and common law causes of action as alleged in the instant Complaint;

45. As a direct and proximate result of Defendants' illegal business practices, Plaintiffs and the members of the Class have suffered injury and have lost money or property.

46. Defendants' conduct has further injured Plaintiffs and Class members by impairing competition within the motor vehicle markets and prevent Plaintiffs and Class members from making fully informed decisions about the motor vehicles they purchase.

47. Plaintiffs respectfully request that the Court enjoin Defendants from engaging in the unlawful conduct alleged herein and require Defendants to a) stop selling any vehicles with an electronic throttle control in the United States which has not been revised in such a manner as to eliminate the possibility of sudden

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unintended acceleration and to which have been added such safety measures that in the case of sudden unintended acceleration, the driver will be able to take measures to slow and stop the vehicle; b) require Defendants to repair and/or replace Plaintiffs' and the putative Class' vehicles, at Defendants' expense, to eliminate the possibility of sudden unintended acceleration and to add such safety measures that, in the case of sudden unintended acceleration, would allow the driver to take measures to safely slow and stop the vehicle; c) in the interim time period, provide immediate notice to Plaintiffs' and Class members of the potential for sudden unintended acceleration of their vehicle and provide instructions for how best to mitigate the situation were it to occur; d) require Defendants to notify all affected persons affected of the Court's injunction; e) require Defendants to provide restitution to Plaintiffs and Class members; f) award Plaintiffs and/or Class members reasonable attorneys' fees and expenses, and g) award such other relief as the Court may deem just and proper.

48. The illegal business practices described herein present a continuing threat to Plaintiffs, members of the Class, and members of the general public in that Defendants continue to engage in these practices, and will not cease doing so unless and until forced to do so by this Court. Defendants' conduct will continue to cause irreparable injury to Plaintiffs and the Class unless enjoined or restrained.

THIRD CAUSE OF ACTION

VIOLATION OF CALIFORNIA'S

FALSE ADVERTISING LAWS

(Against All Defendants)

49. Plaintiffs hereby incorporate, as if set forth in full, paragraphs 1 through 34 above.

50. *Business and Professions Code* § 17500 provides that "[i]t is unlawful for any ... corporation ... with intent ... to dispose of ... personal property ... to induce the public to enter into any obligation relating thereto, to make or

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disseminate or cause to be made or disseminated ... from this state before the public in any state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, including over the Internet, any statement ... which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading...."

51. Defendants' representations, including statements made in Defendants' television, radio, and print advertising, websites, brochures, and all other written and oral materials disseminated by Defendants to promote their vehicles constitute advertising for purposes of this cause of action.

52. Such advertising contained statements which were false, misleading, or which omitted material information which Defendants were under a duty to disclose and which were known or should have been known to Defendants to be false, misleading, or deceptive.

53. As a direct and proximate result of Defendants' misleading advertising, Plaintiffs and the members of the putative Class have suffered injury in fact and have lost money or property.

54. The misleading advertising described herein presents a continuing threat to Plaintiffs, the Class, and members of the public in that Defendants persist and continue to engage in these practices, and will not cease doing so unless and until forced to do so by this Court. Defendants' conduct will continue to cause irreparable injury to plaintiff and the class unless enjoined or restrained.

FOURTH CAUSE OF ACTION

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

(Against All Defendants)

55. Plaintiffs hereby incorporate, as if set forth in full, paragraphs 1 through 34 above.

56. Defendants impliedly warrant that their vehicles are fit for the ordinary

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purpose for which the product is sold.

57. The ordinary purpose for which Defendants' vehicles are sold is to provide the purchaser with a vehicle that is capable of transporting the driver and passengers in reasonable safety, and without unduly endangering them or members of the public.

58. Defendants breached their implied warranty of merchantability by selling a vehicle which has a propensity to suddenly and unintentionally accelerate, and which does not contain safety systems which would 1) prevent such acceleration from happening at all; and 2) which would allow a driver, in case of such acceleration, to safely slow and stop the vehicle.

59. Plaintiffs, and every member of the classes alleged herein, have been similarly damaged as a result of this breach of warranty.

FIFTH CAUSE OF ACTION

BREACH OF IMPLIED WARRANTY

OF FITNESS FOR A PARTICULAR PURPOSE

(Against All Defendants)

60. Plaintiffs hereby incorporate, as if set forth in full, paragraphs 1 through 34 above.

61. Toyota is, and at all relevant times has been, in the business of designing, manufacturing, distributing, and selling vehicles to consumers.

62. Toyota knew, at the time it sold its vehicles to consumers, that such vehicles would be used by Plaintiffs and putative Class members for the specific purpose of attempting to safely transport the driver and passengers from one point to another.

63. Toyota knew that consumers who purchased their vehicles relied upon Defendants' expertise and skill, judgment and knowledge in furnishing vehicles which were capable of transporting the driver and passengers of such vehicle without unreasonable risk of harm to them or to members of the general public.

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64. Toyota's vehicles are not fit for that purpose in that their design or manufacture is so defective as to cause such vehicles to suddenly and unintentionally accelerate and, subsequent to such acceleration, provide an insufficent safety mechanism to allow the driver to slow and stop the vehicle safely.

65. Plaintiff, and every member of the classes alleged herein, have been similarly damaged as a result of this breach of warranty.

SIXTH CAUSE OF ACTION

NEGLIGENCE

(Against All Defendants)

66. Plaintiffs hereby incorporate, as if set forth in full, paragraphs 1 through 34 above.

67. Defendants had a duty to their consumers, as a manufacturer of motor vehicles, to provide vehicles which, in their ordinary operation, would be safe. Defendants also had a duty to sufficiently test their vehicles' safety before selling hundreds or thousands of vehicles. Defendants had further duties once they were on notice by consumers of the propensity of their vehicles to suddenly and unintentionally accelerate, and of the inability of the driver to slow or stop such vehicles.

68. Defendants breached their duty to Plaintiffs and class members. Plaintiffs and class members have been and are currently dealing with vehicles that are inherently unsafe and more dangerous than similar vehicles manufactured by other companies.

69. Defendants' breach proximately caused the damages to Plaintiffs and class members, namely that Plaintiffs and class members have been financially and economically damaged by owning vehicles which are inherently unsafe, and have also been further damaged in the potential risk of injury to themselves and others every time they operate their vehicles.

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PRAYER FOR RELIEF

WHEREFORE, on behalf of themselves and all others similarly situated, Plaintiffs pray for the following relief:

1. An order certifying this action as a plaintiff class action, as set forth herein above;
2. For compensatory damages as to all causes of action where compensatory damages are available;
3. For restitution;
4. For disgorgement of all wrongfully obtained compensation;
5. For preliminary and permanent injunctive relief prohibiting Defendants from continuing the wrongful practices alleged in the Complaint;
6. For punitive damages;
7. For reasonable costs and attorneys' fees as permitted by law; and
8. For such other and further relief as the Court may deem proper.

DATED: November 17, 2009

Respectfully submitted,

KIRTLAND & PACKARD LLP

By: _____

MICHAEL LOUIS KELLY
BEHRAM V. PAREKH
HEATHER M. PETERSON

Counsel for Plaintiffs and all others similarly situated.

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DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury as to all claims so triable.

DATED: November 17, 2009

Respectfully submitted,

KIRTLAND & PACKARD LLP

By: _____

MICHAEL LOUIS KELLY
BEHRAM V. PAREKH
HEATHER M. PETERSON

Counsel for Plaintiffs and all others similarly situated.

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UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA

BY FAX

CIVIL COVER SHEET

I (a) PLAINTIFFS (Check box if you are representing yourself ☐)

ERIC KMETZ, and JOE MORRIS, on behalf of themselves and all others similarly situated

DEFENDANTS

TOYOTA MOTOR SALES, U.S.A., INC., TOYOTA MOTOR CORPORATION, and DOE DEFENDANTS 1-10

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)

Michael Louis Kelly - SBN 82063
KIRTLAND & PACKARD LLP
2631 Rosecrans Ave
Fourth Floor
El Segundo, CA 90245
(310) 536-1000

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an X in one box only.)

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.)

	PTF	DEF		PTF	DEF
Citizen of This State	☒ 1	☐ 1	Incorporated or Principal Place of Business in this State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated and Principal Place of Business in Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☒ 3	Foreign Nation	☐ 6	☐ 6

IV. ORIGIN (Place an X in one box only.)

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify): ☐ 6 Multi-District Litigation ☐ 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: ☒ Yes ☐ No (Check 'Yes' only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23: ☒ Yes ☐ No ☐ **MONEY DEMANDED IN COMPLAINT: $** _____

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

28 U.S.C. Section 1332 - Diversity

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce/ICC Rates/etc.
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 810 Selective Service
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 875 Customer Challenge 12 USC 3410
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Act
- ☐ 892 Economic Stabilization Act
- ☐ 893 Environmental Matters
- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Info. Act
- ☐ 900 Appeal of Fee Determination Under Equal Access to Justice
- ☐ 950 Constitutionality of State Statutes

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loan (Excl. Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS - PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Fed. Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury-Med Malpractice
- ☐ 365 Personal Injury-Product Liability
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IMMIGRATION
- ☐ 462 Naturalization Application
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- ☐ 465 Other Immigration Actions

TORTS - PERSONAL PROPERTY
- ☒ 370 Other Fraud
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- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

CIVIL RIGHTS
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/Accommodations
- ☐ 444 Welfare
- ☐ 445 American with Disabilities - Employment
- ☐ 446 American with Disabilities - Other
- ☐ 440 Other Civil Rights

PRISONER PETITIONS
- ☐ 510 Motions to Vacate Sentence Habeas Corpus
- ☐ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus/ Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition

FORFEITURE/ PENALTY
- ☐ 610 Agriculture
- ☐ 620 Other Food & Drug
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 630 Liquor Laws
- ☐ 640 R.R. & Truck
- ☐ 650 Airline Regs
- ☐ 660 Occupational Safety/Health
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Mgmt. Relations
- ☐ 730 Labor/Mgmt. Reporting & Disclosure Act
- ☐ 740 Railway Labor Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Empl. Ret. Inc. Security Act

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS - Third Party 26 USC 7609

FOR OFFICE USE ONLY: Case Number: CV09-8478

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

TOY-RQ-05E-00004045

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? [X] No [ ] Yes

If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? [ ] No [X] Yes

If yes, list case number(s): CV 09-08143 AHM (FMOx)

Civil cases are deemed related if a previously filed case and the present case:

(Check all boxes that apply)

[X] A. Arise from the same or closely related transactions, happenings, or events; or

[X] B. Call for determination of the same or substantially related or similar questions of law and fact; or

[X] C. For other reasons would entail substantial duplication of labor if heard by different judges; or

[ ] D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.

[ ] Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Eric Kmetz - Los Angeles Joe Morris - Orange	

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.

[ ] Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Toyota Motor Sales U.S.A., Inc. - Los Angeles	Toyota Motor Corporation - Japan

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.

Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country

*** Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties**

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER): _____ **Date** 10/7/2009

Michael Louis Kelly

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))

TOY-RQ-05E-00004046

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Christina A. Snyder and the assigned discovery Magistrate Judge is Robert N. Block.

The case number on all documents filed with the Court should read as follows:

CV09- 8478 CAS (RNBx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

==========

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

[X] **Western Division**
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

[ ] **Southern Division**
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

[ ] **Eastern Division**
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

TOY-RQ-05E-00004047

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ERIC KMETZ, and JOE MORRIS, on behalf of themselves and all others similarly situated, PLAINTIFF(S) V. TOYOTA MOTOR SALES, U.S.A., INC., TOYOTA MOTOR CORPORATION, and DOE DEFENDANTS 1-10 DEFENDANT(S).	CASE NUMBER CV09-8478 CAS (RNBx) **SUMMONS**

TO: DEFENDANT(S): _____

A lawsuit has been filed against you.

Within 20 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached [x] complaint [ ] _____ amended complaint [ ] counterclaim [ ] cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Michael Louis Kelly , whose address is 2361 Rosecrans Ave, 4th Floor, El Segundo, CA 90245 . If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk, U.S. District Court

Dated: NOV 18 2009

By: NATALIE LONGORIA
Deputy Clerk

(Seal of the Court)

1198

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

TOY-RQ-05E-00004048

FILED

2009 NOV 18 AM 11:17

CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

BY _____

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Counsel for Plaintiffs and all others similarly situated

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ERIC KMETZ, and JOE MORRIS, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

TOYOTA MOTOR SALES, U.S.A., INC., TOYOTA MOTOR CORPORATION, and DOE DEFENDANTS 1-10

Defendants.

Case No. CV09-8478 CAS(RNBx)

CLASS ACTION

COMPLAINT

1. VIOLATION OF CALIFORNIA'S CONSUMERS LEGAL REMEDIES ACT;

2. VIOLATION OF THE UNFAIR COMPETITION LAWS;

3. VIOLATION OF THE FALSE ADVERTISING LAWS;

4. BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY;

5. BREACH OF IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE;

6. NEGLIGENCE

DEMAND FOR JURY TRIAL

BY FAX

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Plaintiffs Eric Kmetz and Joe Morris ("Plaintiffs"), on behalf of themselves and all others similarly situated, allege the following upon information and belief based upon investigation of counsel and published reports, except to their own acts, which they allege upon personal knowledge:

JURISDICTION AND VENUE

1. This Court has diversity jurisdiction over this class action pursuant to 28 U.S.C. § 1332 as amended by the Class Action Fairness Act of 2005 because the matter in controversy exceeds $5,000,000, exclusive of interest and costs, and is a class action in which some members of the class are citizens of different states than the Defendants. *See* 28 U.S.C. § 1332(d)(2)(A).

2. This Court also has personal jurisdiction over Defendants because Defendants are authorized to do business, and currently do business, in this state.

3. Venue is proper in this jurisdiction pursuant to 28 U.S.C. § 1391 because Defendant Toyota Motor Sales, U.S.A., Inc. is headquartered in this District and is subject to personal jurisdiction and a substantial portion of the conduct complained of herein occurred in this District.

PARTIES

4. Plaintiff Eric Kmetz is a resident of Los Angeles County. Plaintiff purchased his Lexus IS 300 in 2001. Plaintiff purchased his vehicle from Jim Faulk Lexus, located in Los Angeles, California. Plaintiff's vehicle is equipped with Toyota's electronic throttle control system. Plaintiff has experienced sudden, unexpected acceleration of his vehicle while in the normal process of operating his vehicle.

5. Plaintiff Joe Morris is a resident of Orange County. Plaintiff owns and drives a Toyota Prius. Plaintiff purchased his vehicle from a dealership in Orange County, California. Plaintiff's vehicle is equipped with Toyota's electronic throttle control system.

6. Defendant Toyota Motor Sales, U.S.A., Inc. ("TMS-USA") is, and at

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all relevant times was, a California Corporation headquartered in Los Angeles, California. Defendant TMS-USA is a wholly owned subsidiary of Toyota Motor Corporation, and is responsible for the manufacture, distribution, and sale of all Toyota and Lexus automobiles and trucks in the United States.

7. Defendant Toyota Motor Corporation ("TMC-Japan") is, and at all relevant times was, a Japanese Corporation with its headquarters in Japan. Toyota Motor Corporation, at all relevant times, wholly owned and controlled TMS-USA, and thus, conducted business in Los Angeles County and is subject to the personal jurisdiction of this Court.

8. The above named Defendants, and their subsidiaries and agents, are collectively referred to as "Toyota."

9. The true names and capacities of the Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are currently unknown to Plaintiffs, who therefore sue such Defendants by fictitious names. Each of the Defendants designated herein as a DOE is legally responsible for the unlawful acts alleged herein. Plaintiffs will seek leave of Court to amend this Complaint to reflect the true names and capacities of the DOE Defendants when such identities become known.

10. At all relevant times, each and every defendant was acting as an agent and/or employee of each of the other Defendants and was acting within the course of scope of said agency and/or employment with the full knowledge and consent of each of the other Defendants. Each of the acts and/or omissions complained of herein were alleged and made known to, and ratified by, each of the other Defendants.

FACTUAL ALLEGATIONS

11. Toyota is currently the world's largest manufacturer of vehicles with net revenues in 2009 of over 227 billion dollars.

12. Beginning in the late 1990s, Toyota manufactured, distributed and sold

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vehicles with an electronic throttle control system ("ETC").

13. Unlike that of traditional throttle control systems, where a physical cable connected the accelerator pedal to the engine throttle, under the ETC system, the engine throttle is controlled by electronic signals sent from the gas pedal to the engine throttle. A sensor at the accelerator detects how far the gas pedal is depressed and transmits that information to a computer module which controls a motorized engine throttle. The computer module determines how far the accelerator is depressed, and, in turn, tells the engine throttle motor how far to open the throttle valve.

14. When Toyota first introduced the ETC, they continued to include a mechanical linkage between the accelerator and the engine throttle control.

15. Beginning with the 2001 model year, however, Defendants began manufacturing, distributing, and selling vehicles without such mechanical linkage.

16. Further, Defendants' ETC system also fails to include a failsafe measure incorporated by other vehicle manufacturers which instructs the ETC system to automatically reduce the engine to idle whenever the brakes are applied.

17. The combination of the lack of these two safety systems allows the ETC to set the engine throttle to any position regardless of the position of the accelerator, and with no mechanical or electronic failsafe mechanism to allow the driver to effectively stop or slow the car in such circumstances.

18. According to an article in the November 8, 2009 issue of the Los Angeles Times ("Times"), the Times located federal and other records of 19 fatalities and over 1,000 reports by owners involving the unintended acceleration of Toyota vehicles from the 2002 model year and newer.

19. The Times further quotes an independent safety expert as stating that he had identified nearly 2,000 sudden-acceleration cases for Toyota vehicles built since 2001.

20. The Times further states that other experts believe the numbers may be

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far higher, citing to a 2007 National Highway Traffic and Safety Administration ("NHTSA") survey of 600 Lexus owners that found that 10% complained they had experienced sudden acceleration.

21. The Times further states that when Toyota reported complaint data to NHTSA, Toyota eliminated all reports claiming that the sudden acceleration occurred for "a long duration" or more than a few seconds.

22. The Times further states that in an investigation of reports of sudden acceleration involving 2002 and 2003 Lexus ES and Camry models, Toyota eliminated all reports in five broad categories when responding to NHTSA's request, including all cases in which the drivers said they were unable to control a runaway engine by applying the brakes.

23. Thus, at all relevant times, Toyota had full knowledge of the numerous complaints regarding its vehicles, that such vehicles were susceptible to incidents of sudden, unintended acceleration, and thus such vehicles posed a significant risk of injury and death to vehicle occupants, other motorists, and pedestrians.

24. Regardless of this knowledge, Toyota has taken no steps to remedy this dangerous condition.

CLASS ACTION ALLEGATIONS

25. Plaintiffs bring this action on behalf of themselves and all others similarly situated, as a member of the proposed nationwide plaintiff class and California class (collectively hereafter the "Class") defined as follows:

Nationwide class: All persons who reside in the United States and who presently own a Toyota vehicle equipped with an electronic throttle control system.

California class: All persons who reside in California or are California citizens and who presently own a Toyota vehicle equipped with an electronic throttle control system.

26. Specifically excluded from the proposed Class are Defendants, any entities in which Defendants have a controlling interest, and the officers, directors,

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affiliates, legal representatives, successors, subsidiaries and/or assigns of Defendant. Also specifically excluded from the proposed Class are any claims by any persons who have suffered or possess a right of action for personal injury or wrongful death as a result of the sudden unintended acceleration of their Toyota vehicle.

27. This action is brought and may be properly maintained as a class action pursuant to the provisions of Federal Rule of Civil Procedure 23(a)(1)-(4) and 23(b)(1)-(3). This action satisfies the numerosity, typicality, adequacy, predominance and superiority requirements of those provisions.

28. [Fed. R. Civ. P. 23(a)(1)] The Class is so numerous that the individual joinder of all of its members is impractical. While the exact number and identities of Class members are unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff is informed and believes the Class includes many thousands of members. Plaintiffs allege that the Class may be ascertained by the records maintained by Toyota and its network of dealerships, and/or through the records of public agencies.

29. [Fed. R. Civ. P. 23(a)(2)] Common questions of fact and law exist as to all members of the Class which predominate over any questions affecting only individual members of the Class. These common legal and factual questions, which do not vary from class member to class member, and which may be determined without reference to the individual circumstances of any class member, include, but are not limited to, the following:

a. Whether Toyota vehicles equipped with electronic throttle control systems cause sudden unintended acceleration;

b. Whether Toyota vehicles equipped with electronic throttle control systems are dangerous when used as designed due to such sudden unintended acceleration;

c. Whether Toyota vehicles equipped with electronic throttle control

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systems are dangerous when used as designed because they fail to incorporate safety systems that would allow drivers to control their vehicle in the case of sudden unintended acceleration;

d. Whether Toyota knew of the dangerous propensity of its vehicles equipped with an electronic throttle control system;

e. Whether Toyota failed to remedy the dangerous propensity of its vehicles equipped with an electronic throttle control system;

f. Whether Toyota vehicles equipped with ETC are unreasonably dangerous, constituting a breach of the implied warranty;

g. Whether Toyota vehicles equipped with ETC are not fit for their intended use, constituting a breach of the implied warranty;

h. Whether Toyota was negligent in the manufacture, distribution, and sale of vehicles equipped with ETC;

i. Whether Toyota's conduct described herein violated California's Unfair Competition Law;

j. Whether Toyota's conduct described herein violated California's False Advertising Act;

k. Whether Toyota's conduct described herein violated California's Consumer Legal Remedies Act;

l. Whether Toyota's conduct described herein violated the Magnusson-Moss Consumer Warranty Act.

m. The nature and extent of damages and other remedies to which the conduct of Toyota entitles the Class members.

30. [Fed. R. Civ. P. 23(a)(3)] Plaintiffs' claims are typical of the claims of the members of the Class. Plaintiffs and all members of the Class have sustained injury and are facing irreparable harm arising out of Defendants' common course of conduct as complained of herein. The losses of each member of the Class were caused directly by Defendants' wrongful conduct as alleged herein.

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31. [Fed. R. Civ. P. 23(a)(4)] Plaintiffs will fairly and adequately protect the interests of the members of the Class. Plaintiffs have retained attorneys experienced in the prosecution of class actions, including complex consumer and mass tort litigation.

32. [Fed. R. Civ. P. 23(b)(3)] A class action is superior to other available methods of fair and efficient adjudication of this controversy, since individual litigation of the claims of all Class members is impracticable. Even if every Class member could afford individual litigation, the court system could not. It would be unduly burdensome to the courts in which individual litigation of numerous issues would proceed. Individualized litigation would also present the potential for varying, inconsistent, or contradictory judgments and would magnify the delay and expense to all parties and to the court system resulting from multiple trials of the same complex factual issues. By contrast, the conduct of this action as a class action, with respect to some or all of the issues presented herein, presents fewer management difficulties, conserves the resources of the parties and of the court system, and protects the rights of each Class member.

33. [Fed. R. Civ. P. 23(b)(1)(A)] The prosecution of separate actions by thousands of individual Class members would create the risk of inconsistent or varying adjudications with respect to, among other things, the need for and the nature of proper notice which Defendant must provide to all Class members.

34. [Fed. R. Civ. P. 23(b)(1)(B)] The prosecution of separate actions by individual class members would create a risk of adjudications with respect to them that would, as a practical matter, be dispositive of the interests of the other Class members not parties to such adjudications or that would substantially impair or impede the ability of such non-party Class members to protect their interests.

35. [Fed. R. Civ. P. 23(b)(2)] Defendant has acted or refused to act in respects generally applicable to the Class, thereby making appropriate final and injunctive relief with regard to the members of the Class as a whole.

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FIRST CAUSE OF ACTION

VIOLATION OF CALIFORNIA'S

CONSUMERS LEGAL REMEDIES ACT

(Against All Defendants)

36. Plaintiffs hereby incorporate, as if set forth in full, paragraphs 1 through 34 above.

37. The Defendants' acts and omissions violate the following portions of the California *Consumers Legal Remedies Act*:

- *Civil Code* § 1770(a)(5) "Representing that goods or services have ... characteristics ... uses, benefits ... which they do not have ..."
- *Civil Code* § 1770(a)(7) "Representing that goods or services are of a particular standard, quality, or grade ... if they are of another"
- *Civil Code* § 1770(a)(9) "Advertising goods or services with intent not to sell them as advertised."

38. Plaintiffs and the members of the Class risk irreparable injury as a result of the Defendants' acts and omission in violation of the CLRA and these violations present a continuing risk to the class and members of the public.

39. Plaintiffs have filed concurrently herewith the venue affidavit required by *Civil Code* § 1780(c). In addition Plaintiffs are concurrently providing the notice to defendant required under *Civil Code* § 1782(a). If no appropriate correction, repair, replacement, or other remedy has been given, or has agreed to be given, to Plaintiffs and the putative class within 30 days of such letter, Plaintiffs will amend this Complaint to add a request for damages under this cause of action.

40. Pursuant to *Civil Code* § 1780(a)(2) Plaintiffs seek an order enjoining Defendants from selling any vehicles with an electronic throttle control in the United States which has not been revised in such a manner as to eliminate the

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possibility of sudden unintended acceleration and to which have been added such safety measures that in the case of sudden unintended acceleration, the driver will be able to take measures to slow and stop the vehicle. Plaintiffs further seek restitution from Defendants for the cost paid for their inherently unsafe and dangerous vehicle. Plaintiffs, alternatively, seek a mandatory injunction against Defendants requiring them to repair and/or replace Plaintiffs' and the putative Class' vehicles, at Defendants' expense, to eliminate the possibility of sudden unintended acceleration and to add such safety measures that in the case of sudden unintended acceleration, the driver will be able to take measures to safely slow and stop the vehicle. Unless Defendants are enjoined from violations of the CLRA alleged herein, the members of the class and the general public, who lack an adequate remedy at law to deter Defendants' wrongful conduct, will be irreparably harmed.

41. Plaintiffs have suffered economic damage as a result of defendant's violations of *Civil Code* § 1770 in that they now own a vehicle which is defective and inherently dangerous. Defendants' conduct is sufficiently blameworthy to merit the imposition of punitive damages pursuant to *Civil Code* § 1780(a)(4) to punish, deter, and make an example of Defendants. In addition, Plaintiffs and the class are entitled to an award of attorneys' fees and costs against Defendants pursuant to the provisions of *Civil Code* § 1780(d).

SECOND CAUSE OF ACTION

VIOLATION OF CALIFORNIA'S

UNFAIR COMPETITION LAW

(Against All Defendants)

42. Plaintiffs hereby incorporate, as if set forth in full, paragraphs 1 through 34 above.

43. California *Business and Professions Code* § 17200 *et seq.*, also known as the California Unfair Competition Law ("UCL"), prohibits acts of "unfair

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competition," including any unlawful, unfair, fraudulent or deceptive business act or practice as well as "unfair, deceptive, untrue or misleading advertising."

44. Defendants violated and continue to violate the UCL through one or more of the following unfair, unlawful, or fraudulent practices:

a. Selling to Plaintiffs and Class members vehicles which contain a defect or design which makes them inherently more dangerous than other similar vehicles;

b. Failing to disclose to Plaintiffs and Class members that the vehicles sold to such consumers contain a defect or design which makes them inherently more dangerous than other similar vehicles;

c. Failing to remedy the defect or design which makes Defendants' vehicles inherently more dangerous than other similar vehicles;

d. Failing to manufacture, distribute, and sell a product which would perform in a safe manner when used in a reasonably foreseeable manner by a reasonable consumer;

e. Violating the other statutes and common law causes of action as alleged in the instant Complaint;

45. As a direct and proximate result of Defendants' illegal business practices, Plaintiffs and the members of the Class have suffered injury and have lost money or property.

46. Defendants' conduct has further injured Plaintiffs and Class members by impairing competition within the motor vehicle markets and prevent Plaintiffs and Class members from making fully informed decisions about the motor vehicles they purchase.

47. Plaintiffs respectfully request that the Court enjoin Defendants from engaging in the unlawful conduct alleged herein and require Defendants to a) stop selling any vehicles with an electronic throttle control in the United States which has not been revised in such a manner as to eliminate the possibility of sudden

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unintended acceleration and to which have been added such safety measures that in the case of sudden unintended acceleration, the driver will be able to take measures to slow and stop the vehicle; b) require Defendants to repair and/or replace Plaintiffs' and the putative Class' vehicles, at Defendants' expense, to eliminate the possibility of sudden unintended acceleration and to add such safety measures that, in the case of sudden unintended acceleration, would allow the driver to take measures to safely slow and stop the vehicle; c) in the interim time period, provide immediate notice to Plaintiffs' and Class members of the potential for sudden unintended acceleration of their vehicle and provide instructions for how best to mitigate the situation were it to occur; d) require Defendants to notify all affected persons affected of the Court's injunction; e) require Defendants to provide restitution to Plaintiffs and Class members; f) award Plaintiffs and/or Class members reasonable attorneys' fees and expenses, and g) award such other relief as the Court may deem just and proper.

48. The illegal business practices described herein present a continuing threat to Plaintiffs, members of the Class, and members of the general public in that Defendants continue to engage in these practices, and will not cease doing so unless and until forced to do so by this Court. Defendants' conduct will continue to cause irreparable injury to Plaintiffs and the Class unless enjoined or restrained.

THIRD CAUSE OF ACTION

VIOLATION OF CALIFORNIA'S

FALSE ADVERTISING LAWS

(Against All Defendants)

49. Plaintiffs hereby incorporate, as if set forth in full, paragraphs 1 through 34 above.

50. *Business and Professions Code* § 17500 provides that "[i]t is unlawful for any ... corporation ... with intent ... to dispose of ... personal property ... to induce the public to enter into any obligation relating thereto, to make or

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disseminate or cause to be made or disseminated ... from this state before the public in any state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, including over the Internet, any statement ... which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading...."

51. Defendants' representations, including statements made in Defendants' television, radio, and print advertising, websites, brochures, and all other written and oral materials disseminated by Defendants to promote their vehicles constitute advertising for purposes of this cause of action.

52. Such advertising contained statements which were false, misleading, or which omitted material information which Defendants were under a duty to disclose and which were known or should have been known to Defendants to be false, misleading, or deceptive.

53. As a direct and proximate result of Defendants' misleading advertising, Plaintiffs and the members of the putative Class have suffered injury in fact and have lost money or property.

54. The misleading advertising described herein presents a continuing threat to Plaintiffs, the Class, and members of the public in that Defendants persist and continue to engage in these practices, and will not cease doing so unless and until forced to do so by this Court. Defendants' conduct will continue to cause irreparable injury to plaintiff and the class unless enjoined or restrained.

FOURTH CAUSE OF ACTION

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

(Against All Defendants)

55. Plaintiffs hereby incorporate, as if set forth in full, paragraphs 1 through 34 above.

56. Defendants impliedly warrant that their vehicles are fit for the ordinary

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purpose for which the product is sold.

57. The ordinary purpose for which Defendants' vehicles are sold is to provide the purchaser with a vehicle that is capable of transporting the driver and passengers in reasonable safety, and without unduly endangering them or members of the public.

58. Defendants breached their implied warranty of merchantability by selling a vehicle which has a propensity to suddenly and unintentionally accelerate, and which does not contain safety systems which would 1) prevent such acceleration from happening at all; and 2) which would allow a driver, in case of such acceleration, to safely slow and stop the vehicle.

59. Plaintiffs, and every member of the classes alleged herein, have been similarly damaged as a result of this breach of warranty.

FIFTH CAUSE OF ACTION

BREACH OF IMPLIED WARRANTY

OF FITNESS FOR A PARTICULAR PURPOSE

(Against All Defendants)

60. Plaintiffs hereby incorporate, as if set forth in full, paragraphs 1 through 34 above.

61. Toyota is, and at all relevant times has been, in the business of designing, manufacturing, distributing, and selling vehicles to consumers.

62. Toyota knew, at the time it sold its vehicles to consumers, that such vehicles would be used by Plaintiffs and putative Class members for the specific purpose of attempting to safely transport the driver and passengers from one point to another.

63. Toyota knew that consumers who purchased their vehicles relied upon Defendants' expertise and skill, judgment and knowledge in furnishing vehicles which were capable of transporting the driver and passengers of such vehicle without unreasonable risk of harm to them or to members of the general public.

64. Toyota's vehicles are not fit for that purpose in that their design or manufacture is so defective as to cause such vehicles to suddenly and unintentionally accelerate and, subsequent to such acceleration, provide an insufficent safety mechanism to allow the driver to slow and stop the vehicle safely.

65. Plaintiff, and every member of the classes alleged herein, have been similarly damaged as a result of this breach of warranty.

SIXTH CAUSE OF ACTION

NEGLIGENCE

(Against All Defendants)

66. Plaintiffs hereby incorporate, as if set forth in full, paragraphs 1 through 34 above.

67. Defendants had a duty to their consumers, as a manufacturer of motor vehicles, to provide vehicles which, in their ordinary operation, would be safe. Defendants also had a duty to sufficiently test their vehicles' safety before selling hundreds or thousands of vehicles. Defendants had further duties once they were on notice by consumers of the propensity of their vehicles to suddenly and unintentionally accelerate, and of the inability of the driver to slow or stop such vehicles.

68. Defendants breached their duty to Plaintiffs and class members. Plaintiffs and class members have been and are currently dealing with vehicles that are inherently unsafe and more dangerous than similar vehicles manufactured by other companies.

69. Defendants' breach proximately caused the damages to Plaintiffs and class members, namely that Plaintiffs and class members have been financially and economically damaged by owning vehicles which are inherently unsafe, and have also been further damaged in the potential risk of injury to themselves and others every time they operate their vehicles.

//

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TOY-RQ-05E-00004063

PRAYER FOR RELIEF

WHEREFORE, on behalf of themselves and all others similarly situated, Plaintiffs pray for the following relief:

1. An order certifying this action as a plaintiff class action, as set forth herein above;
2. For compensatory damages as to all causes of action where compensatory damages are available;
3. For restitution;
4. For disgorgement of all wrongfully obtained compensation;
5. For preliminary and permanent injunctive relief prohibiting Defendants from continuing the wrongful practices alleged in the Complaint;
6. For punitive damages;
7. For reasonable costs and attorneys' fees as permitted by law; and
8. For such other and further relief as the Court may deem proper.

DATED: November 17, 2009

Respectfully submitted,

KIRTLAND & PACKARD LLP

By: _____

MICHAEL LOUIS KELLY
BEHRAM V. PAREKH
HEATHER M. PETERSON

Counsel for Plaintiffs and all others similarly situated.

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TOY-RQ-05E-00004064

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury as to all claims so triable.

DATED: November 17, 2009

Respectfully submitted,

KIRTLAND & PACKARD LLP

By: _____

MICHAEL LOUIS KELLY
BEHRAM V. PAREKH
HEATHER M. PETERSON

Counsel for Plaintiffs and all others similarly situated.

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ERIC KMETZ, and JOE MORRIS, on behalf of themselves and all others similarly situated, Plaintiffs, v. TOYOTA MOTOR SALES, U.S.A., INC., TOYOTA MOTOR CORPORATION, and DOE DEFENDANTS 1-10 Defendants.	Case No. 2:09-CV-08478 AHM-FMO Assigned to the Honorable A. Howard Matz **CLASS ACTION** **FIRST AMENDED COMPLAINT FOR:** **1. VIOLATION OF CALIFORNIA'S CONSUMERS LEGAL REMEDIES ACT;** **2. VIOLATION OF THE UNFAIR COMPETITION LAWS;** **3. VIOLATION OF THE FALSE ADVERTISING LAWS;** **4. BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY;** **5. BREACH OF IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE;** **6. NEGLIGENCE** **DEMAND FOR JURY TRIAL**

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Plaintiffs Eric Kmetz and Joe Morris ("Plaintiffs"), on behalf of themselves and all others similarly situated, allege the following upon information and belief based upon investigation of counsel and published reports, except to their own acts, which they allege upon personal knowledge:

JURISDICTION AND VENUE

1. This Court has diversity jurisdiction over this class action pursuant to 28 U.S.C. § 1332 as amended by the Class Action Fairness Act of 2005 because the matter in controversy exceeds $5,000,000, exclusive of interest and costs, and is a class action in which some members of the class are citizens of different states than the Defendants. *See* 28 U.S.C. § 1332(d)(2)(A).

2. This Court also has personal jurisdiction over Defendants because Defendants are authorized to do business, and currently do business, in this state.

3. Venue is proper in this jurisdiction pursuant to 28 U.S.C. § 1391 because Defendant Toyota Motor Sales, U.S.A., Inc. is headquartered in this District and is subject to personal jurisdiction and a substantial portion of the conduct complained of herein occurred in this District.

PARTIES

4. Plaintiff Eric Kmetz is a resident of Los Angeles County. Plaintiff purchased his Lexus IS 300 in 2001. Plaintiff purchased his vehicle from Jim Faulk Lexus, located in Los Angeles, California. Plaintiff's vehicle is equipped with Toyota's electronic throttle control system. Plaintiff has experienced sudden, unexpected acceleration of his vehicle while in the normal process of operating his vehicle. Plaintiff's vehicle has further suffered a diminution in resale value due to press reports and recalls related to the sudden, unexpected acceleration of Toyota and Lexus vehicles. Moreover, one of Toyota's main selling points for its vehicles is that such cars are reputed to be safe and reliable. Plaintiff Kmetz relied upon Toytota's carefully crafted reputation for safety and reliability in choosing his vehicle. But for Toyota's failure to

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disclose that its vehicles are susceptible to incidents of sudden, unintended acceleration, and thus such vehicles posed a significant risk of injury and death to vehicle occupants, other motorists, and pedestrians, Plaintiff Kmetz would not have purchased his vehicle, or would not have purchased his vehicle for the price paid.

5. Plaintiff Joe Morris is a resident of Orange County. Plaintiff owns and drives a Toyota Prius. Plaintiff purchased his vehicle from a dealership in Orange County, California. Plaintiff's vehicle is equipped with Toyota's electronic throttle control system. Plaintiff's vehicle has suffered a diminution in resale value due to press reports and recalls related to the sudden, unexpected acceleration of Toyota and Lexus vehicles. Further, one of Toyota's main selling points for its vehicles is that such cars are reputed to be safe and reliable. Plaintiff Morris relied upon Toytota's carefully crafted reputation for safety and reliability in choosing his vehicle. But for Toyota's failure to disclose that its vehicles are susceptible to incidents of sudden, unintended acceleration, and thus such vehicles posed a significant risk of injury and death to vehicle occupants, other motorists, and pedestrians, Plaintiff Morris would not have purchased his vehicle, or would not have purchased his vehicle for the price paid.

6. Defendant Toyota Motor Sales, U.S.A., Inc. ("TMS-USA") is, and at all relevant times was, a California Corporation headquartered in Los Angeles, California. Defendant TMS-USA is a wholly owned subsidiary of Toyota Motor Corporation, and is responsible for the manufacture, distribution, and sale of all Toyota and Lexus automobiles and trucks in the United States.

7. Defendant Toyota Motor Corporation ("TMC-Japan") is, and at all relevant times was, a Japanese Corporation with its headquarters in Japan. Toyota Motor Corporation, at all relevant times, wholly owned and controlled TMS-USA, and thus, conducted business in Los Angeles County and is subject to

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the personal jurisdiction of this Court.

8. The above named Defendants, and their subsidiaries and agents, are collectively referred to as "Toyota."

9. The true names and capacities of the Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are currently unknown to Plaintiffs, who therefore sue such Defendants by fictitious names. Each of the Defendants designated herein as a DOE is legally responsible for the unlawful acts alleged herein. Plaintiffs will seek leave of Court to amend this Complaint to reflect the true names and capacities of the DOE Defendants when such identities become known.

10. At all relevant times, each and every Defendant was acting as an agent and/or employee of each of the other Defendants and was acting within the course of scope of said agency and/or employment with the full knowledge and consent of each of the other Defendants. Each of the acts and/or omissions complained of herein were alleged and made known to, and ratified by, each of the other Defendants.

FACTUAL ALLEGATIONS

11. Toyota is currently the world's largest manufacturer of vehicles with net revenues in 2009 of over 227 billion dollars.

12. Toyota has carefully crafted and attempted to maintain a reputation for quality and safety in order to increase sales of its cars.

13. Evidence of this include various advertisements by Toyota regarding their vehicles crash safety ratings, design, quality, and resale value.

14. As the Los Angeles Times reported in a front page story on December 23, 2009:

> A peerless reputation for quality and safety has helped Toyota become the world's largest automaker. But even as its sales have soared, the company has delayed recalls,

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> kept a tight lid on disclosure of potential problems and attempted to blame human error in cases where owners claimed vehicles were defective. After Toyota this fall announced its biggest recall to address the sudden-acceleration problem, it insisted publicly that no defect existed. This drew a rare public rebuke from the National Highway Traffic Safety Administration, which chastised the automaker for making 'inaccurate and misleading statements.'

15. Toyota's carefully crafted attempts to minimize any public revelation of the problems with its vehicles are further discussed in that same Los Angeles Times article: "The automaker knew of a dangerous steering defect in vehicles, including the 4Runner sport utility vehicle, for years before issuing a recall in Japan in 2004." However, in 2004, it told U.S. regulators that no such recall was necessary in here because Toyota "has received field information from the Japanese market, but no similar information from the U.S. markets has been received." This statement to regulators was false, as "company records show that Toyota had received numerous complaints about the problem before that date," including ones as far back as the year 2000. In 2005, it was finally forced to recall over 1 million vehicles with that part, a full five years after it knew of such complaints in the United States. "Japanese police, in an investigation of the defect, said that Toyota employees had known about the problem *since 1992*, and should have initiated a recall immediately" (emphasis added).

16. The same Los Angeles Times article reports that a former Toyota lawyer who handled safety litigation, Dimitrios Biller, has sued Toyota alleging that it engaged in a "calculated conspiracy to prevent the disclosure of damaging evidence" as part of a scheme to "prevent evidence of its vehicles

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shortcomings from becoming known."

17. Beginning in the late 1990s, Toyota manufactured, distributed and sold vehicles with an electronic throttle control system ("ETC").

18. Unlike that of traditional throttle control systems, where a physical cable connected the accelerator pedal to the engine throttle, under the ETC system, the engine throttle is controlled by electronic signals sent from the gas pedal to the engine throttle. A sensor at the accelerator detects how far the gas pedal is depressed and transmits that information to a computer module which controls a motorized engine throttle. The computer module determines how far the accelerator is depressed, and, in turn, tells the engine throttle motor how far to open the throttle valve.

19. When Toyota first introduced the ETC, they continued to include a mechanical linkage between the accelerator and the engine throttle control.

20. Beginning with the 2001 model year, however, Defendants began manufacturing, distributing, and selling vehicles without such mechanical linkage.

21. Further, Defendants' ETC system also fails to include a failsafe measure incorporated by other vehicle manufacturers which instructs the ETC system to automatically reduce the engine to idle whenever the brakes are applied.

22. The combination of the lack of these two safety systems allows the ETC to set the engine throttle to any position regardless of the position of the accelerator, and with no mechanical or electronic failsafe mechanism to allow the driver to effectively stop or slow the car in such circumstances.

23. According to an article in the November 8, 2009 issue of the Los Angeles Times ("Times"), the Times located federal and other records of 19 fatalities and over 1,000 reports by owners involving the unintended acceleration of Toyota vehicles from the 2002 model year and newer.

24. The Times further quotes an independent safety expert as stating that he had

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identified nearly 2,000 sudden-acceleration cases for Toyota vehicles built since 2001.

25. The Times further states that other experts believe the numbers may be far higher, citing to a 2007 National Highway Traffic and Safety Administration ("NHTSA") survey of 600 Lexus owners that found that 10% complained they had experienced sudden acceleration.

26. The Times further states that when Toyota reported complaint data to NHTSA, Toyota eliminated all reports claiming that the sudden acceleration occurred for "a long duration" or more than a few seconds.

27. The Times further states that in an investigation of reports of sudden acceleration involving 2002 and 2003 Lexus ES and Camry models, Toyota eliminated all reports in five broad categories when responding to NHTSA's request, including all cases in which the drivers said they were unable to control a runaway engine by applying the brakes.

28. Thus, at all relevant times, Toyota had full knowledge of the numerous complaints regarding its vehicles, that such vehicles were susceptible to incidents of sudden, unintended acceleration, and thus such vehicles posed a significant risk of injury and death to vehicle occupants, other motorists, and pedestrians.

29. Regardless of this knowledge, Toyota has taken no steps to remedy this dangerous condition.

30. Toyota had a duty to disclose this vehicle defect because 1) it publicly created, through its marketing campaign, the image of its vehicles as safe and reliable; and 2) the vehicle defect causes Toyota's vehicles to become inherently dangerous products to the driver, passengers, and the general public.

CLASS ACTION ALLEGATIONS

31. Plaintiffs bring this action on behalf of themselves and all others similarly

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situated, as a member of the proposed nationwide plaintiff class and California class (collectively hereafter the "Class") defined as follows:

Nationwide class: All persons who reside in the United States and who presently own a Toyota vehicle equipped with an electronic throttle control system.

California class: All persons who reside in California or are California citizens and who presently own a Toyota vehicle equipped with an electronic throttle control system.

32. Specifically excluded from the proposed Class are Defendants, any entities in which Defendants have a controlling interest, and the officers, directors, affiliates, legal representatives, successors, subsidiaries and/or assigns of Defendant. Also specifically excluded from the proposed Class are any claims by any persons who have suffered or possess a right of action for personal injury or wrongful death as a result of the sudden unintended acceleration of their Toyota vehicle.

33. This action is brought and may be properly maintained as a class action pursuant to the provisions of Federal Rule of Civil Procedure 23(a)(1)-(4) and 23(b)(1)-(3). This action satisfies the numerosity, typicality, adequacy, predominance and superiority requirements of those provisions.

34. [Fed. R. Civ. P. 23(a)(1)] The Class is so numerous that the individual joinder of all of its members is impractical. While the exact number and identities of Class members are unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff is informed and believes the Class includes many thousands of members. Plaintiffs allege that the Class may be ascertained by the records maintained by Toyota and its network of dealerships, and/or through the records of public agencies.

35. [Fed. R. Civ. P. 23(a)(2)] Common questions of fact and law exist as to all members of the Class which predominate over any questions affecting only individual members of the Class. These common legal and factual questions,

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which do not vary from class member to class member, and which may be determined without reference to the individual circumstances of any class member, include, but are not limited to, the following:

a. Whether Toyota vehicles equipped with electronic throttle control systems cause sudden unintended acceleration;

b. Whether Toyota vehicles equipped with electronic throttle control systems are dangerous when used as designed due to such sudden unintended acceleration;

c. Whether Toyota vehicles equipped with electronic throttle control systems are dangerous when used as designed because they fail to incorporate safety systems that would allow drivers to control their vehicle in the case of sudden unintended acceleration;

d. Whether Toyota knew of the dangerous propensity of its vehicles equipped with an electronic throttle control system;

e. Whether Toyota failed to remedy the dangerous propensity of its vehicles equipped with an electronic throttle control system;

f. Whether Toyota vehicles equipped with ETC are unreasonably dangerous, constituting a breach of the implied warranty;

g. Whether Toyota vehicles equipped with ETC are not fit for their intended use, constituting a breach of the implied warranty;

h. Whether Toyota was negligent in the manufacture, distribution, and sale of vehicles equipped with ETC;

i. Whether Toyota's conduct described herein violated California's Unfair Competition Law;

j. Whether Toyota's conduct described herein violated California's False Advertising Act;

k. Whether Toyota's conduct described herein violated California's Consumer Legal Remedies Act;

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l. Whether Toyota's conduct described herein violated the Magnusson-Moss Consumer Warranty Act.

m. The nature and extent of damages and other remedies to which the conduct of Toyota entitles the Class members.

36. [Fed. R. Civ. P. 23(a)(3)] Plaintiffs' claims are typical of the claims of the members of the Class. Plaintiffs and all members of the Class have sustained injury and are facing irreparable harm arising out of Defendants' common course of conduct as complained of herein. The losses of each member of the Class were caused directly by Defendants' wrongful conduct as alleged herein.

37. [Fed. R. Civ. P. 23(a)(4)] Plaintiffs will fairly and adequately protect the interests of the members of the Class. Plaintiffs have retained attorneys experienced in the prosecution of class actions, including complex consumer and mass tort litigation.

38. [Fed. R. Civ. P. 23(b)(3)] A class action is superior to other available methods of fair and efficient adjudication of this controversy, since individual litigation of the claims of all Class members is impracticable. Even if every Class member could afford individual litigation, the court system could not. It would be unduly burdensome to the courts in which individual litigation of numerous issues would proceed. Individualized litigation would also present the potential for varying, inconsistent, or contradictory judgments and would magnify the delay and expense to all parties and to the court system resulting from multiple trials of the same complex factual issues. By contrast, the conduct of this action as a class action, with respect to some or all of the issues presented herein, presents fewer management difficulties, conserves the resources of the parties and of the court system, and protects the rights of each Class member.

39. [Fed. R. Civ. P. 23(b)(1)(A)] The prosecution of separate actions by

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thousands of individual Class members would create the risk of inconsistent or varying adjudications with respect to, among other things, the need for and the nature of proper notice which Defendants must provide to all Class members.

40. [Fed. R. Civ. P. 23(b)(1)(B)] The prosecution of separate actions by individual class members would create a risk of adjudications with respect to them that would, as a practical matter, be dispositive of the interests of the other Class members not parties to such adjudications or that would substantially impair or impede the ability of such non-party Class members to protect their interests.

41. [Fed. R. Civ. P. 23(b)(2)] Defendants have acted or refused to act in respects generally applicable to the Class, thereby making appropriate final and injunctive relief with regard to the members of the Class as a whole.

FIRST CAUSE OF ACTION

VIOLATION OF CALIFORNIA'S

CONSUMERS LEGAL REMEDIES ACT

(By Plaintiffs and the Class Against All Defendants)

42. Plaintiffs hereby incorporate, as if set forth in full, paragraphs 1 through 41 above.

43. The Defendants' acts and omissions violate the following portions of the California *Consumers Legal Remedies Act*:

- *Civil Code* § 1770(a)(5) "Representing that goods or services have ... characteristics ... uses, benefits ... which they do not have ..."
- *Civil Code* § 1770(a)(7) "Representing that goods or services are of a particular standard, quality, or grade ... if they are of another"
- *Civil Code* § 1770(a)(9) "Advertising goods or services

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with intent not to sell them as advertised."

44. Plaintiffs and the members of the Class risk irreparable injury as a result of the Defendants' acts and omission in violation of the CLRA and these violations present a continuing risk to the class and members of the public.

45. Plaintiffs have filed concurrently herewith the venue affidavit required by *Civil Code* § 1780(c). In addition Plaintiffs concurrently provided the notice to Defendants required under *Civil Code* § 1782(a) with the sending of a letter, sent via certified mail return receipt requested on November 24, 2009. Over 30 days have passed since the notice was given and Defendants have failed to take or agree to take the remedies asked for in the notice. Thus, Plaintiffs and the putative class are entitled to damages in addition to all other appropriate remedies.

46. Pursuant to *Civil Code* § 1780(a)(2) Plaintiffs seek an order enjoining Defendants from selling any vehicles with an electronic throttle control in the United States which has not been revised in such a manner as to eliminate the possibility of sudden unintended acceleration and to which have been added such safety measures that in the case of sudden unintended acceleration, the driver will be able to take measures to slow and stop the vehicle. Plaintiffs further seek restitution from Defendants for the cost paid for their inherently unsafe and dangerous vehicle. Plaintiffs, alternatively, seek a mandatory injunction against Defendants requiring them to repair and/or replace Plaintiffs' and the putative Class' vehicles, at Defendants' expense, to eliminate the possibility of sudden unintended acceleration and to add such safety measures that in the case of sudden unintended acceleration, the driver will be able to take measures to safely slow and stop the vehicle. Unless Defendants are enjoined from violations of the CLRA alleged herein, the members of the class and the general public, who lack an adequate remedy at law to deter Defendants' wrongful conduct, will be irreparably harmed.

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47. Plaintiffs have suffered economic damage as a result of Defendant's violations of *Civil Code* § 1770 in that they now own a vehicle which is defective and inherently dangerous, regardless of the manifestation of the defect. Plaintiffs have further suffered economic damage in that their vehicle's resale value has been reduced. As the factual allegations make clear, Defendants have known of the inherently dangerous defect for a long period of time and have, during that time, not only failed to correct it, but actively suppressed evidence of its existence. Defendants' conduct is sufficiently blameworthy to merit the imposition of punitive damages pursuant to *Civil Code* § 1780(a)(4) to punish, deter, and make an example of Defendants. In addition, Plaintiffs and the class are entitled to an award of attorneys' fees and costs against Defendants pursuant to the provisions of *Civil Code* § 1780(d).

SECOND CAUSE OF ACTION

VIOLATION OF CALIFORNIA'S

UNFAIR COMPETITION LAW

(By Plaintiffs and the Class Against All Defendants)

48. Plaintiffs hereby incorporate, as if set forth in full, paragraphs 1 through 41 above.

49. California *Business and Professions Code* § 17200 *et seq.*, also known as the California Unfair Competition Law ("UCL"), prohibits acts of "unfair competition," including any unlawful, unfair, fraudulent or deceptive business act or practice as well as "unfair, deceptive, untrue or misleading advertising."

50. Defendants violated and continue to violate the UCL through one or more of the following unfair, unlawful, or fraudulent practices:

a. Selling to Plaintiffs and Class members vehicles which contain a defect or design which makes them inherently more dangerous than other similar vehicles;

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b. Failing to disclose to Plaintiffs and Class members that the vehicles sold to such consumers contain a defect or design which makes them inherently more dangerous than other similar vehicles;

c. Failing to remedy the defect or design which makes Defendants' vehicles inherently more dangerous than other similar vehicles;

d. Failing to manufacture, distribute, and sell a product which would perform in a safe manner when used in a reasonably foreseeable manner by a reasonable consumer;

e. Violating the other statutes and common law causes of action as alleged in the instant Complaint.

51. As a direct and proximate result of Defendants' illegal business practices, Plaintiffs and the members of the Class have suffered injury and have lost money or property.

52. Defendants' conduct has further injured Plaintiffs and Class members by impairing competition within the motor vehicle markets and preventing Plaintiffs and Class members from making fully informed decisions about the motor vehicles they purchase.

53. Plaintiffs respectfully request that the Court enjoin Defendants from engaging in the unlawful conduct alleged herein and require Defendants to a) stop selling any vehicles with an electronic throttle control in the United States which has not been revised in such a manner as to eliminate the possibility of sudden unintended acceleration and to which have been added such safety measures that in the case of sudden unintended acceleration, the driver will be able to take measures to slow and stop the vehicle; b) require Defendants to repair and/or replace Plaintiffs' and the putative Class' vehicles, at Defendants' expense, to eliminate the possibility of sudden unintended acceleration and to add such safety measures that, in the case of sudden unintended acceleration, would allow the driver to take measures to safely

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slow and stop the vehicle; c) in the interim time period, provide immediate notice to Plaintiffs and Class members of the potential for sudden unintended acceleration of their vehicle and provide instructions for how best to mitigate the situation were it to occur; d) require Defendants to notify all affected persons affected of the Court's injunction; e) require Defendants to provide restitution to Plaintiffs and Class members; f) award Plaintiffs and/or Class members reasonable attorneys' fees and expenses, and g) award such other relief as the Court may deem just and proper.

54. The illegal business practices described herein present a continuing threat to Plaintiffs, members of the Class, and members of the general public in that Defendants continue to engage in these practices, and will not cease doing so unless and until forced to do so by this Court. Defendants' conduct will continue to cause irreparable injury to Plaintiffs and the Class unless enjoined or restrained.

THIRD CAUSE OF ACTION

VIOLATION OF CALIFORNIA'S

FALSE ADVERTISING LAWS

(By Plaintiffs and the Class Against All Defendants)

55. Plaintiffs hereby incorporate, as if set forth in full, paragraphs 1 through 41 above.

56. *Business and Professions Code* § 17500 provides that "[i]t is unlawful for any ... corporation ... with intent ... to dispose of ... personal property ... to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated ... from this state before the public in any state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, including over the Internet, any statement ... which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be

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known, to be untrue or misleading...."

57. Defendants' representations, including statements made in Defendants' television, radio, and print advertising, websites, brochures, and all other written and oral materials disseminated by Defendants to promote their vehicles constitute advertising for purposes of this cause of action.

58. Such advertising contained statements which were false, misleading, or which omitted material information which Defendants were under a duty to disclose and which were known or should have been known to Defendants to be false, misleading, or deceptive.

59. As a direct and proximate result of Defendants' misleading advertising, Plaintiffs and the members of the putative Class have suffered injury in fact and have lost money or property.

60. The misleading advertising described herein presents a continuing threat to Plaintiffs, the Class, and members of the public in that Defendants persist and continue to engage in these practices, and will not cease doing so unless and until forced to do so by this Court. Defendants' conduct will continue to cause irreparable injury to plaintiff and the class unless enjoined or restrained.

FOURTH CAUSE OF ACTION

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

(By Plaintiffs and the Class Against All Defendants)

61. Plaintiffs hereby incorporate, as if set forth in full, paragraphs 1 through 41 above.

62. Defendants impliedly warrant that their vehicles are fit for the ordinary purpose for which the product is sold.

63. The ordinary purpose for which Defendants' vehicles are sold is to provide the purchaser with a vehicle that is capable of transporting the driver and passengers in reasonable safety, and without unduly endangering them or members of the public.

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64. Defendants breached their implied warranty of merchantability by selling a vehicle which has a propensity to suddenly and unintentionally accelerate, and which does not contain safety systems which would 1) prevent such acceleration from happening at all; and 2) which would allow a driver, in case of such acceleration, to safely slow and stop the vehicle.

65. Plaintiffs, and every member of the classes alleged herein, have been similarly damaged as a result of this breach of warranty.

FIFTH CAUSE OF ACTION

BREACH OF IMPLIED WARRANTY

OF FITNESS FOR A PARTICULAR PURPOSE

(By Plaintiffs and the Class Against All Defendants)

66. Plaintiffs hereby incorporate, as if set forth in full, paragraphs 1 through 41 above.

67. Toyota is, and at all relevant times has been, in the business of designing, manufacturing, distributing, and selling vehicles to consumers.

68. Toyota knew, at the time it sold its vehicles to consumers, that such vehicles would be used by Plaintiffs and putative Class members for the specific purpose of attempting to safely transport the driver and passengers from one point to another.

69. Toyota knew that consumers who purchased their vehicles relied upon Defendants' expertise and skill, judgment and knowledge in furnishing vehicles which were capable of transporting the driver and passengers of such vehicle without unreasonable risk of harm to them or to members of the general public.

70. Toyota's vehicles are not fit for that purpose in that their design or manufacture is so defective as to cause such vehicles to suddenly and unintentionally accelerate and, subsequent to such acceleration, provide an insufficient safety mechanism to allow the driver to slow and stop the vehicle

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safely.

71. Plaintiffs, and every member of the classes alleged herein, have been similarly damaged as a result of this breach of warranty.

SIXTH CAUSE OF ACTION

NEGLIGENCE

(By Plaintiffs and the Class Against All Defendants)

72. Plaintiffs hereby incorporate, as if set forth in full, paragraphs 1 through 41 above.

73. Defendants had a duty to their consumers, as a manufacturer of motor vehicles, to provide vehicles which, in their ordinary operation, would be safe. Defendants also had a duty to sufficiently test their vehicles' safety before selling hundreds or thousands of vehicles. Defendants had further duties once they were on notice by consumers of the propensity of their vehicles to suddenly and unintentionally accelerate, and of the inability of the driver to slow or stop such vehicles.

74. Defendants breached their duty to Plaintiffs and class members. Plaintiffs and class members have been and are currently dealing with vehicles that are inherently unsafe and more dangerous than similar vehicles manufactured by other companies.

75. Defendants' breach proximately caused the damages to Plaintiffs and class members, namely that Plaintiffs and Class members have been financially and economically damaged by owning vehicles which are inherently unsafe, and have also been further damaged in the potential risk of injury to themselves and others every time they operate their vehicles.

PRAYER FOR RELIEF

WHEREFORE, on behalf of themselves and all others similarly situated, Plaintiffs pray for the following relief:

1. An order certifying this action as a plaintiff class action, as set forth

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herein above;

2. For compensatory damages as to all causes of action where compensatory damages are available;

3. For restitution;

4. For disgorgement of all wrongfully obtained compensation;

5. For preliminary and permanent injunctive relief prohibiting Defendants from continuing the wrongful practices alleged in the Complaint;

6. For punitive damages;

7. For reasonable costs and attorneys' fees as permitted by law; and

8. For such other and further relief as the Court may deem proper.

DATED: January 19, 2009

Respectfully submitted,

KIRTLAND & PACKARD LLP

By: _____

MICHAEL LOUIS KELLY
BEHRAM V. PAREKH
HEATHER M. PETERSON

Counsel for Plaintiffs and all others similarly situated.

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KIRTLAND & PACKARD LLP

TOY-RQ-05E-00004084

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury as to all claims so triable.

DATED: January 19, 2010

Respectfully submitted,

KIRTLAND & PACKARD LLP

By: _____

MICHAEL LOUIS KELLY
BEHRAM V. PAREKH
HEATHER M. PETERSON

Counsel for Plaintiffs and all others similarly situated.

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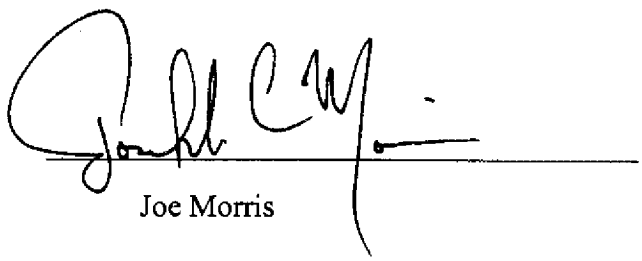
AFFIDAVIT OF JOE MORRIS

1. I, Joe Morris, submit this affidavit pursuant to §1780(d) of the Consumers Legal Remedies Act and declare the following.

2. I am a resident of Orange County, California, and am one of the named plaintiffs in the Complaint filed herewith.

3. I purchased a vehicle from Defendants, which is a subject of the Complaint, in Orange County, California.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct. Executed this 13th day of November, 2009, at Los Angeles, California.



Joe Morris

AFFIDAVIT OF ERIC KMETZ

1. I, Eric Kmetz, submit this affidavit pursuant to §1780(d) of the Consumers Legal Remedies Act and declare the following.

2. I am a resident of Los Angeles County, California, and am one of the named plaintiffs in the Complaint filed herewith.

3. I purchased a vehicle from Defendants, which is a subject of the Complaint, in Los Angeles County, California.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct. Executed this 13th day of November, 2009, at Los Angeles, California.

Eric Kmetz

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PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I, the undersigned, am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 2361 Rosecrans Avenue, Fourth Floor, El Segundo, California 90245. I am "readily familiar" with my employer's practice of collection and processing of correspondence and documents for mailing with the United States Postal Service, mailing via overnight delivery, transmission by facsimile machine, and delivery by hand.

On January 19, 2010, I served a copy of each of the documents listed below by placing said copies for processing as indicated herein:

FIRST AMENDED COMPLAINT (CLASS ACTION)

(✓) OVERNIGHT DELIVERY: The correspondence or documents were placed in sealed, labeled packaging for overnight delivery with all charges to be paid by my employer on the above date for collection and mailing at my place of business to be deposited in a facility regularly maintained by the overnight delivery carrier, or delivered to a courier or driver authorized by the overnight delivery carrier to receive such packages, on this date in the ordinary course of business.

(✓) ELECTRONIC TRANSMISSION: The correspondence or documents were transmitted via email on this same date in the ordinary course of business. The transmission was reported as "sent" and a record of the transmission was recorded as outgoing (sent) mail by the transmitting email program.

PERSONS OR PARTIES SERVED:

** See attached service list **

( ) (State) I certify (or declare) under penalty of perjury that the foregoing is true and correct and that this declaration was executed on January 19, 2010.

(✓) (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

KATHERINE STUCZYNSKI

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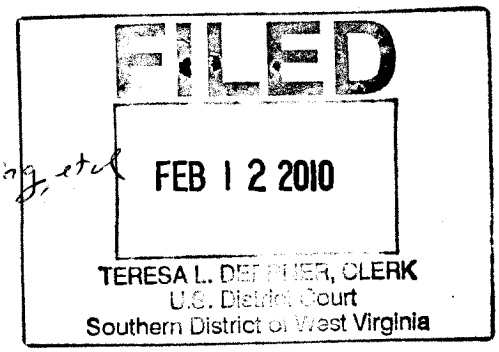
Graves, et al
v.
Toyota Motor Manufacturing, et al
CA 2:09-1247



BEFORE THE JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION

IN RE: TOYOTA UNINTENDED ACCELERATION PRODUCT LIABILITY LITIGATION	))))	MDL Docket No. _____

MOTION FOR TRANSFER OF ACTIONS TO THE CENTRAL DISTRICT OF CALIFORNIA AND FOR COORDINATION OR CONSOLIDATION OF ALL PRETRIAL PROCEEDINGS PURSUANT TO 28 U.S.C. §1407

Plaintiffs Eric Kmetz and Joseph Morris in the Central District of California action, *Kmetz v. Toyota Motor Sales U.S.A., Inc. Et al.*, Case No. 2:09-cv-08478 AHM (FMOx) and Plaintiffs Joseph Hauter, and Frank Palomares in the Central District of California action, *Hauter v. Toyota Motor Sales U.S.A., Inc. et al.*, Case No. 2:10-cv-00105 CJC (ANx) on behalf of themselves and all others similarly situated, (collectively "Plaintiffs" or "Movants") respectfully move the Panel for an Order pursuant to 28 U.S.C. §1407, to transfer the pending cases identified in the schedule of actions filed concurrently herewith ("Actions"), as well as any cases subsequently filed involving similar facts or claims ("tag-along cases") to the United States District Court for the Central District of California, and to consolidate or coordinate the cases for pretrial proceedings before the Honorable A. Howard Matz, to whom the low numbered case is currently assigned in the Central District of California.

In support of the Motion for Transfer and Coordination or Consolidation to the Central District of California, and as set forth in more detail in the accompanying Memorandum, Plaintiffs state as follows:

1. Movants are plaintiffs in the following captioned cases in the Central District of California:

   - *Kmetz v. Toyota Motor Sales U.S.A., Inc. Et al.*, Case No. 2:09-cv-08478 AHM (FMOx)
   - *Hauter v. Toyota Motor Sales U.S.A., Inc. et al.*, Case No. 2:10-cv-00105 CJC (Anx)

2. These Actions are nationwide class actions that allege that various causes of action against Toyota Motor Sales U.S.A., Inc. and its Japanese parent, Toyota Motor Corporation relating to the unintended acceleration of Toyota and Lexus branded vehicles.

3. At last count, there were at least 7 actions pending in the Central District of California, and 14 actions pending in various other district courts nationwide, which similarly allege various causes of action against these defendants relating to the unintended acceleration of Toyota and Lexus branded vehicles.

4. Each of these Actions seek relief for virtually the identical class of persons: all persons in the United States who own i) Toyota vehicles equipped with an electronic throttle control system and/or ii) a Toyota vehicle subject to Toyota's recalls regarding unintended acceleration.

5. Each of these Actions arise out of the same or similar nucleus of operative facts, all arising out of Toyota's same or similar alleged wrongful conduct.

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6. Each of these Actions assert similar claims for injunctions, compensatory damages, exemplary damages, all arising out of Toyota's same or similar alleged wrongful conduct.

7. Each of these Actions will involve the resolution of the same or similar questions of fact and law, as the all arise from Toyota's same or similar alleged wrongful conduct.

8. Discovery conducted in each of these Actions will be substantially similar, and will involve the same or similar documents and witnesses, since each action arises from the same or similar nucleus of operative facts.

9. Discovery has not yet commenced in any of the Actions, thus no prejudice or inconvenience will result from transfer and coordination or consolidation.

10. Defendant Toyota Motor Sales, U.S.A., Inc., is headquartered in Torrance, California, in the Central District of California, and thus, judicial and discovery efficiency, as well as the convenience of the parties, will be enhanced, as many of the witnesses and documents will be located in the Central District.

11. The corporate parent Defendant, Toyota Motor Corporation, is located in Japan. The Central District of California, located in Los Angeles, makes a convenient location for the centralization of discovery efforts which may result in depositions and document discovery in Japan, or the need for Japanese employees of Toyota to travel the to the United States, with numerous direct flights to Tokyo and connecting flights to Nagoya, the closest airport to Toyota's headquarters in the city of Toyota, Japan.

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For the reasons stated above, and in more detail in the accompanying Memorandum, the transfer and coordination or consolidation of the Actions to the Central District of California will promote the just and efficient administration of these Actions. Thus, Movants respectfully request that the Actions, and tag-along actions, be transferred to the Central District of California for consolidated or coordinated proceedings before the Honorable A. Howard Matz.

RESPECTFULLY SUBMITTED,

Dated: February 5, 2010

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BEFORE THE JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION

IN RE: TOYOTA UNINTENDED ACCELERATION PRODUCT LIABILITY LITIGATION	)	MDL Docket No. _____

MEMORANDUM IN SUPPORT OF MOTION FOR TRANSFER OF ACTIONS TO THE CENTRAL DISTRICT OF CALIFORNIA AND FOR COORDINATION OR CONSOLIDATION OF ALL PRETRIAL PROCEEDINGS PURSUANT TO 28 U.S.C. §1407

Plaintiffs Eric Kmetz and Joseph Morris in the Central District of California action, *Kmetz v. Toyota Motor Sales U.S.A., Inc. Et al.*, Case No. 2:09-cv-08478 AHM (FMOx) and Plaintiffs Joseph Hauter, and Frank Palomares in the Central District of California action, *Hauter v. Toyota Motor Sales U.S.A., Inc. et al.*, Case No. 2:10-cv-00105 CJC (ANx) on behalf of themselves and all others similarly situated, (collectively "Plaintiffs") respectfully move the Panel for an Order pursuant to 28 U.S.C. §1407, to transfer the pending cases identified in the schedule of actions filed concurrently herewith ("Actions"), as well as any cases subsequently filed involving similar facts or claims ("tag-along cases") to the United States District Court for the Central District of California, and to consolidate or coordinate the cases for pretrial proceedings before the Honorable A. Howard Matz, to whom the low numbered case is currently assigned in the Central District of California.

I. INTRODUCTION

There are, at last count, 21 actions filed in various courts throughout the nation against some combination of the defendants in these litigations. These cases all stem from the alleged tendency of Toyota and Lexus branded (collectively "Toyota") vehicles to experience events of sudden unintended acceleration while the driver of the vehicle is attempting to slow the vehicle, or at least not accelerate the vehicle. Although the various complaints generally allege that this tendency has existed in Toyota vehicles since approximately 2001, when Toyota first switched from mechanical linkages between the accelerator pedal and the throttle control, these cases have generally been filed subsequent to the high-profile death of California Highway Patrol Officer Mark Saylor while driving a Lexus ES350 vehicle on August 28, 2009. Officer Saylor's brother-in-law called 911 while in the vehicle, just prior to his death, stating "the accelerator is stuck...we're approaching an intersection."

The national press coverage given to this incident forced Toyota to begin seriously investigating incidents of unintended acceleration of its vehicles which, heretofore, it had externally attributed to isolated incidents and driver error. On September 29, 2009 Toyota announced a recall of 3.8 million vehicles, which was subsequently expanded to 4.2 million vehicles, due to what Toyota claimed was an issue with aftermarket or improperly installed floor-mats causing unintended acceleration of its vehicles.

In a press release issued regarding the recall, Toyota unequivocally stated "no defect exists in vehicles in which the driver's floor mat is compatible with the vehicle and properly secured." This explanation, however, did not appear to ring true, given the numerous incidents of unintended acceleration of Toyota vehicles in which both witnesses and investigators had concluded that floor mats were not responsible. Plaintiffs Kmetz and Morris filed suit on

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November 18, 2009 in the Central District of California, both their home district and that of the primary defendant, Toyota Motor Sales U.S.A., Inc., alleging that the floor mats, alone, were not the problem and that a more systemic problem related to Toyota's electronic throttle control system existed.

On January 21, 2010, Toyota announced a second recall, this time blaming unintended acceleration events on an worn accelerator pedal assemblies that could "stick" in a partially depressed position. Again, Toyota's explanation did not appear to ring true, given incidents of unintended acceleration involving vehicles that were not part of the "sticky pedal" recall, and also given incidents in vehicles which were almost brand-new.

Subsequent to this announcement, Plaintiffs Hauter and Palomares filed a suit on January 22, 2010, again in the Central District of California, and again for the same reasons, alleging that the floor mats and "sticky pedals," alone, were not the problem and that a more systemic problem related to Toyota's electronic throttle control system existed.

At that point, apparently, the floodgates opened, and no less that 18 suits alleging similar claims and seeking similar relief as Movants have been filed in various courts, both state and federal, throughout the nation. These related actions arise from the same or similar nucleus of operative facts as Movants' cases. Each action will involve substantially similar discovery, with the same or similar documents and witnesses. Discovery has not commenced in Plaintiffs' cases or any of the related actions.

Since these actions require the same or similar questions of law and fact to be determined by a court of law, prompt action by the Panel to transfer and consolidate or coordinate these actions in the Central District of California will promote their just and efficient prosecution, enhance judicial economy, and serve the convenience of the parties.

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II. ARGUMENT

A. Transfer and Consolidation or Coordination of All Actions Is Appropriate Under 28 U.S.C. §1407.

28 U.S.C. §1407 provides for transfer of actions to one district for coordinated or consolidated pretrial proceedings where actions pending in different districts involve one or more common questions of fact. 28 U.S.C. §1407(a). Transfers are authorized where the Panel determines that such transfers will be for the convenience of parties and witnesses and will promote the just and efficient conduct of such actions. *Id.*

The purpose of the multidistrict litigation process is to "eliminate the potential for contemporaneous pretrial rulings by coordinate district and appellate courts in multidistrict related civil actions." *In re Multidistrict Private Civ. Treble Damages Litig.*, 298 F.Supp. 484, 491-92 (J.P.M.L. 1968). Consolidation is especially important in class actions where "the potential for conflicting, disorderly, chaotic" action is greatest. *Id.* at 493. Transfer of related actions to a single district for pretrial proceedings avoid conflicting pretrial discovery and ensures uniform and expeditious treatment in the pretrial procedurs. *In re Phenylpropanolamine (PPA) Prods. Liab. Litig.*, 460 F.3d 1217, 1230 (9th Cir. 2006).

Transfer and consolidation is appropriate here because many common questions of fact and law exist. The Actions all arise from the same or similar nucleus of operative facts, and each seeks a determination of, among other things:

1. Whether certain Toyota vehicles are prone to unintended acceleration events;
2. if so, which Toyota vehicles are prone to unintended acceleration events;
3. what is the cause or causes of the unintended acceleration events;
4. whether Toyota failed to properly test its vehicles prior to market entry;

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5. Toyota's knowledge of the propensity of their vehicles to unintended acceleration events;

6. the timing of Toyota's knowledge;

7. whether Toyota negligently, recklessly, or intentionally delayed recalls of their vehicles;

8. whether Toyota breached its duty of car to Plaintiffs and class members;

9. whether Toyota breached any contract or warranty, express or implied, related to their sale of their vehicles;

10. whether Toyota was unjustly enriched as a result of its wrongful conduct;

11. whether Plaintiffs and class members are entitled to equitable or injunctive relief;

12. whether Plaintiffs and class members are entitled to compensatory damages;

13. whether Plaintiffs and class members are entitled to exemplary damages; and

14. whether a class or classes may be appropriately certified.

Determination of these and other common issues in a single district will benefit the parties and witnesses, and promote the just and efficient prosecution and resolution of the Actions. Without transfer and consolidation of the Actions, the significant hazard of inconsistent rulings exists, and judicial inefficiency, overlapping discovery, and unnecessary expense will certainly result.

Transfer and consolidation is especially appropriate as formal discovery has not yet commenced in any of the actions and the pleadings in the Actions are not even yet at issue. Transfer and consolidation of the Actions in a single district is appropriate for the just and efficient prosecution of the Actions and convenience of the parties and witnesses.

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B. The Central District of California Is the Most Appropriate Forum for Transfer and Consolidation or Coordination

There are numerous factors which the Panel generally takes into consideration in determining the most appropriate transferee forum. Among those factors include the number of cases pending in the jurisdiction, convenience of the parties, location of witnesses and other evidence, whether the district is in an accessible metropolitan location, the caseload of the transferee district, and experience in management of class actions and complex litigation. *See, e.g.*, *In re Wheat Farmers Antitrust Class Action Litig.*, 366 F. Supp. 1087, 1088 (J.P.M.L. 1973); *In re Preferential Drug Prods. Pricing Antitrust Litig.*, 429 F. Supp. 1027, 1029 (J.P.M.L. 1977); *In re Tri-State Crematory Litig.*, 206 F. Supp. 2d 1376, 1378 (J.P.M.L. 2002); *In re General Motors Corp. Dex-Cool Products Liability Litig.*, 293 F. Supp. 2d 1381, 1382 (J.P.M.L. 2003); *In re Educ. Testing Serv. Plt 7-12 Test Scoring Litig.*, 350 F. Supp. 2d 1363, 1365 (J.P.M.L. 2004). Of the various potential venues in the United States, the Central District of California best meets those factors.

1. Number of Cases Pending

The jurisdiction with the greatest number of pending cases is currently the Central District of California (7). No other jurisdiction other than the Central District of California has any significant number of filed cases. Moreover, given that American location for Toyota's headquarters is in Los Angeles, and that it appears that the number of lawsuits being filed regarding the issues addressed in the Actions appears to increase daily, it is likely that number of law suits filed will continue to increase significantly, including the diversity of jurisdictions in which such suits are filed. Thus, it is likely that the Central District of California, with its significantly higher population and the location of Toyota's American headquarters, will end up

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as the jurisdiction with the greatest number of independently filed lawsuits. Thus, of the potential jurisdictions available to the Panel, the Central District of California constitutes the venue with the greatest current number of filed cases, and the same District will probably end up with having the greatest number of filed lawsuits when all is said and done.

2. Convenience of the Parties

There is a significant geographic advantage to the Central District of California for the convenience of the Parties. First, as noted above, to date the greatest number of lawsuits have been filed in the Central District of California, and thus, presumably, the parties which filed these lawsuits consider the Central District of California their most convenient choice of forum. Second, the primary defendant in the litigation, Toyota Motor Sales, U.S.A., Inc., has its American headquarters in the Central District of California, and thus, presumably, it would be the most convenient location for it as well. Finally, although the other primary defendant, the parent Toyota Motor Corporation, is located in Japan, presumably, Toyota executives are used to traveling back and forth to its American headquarters, and would be able to most conveniently travel and use Toyota's American facilities in Los Angeles were it necessary for them to attend depositions or court appearances in the United States. Thus, of the jurisdictions available to the Panel, the Central District of California provides the greatest convenience to the parties.

3. Location of Witnesses and Other Evidence

Equally, from the perspective of the location of witnesses and other evidence, the Central District of California is the most convenient location, as it is the American headquarters of the primary defendant, and no other jurisdiction has any stronger claim to being convenient to the location of witnesses or other evidence.

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D. Accessible Metropolitan Location

While there are numerous jurisdictions which are in accessible metropolitan locations, for the reasons discussed above, the Central District of California has a slight advantage in that it is closer and cheaper to access for parties and witnesses conducting discovery in Japan or appearing in the United States from Japan as compared to airports further east, is significantly more accessible in terms of the number of direct flights, and the locations directly flown to, both in Japan and domestically, than many locations further east, and has the least weather related airport delays of any major metropolitan airport in the United States.

E. Caseload of the Transferee District / Experience in Managing Complex Litigation

The Central District of California is also an appropriate forum because of the status of its civil dockets. Of major metropolitan based district courts, the Central District has one of the lower median times to disposition, at 6.9 months for calendar 2008. (See Ex. A). Further, the Central District of California is in the top 15 percent of all District Courts for time to disposition, and top 25 percent for Time to trial, and the Ninth Circuit as a whole is ranked second in the nation. (See Exh. A). , and Judge Matz is an experienced jurist with over 21 years experience on the bench, including having dealt with many complex and high-profile cases, such as the first legal challenge to Guantanamo Bay's Camp X-Ray and the challenge by Perfect 10 to the Google Books initiative, along with prior MDL experience, i.e., *Conseco Life Ins.*, MDL 1610, which concluded July, 2007.

Further, even were the case to go another jurist than Judge Matz, the other jurists in the Central District who are currently assigned to some of the Actions are also experienced jurists with prior MDL experience, such as Judge Fees, MDL 1394, which concluded August, 2006,

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Judge Lew, MDL 1581, which concluded May 2006, Judge Carney, MDL 1926, and Judge Snyder, MDL 1671. These are but exemplars, and there is simply no question that the jurists of the Central District of California are more than capable of handling this MDL.

III. CONCLUSION

For the reasons discussed above, Movants respectfully request that the Panel transfer the Actions for coordinated or consolidated pretrial proceedings before the Central District of California.

RESPECTFULLY SUBMITTED,

Dated: February 5, 2010

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EXHIBIT A

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Table C-5.
U.S. District Courts—Median Time Intervals From Filing to Disposition of Civil Cases Terminated, by District and Method of Disposition, During the 12-Month Period Ending December 31, 2008

Circuit and District	Total Cases		No Court Action		Court Action					
					Before Pretrial		During or After Pretrial		Trial	
	Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months
TOTAL	**175,385**	**8.1**	**44,049**	**5.0**	**104,916**	**7.9**	**22,094**	**13.6**	**4,326**	**32.8**
DC	**1,931**	**8.6**	**650**	**6.2**	**1,213**	**9.4**	**42**	**12.4**	**26**	**35.6**
1ST	**4,709**	**9.1**	**1,633**	**6.5**	**2,271**	**8.7**	**633**	**16.8**	**172**	**25.5**
ME	374	7.1	166	4.5	181	8.4	14	13.1	13	16.9
MA	2,333	9.2	1,008	6.6	948	8.9	287	19.0	90	26.5
NH	351	7.4	89	3.2	125	5.7	131	14.6	6	-
RI	392	8.8	133	8.2	189	8.3	59	11.2	11	19.5
PR	1,259	10.2	237	8.7	828	9.1	142	22.6	52	34.1
2ND	**19,398**	**9.9**	**4,320**	**6.2**	**11,957**	**10.2**	**2,831**	**14.0**	**290**	**29.4**
CT	1,846	10.1	1,178	7.7	550	13.8	65	25.0	53	30.5
NY,N	1,092	13.0	214	4.7	564	15.3	289	15.4	25	27.2
NY,E	5,612	12.9	866	8.7	3,559	13.6	1,092	14.6	95	29.8
NY,S	9,547	8.0	1,938	5.0	6,201	7.8	1,304	12.7	104	28.7
NY,W	1,072	11.3	105	4.1	881	11.8	78	21.5	8	-
VT	229	7.8	19	2.5	202	8.2	3	-	5	-
3RD	**16,760**	**7.1**	**3,609**	**4.6**	**9,800**	**6.1**	**3,076**	**12.3**	**275**	**25.4**
DE	734	12.4	170	6.6	515	13.3	16	31.1	33	30.8
NJ	6,033	8.2	1,759	5.8	2,658	5.9	1,543	14.6	73	31.7
PA,E	6,306	5.3	583	2.3	4,346	4.2	1,269	9.6	108	19.6
PA,M	1,417	7.6	404	4.1	924	8.2	57	18.0	32	27.4
PA,W	1,884	7.1	534	4.4	1,296	8.3	27	26.7	27	33.4
VI	386	24.7	159	17.1	61	28.4	164	27.3	2	-
4TH	**11,453**	**6.6**	**2,817**	**5.8**	**7,493**	**6.4**	**970**	**8.5**	**173**	**20.9**
MD	2,468	7.1	906	7.0	1,316	6.0	209	13.1	37	22.3
NC,E	837	8.8	341	7.6	475	9.6	13	11.0	8	-
NC,M	612	8.4	365	5.5	227	13.8	17	14.0	3	-
NC,W	912	6.1	221	7.9	595	5.0	82	13.4	14	26.6
SC	2,128	8.4	328	4.6	1,644	8.5	109	11.0	47	24.8
VA,E	2,150	4.7	276	2.2	1,337	4.1	500	6.4	37	10.1
VA,W	639	9.0	157	6.3	449	9.7	17	11.1	16	19.0
WV,N	416	10.0	181	9.2	217	9.5	12	23.0	6	-
WV,S	1,291	4.6	42	3.9	1,233	4.6	11	18.6	5	-

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Table C-5. (December 31, 2008—Continued)

Circuit and District	Total Cases		No Court Action		Court Action					
					Before Pretrial		During or After Pretrial		Trial	
	Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months
5TH	**25,402**	**10.0**	**4,574**	**6.7**	**15,604**	**8.3**	**3,383**	**15.6**	**1,841**	**166.4**
LA,E	9,111	9.8	63	3.6	6,362	7.1	2,613	15.7	73	18.5
LA,M	2,087	166.4	258	5.5	374	12.6	19	24.7	1,436	166.4
LA,W	1,558	12.2	427	7.9	1,039	12.9	59	24.2	33	20.2
MS,N	745	12.0	216	7.9	347	9.5	151	17.7	31	26.6
MS,S	1,977	10.6	1,298	9.7	591	10.8	50	20.2	38	20.1
TX,N	2,414	7.4	325	5.6	2,025	7.4	2	-	62	23.5
TX,E	1,829	9.4	308	6.6	1,420	9.4	53	19.3	48	19.6
TX,S	3,684	6.8	1,137	3.2	2,114	8.2	366	10.1	67	19.3
TX,W	1,997	8.4	542	7.1	1,332	8.3	70	15.4	53	18.2
6TH	**16,260**	**9.7**	**4,083**	**5.2**	**8,041**	**9.5**	**3,889**	**13.9**	**247**	**23.9**
KY,E	1,317	9.2	170	4.9	1,098	9.4	34	17.1	15	25.2
KY,W	1,061	9.3	291	7.6	678	9.1	79	19.7	13	25.9
MI,E	4,161	9.7	993	4.4	1,210	6.1	1,904	14.9	54	26.2
MI,W	906	8.3	117	2.9	763	9.2	10	23.0	16	30.6
OH,N	3,399	9.1	819	4.1	1,688	11.7	853	9.6	39	17.6
OH,S	2,513	10.3	937	5.8	866	10.3	676	14.3	34	26.5
TN,E	962	11.9	198	8.0	435	10.2	300	16.4	29	22.9
TN,M	1,093	9.2	253	5.8	811	9.7	8	-	21	17.3
TN,W	848	11.7	305	8.7	492	11.9	25	20.0	26	26.8
7TH	**11,953**	**7.3**	**3,610**	**4.7**	**6,439**	**7.3**	**1,699**	**12.0**	**205**	**25.2**
IL,N	6,620	6.3	2,328	4.8	3,589	6.5	600	11.5	103	25.0
IL,C	590	9.7	216	6.9	362	10.8	5	-	7	-
IL,S	650	9.6	151	4.5	460	10.3	23	27.8	16	25.8
IN,N	1,072	11.1	254	5.0	327	9.1	469	14.3	22	24.7
IN,S	1,717	9.0	451	4.2	824	9.0	419	11.8	23	22.3
WI,E	862	7.8	144	3.7	649	7.9	43	14.9	26	33.5
WI,W	442	4.7	66	2.1	228	3.7	140	7.1	8	-
8TH	**13,270**	**5.7**	**5,029**	**2.7**	**6,910**	**8.8**	**1,139**	**16.1**	**192**	**21.5**
AR,E	1,166	8.4	215	9.4	914	7.2	7	-	30	22.5
AR,W	575	10.2	24	3.2	530	10.2	5	-	16	16.2
IA,N	393	9.0	71	6.7	308	9.1	3	-	11	20.7
IA,S	558	10.8	153	7.3	270	9.6	119	16.1	16	23.9
MN	6,583	3.0	3,015	2.4	2,581	7.1	956	15.6	31	19.7
MO,E	1,594	7.0	672	5.0	888	8.2	7	-	27	18.6
MO,W	1,425	7.8	693	5.9	693	9.1	11	18.2	28	26.7
NE	545	8.6	28	2.4	480	8.4	20	17.1	17	19.5
ND	220	6.5	93	3.6	120	7.6	3	-	4	-
SD	211	12.4	65	12.4	126	10.6	8	-	12	24.4

TOY-RQ-05E-00004105

Table C-5. (December 31, 2008—Continued)

Circuit and District	Total Cases		No Court Action		Court Action					
					Before Pretrial		During or After Pretrial		Trial	
	Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months
9TH	**26,603**	**7.9**	**8,594**	**5.9**	**15,591**	**8.1**	**1,961**	**14.2**	**457**	**23.8**
AK	318	8.7	142	6.6	169	10.1	2	-	5	-
AZ	1,929	8.6	679	7.5	1,195	9.1	17	36.2	38	29.2
CA,N	4,060	8.1	862	4.6	1,947	6.1	1,202	14.0	49	24.3
CA,E	2,003	9.6	758	6.5	1,167	10.8	36	27.1	42	29.2
CA,C	9,189	6.9	3,658	6.0	5,294	7.1	100	18.5	137	21.7
CA,S	1,702	5.8	173	3.2	1,145	5.8	359	10.3	25	26.6
HI	534	10.5	297	8.2	177	11.0	39	22.4	21	30.8
ID	354	10.5	38	4.0	305	10.8	4	-	7	-
MT	481	10.3	200	7.0	171	9.9	95	16.3	15	23.4
NV	1,542	9.1	539	7.0	933	9.7	48	15.6	22	29.2
OR	1,677	11.0	476	8.6	1,139	11.7	15	24.3	47	19.0
WA,E	481	8.3	156	3.7	289	9.0	28	16.1	8	-
WA,W	2,274	6.9	588	4.0	1,636	8.0	12	15.8	38	17.1
GUAM	27	17.9	9	-	15	19.2	2	-	1	-
NMI	32	12.5	19	13.3	9	-	2	-	2	-
10TH	**7,366**	**8.3**	**1,556**	**5.0**	**4,469**	**8.0**	**1,183**	**11.8**	**158**	**20.5**
CO	2,011	6.6	149	3.0	1,746	6.5	80	18.0	36	25.9
KS	1,176	9.3	500	7.0	549	9.4	104	17.4	23	23.6
NM	1,007	9.5	232	4.0	371	9.9	374	11.3	30	20.2
OK,N	592	9.2	80	3.6	482	9.9	14	17.4	16	16.5
OK,E	335	7.6	218	8.6	100	6.3	8	-	9	-
OK,W	1,134	8.2	311	3.4	368	7.8	436	9.8	19	16.1
UT	894	8.8	53	3.0	787	9.0	40	17.4	14	29.7
WY	217	10.0	13	4.3	66	5.5	127	11.0	11	15.4
11TH	**20,280**	**6.8**	**3,574**	**4.1**	**15,128**	**6.9**	**1,288**	**13.5**	**290**	**18.3**
AL,N	2,371	10.6	502	7.5	1,821	11.2	25	18.6	23	18.2
AL,M	734	9.6	201	7.5	456	9.2	62	17.0	15	16.2
AL,S	589	7.8	128	7.2	430	7.6	16	15.6	15	15.0
FL,N	875	7.6	130	6.4	704	7.8	17	9.1	24	17.6
FL,M	5,297	7.7	447	5.9	4,687	7.6	92	17.2	71	20.6
FL,S	6,374	4.6	1,539	3.0	4,701	5.0	51	15.6	83	14.8
GA,N	2,997	6.6	427	2.4	1,534	5.1	994	11.9	42	24.0
GA,M	635	11.4	136	6.6	481	11.8	7	-	11	22.8
GA,S	408	9.9	64	5.8	314	10.0	24	14.5	6	-

NOTE: MEDIAN TIME INTERVALS NOT COMPUTED WHEN FEWER THAN 10 CASES REPORTED. THIS TABLE EXCLUDES LAND CONDEMNATIONS, PRISONER PETITIONS, DEPORTATION REVIEWS, RECOVERY OF OVERPAYMENTS, AND ENFORCEMENT OF JUDGMENTS. FOR FISCAL YEARS PRIOR TO 2001, THIS TABLE INCLUDED DATA ON RECOVERY OF OVERPAYMENTS AND ENFORCEMENT OF JUDGMENTS.

TOY-RQ-05E-00004106

U.S. DISTRICT COURT - JUDICIAL CASELOAD PROFILE

CALIFORNIA CENTRAL			12-MONTH PERIOD ENDING SEPTEMBER 30							
			2008	2007	2006	2005	2004	2003	Numerical Standing	
									U.S.	Circuit
OVERALL CASELOAD STATISTICS	Filings*		15,144	14,154	12,909	14,630	16,938	14,720		
	Terminations		14,742	13,642	13,680	16,173	15,269	15,800		
	Pending		12,221	11,817	12,401	13,180	14,720	13,129		
	% Change in Total Filings	Over Last Year		7.0					23	3
		Over Earlier Years			17.3	3.5	-10.6	2.9	28	4
Number of Judgeships			28	28	28	28	28	28		
Vacant Judgeship Months**			12.0	31.2	53.9	24.8	2.3	23.6		
ACTIONS PER JUDGESHIP	FILINGS	Total	540	505	461	523	605	526	19	5
		Civil	433	425	397	450	515	451	12	3
		Criminal Felony	63	47	36	45	60	49	49	9
		Supervised Release Hearings**	44	33	28	28	30	26	15	6
	Pending Cases		436	422	443	471	526	469	24	5
	Weighted Filings**		578	551	518	565	651	590	12	4
	Terminations		527	487	489	578	545	564	20	7
	Trials Completed		11	12	12	13	12	14	84	12
MEDIAN TIMES (months)	From Filing to Disposition	Criminal Felony	7.5	12.1	12.4	10.3	8.2	9.4	32	4
		Civil**	7.0	6.8	7.2	7.4	7.3	7.5	12	2
	From Filing to Trial** (Civil Only)		22.0	21.3	21.3	20.5	17.8	21.2	24	2
OTHER	Civil Cases Over 3 Years Old**	Number	821	712	1,240	809	624	609		
		Percentage	8.1	7.2	11.6	7.2	5.0	5.4	68	10
	Average Number of Felony Defendants Filed Per Case		1.5	1.3	1.6	1.5	1.4	1.4		
	Jurors	Avg. Present for Jury Selection	60.94	60.57	64.08	47.33	49.01	49.49		
		Percent Not Selected or Challenged	53.7	56.5	55.7	48.3	49.4	51.6		

2008 CIVIL AND CRIMINAL FELONY FILINGS BY NATURE OF SUIT AND OFFENSE

Type of	TOTAL	A	B	C	D	E	F	G	H	I	J	K	L
Civil	12130	1023	200	2976	287	205	839	1508	562	1395	1292	113	1730
Criminal*	1761	12	242	671	115	360	48	124	49	48	15	37	40

* Filings in the "Overall Caseload Statistics" section include criminal transfers, while filings "By Nature of Offense" do not.
** See "Explanation of Selected Terms."

TOY-RQ-05E-00004107

U.S. DISTRICT COURT - JUDICIAL CASELOAD PROFILE

ALL DISTRICT COURTS			12-MONTH PERIOD ENDING SEPTEMBER 30						Numerical Standing	
			2008	2007	2006	2005	2004	2003	U.S.	Circuit
OVERALL CASELOAD STATISTICS	Filings*		349,969	335,655	335,868	330,721	358,983	328,520	U.S.	Circuit
	Terminations		317,056	317,277	350,807	347,196	324,532	323,399		
	Pending		358,303	324,673	309,006	323,914	341,785	312,223		
	% Change in Total Filings	Over Last Year		4.3					-	-
		Over Earlier Years			4.2	5.8	-2.5	6.5	-	-
Number of Judgeships			678	678	678	678	679	680		
Vacant Judgeship Months**			397.9	424.7	399.3	309.2	291.4	444.8		
ACTIONS PER JUDGESHIP	FILINGS	Total	516	495	495	488	528	483	-	-
		Civil	394	380	383	374	414	372	-	-
		Criminal Felony	91	85	84	87	88	87	-	-
		Supervised Release Hearings**	31	30	28	27	26	24	-	-
	Pending Cases		528	479	456	478	503	459	-	-
	Weighted Filings**		472	477	464	489	529	498	-	-
	Terminations		468	468	517	512	478	476	-	-
	Trials Completed		20	20	19	19	19	19	-	-
MEDIAN TIMES (months)	From Filing to Disposition	Criminal Felony	7.3	7.6	7.6	7.3	6.9	6.7	-	-
		Civil**	8.1	8.6	8.3	9.5	8.5	9.3	-	-
	From Filing to Trial** (Civil Only)		24.8	24.6	23.2	22.5	22.6	22.5	-	-
OTHER	Civil Cases Over 3 Years Old**	Number	21,820	17,446	27,574	39,600	35,965	34,067		
		Percentage	7.3	6.6	1.1	14.9	12.6	13.0	-	-
	Average Number of Felony Defendants Filed Per Case		1.3	1.4	1.4	1.4	1.4	1.4		
	Jurors	Avg. Present for Jury Selection	48.81	49.32	49.61	47.36	46.33	47.81		
		Percent Not Selected or Challenged	37.4	37.3	38.1	36.7	36.8	40.0		

2008 CIVIL AND CRIMINAL FELONY FILINGS BY NATURE OF SUIT AND OFFENSE

Type of	TOTAL	A	B	C	D	E	F	G	H	I	J	K	L
Civil	267257	13138	52110	54786	3782	5072	16788	34172	19901	9592	32132	1318	24466
Criminal*	61026	3606	11010	21190	7980	7036	1991	2660	706	1293	910	894	1750

* Filings in the "Overall Caseload Statistics" section include criminal transfers, while filings "By Nature of Offense" do not.
** See "Explanation of Selected Terms."

http://www.uscourts.gov/cgi-bin/cmsd2008.pl

BEFORE THE JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION

IN RE: TOYOTA UNINTENDED ACCELERATION PRODUCT LIABILITY LITIGATION	))))	MDL Docket No. _____

SCHEDULE OF ACTIONS IN SUPPORT OF MOTION FOR TRANSFER OF ACTIONS TO THE CENTRAL DISTRICT OF CALIFORNIA AND FOR COORDINATION OR CONSOLIDATION OF ALL PRETRIAL PROCEEDINGS PURSUANT TO 28 U.S.C. §1407

Plaintiffs Eric Kmetz and Joseph Morris in the Central District of California action, *Kmetz v. Toyota Motor Sales U.S.A., Inc. Et al.*, Case No. 2:09-cv-08478 AHM (FMOx) and Plaintiffs Joseph Hauter, and Frank Palomares in the Central District of California action, *Hauter v. Toyota Motor Sales U.S.A., Inc. et al.*, Case No. 2:10-cv-00105 CJC (ANx) on behalf of themselves and all others similarly situated, (collectively "Plaintiffs" or "Movants") respectfully submit the following schedule of actions in support of their Motion for Transfer of Actions to the Central District of California and for Coordination or Consolidation of All Pretrial Proceedings Pursuant to 28 U.S.C. §1407.

RESPECTFULLY SUBMITTED,

Dated: February 5, 2010

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Joseph Hauter, and Frank Palomares

TOY-RQ-05E-00004110

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION
MDL Docket No. _____ - In re: Toyota Unintended Acceleration Product Liability Litigation

SCHEDULE OF ACTIONS

CASE CAPTIONS	COURT	CASE NO.	JUDGE
Dale Baldiseeri v. Toyota Motor Sales, USA, Inc., Toyota Motor North America, Inc., Toyota Motor Manufacturing North America, Inc., and Toyota Motor Engineering & Manufacturing North America, Inc.	D. California, Central	2:09-cv-09386-GAF-FMO	Gary A. Feess
Eric Kmetz and Joe Morris v. Toyota Motor Sales, U.S.A., Inc., Toyota Motor Corporation	D. California, Central	2:09-cv-09-8478 CAS	Christina A. Snyder
Heather A. Lane v. Toyota Motor Sales, USA, Inc.	D. California, Central	2:09-cv-09158-GAF-FMO	Gary A. Feess
Matthew Marr, Luis Fernandez, and Sylvia Fernandez v. Toyota Motor Sales, USA, Inc. And Toyota Motor Corp.	D. California, Central	2:10-cv-00799-CAS-SS	Christina A. Snyder
Roz Schwartz v. Toyota Motor Sales, USA, Inc. And Toyota Motor Corp.	D. California, Central	2:10-cv-001710-RSWL-FMO	Ronald S.W. Lew
Seong Bae Choi, Chris Chan Park, Sandra Reech, Donald Pritchett, Un Jin Choi, Mary Ann Parker v. Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Inc.	D. California, Central	2:09-cv-08143-AHM-FMO	A. Howard Matz

TOY-RQ-05E-00004111

Joseph Hauter v. Toyota Motor Sales, U.S.A., Inc., Toyota Motor Corporation	D. California, Central	SA CV10-00105 CJC	Cormac J. Carney
Ryan Scharrel v. Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Sales U.S.A., Inc.	D. Colorado	1:10-cv-0227-PAB	Philip A. Brimmer
Jonathan Gellman v. Toyota Motor Sales U.S.A., Inc.	D. Florida, Southern	1:10-cv-20006-MGC	Marcia G. Cooke
Jim Heidenreich v. Toyota Motor North America, Inc., Toyota Motor Sales USA Inc.	D. Florida, Northern	4:10-cv-00035-RH-WCS	Robert L. Hinkle
Michelle Lynch v. Toyota Motor Corp. and Toyota Motor Sales, USA, Inc	D. Florida, Middle	8:10-cv-00326-SDM-TGW	Steven D. Merryday
Arlene S. Heilbrunn v. Toyota Motor Corp.	D. Florida, Southern	9:10-cv-80208-WJZ	William J. Zloch
Judith M. Enderle v. Toyota Motor North America, Inc., Toyota Motor Corp., Toyota Motor Engineering & Manufacturing North America, Inc. and Toyota Motor Sales, USA, Inc.,	D. Indiana, Southern	1:10-cv-00142-SEB-TAB	Sarah E. Barker

TOY-RQ-05E-00004112

Debra Poynter, Ron Poynter, Tina Preedom, Fran Preedom, Krystal Eggerding, Angela Boles, Laurie Chambers, Amy Smith Roth, Lucero Davidson, Mark Davidson v. Toyota Motor North America, Inc., Toyota Motor Sales, USA, Inc., Toyota Motor Corp., Toyota Motor Engineering & Manufacturing North America, Inc. And Toyota Motor Manufacturing Kentucky, Inc.	D. Kentucky, Eastern	2:10-cv-00021-WOB	William O. Bertelsman
Amanda R. Maillho v. Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Sales, USA, Inc.	D. Louisiana, Eastern	2:10-cv-00279-MVL-JCW	Mary A.V. Lemmon
Daniel Weimer, Jr., Colby Wenck, and Ann Cavalier v. Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Sales, USA, Inc.	D. Louisiana, Eastern	2:10-cv-00219-ILRL-SS	Ivan L.R. Lemelle
Gary T. Brock v. Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Sales, USA, Inc.	D. Louisiana, Eastern	2:10-cv-00281-ILRL-SS	Ivan L.R. Lemelle
David Hulsen v. Toyota Motor Corp., Toyota Motor Sales, USA, Inc., Toyota Motor Engineering & Manufacturing North America, Inc.	D. Missouri, Western	4:10-cv-00103-HFS	Howard F. Sachs
Margaret Gonzalez v. Toyota Motor Corp., Toyota Motor Sales, USA, Inc., Toyota Motor North America, Inc., and Toyota Motor Engineering & Manufacturing North America, Inc.	D. New Jersey	3:10-cv-00595-MLC-DEA	Mary L. Cooper

TOY-RQ-05E-00004113

Troy Menssen v. Toyota Motor Sales, USA, Inc., Toyota Motor Engineering & Manufacturing North America, Inc. Toyota Motor Corp.	D. Ohio, Northern	1:10-cv-00260-SO	Solomon Oliver, Jr.
Zahira Crespo Bithorn and Milagros Rodriguez Cruz v. Toyota North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc.,Toyota Motor Sales USA, Inc. and Toyota de Puerto Rico Corp.	D. Puerto Rico	3:10-cv-01083-FAB	Francisco A. Besosa
Linda Alford Wooten v. Toyota North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Manufacturing Kentucky, Inc., Toyota Motor Sales USA, Inc. And Toyota Motor Corp.	D. South Carolina	3:10-cv-00229-MJP	Matthew J. Perry
Sylvia Pena and Albert A. Pena, III v. Toyota Motor Corp., Toyota Motor Sales, USA, Inc.	D. Texas, Southern	2:10-cv-00037	John D. Rainey
Michael Graves and Jeff Mullins v. Toyota Motor Manufacturing, West Virginia, Inc.; Toyota Motor North America Inc.; Toyota Motor Engineering & Manufacturing North America, Inc.; Toyota Motor Sales U.S.A., Inc.	D. West Virginia, Southern	2:09-cv-1247	Joseph R. Goodwin

TOY-RQ-05E-00004114

BEFORE THE JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION

IN RE: TOYOTA UNINTENDED ACCELERATION PRODUCT LIABILITY LITIGATION	)	MDL Docket No. _____

NOTICE OF APPEARANCE

In compliance with Rule 5.2(c) of the Rule of Procedure of the Judicial Panel on Multidistrict Litigation, the following attorney is authorized to receive service of all pleadings, notices, orders, and other papers relating to practice before the Judicial Panel on Multidistrict Litigation on behalf of Plaintiffs Eric Kmetz, Joseph Morris, Joseph Hauter, and Frank Palomares in the following captioned litigations:

USDC, Central District of California, *Kmetz v. Toyota Motor Sales U.S.A., Inc. Et al.*, Case No. 2:09-cv-08478 AHM (FMOx)

USDC, Central District of California, *Hauter v. Toyota Motor Sales U.S.A., Inc. et al.*, Case No. 2:10-cv-00105 CJC (ANx)

Name and Address of Designated Attorney:

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RESPECTFULLY SUBMITTED,

Dated: February 5, 2010

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Joseph Hauter, and Frank Palomares

TOY-RQ-05E-00004116

BEFORE THE JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION

IN RE: TOYOTA UNINTENDED ACCELERATION PRODUCT LIABILITY LITIGATION	))))	MDL Docket No. _____

COURTESY COPY OF DOCKETS/COMPLAINTS IN SUPPORT OF MOTION FOR TRANSFER OF ACTIONS TO THE CENTRAL DISTRICT OF CALIFORNIA AND FOR COORDINATION OR CONSOLIDATION OF ALL PRETRIAL PROCEEDINGS PURSUANT TO 28 U.S.C. §1407

Plaintiffs Eric Kmetz and Joseph Morris in the Central District of California action, *Kmetz v. Toyota Motor Sales U.S.A., Inc. Et al.*, Case No. 2:09-cv-08478 AHM (FMOx) and Plaintiffs Joseph Hauter, and Frank Palomares in the Central District of California action, *Hauter v. Toyota Motor Sales U.S.A., Inc. et al.*, Case No. 2:10-cv-00105 CJC (ANx) on behalf of themselves and all others similarly situated, (collectively "Plaintiffs" or "Movants") respectfully submit the following courtesy copies of dockets/complaints in support of their Motion for Transfer of Actions to the Central District of California and for Coordination or Consolidation of All Pretrial Proceedings Pursuant to 28 U.S.C. §1407.

RESPECTFULLY SUBMITTED,

Dated: February 5, 2010

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Joseph Hauter, and Frank Palomares

TOY-RQ-05E-00004118

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION
MDL Docket No. _____ - In re: Toyota Unintended Acceleration Product Liability Litigation

INDEX OF ATTACHED COURTESY DOCKETS/COMPLAINTS

CASE CAPTIONS	COURT	CASE NO.	JUDGE
Dale Baldiseeri v. Toyota Motor Sales, USA, Inc., Toyota Motor North America, Inc., Toyota Motor Manufacturing North America, Inc., and Toyota Motor Engineering & Manufacturing North America, Inc.	D. California, Central	2:09-cv-09386-GAF-FMO	Gary A. Feess
Eric Kmetz and Joe Morris v. Toyota Motor Sales, U.S.A., Inc., Toyota Motor Corporation	D. California, Central	2:09-cv-09-8478 CAS	Christina A. Snyder
Heather A. Lane v. Toyota Motor Sales, USA, Inc.	D. California, Central	2:09-cv-09158-GAF-FMO	Gary A. Feess
Matthew Marr, Luis Fernandez, and Sylvia Fernandez v. Toyota Motor Sales, USA, Inc. And Toyota Motor Corp.	D. California, Central	2:10-cv-00799-CAS-SS	Christina A. Snyder
Roz Schwartz v. Toyota Motor Sales, USA, Inc. And Toyota Motor Corp.	D. California, Central	2:10-cv-001710-RSWL-FMO	Ronald S.W. Lew
Seong Bae Choi, Chris Chan Park, Sandra Reech, Donald Pritchett, Un Jin Choi, Mary Ann Parker v. Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Inc.	D. California, Central	2:09-cv-08143-AHM-FMO	A. Howard Matz

TOY-RQ-05E-00004119

Joseph Hauter v. Toyota Motor Sales, U.S.A., Inc., Toyota Motor Corporation	D. California, Central	SA CV10-00105 CJC	Cormac J. Carney
Ryan Scharrel v. Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Sales U.S.A., Inc.	D. Colorado	1:10-cv-0227-PAB	Philip A. Brimmer
Jonathan Gellman v. Toyota Motor Sales U.S.A., Inc.	D. Florida, Southern	1:10-cv-20006-MGC	Marcia G. Cooke
Jim Heidenreich v. Toyota Motor North America, Inc., Toyota Motor Sales USA Inc.	D. Florida, Northern	4:10-cv-00035-RH-WCS	Robert L. Hinkle
Michelle Lynch v. Toyota Motor Corp. and Toyota Motor Sales, USA, Inc	D. Florida, Middle	8:10-cv-00326-SDM-TGW	Steven D. Merryday
Arlene S. Heilbrunn v. Toyota Motor Corp.	D. Florida, Southern	9:10-cv-80208-WJZ	William J. Zloch
Judith M. Enderle v. Toyota Motor North America, Inc., Toyota Motor Corp., Toyota Motor Engineering & Manufacturing North America, Inc. and Toyota Motor Sales, USA, Inc.,	D. Indiana, Southern	1:10-cv-00142-SEB-TAB	Sarah E. Barker

TOY-RQ-05E-00004120

Debra Poynter, Ron Poynter, Tina Preedom, Fran Preedom, Krystal Eggerding, Angela Boles, Laurie Chambers, Amy Smith Roth, Lucero Davidson, Mark Davidson v. Toyota Motor North America, Inc., Toyota Motor Sales, USA, Inc., Toyota Motor Corp., Toyota Motor Engineering & Manufacturing North America, Inc. And Toyota Motor Manufacturing Kentucky, Inc.	D. Kentucky, Eastern	2:10-cv-00021-WOB	William O. Bertelsman
Amanda R. Maillho v. Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Sales, USA, Inc.	D. Louisiana, Eastern	2:10-cv-00279-MVL-JCW	Mary A.V. Lemmon
Daniel Weimer, Jr., Colby Wenck, and Ann Cavalier v. Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Sales, USA, Inc.	D. Louisiana, Eastern	2:10-cv-00219-ILRL-SS	Ivan L.R. Lemelle
Gary T. Brock v. Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Sales, USA, Inc.	D. Louisiana, Eastern	2:10-cv-00281-ILRL-SS	Ivan L.R. Lemelle
David Hulsen v. Toyota Motor Corp., Toyota Motor Sales, USA, Inc., Toyota Motor Engineering & Manufacturing North America, Inc.	D. Missouri, Western	4:10-cv-00103-HFS	Howard F. Sachs
Margaret Gonzalez v. Toyota Motor Corp., Toyota Motor Sales, USA, Inc., Toyota Motor North America, Inc., and Toyota Motor Engineering & Manufacturing North America, Inc.	D. New Jersey	3:10-cv-00595-MLC-DEA	Mary L. Cooper

TOY-RQ-05E-00004121

Troy Menssen v. Toyota Motor Sales, USA, Inc., Toyota Motor Engineering & Manufacturing North America, Inc. Toyota Motor Corp.	D. Ohio, Northern	1:10-cv-00260-SO	Solomon Oliver, Jr.
Zahira Crespo Bithorn and Milagros Rodriguez Cruz v. Toyota North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc.,Toyota Motor Sales USA, Inc. and Toyota de Puerto Rico Corp.	D. Puerto Rico	3:10-cv-01083-FAB	Francisco A. Besosa
Linda Alford Wooten v. Toyota North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Manufacturing Kentucky, Inc., Toyota Motor Sales USA, Inc. And Toyota Motor Corp.	D. South Carolina	3:10-cv-00229-MJP	Matthew J. Perry
Sylvia Pena and Albert A. Pena, III v. Toyota Motor Corp., Toyota Motor Sales, USA, Inc.	D. Texas, Southern	2:10-cv-00037	John D. Rainey
Michael Graves and Jeff Mullins v. Toyota Motor Manufacturing, West Virginia, Inc.; Toyota Motor North America Inc.; Toyota Motor Engineering & Manufacturing North America, Inc.; Toyota Motor Sales U.S.A., Inc.	D. West Virginia, Southern	2:09-cv-1247	Joseph R. Goodwin

TOY-RQ-05E-00004122

BEFORE THE JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION

IN RE: TOYOTA UNINTENDED ACCELERATION PRODUCT LIABILITY LITIGATION	MDL Docket No. _____

PROOF OF SERVICE MOTION FOR TRANSFER OF ACTIONS TO THE CENTRAL DISTRICT OF CALIFORNIA AND FOR COORDINATION OR CONSOLIDATION OF ALL PRETRIAL PROCEEDINGS PURSUANT TO 28 U.S.C. §1407 AND ACCOMPANYING DOCUMENTS

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action. My business address is 2361 Rosecrans Avenue, Fourth Floor, El Segundo, California 90245.

On February 5, 2010, I served and/or filed the following document(s) described as:

MOTION FOR TRANSFER OF ACTIONS TO THE CENTRAL DISTRICT OF CALIFORNIA AND FOR COORDINATION OR CONSOLIDATION OF ALL PRETRIAL PROCEEDINGS PURSUANT TO 28 U.S.C. §1407

MEMORANDUM IN SUPPORT OF MOTION FOR TRANSFER OF ACTIONS TO THE CENTRAL DISTRICT OF CALIFORNIA AND FOR COORDINATION OR CONSOLIDATION OF ALL PRETRIAL PROCEEDINGS PURSUANT TO 28 U.S.C. §1407

SCHEDULE OF ACTIONS IN SUPPORT OF MOTION FOR TRANSFER OF ACTIONS TO THE CENTRAL DISTRICT OF CALIFORNIA AND FOR COORDINATION OR CONSOLIDATION OF ALL PRETRIAL PROCEEDINGS PURSUANT TO 28 U.S.C. §1407

NOTICE OF APPEARANCE

COURTESY COPY OF DOCKETS/COMPLAINTS IN SUPPORT OF MOTION FOR TRANSFER OF ACTIONS TO THE CENTRAL DISTRICT OF CALIFORNIA AND FOR COORDINATION OR CONSOLIDATION OF ALL PRETRIAL PROCEEDINGS PURSUANT TO 28 U.S.C. §1407 (without exhibits)

on the interested parties in this action by placing true and correct copies thereof enclosed in sealed envelopes and addressed as follows: **SEE ATTACHED LIST**

(✓) U.S. MAIL: The correspondence or documents were placed in sealed, labeled envelopes with postage thereon fully prepaid on the above date and placed for collection and mailing at my place of business to be deposited with the U.S. Postal Service at El Segundo, California on this same date in the ordinary course of business.

(✓) (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

KATHERINE STUCZYNSKI

TOY-RQ-05E-00004124

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

MDL Docket No. _____ - In re: Toyota Unintended Acceleration Product Liability Litigation

COURT SERVICE LIST

United States District Court
California, Central
312 N. Spring St.
Los Angeles, CA 90012-4793
(tel: 213/894-2634)

United States District Court
West Virginia, Southern
P.O. Box 2546
Charleston, WV 25329
(tel: 304/347-3000)

United States District Court
Florida, Southern
400 N. Miami Ave, 8th Flr.
Miami, FL 33128
(tel: 305/523-5100)

United States District Court
Florida, Middle
801 N. Florida Avenue
Tampa, FL 33602
(tel: 813/301-5400)

United States District Court
Texas, Southern
1133 N. Shoreline Blvd.
Corpus Christi, TX 78401
(tel: 361/888-3142)

United States District Court
Texas, Eastern
100 E. Houston, Rm 125
Marshall, TX 75670
(tel: 903/935-2912)

TOY-RQ-05E-00004125

United States District Court
Louisiana, Eastern
500 Poydras St.
New Orleans, LA 70130

United States District Court
District of Utah
350 South Main Street, Rm. 150
Salt Lake City, Utah 84101-2180
(tel: 801/524-6100)

United States District Court
South Carolina
901 Richland Street
Columbia, SC 29201
(tel: 803/765-5816)

United States District Court
Federico Degetau Federal Building, Room 150
150 Carlos Chardón Street
San Juan, Puerto Rico 00918-1767
(Tel: 787/772-3000)

United States District Court
New Jersey
Clarkson S. Fisher Building
& U.S. Courthouse
402 East State Street Room 2020
Trenton, NJ 08608

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION
MDL Docket No. _____ - In re: Toyota Unintended Acceleration Product Liability Litigation

COUNSEL SERVICE LIST

CASE NAME	CASE NO.	Plaintiff's Counsel	Defendant's Counsel
Dale Baldiseeri vs. Toyota Motor Sales, USA, Inc., Toyota Motor North America, Inc., Toyota Motor Manufacturing North America, Inc., and Toyota Motor Engineering & Manufacturing North America, Inc.	2:09-cv-09386-GAF-FMO	H Scott Leviant Ira R. Spiro J. Mark Moore Spiro Moss LLP 11377 West Olympic Boulevard 5th Floor Los Angeles , CA 90064 310-235-2468 Fax: 310-235-2456 Email: scott@spiromoss.com	
Eric Kmetz and Joe Morris vs. Toyota Motor Sales, U.S.A., Inc., Toyota Motor Corporation	2:09-cv-09-8478 CAS	Michael Louis Kelly Kirtland & Packard LLP 2361 Rosecrans Avenue, Fourth Floor El Segundo, CA 90245 (310) 536-1000 tell. (310) 536-1001 fax mlk@kirtlandpackard.com	Cari K. Dawson Alston & Bird LLP 1201 W. Peachtree St Atlanta, GA 30309 404/881-7000 tel 404/881-7777 fax cari.dawson@alston.com Lisa Gilford Alston & Bird LLP 333 S. Hope Street, 16th Floor Los Angeles, CA 90071 213-576-1000 tel. 213-576-1100 fax lisa.gilford@alston.com

TOY-RQ-05E-00004127

Heather A. Lane vs. Toyota Motor Sales, USA, Inc.	2:09-cv-09158-GAF-FMO	Gene J. Stone barger Stonebarger Law, APC 75 Iron Point Circle, Ste. 145 Folsom, CA 95630 916-235-7140 tel. 916-235-7141 fax gstonebarger@stonebargerlaw.com	Cari K. Dawson Alston & Bird LLP 1201 W. Peachtree St Atlanta, GA 30309 404/881-7000 tel 404/881-7777 fax cari.dawson@alston.com Lisa Gilford Alston & Bird LLP 333 S. Hope Street, 16th Floor Los Angeles, CA 90071 213-576-1000 tel. 213-576-1100 fax lisa.gilford@alston.com
Matthew Marr, Luis Fernandez, and Sylvia Fernandez vs. Toyota Motor Sales, USA, Inc. And Toyota Motor Corp.	2:10-cv-00799-CAS-SS	Lionel Z. Glancy Michael M. Goldberg Glancy Binkow and Goldberg LLP 1801 Avenue of the Stars, Ste. 311 Los Angeles, CA 90067 310-201-9150 tel. 310-201-9160 fax	

TOY-RQ-05E-00004128

Roz Schwartz vs. Toyota Motor Sales, USA, Inc. And Toyota Motor Corp.	2:10-cv-001710-RSWL-FMO	Jeff Osterwise Jon Lamibiras Sherrie Savett Berger & Montague PC 1622 Locust St. Philadelphia, PA 19103 215-875-3000 tel. 215-875-4604 fax Marc M. Seltzer Ryan C. Kirkpatrick Susman Godfrey LLP 1901 Avenue of the Stars, Ste. 950 Los Angeles, CA 90067 310-789-3100 tel. 310-789-3150 fax	
Seong Bae Choi, Chris Chan Park, Sandra Reech, Donald Pritchett, Un Jin Choi, Mary Ann Parker vs. Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Inc.	2:09-cv-08143-AHM-FMO	David C. Wright Kristy M. Arevalo Richard D. McCune, Jr. McCune Wright LLP 2068 Orange Tree Ln #216 Redlands, CA 92374 909/557-1250 tel 909/557-1275 fax dcw@mccunewright.com	Cari K. Dawson Derin B. Dickerson Kyle G.A. Wallace Alston & Bird LLP 1201 W. Peachtree St Atlanta, GA 30309 404/881-7000 tel 404/881-7777 fax cari.dawson@alston.com Lisa Gilford Alston & Bird LLP 333 S. Hope Street, 16th Floor Los Angeles, CA 90071 213-576-1000 tel.

TOY-RQ-05E-00004129

			213-576-1100 fax lisa.gilford@alston.com Michael L. Mallow Loeb and Loeb LLP 10100 Santa Monica Blvd., Ste. 2200 Los Angeles, CA 90067 310-282-2287 tel. 310-919-3883 fax
Joseph Hauter vs. Toyota Motor Sales, U.S.A., Inc., Toyota Motor Corporation	SA CV10-00105 CJC	Michael Louis Kelly Kirtland & Packard LLP 2361 Rosecrans Avenue, Fourth Floor El Segundo, CA 90245 (310) 536-1000 tell. (310) 536-1001 fax mlk@kirtlandpackard.com	
Ryan Scharrel vs. Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Sales U.S.A., Inc.	1:10-cv-0227-PAB	Daniel Ellis McKenzie Michael S. Burg Seth Alan Katz Burg, Simpson, Eldredge, Hersh & Jardine, PC 40 Inverness Drive East Englewood , CO 80112-2866 303-792-5595 Fax: 303-708-0527 Email: dmckenzie@burgsimpson.com	
Jonathan Gellman vs. Toyota Motor Sales U.S.A., Inc.	1:10-cv-20006-MGC	Lance August Harke Harke & Clasby 155 S Miami Ave #600	Michael Ross Tein Lewis Tein 3059 Grand Ave #340

		Miami, FL 33130 305/536-8222 tel 305/536-8229 fax lharke@harkeclasby.com	Coconut Grove, FL 33133 305/442-1101 tel 305/442-6744 fax tein@lewistein.com
Jim Heidenreich vs. Toyota Motor North America, Inc., Toyota Motor Sales USA Inc.	4:10-cv-00035-RH-WCS	Douglas S Lyons Norwood Sherman Wilner Phillip Timothy Howard **LYONS & FARRAR PA** 325 N Calhoun St Tallahassee, FL 32301 850-222-8811 Fax: 850-222-5583 Email: dslyons@earthlink.net	
Michelle Lynch vs. Toyota Motor Corp. and Toyota Motor Sales, USA, Inc	8:10-cv-00326-SDM-TGW	J. Andrew Meyer Morgan & Morgan, PA 7th Floor 201 N Franklin St Tampa, FL 33602 813-223-5505 Fax: 813-223-5402 ameyer@forthepeople.com Scott Wm. Weinstein Morgan & Morgan, PA 12800 University Dr - Ste 600 PO Box 9504 Ft Myers, FL 33906 239/433-6880	

TOY-RQ-05E-00004131

		Fax: 239/433-6836 Email: sweinstein@forthepeople.com Tamra Carsten Givens Morgan & Morgan, PA 7th Floor 201 N Franklin St Tampa, FL 33602 813/286-4100 Fax: 813/286-4174 tgivens@forthepeople.com	
Arlene S. Heilbrunn vs. Toyota Motor Corp.	9:10-cv-80208-WJZ	Brian William Smith Smith & Vanture, LLP 1615 Forum Place West Palm Beach, FL 33401 561-684-6330 Fax: 688-0630 Email: bws@smithvanture.com	
Judith M. Enderle vs. Toyota Motor North America, Inc., Toyota Motor Corp., Toyota Motor Engineering & Manufacturing North America, Inc. and Toyota Motor Sales, USA, Inc.,	1:10-cv-00142-SEB-TAB	Irwin B. Levin COHEN & MALAD LLP One Indiana Square Suite 1400 Indianapolis, IN 46204 (317) 636-6481 Fax: (317) 636-2593 Email: ilevin@cohenandmalad.com	

Debra Poynter, Ron Poynter, Tina Preedom, Fran Preedom, Krystal Eggerding, Angela Boles, Laurie Chambers, Amy Smith Roth, Lucero Davidson, Mark Davidson vs. Toyota Motor North America, Inc., Toyota Motor Sales, USA, Inc., Toyota Motor Corp., Toyota Motor Engineering & Manufacturing North America, Inc. And Toyota Motor Manufacturing Kentucky, Inc.	2:10-cv-00021-WOB	Eric C. Deters Eric C. Deters & Associates, P.S.C. 5247 Madison Pike Independence , KY 41051 859-363-1900 Fax: 859-363-1444 Email: llittle@ericdeters.com	
Amanda R. Maillho vs. Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Sales, USA, Inc.	2:10-cv-00279-MVL-JCW	Matthew B. Moreland Becnel Law Firm, LLC 106 W. 7th St P.O. Drawer H Reserve, LA 70084 985/536-1186 tel 985/536-6445 fax Hugh P. Lambert Cayce C. Peterson Linda J. Nelson Lambert & Nelson 701 Magazine St. New Orleans, LA 70130 504-581-1750 tel. Camilo K. Salas, III	

TOY-RQ-05E-00004133

		Salas LC 650 Poydras St., Ste. 1650 New Orleans, LA 70130 504-499-3080 tel. Andres A. Alonso Jerrold S. Parker Parker & Waichman LLP 111 Great Neck Rd., Ste. 101 Great Neck, NY 11021 516-466-6500 tel. 516-466-6665 fax Christopher D. Becnel Toni B. Becnel Becnel Law Firm 425 W. Airline Hwy., Ste. B LaPlace, LA 70083 985-651-6101 tel. Matthew B. Moreland 4008 Prytania St., Ste. A New Orleans, LA 70115 504-782-9083 tel.	
Daniel Weimer, Jr., Colby Wenck, and Ann Cavalier vs. Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., Toyota	2:10-cv-00219-ILRL-SS	Daniel E. Becnel, Jr. Becnel Law Firm, LLC 106 W. 7th St P.O. Drawer H Reserve, LA 70084 985/536-1186 tel	

TOY-RQ-05E-00004134

Motor Sales, USA, Inc.		985/536-6445 fax Hugh P. Lambert Cayce C. Peterson Linda J. Nelson Lambert & Nelson 701 Magazine St. New Orleans, LA 70130 504-581-1750 tel. Camilo K. Salas, III Salas LC 650 Poydras St., Ste. 1650 New Orleans, LA 70130 504-499-3080 tel. Daniel E. Becnel, Jr. Becnel Law Firm, LLC 106 W. 7th St P.O. Drawer H Reserve, LA 70084 985/536-1186 tel 985/536-6445 fax Matthew B. Moreland 4008 Prytania St., Ste. A New Orleans, LA 70115 504-782-9083 tel.	
Gary T. Brock vs. Toyota Motor North America, Inc., Toyota Motor Engineering &	2:10-cv-00281-lLRL-SS	Daniel E. Becnel, Jr. Jennifer L. Crose Becnel Law Firm, LLC	

TOY-RQ-05E-00004135

Manufacturing North America, Inc., Toyota Motor Sales, USA, Inc.		106 W. 7th St P.O. Drawer H Reserve, LA 70084 985/536-1186 tel 985/536-6445 fax Hugh P. Lambert Cayce C. Peterson Linda J. Nelson Lambert & Nelson 701 Magazine St. New Orleans, LA 70130 504-581-1750 tel. Camilo K. Salas, III Salas LC 650 Poydras St., Ste. 1650 New Orleans, LA 70130 504-499-3080 tel. Diane K. Zink Becnel Law Firm 425 W. Airline Hwy., Ste. B LaPlace, LA 70083 985-651-6101 tel. John F. Nevares P.O. Box 13667 San Juan, PR 00908 787-722-9333 tel.	
David Hulsen vs. Toyota	4:10-cv-00103-	Chad Cameron Lucas	

TOY-RQ-05E-00004136

Motor Corp., Toyota Motor Sales, USA, Inc., Toyota Motor Engineering & Manufacturing North America, Inc.	HFS	Kuhlman Law Firm, LLC 1100 Main St. Ste. 2550 Kansas City, MO 64105 (816) 799-0330 Fax: 816-799-0336 Email: clucas@kuhlman-law.com	
Margaret Gonzalez vs. Toyota Motor Corp., Toyota Motor Sales, USA, Inc., Toyota Motor North America, Inc., and Toyota Motor Engineering & Manufacturing North America, Inc.	3:10-cv-00595-MLC-DEA	Andres F. Alonso Jerrold S. Parker Melanie H. Muhlstock Parker Waichman & Alonso Llp 111 Great Neck Road 5th Floor Great Neck, NY 11021 516-466-6665 jparker@yourlawyer.com muhlstock@yourlawyer.com Michael A. London Douglas & London, PC 111 John Street St., Suite 1400 New York, NY 10038 (212) 566-7500 mlondon@douglasandlondon.com	
Troy Menssen vs. Toyota Motor Sales, USA, Inc., Toyota Motor Engineering & Manufacturing North America, Inc. Toyota Motor Corp.	1:10-cv-00260-SO	John R. Climaco Frank E. Piscitelli, Jr. Partick G. Warner Climaco, Lefkowitz, Peca, Wilcox & Garofoli Ste. 1950	

TOY-RQ-05E-00004137

		55 Public Square Cleveland, OH 44113 216-621-8484 Fax: 216-771-1632 Email: jrclim@climacolaw.com D. Scott Kalish 405 Western Reserve Bldg. 1468 W. Ninth Street Cleveland, OH 44113 216-931-7000 tel. 216-931-9925 fax Hunter J. Shkolnik Rheingold Valet Rheingold Shkolnik et al. 113 E. 37th St. New York, NY 10016 212-684-1880 tel. 212-689-8156 fax James L. Deese Ste. 512 20325 Center Ridge Rd. Cleveland, OH 44116 440-356-5056 tel. 440-356-9260 fax John R. Whaley Richard J. Arsenault Neblett Beard & Arsenault 2220 Bonaventure Court P.O. Box 1190	

TOY-RQ-05E-00004138

		Alexandria, LA 71309 318-487-9874 tel. Mark J. Geragos Geragos & Geragos Ste. 3900 350 S. Grand Ave. Los Angeles, CA 90071 213-625-3900 tel. 213-625-1600 fax Shelley Kaufman Tamar Arminak Geragos & Geragos 644 S. Figueroa St. Los Angeles, CA 90017 213-625-3900 tel. 213-625-1600 fax	
Zahira Crespo Bithorn and Milagros Rodriguez Cruz vs. Toyota North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc.,Toyota Motor Sales USA, Inc. and Toyota de Puerto Rico Corp.	3:10-cv-01083-FAB	John F. Nevares John F. Nevares & Assoc. PSC P.O. Box 13667 San Juan , PR 00908-3667 787-722-9333 Fax: 787-721-8820 Email: jfnevares@nevareslaw.com	

TOY-RQ-05E-00004139

Linda Alford Wooten vs. Toyota North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Manufacturing Kentucky, Inc., Toyota Motor Sales USA, Inc. And Toyota Motor Corp.	3:10-cv-00229-MJP	Arthur Camden Lewis Lewis & Babcock P.O. Box 11208 Columbia, SC 29211 (803) 733-3534 acl@lewisbabcock.com	
Sylvia Pena and Albert A. Pena, III vs. Toyota Motor Corp., Toyota Motor Sales, USA, Inc.	2:10-cv-00037	Robert C. Hilliard Kevin W. Grillo Reynaldo A. Pena Hilliard Munoz Guerra, LLP 719 S. Shoreline Blvd., #500 Corpus Christi, TX 78401 361/882-1612 tel 361/882-3015 fax bobh@hmglawfirm.com Edward M. Carstarphen, III Ellis Carstarphen et al. 5847 San Felipe, Ste. 1900 Houston, TX 77057 713-647-6800 tel.713-647-6884 fax Kathryn Snapka The Snapka Law Firm P.O. Drawer 23017 Corpus Christi, TX 78403 361-888-7676 tel. 361-884-8545 fax	

TOY-RQ-05E-00004140

Michael Graves and Jeff Mullins vs. Toyota Motor Manufacturing, West Virginia, Inc.; Toyota Motor North America Inc.; Toyota Motor Engineering & Manufacturing North America, Inc.; Toyota Motor Sales U.S.A., Inc.	2:09-cv-1247	Benjamin L. Bailey Eric B. Snyder Robert P. Lorea Bailey & Glasser 209 Capitol Street Charleston, WV 25301 304/345-6555 bbailey@baileyglasser.com Edgar F. Heiskell, III P.O. Box 3232 Charleston, WV 35332 434-951-7234 tel. 434-951-7254 fax	Nicholas S. Johnson Rebecca A. Betts David B. Thomas Allen Guthrie & Thomas POB 3394 Charleston, WV 25333 304/345-9941 tel 304/345-9941 nsjohnson@agmtlaw.com Cari K. Dawson Derin B. Dickerson Alston & Bird LLP 1201 W. Peachtree St Atlanta, GA 30309 404/881-7000 tel 404/881-7777 fax cari.dawson@alston.com Lisa Gilford Alston & Bird LLP 333 S. Hope Street, 16th Floor Los Angeles, CA 90071 213-576-1000 tel. 213-576-1100 fax lisa.gilford@alston.com

TOY-RQ-05E-00004141

USDC/ATTY-006 (Rev. 4/09) Notice of Change of Attorney Information

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF WEST VIRGINIA

MICHAEL GRAVES, and MICHAEL C. GRAVES, and JEFF MULLINS, Individually, and on Behalf of all others similarly situated,

AT CHARLESTON

v.

Case Number 2:09-cv-1247

TOYOTA MOTOR MANUFACTURING, WEST VIRGINIA, INC., et al.

NOTICE OF CHANGE OF ATTORNEY INFORMATION

Select and complete the appropriate section of this form to update your name and/or firm information, to add your name as counsel of record, to change representation within your firm, or to remove your name from the court's service list for the above-entitled action only. DO NOT use this form to withdraw from the above-entitled action, which requires a motion to withdraw and a court order pursuant to LR Civ P 83.4.

I, Rodney A. Smith, hereby provide this ***Notice of Change of Attorney Information*** to the Court and request the Clerk's Office to:

Name of Attorney

◉ **Please add my name as counsel of record *in the above-entitled action only* as follows:**

My firm/government agency, Bailey & Glasser, LLP, has made an appearance in the above-entitled action. I request to be added as additional counsel of record for the party(s) on whose behalf my firm/government agency has already made an appearance.

○ **Please change within-firm representation *in the above-entitled action only* as follows:**

My firm/government agency, _____,

by _____,
has made an appearance in the above-entitled action. I request to be substituted as counsel of record for the party(s) on whose behalf the above-named attorney has appeared and further request the court to remove the above-named attorney from the court's service list for this case only.

USDC/ATTY-006 (Rev. 4/09) Notice of Change of Attorney Information

O **Please remove me from the Court's service list *for the above-entitled action only* as follows:**

I am to remain counsel of record for the following party(s):

_____

_____

_____

However, I do not wish to receive copies of any future orders, correspondence, motions, pleadings, notices, etc., and am notifying the court to remove my name from its service list for this case only. I will notify the Clerk of Court should this notice requirement change.

Further, I hereby absolve other counsel of record, if any exist, or pro se parties, from serving any future correspondence, motions, pleadings, notices, etc., upon me in this case only.

O **Please update my name and/or firm information *for the above-entitled action only* as follows:**

Former name: _____ New name: _____

New firm/government agency name: _____

New address: _____

_____

_____ _____ _____

New telephone number New facsimile number New e-mail address *(provide only if a registered CM/ECF e-filer)*

Date: 02/17/2010

/s/ Rodney A. Smith

Rodney Smith, Esq. (WVSB #9750)
Bailey & Glasser LLP
209 Capitol Street
Charleston, West Virginia 25301
Phone: (304) 345-6555
Facsimile: (304) 342-1110
rsmith@baileyglasser.com

BY FAX

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA

CIVIL COVER SHEET

I (a) PLAINTIFFS (Check box if you are representing yourself ☐)

ERIC KMETZ, and JOE MORRIS, on behalf of themselves and all others similarly situated

DEFENDANTS

TOYOTA MOTOR SALES, U.S.A., INC., TOYOTA MOTOR CORPORATION, and DOE DEFENDANTS 1-10

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)

Michael Louis Kelly - SBN 82063
KIRTLAND & PACKARD LLP
2631 Rosecrans Ave
Fourth Floor
El Segundo, CA 90245
(310) 536-1000

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an X in one box only.)

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.)

	PTF	DEF		PTF	DEF
Citizen of This State	☒ 1	☐ 1	Incorporated or Principal Place of Business in this State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated and Principal Place of Business in Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☒ 3	Foreign Nation	☐ 6	☐ 6

IV. ORIGIN (Place an X in one box only.)

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify): ☐ 6 Multi-District Litigation ☐ 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: ☒ Yes ☐ No (Check 'Yes' only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23: ☒ Yes ☐ No ☐ **MONEY DEMANDED IN COMPLAINT: $** _____

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

28 U.S.C. Section 1332 - Diversity

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce/ICC Rates/etc.
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 810 Selective Service
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 875 Customer Challenge 12 USC 3410
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Act
- ☐ 892 Economic Stabilization Act
- ☐ 893 Environmental Matters
- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Info. Act
- ☐ 900 Appeal of Fee Determination Under Equal Access to Justice
- ☐ 950 Constitutionality of State Statutes

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loan (Excl. Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS - PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Fed. Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury-Med Malpractice
- ☐ 365 Personal Injury-Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 463 Habeas Corpus-Alien Detainee
- ☐ 465 Other Immigration Actions

TORTS - PERSONAL PROPERTY
- ☒ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

CIVIL RIGHTS
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/Accommodations
- ☐ 444 Welfare
- ☐ 445 American with Disabilities - Employment
- ☐ 446 American with Disabilities - Other
- ☐ 440 Other Civil Rights

PRISONER PETITIONS
- ☐ 510 Motions to Vacate Sentence Habeas Corpus
- ☐ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus/ Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition

FORFEITURE/ PENALTY
- ☐ 610 Agriculture
- ☐ 620 Other Food & Drug
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 630 Liquor Laws
- ☐ 640 R.R. & Truck
- ☐ 650 Airline Regs
- ☐ 660 Occupational Safety/Health
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Mgmt. Relations
- ☐ 730 Labor/Mgmt. Reporting & Disclosure Act
- ☐ 740 Railway Labor Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Empl. Ret. Inc. Security Act

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS - Third Party 26 USC 7609

FOR OFFICE USE ONLY: Case Number: CV09-8478

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

TOY-RQ-05E-00004144

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA

CIVIL COVER SHEET

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? [X] No [ ] Yes

If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? [ ] No [X] Yes

If yes, list case number(s): CV 09-08143 AHM (FMOx)

Civil cases are deemed related if a previously filed case and the present case:

(Check all boxes that apply)

[X] A. Arise from the same or closely related transactions, happenings, or events; or

[X] B. Call for determination of the same or substantially related or similar questions of law and fact; or

[X] C. For other reasons would entail substantial duplication of labor if heard by different judges; or

[ ] D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.

[ ] Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Eric Kmetz - Los Angeles Joe Morris - Orange	

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.

[ ] Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Toyota Motor Sales U.S.A., Inc. - Los Angeles	Toyota Motor Corporation - Japan

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.

Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country

*** Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties**

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER): _____ **Date** 11/17/2009

Michael Louis Kelly

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))

TOY-RQ-05E-00004145

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Christina A. Snyder and the assigned discovery Magistrate Judge is Robert N. Block.

The case number on all documents filed with the Court should read as follows:

CV09- 8478 CAS (RNBx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

[X] **Western Division**
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

[ ] **Southern Division**
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

[ ] **Eastern Division**
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

TOY-RQ-05E-00004146

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ERIC KMETZ, and JOE MORRIS, on behalf of themselves and all others similarly situated, PLAINTIFF(S) V. TOYOTA MOTOR SALES, U.S.A., INC., TOYOTA MOTOR CORPORATION, and DOE DEFENDANTS 1-10 DEFENDANT(S).	CASE NUMBER CV09-8478 CAS (RNBx) **SUMMONS**

TO: DEFENDANT(S): _____

A lawsuit has been filed against you.

Within 20 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached [x] complaint [ ] _____ amended complaint [ ] counterclaim [ ] cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Michael Louis Kelly, whose address is 2361 Rosecrans Ave, 4th Floor, El Segundo, CA 90245. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk, U.S. District Court

Dated: NOV 18 2009

By: NATALIE LONGORIA
Deputy Clerk

(Seal of the Court)

1198

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

TOY-RQ-05E-00004147

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Eric Kmetz et al Plaintiff(s), v. Toyota Motor Sales, U.S.A., Inc. et al Defendant(s).	CASE NUMBER: CV09-08478 CAS (RNBx) **ORDER RE TRANSFER PURSUANT TO GENERAL ORDER 08-05 (Related Cases)**

CONSENT

I hereby consent to the transfer of the above-entitled case to my calendar, pursuant to General Order 08-05.

11/24/09
Date

A. Howard Matz
United States District Judge

DECLINATION

I hereby decline to transfer the above-entitled case to my calendar for the reasons set forth:

_____

_____

_____

_____

_____

_____

_____ _____

Date *United States District Judge*

REASON FOR TRANSFER AS INDICATED BY COUNSEL

Case CV09-08143 AHM (FMOx) and the present case:

- ☑ A. Arise from the same or closely related transactions, happenings or events; or
- ☑ B. Call for determination of the same or substantially related or similar questions of law and fact; or
- ☑ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
- ☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.
- ☐ E. Involve one or more defendants from the criminal case in common, and would entail substantial duplication of labor if heard by different judges (applicable only on civil forfeiture action).

NOTICE TO COUNSEL FROM CLERK

Pursuant to the above transfer, any discovery matters that are or may be referred to a Magistrate Judge are hereby transferred from Magistrate Judge Block to Magistrate Judge Olguin.

On all documents subsequently filed in this case, please substitute the initials AHM (FMOx) after the case number in place of the initials of the prior judge, so that the case number will read CV09-08478 AHM (FMOx). This is very important because documents are routed to the assigned judges by means of these initials. The case file, under seal documents, exhibits, docket, transcripts or depositions may be viewed at the ☑ Western ☐ Southern ☐ Eastern Division.

Traditionally filed subsequent documents must be filed at the ☑ Western ☐ Southern ☐ Eastern Division.
Failure to file at the proper location will result in your documents being returned to you.

cc: ☐ *Previous Judge* ☐ *Statistics Clerk*

TOY-RQ-05E-00004148

LISA M. GILFORD (State Bar No. 171641)
ALSTON + BIRD LLP
333 South Hope Street
Sixteenth Floor
Los Angeles, California 90071
Telephone: (213) 576-1000
Facsimile: (213) 576-1100
E-mail: lisa.gilford@alston.com

VINCENT GALVIN, JR. (State Bar No. 104448)
BOWMAN AND BROOKE
1741 Technology Drive
San Jose, CA 95110
Telephone: (408) 279-5393
Facsimile: (408) 279-5845
E-mail: vgalvin@bowman-brooke.com

Attorneys for Defendants
TOYOTA MOTOR SALES, U.S.A., INC., and TOYOTA MOTOR CORPORATION

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ERIC KMETZ, and JOE MORRIS, on behalf of themselves and all others similarly situated,

Plaintiff,

v.

TOYOTA MOTOR SALES, U.S.A., INC., TOYOTA MOTOR CORPORATION, and DOES DEFENDANTS 1-10,

Defendant.

Case No.: CV09-8478 CAS (RNBx)
Assigned to the Honorable A. Howard Matz

STIPULATION TO EXTEND TIME TO RESPOND TO INITIAL COMPLAINT

Ctrm: 14

Filing Date: November 18, 2009

Pursuant to Civil Local Rule 8-3 of the United States District Court, Central District of California, Defendants Toyota Motor Sales, U.S.A., Inc. and Toyota Motor Corporation, and Plaintiffs Eric Kmetz and Joe Morris, by and through their respective counsel of record, hereby stipulate to extend Defendants' time within which to respond to the Complaint in this matter by twenty-six (26) days.

TOY-RQ-05E-00004149

The new deadline for Defendants to file an Answer or otherwise respond to the Complaint is January 4, 2010.

It is further stipulated that Toyota Motor Corporation ("TMC") will be deemed to be served as of the date this Stipulation is filed with the Court.

In exchange for this agreement to forego the formalities of the Hague Service Convention otherwise required for service on TMC, Plaintiffs and TMC agree to the following: (1) TMC will have an additional 60 days to respond to all written discovery requests; (ii) any TMC corporate representative deposition noticed under FRCP 30(b)(6) will be done on at least 90 days notice; and (iii) at Defendants' election, any depositions of a corporate representative noticed under FRCP 30(b)(6) shall be conducted at a law office selected by Defendants in the Los Angeles area.

DATED: December 2, 2009

MICHAEL LOUIS KELLY
BEHRAM V. PAREKH
HEATHER M. PETERSON
KIRTLAND & PACKARD LLP

/s/ BEHRAM V. PAREKH
Behram V. Parekh

Attorneys for **PLAINTIFFS**

DATED: December 2, 2009

LISA M. GILFORD
ALSTON & BIRD LLP

VINCENT GALVIN, JR.
BOWMAN AND BROOKE

/s/ LISA M. GILFORD
Lisa M. Gilford

Attorneys for Defendants
TOYOTA MOTOR SALES, U.S.A., INC., and TOYOTA MOTOR CORPORATION

TOY-RQ-05E-00004150

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ERIC KMETZ, et al., Plaintiffs, v. TOYOTA MOTOR SALES, U.S.A., et al., Defendants.	CASE NO. CV 09-8478 AHM (FMOx) INITIAL ORDER FOLLOWING FILING OF COMPLAINT ASSIGNED TO JUDGE MATZ

COUNSEL FOR PLAINTIFF SHALL SERVE THIS ORDER ON ALL DEFENDANTS AND/OR THEIR COUNSEL ALONG WITH THE SUMMONS AND COMPLAINT, OR IF THAT IS NOT PRACTICABLE AS SOON AS POSSIBLE THEREAFTER. IF THIS CASE WAS ASSIGNED TO THIS COURT AFTER BEING REMOVED FROM STATE COURT, THE DEFENDANT WHO REMOVED THE CASE SHALL SERVE THIS ORDER ON ALL OTHER PARTIES.

This case has been assigned to the calendar of Judge A. Howard Matz. Judge Matz is intent on assuring that, as called for in Fed.R.Civ. P. 1, this case will proceed so as "to secure [a] just, speedy and inexpensive determination . . ." The parties are hereby informed of how they are expected to proceed.

A. THE COURT'S ORDERS

Copies of Judge Matz's orders that may have specific application to this case are available on the Central District of California website. See ¶ J. Those orders include the following (this is not necessarily a complete list):

(1) Order Setting Rule 16(b) Scheduling Conference

(2) Scheduling and Case Management Order

(3) Order re Protective Orders and Treatment of Confidential Information

(4) Orders (separate) re Civil Jury Trials and Court Trials

(5) Order re Settlement Conference Before This Court

B. SERVICE OF PLEADINGS

Although Fed.R.Civ.P. 4(m) does not require the summons and complaint to be served for as much as 120 days, the Court expects that they will be served much sooner than that, and will require plaintiff to show cause before then if it appears that there is undue delay.

C. ASSIGNMENT TO A MAGISTRATE JUDGE

Under 28 U.S.C. § 636, the parties may consent to have a Magistrate Judge preside over all proceedings, including trial. The Magistrate Judges who accept those designations are identified on the Central District's website, which also contains the consent form. See ¶ K.

D. APPLICATIONS AND STIPULATIONS FOR EXTENSIONS OF TIME

A. Applications or Stipulations to Extend the Time to File any Required Document or to Continue any Pretrial or Trial Date.

No stipulations extending scheduling requirements or modifying applicable rules are effective until and unless the Court approves them. Both applications and stipulations must set forth:

TOY-RQ-05E-00004152

1. the existing due date or hearing date;

2. specific, concrete reasons supporting good cause for granting the extension. In this regard, a statement that an extension "will promote settlement" is insufficient. The requesting party or parties must indicate the status of ongoing negotiations: have written proposals been exchanged? Is counsel in the process of reviewing a draft settlement agreement? Has a mediator been selected?

3. whether there have been prior requests for extensions, and whether these were granted or denied by the Court.

E. TRO'S AND INJUNCTIONS

Parties seeking emergency or provisional relief shall comply with F.R.Civ.P. 65 and Local Rule 65. The Court will not rule on any application for such relief for at least 24 hours after the party subject to the requested order has been served; such party may file opposing or responding papers in the interim. The parties shall lodge a courtesy copy, conformed to reflect that it has been filed, of all papers relating to TROs and injunctions. The courtesy copy shall be placed in the drop box in the entrance way to chambers, to the left of Courtroom 14. All such papers shall be filed "loose" - - *i.e.*, not inside envelopes.

F. CASES REMOVED FROM STATE COURT

All documents filed in state court, including documents appended to the complaint, answers and motions, must be refiled in this Court as a supplement to the Notice of Renewal, if not already included. *See* 28 U.S.C. § 1447(a)(b). If the defendant has not yet answered or moved, the answer or responsive pleading filed in this Court must comply with the Federal Rules of Civil Procedure and the Local Rules of the Central District. If before the case was removed a motion was pending in state court, it must be re-noticed in accordance with Local Rule 7.

/ / /

TOY-RQ-05E-00004153

G. STATUS OF FICTITIOUSLY NAMED DEFENDANTS

This Court intends to adhere to the following procedures where a matter is removed to this Court on diversity grounds with fictitiously named defendants referred to in the complaint. (*See* 28 U.S.C. ¶¶ 1441(a) and 1447.)

1. Plaintiff is normally expected to ascertain the identity of and serve any fictitiously named defendants within 120 days of the removal of the action to this Court.

2. If plaintiff believes (by reason of the necessity for discovery or otherwise) that fictitiously named defendants cannot be fully identified within the 120-day period, an *ex parte* application requesting permission to extend that period to effectuate service may be filed with this Court. Such application shall state the reasons therefor, and may be granted upon a showing of good cause. The *ex parte* application shall be served upon all appearing parties, and shall state that appearing parties may comment within seven (7) days of the filing of the *ex parte* application.

3. If plaintiff desires to substitute a named defendant for one of the fictitiously named parties, plaintiff first shall seek to obtain consent from counsel for the previously-identified defendants (and counsel for the fictitiously named party, if that party has separate counsel). If consent is withheld or denied, plaintiff may apply *ex parte* requesting such amendment, with notice to all appearing parties. Each party shall have seven calendar days to respond. The *ex parte* application and any response should comment not only on the substitution of the named party for a fictitiously named defendant, but on the question of whether the matter should thereafter be remanded to the Superior Court if diversity of citizenship is destroyed by the addition of the new substituted party. *See* U.S.C. § 1447(c)(d).

/ / /

/ / /

TOY-RQ-05E-00004154

H. BANKRUPTCY APPEALS

Counsel shall comply with the ORDER RE PROCEDURE TO BE FOLLOWED IN APPEAL FROM BANKRUPTCY COURT issued at the time the appeal is filed in the District Court. The matter is considered submitted upon the filing of the appellant's reply brief. No oral argument is held unless otherwise ordered by this Court.

I. MOTIONS UNDER FED.R.CIV.P. 12

Many motions to dismiss or to strike could be avoided if the parties confer in good faith (as they are required to do under L.R. 7-3), especially for perceived defects in a complaint, answer or counterclaim which could be corrected by amendment. *See Chang v. Chen*, 80 F.3d 1293, 1296 (9th Cir. 1996) (where a motion to dismiss is granted, a district court should provide leave to amend unless it is clear that the complaint could not be saved by *any* amendment). Moreover, a party has the right to amend his complaint "once as a matter of course at any time before a responsive pleading is served." Fed.R.Civ.P. 15(a). A 12(b)(6) motion is not a responsive pleading and therefore plaintiff might have a right to amend. *See Nolen v. Fitzharris*, 450 F.2d 958, 958-59 (9th Cir. 1971); *St. Michael's Convalescent Hospital v. California*, 643 F.2d 1369, 1374 (9th Cir. 1981). And even where a party has amended his Complaint once or a responsive pleading has been served, the Federal Rules provide that leave to amend should be "freely given when justice so requires." F.R.Civ.P. 15(a). The Ninth Circuit requires that this policy favoring amendment be applied with "extreme liberality." *Morongo Band of Mission Indians v. Rose*, 893 F.2d 1074, 1079 (9th Cir. 1990). These principles require that counsel for the plaintiff should carefully evaluate the defendant's contentions as to the deficiencies in the complaint and that in many instances the defendant (or moving party) should agree to any amendment that would cure a curable defect.

/ / /

TOY-RQ-05E-00004155

In the unlikely event that motions under Fed.R.Civ.P. 12 challenging pleadings are filed after the Rule 16(b) Scheduling Conference, the moving party shall attach a copy of the challenged pleading to the Memorandum of Points and Authorities in support of the motion.

The foregoing provisions apply as well to motions to dismiss a counterclaim, answer or affirmative defense, which a plaintiff might contemplate bringing.

J. COURTESY COPIES AND COMPUTER DISKS

Courtesy copies are required for all e-filed documents and must be delivered to the drop box in the entrance way to chambers, to the left of Courtroom 14, located at 312 N. Spring Street, Spring Street level, no later than noon the following business day. In addition, courtesy copies of manually filed documents are required when: (1) reply papers are filed late; or (2) emergency circumstances make them essential -- e.g., for TROs, ex parte applications or papers filed during trial or within two days of a scheduled hearing, pre-trial conference or trial. When the Court requires an electronic version of any document be submitted (e.g., with summary judgment papers or proposed jury instructions), that Word/WordPerfect formatted document should be emailed to the court clerk at stephen_montes@cacd.uscourts.gov. Counsel should avoid leaving extra copies of voluminous documents with chambers when they are not necessary to comply with this paragraph.

K. ELECTRONIC FILING

All documents which are required to be filed in an electronic format pursuant to General Order No. 08-02 must be filed electronically no later than midnight on the date due, unless otherwise ordered by the Court. Documents filed late may be stricken by the Court. The Court will not accept documents which were filed electronically, but which otherwise fail to comply with filing requirements.

TOY-RQ-05E-00004156

Courtesy Paper Copies. Unless otherwise ordered, courtesy paper copies of all electronically filed documents must be delivered to the courtesy box outside chambers no later than 12:00 noon the following business day. The courtesy paper copies must comply with Local Rule 11-3, i.e., blue backed, font size, page numbering, tabbed exhibits, etc., unless otherwise directed. IF A DOCUMENT CONTAINS EXHIBITS THAT ARE NOT TABBED, THE COURT MAY DECLINE TO READ THE EXHIBITS. The courtesy paper copy must be prominently labeled COURTESY COPY on the face page. The courtesy paper copy must include the Notice of Electronic Filing, which should be the last page of the document. The court's CM/ECF website contains additional instructions for delivery of courtesy copies.

It would benefit the Court, and thus would be in counsel's interest, for counsel seeking any kind of expedited relief, such as by an *Ex Parte* Application or an application for a Temporary Restraining Order, to deliver the courtesy paper copies to chambers *immediately* after the applicable filed document(s) have been filed.

L. WEBSITE

Copies of this Order and other orders of this Court are available on the Central District of California's website, at "www.cacd.uscourts.gov," under "Judge's Requirements."

The Court thanks counsel and the parties for their anticipated cooperation.

IT IS SO ORDERED.

Dated: December 3, 2009

A. HOWARD MATZ
United States District Judge

TOY-RQ-05E-00004157

Name and address: CARI K. DAWSON
ALSTON & BIRD LLP
1201 W. PEACHTREE ST
ATLANTA, GA 30309
(404) 881-7000

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ERIC KMETZ, et al., Plaintiff(s) v. TOYOTA MOTOR SALES, U.S.A., et al., Defendant(s).	CASE NUMBER 2:09-cv-08478-AHM-FMO **APPLICATION OF NON-RESIDENT ATTORNEY TO APPEAR IN A SPECIFIC CASE**

NOTICE: Effective June 1, 2004, the fee for *Pro Hac Vice* Appearance is $185.00 for **each case** application. Please submit the fee with your application. Pursuant to Local Rule 83-2.4, submission of this application and the fee is waived for attorneys for the United States, its departments and agencies with Appointment Affidavits on file with the Clerk. If no Appointment Affidavit is on file, submission of the application is required.

A **CERTIFICATE OF GOOD STANDING** for the applicant from the state for which the applicant is a member of the bar, and which has been issued within 30 days, must be attached to this application.

I, Cari K. Dawson, hereby apply to the Court under Local Rule 83-2.8.2 for permission to appear and participate in the above-entitled action on behalf of ☐ Plaintiff ☑ Defendant: Toyota Motor Sales, U.S.A., Inc., et al by whom I have been retained.

My *out-of-state* business information is as follows:

Alston & Bird LLP
Firm Name

1201 W. Peachtree Street
Street Address

Atlanta, GA 30309
City, State, Zip

cari.dawson@alston.com
E-Mail Address

(404) 881-7000
Telephone Number

(404) 881-7777
Fax Number

I am a member in good standing and eligible to practice before the following courts:

Title of Court	*Date of Admission*
See attached	

I am not a resident of, nor am I regularly employed, engaged in business, professional or other activities in the State of California. I am not currently suspended or disbarred in any court.

TOY-RQ-05E-00004158

I have concurrently, or within three (3) years of this application, made *Pro Hac Vice* applications to this Court in the following actions:

Case Number	*Title of Action*	*Date of Application*	*Application Granted or Denied*

If any *Pro Hac Vice* applications submitted within three (3) years of this application have been denied by the Court, please explain:

N/A

I designate Lisa Gilford as local counsel, whose business information is as follows:

Alston & Bird LLP
Firm Name

333 South Hope Street - 16th Floor
Street Address

Los Angeles, CA 90071
City, State, Zip

lisa.gilford@alston.com
E-Mail Address

(213) 576-1114
Telephone Number

(213) 576-1100
Fax Number

who is a member in good standing of the Bar of this Court and maintains an office in the Central District of California for the practice of law, as the attorney with whom the Court and opposing counsel may readily communicate regarding the conduct of this case, and upon whom papers may be served.

I declare under penalty of perjury that the foregoing is true and correct and that I am familiar with the Local Rules, the Local Criminal Rules, the F.R. Civ. P., the F.R. Crim. P., and the F.R. Evidence.

Dated December 16, 2009

Cari K. Dawson
Applicant's Name (please print)

Cari K. Dawson
Applicant's Signature

I hereby consent to the foregoing designation as local counsel.

Dated December 18, 2009

Lisa Gilford
Designee's Name (please print)

Designee's Signature

171641
Designee's California State Bar Number

NOTE: COUNSEL AND PARTIES ARE REMINDED TO SUBMIT A COMPLETED *ORDER ON APPLICATION OF NON-RESIDENT ATTORNEY TO APPEAR IN A SPECIFIC CASE* (G-64 ORDER) ALONG WITH THIS APPLICATION.

TOY-RQ-05E-00004159

CARI K. DAWSON
[Georgia Bar No. 213490]

Bar/Court	Date Admitted
All State Courts of Georgia	
Supreme Court of the State of Georgia	1995
Court of Appeals of the State of Georgia	1995
United States District Court for the Northern District of Georgia	1995
U.S. Court of Appeals for the Fifth Circuit	1999
U.S. Court of Appeals for the Eleventh Circuit	1999
U.S. Court of Appeals for the Eighth Circuit	2000
United States District Court for the District of Vermont	2000
United States District Court, District of Colorado	2001
United States District Court for the Middle District of Georgia	2005
U.S. Court of Appeals for the Ninth Circuit	2006
Supreme Court of the United States	2006
U.S. Court of Appeals for the Third Circuit	2007
U.S. Court of Appeals for the Sixth Circuit	2008

CERTIFICATE OF GOOD STANDING

UNITED STATES OF AMERICA }
} **ss.**
NORTHERN DISTRICT OF GEORGIA }

I, James N. Hatten, Clerk of the United States District Court for the Northern District of Georgia,

DO HEREBY CERTIFY that **CARI K. DAWSON , State Bar No. 213490,** was duly admitted to practice in said Court on May 31, 1995, and is in good standing as a member of the bar of said Court.

Dated at Atlanta, Georgia, this 15th day of December, 2009.

JAMES N. HATTEN
CLERK OF COURT

By: Jamee Green
Jamee Green
Deputy Clerk

Name and address: DERIN B. DICKERSON
ALSTON & BIRD LLP
1201 W. PEACHTREE ST
ATLANTA, GA 30309
(404) 881-7000

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ERIC KMETZ, et al., Plaintiff(s) v. TOYOTA MOTOR SALES, U.S.A., et al., Defendant(s).	CASE NUMBER 2:09-cv-08478-AHM-FMO **APPLICATION OF NON-RESIDENT ATTORNEY TO APPEAR IN A SPECIFIC CASE**

NOTICE: Effective June 1, 2004, the fee for *Pro Hac Vice* Appearance is $185.00 for **each case** application. Please submit the fee with your application. Pursuant to Local Rule 83-2.4, submission of this application and the fee is waived for attorneys for the United States, its departments and agencies with Appointment Affidavits on file with the Clerk. If no Appointment Affidavit is on file, submission of the application is required.

A **CERTIFICATE OF GOOD STANDING** for the applicant from the state for which the applicant is a member of the bar, and which has been issued within 30 days, must be attached to this application.

I, Derin B. Dickerson, hereby apply to the Court under Local Rule 83-2.8.2 for permission to appear and participate in the above-entitled action on behalf of ☐ Plaintiff ☑ Defendant: Toyota Motor Sales, U.S.A., Inc., et al by whom I have been retained.

My *out-of-state* business information is as follows:

Alston & Bird LLP
Firm Name

1201 W. Peachtree Street
Street Address

Atlanta, GA 30309
City, State, Zip

derin.dickerson@alston.com
E-Mail Address

(404) 881-7000
Telephone Number

(404) 881-7777
Fax Number

I am a member in good standing and eligible to practice before the following courts:

Title of Court	*Date of Admission*
See attached	

I am not a resident of, nor am I regularly employed, engaged in business, professional or other activities in the State of California. I am not currently suspended or disbarred in any court.

TOY-RQ-05E-00004162

I have concurrently, or within three (3) years of this application, made *Pro Hac Vice* applications to this Court in the following actions:

Case Number	*Ttitle of Action*	*Date of Application*	*Application Granted or Denied*

If any *Pro Hac Vice* applications submitted within three (3) years of this application have been denied by the Court, please explain:

N/A

I designate Lisa Gilford as local counsel, whose business information is as follows:

Alston & Bird LLP
Firm Name

333 South Hope Street - 16th Floor
Street Address

Los Angeles, CA 90071
City, State, Zip

lisa.gilford@alston.com
E-Mail Address

(213) 576-1114
Telephone Number

(213) 576-1100
Fax Number

who is a member in good standing of the Bar of this Court and maintains an office in the Central District of California for the practice of law, as the attorney with whom the Court and opposing counsel may readily communicate regarding the conduct of this case, and upon whom papers may be served.

I declare under penalty of perjury that the foregoing is true and correct and that I am familiar with the Local Rules, the Local Criminal Rules, the F.R. Civ. P., the F.R. Crim. P., and the F.R. Evidence.

Dated December 16, 2009

Derin B. Dickerson
Applicant's Name (please print)

Applicant's Signature

I hereby consent to the foregoing designation as local counsel.

Dated December 18, 2009

Lisa Gilford
Designee's Name (please print)

Designee's Signature

171641
Designee's California State Bar Number

NOTE: COUNSEL AND PARTIES ARE REMINDED TO SUBMIT A COMPLETED *ORDER ON APPLICATION OF NON-RESIDENT ATTORNEY TO APPEAR IN A SPECIFIC CASE* (G-64 ORDER) ALONG WITH THIS APPLICATION.

TOY-RQ-05E-00004163

DERIN B. DICKERSON
[Georgia Bar No. 220620]

Bar/Court	Date Admitted
Georgia Court of Appeals	2004
US Court of Appeals – 3rd Circuit	2007
US District Court – Northern District of Georgia	2008
US Court of Appeals – 11th Circuit	2008
State Bar of Georgia	
Georgia Supreme Court	

TOY-RQ-05E-00004164

CERTIFICATE OF GOOD STANDING

UNITED STATES OF AMERICA }
} **ss.**
NORTHERN DISTRICT OF GEORGIA }

I, James N. Hatten, Clerk of the United States District Court for the Northern District of Georgia,

DO HEREBY CERTIFY that **DERIN BRONSON DICKERSON , State Bar No. 220620,** was duly admitted to practice in said Court on March 22, 2004, and is in good standing as a member of the bar of said Court.

Dated at Atlanta, Georgia, this 15th day of December, 2009.

JAMES N. HATTEN
CLERK OF COURT

By: _____
Jamee Green
Deputy Clerk

Name and address: KYLE G.A. WALLACE
ALSTON & BIRD LLP
1201 W. PEACHTREE ST
ATLANTA, GA 30309
(404) 881-7000

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ERIC KMETZ, et al., Plaintiff(s) v. TOYOTA MOTOR SALES, U.S.A., et al., Defendant(s).	CASE NUMBER 2:09-cv-08478-AHM-FMO **APPLICATION OF NON-RESIDENT ATTORNEY TO APPEAR IN A SPECIFIC CASE**

NOTICE: Effective June 1, 2004, the fee for *Pro Hac Vice* Appearance is $185.00 for **each case** application. Please submit the fee with your application. Pursuant to Local Rule 83-2.4, submission of this application and the fee is waived for attorneys for the United States, its departments and agencies with Appointment Affidavits on file with the Clerk. If no Appointment Affidavit is on file, submission of the application is required.

A **CERTIFICATE OF GOOD STANDING** for the applicant from the state for which the applicant is a member of the bar, and which has been issued within 30 days, must be attached to this application.

I, Kyle G.A. Wallace, hereby apply to the Court under Local Rule 83-2.8.2 for permission to appear and participate in the above-entitled action on behalf of ☐ Plaintiff ☑ Defendant: Toyota Motor Sales, U.S.A., Inc., et al by whom I have been retained.

My *out-of-state* business information is as follows:

Alston & Bird LLP
Firm Name

1201 W. Peachtree Street
Street Address

Atlanta, GA 30309
City, State, Zip

kyle.wallace@alston.com
E-Mail Address

(404) 881-7000
Telephone Number

(404) 881-7777
Fax Number

I am a member in good standing and eligible to practice before the following courts:

Title of Court	*Date of Admission*
See attached	

I am not a resident of, nor am I regularly employed, engaged in business, professional or other activities in the State of California. I am not currently suspended or disbarred in any court.

TOY-RQ-05E-00004166

I have concurrently, or within three (3) years of this application, made *Pro Hac Vice* applications to this Court in the following actions:

Case Number	*Title of Action*	*Date of Application*	*Application Granted or Denied*

If any *Pro Hac Vice* applications submitted within three (3) years of this application have been denied by the Court, please explain:

N/A

I designate Lisa Gilford as local counsel, whose business information is as follows:

Alston & Bird LLP
Firm Name

333 South Hope Street - 16th Floor
Street Address

Los Angeles, CA 90071
City, State, Zip

lisa.gilford@alston.com
E-Mail Address

(213) 576-1114
Telephone Number

(213) 576-1100
Fax Number

who is a member in good standing of the Bar of this Court and maintains an office in the Central District of California for the practice of law, as the attorney with whom the Court and opposing counsel may readily communicate regarding the conduct of this case, and upon whom papers may be served.

I declare under penalty of perjury that the foregoing is true and correct and that I am familiar with the Local Rules, the Local Criminal Rules, the F.R. Civ. P., the F.R. Crim. P., and the F.R. Evidence.

Dated December 16, 2009

Kyle G.A. Wallace
Applicant's Name (please print)

Applicant's Signature

I hereby consent to the foregoing designation as local counsel.

Dated December 16, 2009

Lisa Gilford
Designee's Name (please print)

Designee's Signature

171641
Designee's California State Bar Number

NOTE: COUNSEL AND PARTIES ARE REMINDED TO SUBMIT A COMPLETED *ORDER ON APPLICATION OF NON-RESIDENT ATTORNEY TO APPEAR IN A SPECIFIC CASE* (G-64 ORDER) ALONG WITH THIS APPLICATION.

TOY-RQ-05E-00004167

KYLE G.A. WALLACE
[Georgia Bar No. 734167]

Bar/Court	Date Admitted
All State Courts of Georgia	2002
Supreme Court of Georgia	2004
Court of Appeals of Georgia	2004
US Court of Appeals – 11th Circuit	2004
US District Court – Middle District of Georgia	2004
US District Court – Southern District of Georgia	2005
US District Court – Northern District of Georgia	2008

CERTIFICATE OF GOOD STANDING

UNITED STATES OF AMERICA }
} **ss.**
NORTHERN DISTRICT OF GEORGIA }

I, James N. Hatten, Clerk of the United States District Court for the Northern District of Georgia,

DO HEREBY CERTIFY that **KYLE G.A. WALLACE , State Bar No. 734167,** was duly admitted to practice in said Court on February 25, 2008, and is in good standing as a member of the bar of said Court.

Dated at Atlanta, Georgia, this 15th day of December, 2009.

JAMES N. HATTEN
CLERK OF COURT

By: _____
Jamee Green
Deputy Clerk

LISA M. GILFORD (State Bar No. 171641)
ALSTON + BIRD LLP
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FILED
CLERK, U.S. DISTRICT COURT
DEC 30 2009
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ERIC KMETZ, and JOE MORRIS, on behalf of themselves and all others similarly situated, Plaintiff(s) v. TOYOTA MOTOR SALES, U.S.A., INC., TOYOTA MOTOR CORPORATION, and DOES DEFENDANTS 1-10, Defendant(s).	CASE NUMBER 2:09-CV-08478 AHM (FMO) ORDER ON APPLICATION OF NON-RESIDENT ATTORNEY TO APPEAR IN A SPECIFIC CASE

The Court, having reviewed the accompanying Application of Cari K. Dawson,
Applicant's Name

of Alston + Bird LLP, 1201 W. Peachtree Street, Atlanta, GA 30309
Firm Name /Address

(404) 881-7000 cari.dawson@alston.com
Telephone Number *E-mail Address*

for permission to appear and participate in the above-entitled action on behalf of ☐ Plaintiff ☒ Defendant
TOYOTA MOTOR SALES U.S.A., INC., et al.

and the designation of Lisa Gilford / 171641
Local Counsel Designee /State Bar Number

of Alston + Bird LLP, 333 South Hope Street, 16th Floor, Los Angeles, CA 90071
Local Counsel Firm / Address

(213) 576-1000 lisa.gilford@alston.com
Telephone Number *E-mail Address*

as local counsel, hereby **ORDERS** the Application be:

☑ GRANTED
☐ DENIED. Fee, if paid, shall be returned by the Clerk.

Dated DEC 30 2009

U. S. District Judge/~~U.S. Magistrate Judge~~

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www.FormsWorkflow.com

LISA M. GILFORD (State Bar No. 171641)
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FILED
CLERK, U.S. DISTRICT COURT
DEC 30 2009
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ERIC KMETZ, and JOE MORRIS, on behalf of themselves and all others similarly situated, Plaintiff(s) v. TOYOTA MOTOR SALES, U.S.A., INC., TOYOTA MOTOR CORPORATION, and DOES DEFENDANTS 1-10, Defendant(s).	CASE NUMBER 2:09-CV-08478 AHM (FMO) ORDER ON APPLICATION OF NON-RESIDENT ATTORNEY TO APPEAR IN A SPECIFIC CASE

The Court, having reviewed the accompanying Application of Derin B. Dickerson,
Applicant's Name

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(404) 881-7000 *Telephone Number* derin.dickerson@alston.com *E-mail Address*

for permission to appear and participate in the above-entitled action on behalf of ☐ Plaintiff ☒ Defendant

TOYOTA MOTOR SALES U.S.A., INC., et al.

and the designation of Lisa Gilford / 171641
Local Counsel Designee /State Bar Number

of Alston + Bird LLP, 333 South Hope Street, 16th Floor, Los Angeles, CA 90071
Local Counsel Firm / Address

(213) 576-1000 *Telephone Number* lisa.gilford@alston.com *E-mail Address*

as local counsel, hereby **ORDERS** the Application be:

☑ GRANTED

☐ DENIED. Fee, if paid, shall be returned by the Clerk.

Dated DEC 30 2009

U. S. District Judge/~~U.S. Magistrate Judge~~

American LegalNet, Inc.
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FILED
CLERK, U.S. DISTRICT COURT
DEC 30 2009
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ERIC KMETZ, and JOE MORRIS, on behalf of themselves and all others similarly situated, Plaintiff(s) v. TOYOTA MOTOR SALES, U.S.A., INC., TOYOTA MOTOR CORPORATION, and DOES DEFENDANTS 1-10, Defendant(s).	CASE NUMBER 2:09-CV-08478 AHM (FMO) ORDER ON APPLICATION OF NON-RESIDENT ATTORNEY TO APPEAR IN A SPECIFIC CASE

The Court, having reviewed the accompanying Application of Kyle G.A. Wallace,
Applicant's Name

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kyle.wallace@alston.com
E-mail Address

for permission to appear and participate in the above-entitled action on behalf of ☐ Plaintiff ☒ Defendant
TOYOTA MOTOR SALES U.S.A., INC., et al.

and the designation of Lisa Gilford / 171641
Local Counsel Designee /State Bar Number

of Alston + Bird LLP, 333 South Hope Street, 16th Floor, Los Angeles, CA 90071
Local Counsel Firm / Address

(213) 576-1000
Telephone Number

lisa.gilford@alston.com
E-mail Address

as local counsel, hereby **ORDERS** the Application be:

☑ GRANTED

☐ DENIED. Fee, if paid, shall be returned by the Clerk.

Dated DEC 30 2009

U. S. District Judge/~~U.S. Magistrate Judge~~.

American LegalNet, Inc.
www.FormsWorkflow.com

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ERIC KMETZ, and JOE MORRIS, on behalf of themselves and all others similarly situated,

Plaintiff,

v.

TOYOTA MOTOR SALES, U.S.A., INC., TOYOTA MOTOR CORPORATION, and DOES DEFENDANTS 1-10,

Defendant.

Case No.: 2:09-CV-08478 AHM-FMO

Assigned to the Honorable A. Howard Matz

ORDER RE FILING OF FIRST AMENDED COMPLAINT AND DEFENDANTS' RESPONSE

The parties having stipulated to deadlines relating to the time for filing the First Amended Complaint and Defendants' Response, and good cause appearing therefore,

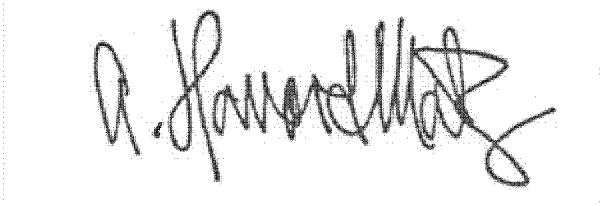
IT IS HEREBY ORDERED that the deadlines are as follows:

Plaintiffs shall file a First Amended Complaint on or before **January 18, 2010**.

The Defendants shall Answer or otherwise respond to the First Amended Complaint on or before **February 8, 2010**.

By so stipulating, Defendants do not waive any defenses with respect to the amendment, or any other claims or issues raised by the First Amended Complaint.

DATED: January 04, 2010



UNITED STATES DISTRICT JUDGE

LAW OFFICES
KIRTLAND & PACKARD LLP

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ERIC KMETZ, and JOE MORRIS, on behalf of themselves and all others similarly situated, Plaintiffs, v. TOYOTA MOTOR SALES, U.S.A., INC., TOYOTA MOTOR CORPORATION, and DOE DEFENDANTS 1-10 Defendants.	Case No. 2:09-CV-08478 AHM-FMO Assigned to the Honorable A. Howard Matz **ORDER RE CLARIFYING DUE DATE FOR FILING OF FIRST AMENDED COMPLAINT** Ctrm: 14 Filing Date: November 18, 2009

The parties having stipulated to a new date for filing the First Amended Complaint and Defendants' Response and good cause appearing:

Plaintiffs shall file a First Amended Complaint on or before **January 19, 2010.**

The Defendants will still Answer or otherwise respond to the First Amended Complaint on or before **February 8, 2010.**

TOY-RQ-05E-00004175

By so stipulating, Defendants do not waive any defenses with respect to the amendment, or any other claims or issues raised by the First Amended Complaint.

DATED: January 12, 2010

By: _____
UNITED STATES DISTRICT JUDGE

LAW OFFICES
KIRTLAND & PACKARD LLP

TOY-RQ-05E-00004176

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Attorneys for Defendants
TOYOTA MOTOR SALES, U.S.A., INC.
and TOYOTA MOTOR CORPORATION

** Additional counsel listed on page 2*

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ERIC KMETZ and JOE MORRIS, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

TOYOTA MOTOR SALES, U.S.A., INC., TOYOTA MOTOR CORPORATION, and DOE DEFENDANTS 1-10,

Defendants.

Case No.: CV 2:09-08478 AHM (FMOx)

Honorable A. Howard Matz

THE TOYOTA DEFENDANTS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO STRIKE ALL CLASS ALLEGATIONS FROM PLAINTIFFS' FIRST AMENDED COMPLAINT

Fed. R. Civ. Proc. 12(f) and 23(d)(1)(D)

[Filed concurrently with Notice of Motion to Strike; Appendix of Non-Federal and Out-of-State Authorities; Motion to Dismiss; and [Proposed] Orders]

Date: March 15, 2010
Time: 10:00 a.m.
Ctroom: 14

First Amended Complaint filed January 19, 2010

TOY-RQ-05E-00004177

CARI K. DAWSON (Admitted *Pro Hac Vice*)
cari.dawson@alston.com
DERIN DICKERSON (Admitted *Pro Hac Vice*)
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KYLE G.A. WALLACE (Admitted *Pro Hac Vice*)
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Attorneys for Defendants
TOYOTA MOTOR SALES, U.S.A., INC.
and TOYOTA MOTOR CORPORATION

TOY-RQ-05E-00004178

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TABLE OF AUTHORITIES

FEDERAL CASES

Bishop v. Saab Auto A.B.,
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Chin v. Chrysler Corp.,
182 F.R.D. 448 (D.N.J. 1998) 3

Gable v. Land Rover N. Am., Inc.,
No. 8:07-CV-0376, 2008 WL 4441960 (C.D. Cal. Sept. 29, 2008) 2

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John v. Nat'l Sec. Fire & Cas. Co.,
501 F.3d 443 (5th Cir. 2007) 3

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Shabaz v. Polo Ralph Lauren Corp.,
586 F. Supp. 2d 1205 (C.D. Cal. 2008) 1

RULES

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I. INTRODUCTION

As detailed in Toyota Motor Sales, U.S.A., Inc.'s and Toyota Motor Corporation's (collectively "Toyota") accompanying Motion to Dismiss, Plaintiffs' First Amended Complaint ("FAC") fails to state a claim for which relief may be granted. If the Court dismisses the FAC in its entirety, there is no need for the Court to reach this Motion. However, even if Plaintiffs have stated some viable claim (which they have not), Plaintiffs' class action allegations should be stricken because Plaintiffs purport to represent a putative class of individuals who, like Plaintiff Joe Morris, have not experienced a manifestation of an alleged unintended acceleration defect. Such putative class members plainly lack standing to pursue the claims asserted against Toyota and cannot properly be included in any putative class action.

II. STATEMENT OF FACTS

Pursuant to Fed. R. Civ. P. 10(c), Toyota incorporates by reference the facts set forth in the "Plaintiffs' Allegations" section of Toyota's memorandum in support of its motion to dismiss filed contemporaneously with this motion to strike. (*See* Memorandum of Points and Authorities in Support of Motion to Dismiss Plaintiffs' First Amended Complaint, at 3-5.)

III. PLAINTIFFS' PUTATIVE CLASS ALLEGATIONS SHOULD BE STRICKEN BECAUSE THE CLASS DEFINITION PURPORTS TO INCLUDE INDIVIDUALS WHO HAVE NOT EXPERIENCED UNINTENDED ACCELERATION

Courts may strike class action allegations pursuant to Federal Rule of Civil Procedure 12(f) when it is apparent from the face of the complaint that class certification is improper. *See, e.g., Shabaz v. Polo Ralph Lauren Corp.*, 586 F. Supp. 2d 1205, 1211 (C.D. Cal. 2008) (Courts may address class certification issues at the pleading stage when "the issues are plain enough from the pleadings to determine whether the interests of the absent parties are fairly encompassed within the named plaintiff's claims."); *Sanders v. Apple Inc.*, No. 5:08-CV-1713, 2009 WL 150950, * 9

(N.D. Cal. 2009) ("Where the complaint demonstrates that a class action cannot be maintained on the facts alleged, a defendant may move to strike class allegations prior to discovery."). Rule 23(d)(1)(D) of the Federal Rules of Civil Procedure provides the court with authority to "eliminate allegations about representation of absent persons" where appropriate. The United States Supreme Court has recognized that "[s]ometimes the issues are plain enough from the pleadings to determine whether the interests of absent parties are fairly encompassed within the named plaintiff's claim." *See also Gen. Tel. of Sw. v. Falcon*, 457 U.S. 147, 160, 102 S. Ct. 2364, 2372, 72 L. Ed. 2d 740 (1982).

Plaintiffs purport to represent a nationwide class of persons that includes "[a]ll persons who reside in the United States and who presently own a Toyota vehicle equipped with an electronic throttle control system." (FAC, ¶ 31). This purported class includes individuals who have not experienced a manifestation of the alleged defect. Their vehicles have not malfunctioned in any way. In fact, it is clear from the pleadings and the nature of this action that the vast majority of the purported class is made up of such individuals. (*See generally* FAC ¶¶ 23-25).[1] As discussed in Toyota's memorandum in support of its motion to dismiss, at 6-10, individual class members like Plaintiff Morris who have not experienced a manifestation of the alleged unintended acceleration defect lack standing to pursue claims against Toyota and cannot properly be included in any putative class action. As this Court has acknowledged, "[t]he courts have refused to certify class actions based on similar 'tendency to fail' theories because the purported class includes members who have suffered no injury and therefore lack standing to sue." *Bishop v. Saab Auto A.B.*, No. CV95-0721, 1996 WL 33150020, *5 (C.D. Cal. 1996); *see also Gable v. Land Rover N. Am., Inc.*, No. 8:07-CV-0376, 2008 WL 4441960, at *1, 5 (C.D. Cal. Sept. 29,

[1] Plaintiffs also seek to represent a California class made up of all California citizens or residents who "own a Toyota vehicle equipped with an electronic throttle control system." (FAC, ¶ 31). This putative class likewise includes all owners, the vast majority of whom have not experienced sudden, unintended acceleration or any malfunction with their vehicles.

2008) (declining to certify class where the plaintiff failed to show that even a majority of the class members had actually experienced a problem with uneven and premature tire wear due to the vehicle's defective design); *Chin v. Chrysler Corp.,* 182 F.R.D. 448, 455 (D.N.J. 1998) (class certification was not appropriate under Rule 23(b)(3) because "[p]roving a class-wide defect where the majority of class members have not experienced any problems with the alleged defective product, if possible at all, would be extremely difficult.").

Because Plaintiffs purport to represent a putative class the vast majority of which is made up of class members who, like Plaintiff Morris, have not experienced a manifestation of the alleged defect, this Court should strike Plaintiffs' class action allegations pursuant to Rule 12(f). *See John v. Nat'l Sec. Fire & Cas. Co.*, 501 F.3d 443, 445 (5th Cir. 2007) ("Where it is facially apparent from the pleadings that there is no ascertainable class, a district court may dismiss the class allegation on the pleadings.").

IV. CONCLUSION

For the foregoing reasons, Toyota respectfully requests that the Court grant its Motion to Strike Allegations from Plaintiff's FAC in its entirety.

Dated: February 8, 2010

Respectfully submitted,
ALSTON + BIRD LLP

/s/ Lisa Gilford
Lisa Gilford
Attorney for Defendants

TOYOTA MOTOR SALES, U.S.A., INC. and
TOYOTA MOTOR CORPORATION

CERTIFICATE OF SERVICE

I hereby certify that on February 8, 2010, I caused a copy of **THE TOYOTA DEFENDANTS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO STRIKE ALL CLASS ALLEGATIONS FROM PLAINTIFFS' FIRST AMENDED COMPLAINT** to be served upon the following counsel in the manner described below:

Via the Court's CM/ECF system:

Michael Louis Kelly
Behram V. Parekh
Heather M. Peterson
KIRTLAND & PACKARD LLP
2361 Rosecrans Avenue
Fourth Floor
El Segundo, California 90245
mlk@kirtlandpackard.com
bvp@kirtlandpackard.com
hmp@kirtlantpackard.com

Attorneys for Plaintiffs Eric Kmetz and Joe Morris

By: /s/ Lisa Gilford
Attorney for Defendants
TOYOTA MOTOR SALES, U.S.A., INC. and
TOYOTA MOTOR CORPORATION

LISA GILFORD (California Bar No. 171641)
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VINCENT GALVIN, JR. (California Bar No. 104448)
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Attorneys for Defendants
TOYOTA MOTOR SALES, U.S.A., INC.
and TOYOTA MOTOR CORPORATION

** Additional counsel listed on page 2*

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ERIC KMETZ and JOE MORRIS, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

TOYOTA MOTOR SALES, U.S.A., INC., TOYOTA MOTOR CORPORATION, and DOE DEFENDANTS 1-10,

Defendants.

Case No.: CV 2:09-08478 AHM (FMOx)

Honorable A. Howard Matz

THE TOYOTA DEFENDANTS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT

Fed. R. Civ. Proc. 12(b)(6)

[Filed concurrently with Notice of Motion to Dismiss; Request for Judicial Notice; Appendix of Non-Federal and Out-of-State Authorities; and [Proposed] Orders]

Date: March 15, 2010
Time: 10:00 a.m.
Ctroom: 14

First Amended Complaint filed January 19, 2010

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I. INTRODUCTION

Plaintiffs Eric Kmetz and Joe Morris allege that they are owners of Lexus and Toyota vehicles that contain an electronic throttle control system ("ETCS-i") that is defective, and has a potential to cause instances of sudden, unintended acceleration during normal operation. Plaintiffs, who purchased their cars through dealers in Southern California, seek to represent putative nationwide and California classes of owners of ETCS-i equipped Toyota and Lexus vehicles. Plaintiffs' Complaint pursues claims against Toyota Motor Sales, U.S.A., Inc. and Toyota Motor Corporation ("Toyota") under the California Consumer Legal Remedies Act (Cal. Civ. Code § 1770, "CLRA"), the Unfair Competition Law (Cal. Bus. & Prof. Code § 17200, "UCL"), the False Advertising Law (Cal. Bus. & Prof. Code § 17500, "FAL") and for breach of warranties and negligence. As set forth below, however, each and every claim for relief is fatally flawed and the Complaint should be dismissed in its entirety.

The most glaring problem with the Complaint is that Plaintiffs lack standing to assert their claims. Even taking all of their factual allegations as true, it is clear that Plaintiffs received the benefit of their bargain and have not suffered injury-in-fact as required under Article III, and the more stringent requirements of the CLRA, UCL and FAL. In fact, Plaintiff Joe Morris does not even allege that he experienced sudden, unintended acceleration or any manifestation of a defect in his vehicle. His "injury" is merely speculative, and is certainly not "injury-in-fact." Nor have Plaintiffs alleged that Toyota failed to honor its warranty, or to repair any allegedly defective components. Neither Plaintiff has alleged the standing prerequisites of the CLRA, UCL, and FAL, namely, that they relied on alleged misrepresentations made by Toyota in purchasing their vehicles. Based on what is plead, Plaintiffs cannot even make the preliminary showing necessary to state their claims.

Even if Plaintiffs had standing to assert CLRA, UCL, and FAL claims, which they do not, the claims fail for several other reasons. Plaintiffs have not adequately

alleged fraud under these statutes, nor have they plead fraud with the requisite particularity. Plaintiffs have not alleged that Toyota made any misrepresentations to Plaintiffs, and they cannot demonstrate that Toyota had a duty to disclose the alleged defect. Plaintiffs' UCL claim also fails because they have not set forth violations of the unlawful or unfair prongs of the law. Plaintiffs' CLRA claim for monetary damages should be dismissed because Plaintiffs failed to comply with the Act's pre-suit notice requirement.

Plaintiffs' claims for breaches of the implied warranty of merchantability and the implied warranty of fitness for a particular purpose do not fare any better. Both claims fail as a matter of law because Plaintiffs are not in vertical privity with Toyota. It is undisputed that Plaintiffs purchased their vehicles from dealers, not from Toyota. Moreover, regardless of privity, Plaintiff Joe Morris has not stated a viable implied warranty of merchantability claim since he does not even allege that his vehicle manifested the alleged defect. Plaintiffs' claim for breach of the implied warranty of fitness for a particular purpose also fails as a matter of law because Plaintiffs do not (and cannot) allege a particular purpose for the vehicles. Rather, Plaintiffs attempt to assert this claim based on the ordinary purpose of the vehicles.

Plaintiffs' negligence claim fails as a matter of law because the tort of negligence does not lie for a claim like Plaintiffs', which alleges purely economic loss associated with owning a product containing an alleged flaw or defect. Under the economic loss rule, in actions for negligence a manufacturer's liability is limited to damages for physical injuries to person or property. There is no recovery for economic loss alone.

Finally, Plaintiffs' request for a court ordered recall preventing Toyota from selling any vehicles with Toyota's current ETCS-i system is preempted by the National Traffic and Motor Vehicle Safety Act of 1966 ("Safety Act"), 49 U.S.C. § 30101 *et seq.* The Safety Act and its implementing regulations set forth a comprehensive regulatory framework for the federal government to address the recall

of automobiles for safety concerns and vests this authority in the National Highway Traffic Safety Administration ("the NHTSA"). Plaintiffs' requested injunctive relief would frustrate these governmental objectives, usurp the role of the NHTSA, and is therefore preempted.

For these several different and alternative reasons, each of Plaintiffs' claims fails as a matter of law and Toyota is entitled to a dismissal with prejudice.

II. PLAINTIFFS' ALLEGATIONS

Plaintiffs bring this putative class action against Toyota asserting various claims for alleged "economic damage" relating to the electronic throttle control system, (known as ETCS-i, but dubbed "ETC" in the Complaint) that is part of many models of Toyota and Lexus brand vehicles. Plaintiffs claim that the vehicles equipped with ETCS-i are defective. (First Amended Complaint ("FAC"), ¶¶ 18-29). Plaintiffs claim that, because of the alleged absence of failsafe measures, Toyota vehicles equipped with ETCS-i are susceptible to incidents of sudden, unintended acceleration, are unreasonably dangerous, and pose significant risks to drivers, passengers, other motorists, and pedestrians. (*Id.*, ¶¶ 22-27). Plaintiffs assert that Toyota was aware that its vehicles were susceptible to incidents of sudden, unintended acceleration but has failed to remedy the condition. (*Id.*, ¶¶ 28-29).

Plaintiff Eric Kmetz alleges that he purchased a Lexus IS 300 in 2001 from Jim Faulk Lexus, a car dealership located in Los Angeles, California. (*Id.*, ¶ 4). Plaintiff Joe Morris alleges he purchased a Toyota Prius from a dealership in Orange County, California. (*Id.*, ¶ 5). Both Plaintiffs claim that their vehicles are equipped with ETCS-i. (*Id.*, ¶¶ 4-5). Plaintiff Kmetz asserts that he "has experienced sudden, unexpected acceleration of his vehicle while in the normal process of operating his vehicle." (*Id.*, ¶¶ 4). Plaintiffs, however, do not allege that they have been injured or suffered any damages to their vehicles or other property in any way from any alleged event of sudden, unintended acceleration, and in fact, Plaintiff Joe Morris does not even allege having experienced any type of unintended acceleration with his vehicle.

(*Id.*, ¶¶ 4-30). Rather, Plaintiffs bring this Complaint for purported economic damage arising out of their ownership of a vehicle that they believe contains a defect. (*Id.*, ¶¶ 4, 5, 47, 75). Plaintiffs allege that their vehicles have "suffered a diminution in resale value due to press reports and recalls related to the sudden, unexpected acceleration of Toyota and Lexus vehicles." (FAC, ¶¶ 4-5). Plaintiffs do not claim that they have attempted to sell the vehicles or provide any concrete factual basis for this assertion. (*Id.*). Plaintiffs claim that they would not have purchased their vehicles, or would not have purchased the vehicles for the price paid, if Toyota had disclosed that the vehicles are susceptible to incidents of sudden, unintended acceleration, as Plaintiffs allege. (*Id.*).

Plaintiffs allege the following six claims for relief under California law: (1) violation of the CLRA (FAC, ¶¶ 42-47); (2) violation of the UCL, (FAC, ¶¶ 48-54); (3) violation of the FAL (FAC, ¶¶ 55-60); (4) breach of implied warranty of merchantability (*id.*, ¶¶ 61-65); (5) breach of implied warranty of fitness for a particular purpose (*id.*, ¶¶ 66-71); and (6) negligence (*id.*, ¶¶ 72-75). Plaintiffs seek compensatory damages, restitution, disgorgement, punitive damages, and attorneys' fees and costs. (*Id.* at pp. 18-19). Plaintiffs seek restitution for the cost paid for the vehicles, or alternatively, an order requiring Toyota to repair and/or replace the vehicles to include certain alleged safety measures. (*Id.*, ¶¶ 46, 53) Significantly, Plaintiffs also seek an order from this Court enjoining Toyota from selling any vehicles with ETCS-i that do not include these measures. (*Id.*, ¶¶ 46, 53).

Plaintiffs seek to represent a nationwide class of "[a]ll persons who reside in the United States and who presently own a Toyota vehicle equipped with an electronic throttle control system," as well as a California class of "[a]ll persons who reside in California or are California citizens and who presently own a Toyota vehicle equipped with an electronic throttle control system." (*Id.*, ¶ 31). Plaintiffs specifically exclude from the proposed class "any claims by any persons who have suffered or possess a right of action for personal injury or wrongful death as a result of the sudden intended

acceleration of their Toyota vehicle." (*Id.*, ¶ 32). Notably, Plaintiffs do not exclude from the putative class those who have not experienced unintended acceleration.

III. PLAINTIFFS' COMPLAINT IS FATALLY DEFECTIVE IN SEVERAL RESPECTS AND SHOULD BE DISMISSED WITH PREJUDICE

A. Defendants Are Entitled To Dismissal Of The Complaint Under Fed. R. Civ. P. 12(b)(6).

Defendants are entitled to dismissal under Rule 12(b)(6) if, accepting the allegations as true, the First Amended Complaint fails to state facts that would support relief. *Parks Sch. of Bus., Inc. v. Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995). However, the Court should not accept as true "allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences." *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). "[T]he tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions." *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949, 173 L. Ed. 2d 868 (2009). "A pleading that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.'" *Id.* (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 127 S. Ct. 1955, 1964-65, 167 L. Ed. 2d 929 (2007)). "Nor does a complaint suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancement.'" *Id.* (quoting *Twombly*, 550 U.S. at 557, 127 S. Ct. at 1966). *Iqbal* explains that "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id.*

Moreover, Rule 8(a)(2) "demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Id.* "[O]nly a complaint that states a plausible claim for relief survives a motion to dismiss." *Id.* at 1950. The Supreme Court explained:

> To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face." A claim has facial plausibility when the plaintiff pleads

> factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. The plausibility standard is not akin to a "probability requirement," but it asks for more than a sheer possibility that a defendant has acted unlawfully. Where a complaint pleads facts that are "merely consistent with" a defendant's liability, it "stops short of the line between possibility and plausibility of 'entitlement to relief.'"

Id. at 1949 (citations omitted) (quoting *Twombly*, 550 U.S. at 556-57, 570, 127 S. Ct. at 1966-68, 1974). "Determining whether a complaint states a plausible claim for relief will . . . be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Id.* at 1950. "But where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not 'show[n]'—'that the pleader is entitled to relief.'" *Id.* (quoting Fed. R. Civ. P. 8(a)(2)).

As shown below, Plaintiffs' First Amended Complaint should be dismissed because it fails to sufficiently allege facts supporting its claims for relief.

B. Plaintiffs Lack Standing Because They Have Not Suffered Injury-In-Fact.

Standing is a threshold issue under Article III of the Constitution, and consequently, under the CLRA, UCL and FAL. Under Article III, (i) the plaintiff must have suffered an injury-in-fact which is actual, not hypothetical; (ii) there must be a causal connection between the injury and the conduct complained of; and (iii) it must be likely, not merely speculative, that the injury will be redressed by a favorable decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560, 112 S. Ct. 2130, 2136, 119 L. Ed. 2d 351 (1992). Plaintiffs cannot satisfy the standing requirement because they have not suffered a cognizable injury.

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1. Plaintiff Joe Morris lacks standing because he did not experience the alleged defect.

Article III standing requires, among other things, that there be a "causal connection between the injury and the conduct complained of." *Lujan,* 504 U.S. at 560, 112 S. Ct. at 2136. Speculation and "subjective apprehension" about what might happen in the future does not support standing. *Mayfield v. United States*, No. 07-35865, 2009 WL 4674172, at *5 (9th Cir. Dec. 10, 2009). It is beyond dispute that putative class representatives must have standing to represent the claims of putative class members. As the Ninth Circuit aptly stated, "the courts [must] not be available to those who have suffered no harm at the hands of them against whom they complain. They have no standing to sue. It is necessary, therefore, to examine the standing of the plaintiffs to institute the class action before us." *La Mar v. H & B Novelty & Loan Co.*, 489 F.2d 461, 464 (9th Cir. 1973).

It is well-settled that in a case alleging a product defect such as this one, a plaintiff lacks standing unless he or she has experienced the alleged defect or, at a minimum, is substantially certain to experience the defect in the future. *Birdsong v. Apple, Inc.*, 590 F.3d 955 (9th Cir. 2009); *Mathison v. Bumbo*, No. 8:08-CV-0369, 2008 U.S. Dist. LEXIS 108511 (C.D. Cal. Aug. 18, 2008); *Whitson v. Bumbo*, No. C07-05597 MHP, 2009 WL 1515597 (N.D. Cal. Apr. 16, 2009); *In re Bextra & Celebrex Mktg., Sales Practices & Prod. Liab. Litig.*, No. MDL05-01699, 2007 WL 2028408, at *8 (N.D. Cal. July 10, 2007).

In *Whitson*, plaintiff Whitson purchased a Bumbo "Baby Sitter" Seat manufactured by defendants. Whitson's class action complaint alleged that the child seat was defective and dangerous. On October 25, 2007, the Consumer Products Safety Commission (CPSC) recalled the Bumbo seat, noting that out of "about 1 million" units sold, the CPSC had "received 28 reports of young children falling out of the Bumbo Baby Sitter seats, including three skull fractures, which occurred when children fell out of chairs that had been placed on tables." *Id.* at *2.

The named plaintiff commenced a class action even though she did not allege that her child's seat had tipped over. The plaintiff raised a variety of claims, including a UCL claim and implied warranty claim. *Id.* at *4 & 7. Given that Whitson had not experienced any defect, the trial court described her fundamental allegations like this:

> Her allegations amount to the following: (1) Whitson bought a Bumbo seat; (2) Defendants misrepresented the safety and intended uses of the Bumbo seat; and (3) Some children somewhere in the country were harmed while using the Bumbo seat; therefore, (4) Whitson, and a class of Bumbo seat purchasers that her lawyers would like her to represent, deserve damage awards.

Id. at *4.

The court granted the defendants' motion to dismiss. The court concluded that Whitson lacked standing under Article III to pursue her claims because Whitson had not experienced a manifested defect. *Id.* at *5. Moreover, out of approximately one million Bumbo seats, only 28 had malfunctioned, representing a failure rate of only 0.0028%. *Id.* at *8. For these reasons, the court held that Whitson's claim for breach of implied warranty failed because "Whitson fails to allege a defect, i.e., that she or her children 'personally suffered any injury or property damage, or that their seats tipped over.'" *Id.* at *8 (quoting *Mathison, supra).* The court stated "[w]here a product serves its purpose throughout its useful life, it is, as a matter of law, not 'defective.'" *Id.* Similarly, the court held that Whitson lacked standing to pursue her UCL claim because she did not suffer an actual "injury." *Id.*

Indeed, courts around the country preclude a plaintiff from recovering under a product defect theory or representing a class where the alleged defect has not manifested itself in the plaintiff's product even when it is alleged that the defect renders the product dangerous or a safety risk. *See, e.g., O'Neil v. Simplicity, Inc.*, 553 F. Supp. 2d 1110, 1115 (D. Minn. 2008) ("It is simply not enough for a plaintiff to allege that a product defect suffered by others renders his or her use of that same

product unsafe; the plaintiff must instead allege an *actual manifestation* of the defect *that results in some injury* in order to state a cognizable claim for breach of warranty, unfair trade practices, or unjust enrichment."), *aff'd*, 574 F. 3d 501 (8th Cir. 2009); *Harrison v. Leviton Mfg. Co.*, No. 05-CV-0491, 2006 WL 2990524, at *5 (N.D. Okla. Oct. 19, 2006) ("Courts do not allow consumers to bring claims against manufacturers for products that are perceived to be harmful, but that have not actually cause[d] an identifiable injury."); *In re Air Bag Prods. Liab. Litig.,* 7 F. Supp. 2d 792, 805 (E.D. La. 1998) (dismissing all claims for lack of injury, where plaintiffs claimed that air bags were "dangerously defective" because they deployed with excessive force); *In re Gen. Motors Corp. Anti-Lock Brake Prods. Liab. Litig.,* 966 F. Supp. 1525, 1530 (E.D. Mo. 1997) (dismissing claims based upon allegations that anti-lock brakes were "defective" and increased chance of accidents for failure to plead that defect had ever manifested itself in the plaintiffs' vehicles), *aff'd*, 172 F.3d 623 (8th Cir. 1999).

The Complaint reveals that Plaintiff Morris did not experience the manifestation of the alleged ETCS-i defect. (*See* FAC, ¶ 5). Plaintiffs allege that Kmetz "experienced sudden, unexpected acceleration of his vehicle," but a similar allegation regarding Plaintiff Morris is noticeably absent. (*Id.*, ¶ 4, 5). At best, Plaintiff Morris claims that at some point in the future his car may manifest a defect. Such a remote, might-happen-in-the-future-claim does not amount to injury-in-fact.

Plaintiffs will likely attempt to avoid this necessary fate by citing to the *Hicks v. Kaufman & Broad Home Corp.* line of cases, holding that a breach of warranty claim "does not require proof the product has malfunctioned but only that it contains an inherent defect which is substantially certain to result in malfunction during the useful life of the product." *See Hicks*, 89 Cal. App. 4th 908, 918, 107 Cal. Rptr. 2d 761, 768 (2001); *see also Hewlett-Packard Co. v. Super. Ct.*, 167 Cal. App. 4th 87, 83 Cal. Rptr. 3d 836 (2008). In *Hicks*, homeowners filed a class action suit against a developer and general contractor alleging that the slab foundations under their homes were defective because they were constructed using a material that was susceptible to

cracking. *Hicks*, 89 Cal. App. 4th at 912. The homeowners sought damages for the cost of repairing and replacing the defective concrete foundations. *Id.* The trial court denied the homeowners' motion for class certification, in part, on the ground that common issues did not predominate and individualized analysis would be required to determine whether each putative class member's foundations manifested the defect. *Id.* at 916. The appellate court reversed, holding that a class action could be maintained because a breach of warranty claim "does not require proof the product has malfunctioned but only that it contains an inherent defect which is substantially certain to result in malfunction during the useful life of the product." *Id.* at 918.

Hicks and its progeny are clearly distinguishable and do not apply to this case. Plaintiff Morris and putative class members whose vehicles have not malfunctioned cannot assert their claims because there is no substantial certainty that their vehicles will malfunction. Most importantly, Plaintiffs do not allege such a substantial certainty and cannot do so in good faith. Rather, Plaintiffs allege the following: a newspaper article claims that records suggest that there have been "1,000 reports" of unintended acceleration since model year 2002 (FAC, ¶ 23); an article claims that an "expert" has identified "nearly 2,000 sudden-acceleration cases for [the millions of] Toyota vehicles built since 2001" (*Id.*, ¶ 24); and an article claiming that the numbers may be higher, citing a survey of 600 Lexus owners where 10% claimed to have experienced unintended acceleration. (*Id.*, ¶ 25). It is clear that this is not a case that falls within the *Hicks* line of authority. Rather, for the reasons discussed above, Plaintiff Morris has no standing, and each of his claims should be dismissed.[1]

[1] For these reasons, Plaintiffs cannot purport to represent persons who likewise have not experienced any manifestation of the alleged defect. *See, e.g.*, *Bishop v. Saab Auto A.B.*, No. CV95-0721, 1996 WL 33150020, at *5 (C.D. Cal. Feb. 16, 1996) ("The courts have refused to certify class actions based on similar 'tendency to fail' theories because the purported class includes members who have suffered no injury and therefore lack standing to sue."). To the extent Plaintiffs purport to represent persons who do have not standing, Plaintiffs' class allegations should be stricken under Rule 12(f).

2. Plaintiffs received the benefit of the bargain, and thus, have not suffered an injury-in-fact.

A consumer who receives the benefit of his bargain cannot satisfy the Article III standing requirement as a matter of law because he has not been injured. *See*, *e.g.*, *Peterson v. Cellco P'ship*, 164 Cal. App. 4th 1583, 1591, 80 Cal. Rptr. 3d 316, 322 (2008) (plaintiffs "received the benefit of their bargain" and therefore "have not shown they suffered actual economic injury" under the UCL); *Baggett v. Hewlett-Packard Co.*, No. CV07-0667, 2009 WL 3178066, at *3 (C.D. Cal. Sept. 29, 2009) (holding that there was no violation of the UCL where the plaintiff received exactly what he bargained for); *Laster v. T-Mobile USA, Inc.*, No. 05CV1167, 2009 WL 4842801, at *6 (S.D. Cal. Dec. 14, 2009) (holding that the plaintiff lacked standing under the UCL and FAL where she received "the benefit of her bargain"). Indeed, there is no basis for any product defect claim where the plaintiff has received the benefit of a warranty to repair or replace the purportedly defective product. *See Thiedemann v. Mercedes-Benz USA, LLC*, 183 N.J. 234, 238-39, 872 A.2d 783, 786 (N.J. 2005).

A recent New Jersey Supreme Court case directly on point explains why no such case can be maintained. In *Thiedemann*, 872 A.2d at 786, the court considered whether plaintiffs had suffered an "'ascertainable loss of moneys or property' . . . as a result of" defendant's conduct for purposes of establishing damages under New Jersey's Consumer Fraud Act ("CFA"), New Jersey's analog to California's UCL and CLRA. Like here, plaintiffs in *Thiedemann* were pursuing a class action under the CFA, claiming that Mercedes failed to disclose material defects in fuel gauges. *Id.* at 786. The New Jersey Supreme Court explained that there could be no claim:

> Defects can, and do, arise with complex instrumentalities such as automobiles. The mere fact that an automobile defect arises does not establish, in and of itself, an actual and ascertainable loss to the vehicle purchaser. Indeed, the warranty provided as part of the contract of sale or

> lease is part of the benefit of the bargain between the parties. The defects that arise and are addressed by warranty, at no cost to the consumer, do not provide the predicate "loss" that the CFA expressly requires . . . .

Id. at 794.

This reasoning in *Thiedemann* applies here. The warranty applicable to Plaintiffs' vehicles provides that Toyota will make any "repairs and adjustments needed to correct defects in materials or workmanship." *See, e.g,* Toyota Warranty, attached to the Request for Judicial Notice as Exhibit A, at 9.[2] The warranty further provides that the "performance of necessary repairs and adjustments is the exclusive remedy." *See id.* at 8. To obtain warranty service, Toyota instructs Plaintiffs to take their vehicles to an authorized Toyota dealership. *See id.* at 29. Plaintiffs' obligation to tender their vehicles is a condition precedent to Toyota's obligations to repair or adjust the vehicles. Plaintiffs do not allege that they have tendered their vehicles to a dealer for repair or adjustment, and thus, Toyota has not failed to honor its warranty. Because plaintiffs have received exactly what they bargained for, they have suffered no legally cognizable injury in connection with their alleged "defects" and thus have no standing to sue as a matter of law.

C. Plaintiffs' CLRA Claim For Damages Should Be Dismissed Because Plaintiffs Failed to Comply With The Pre-Suit Notice Requirement.

To assert a claim for damages under the CLRA, a consumer must provide notice of the claim "***prior to*** the commencement of an action." Cal. Civ. Code § 1782(a) (emphasis added); *Laster v. T-Mobile USA, Inc*, 407 F. Supp. 2d 1181, 1195

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[2] The Court may take judicial notice of the express warranties provided for Plaintiffs' vehicles. *See Hoey v. Sony Elecs. Inc.*, 515 F. Supp. 2d 1099, 1103 (N.D. Cal. 2007). Although courts typically only consider documents attached to the complaint in considering a motion to dismiss, "if a document is not attached to a complaint, it may [nonetheless] be incorporated by reference into a complaint if the plaintiff refers extensively to the document or the document forms the basis of the plaintiff's claim." *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003). The warranty document attached to the Request for Judicial Notice is representative of the warranties applicable to each vehicle identified in the Complaint in all respects relevant to the arguments set forth herein.

(S.D. Cal. 2005). The purpose of the notice requirement is to "give the manufacturer or vendor sufficient notice of alleged defects to permit appropriate corrections or replacements." *Outboard Marine Corp. v. Super. Ct.*, 52 Cal. App. 3d 30, 40, 124 Cal. Rptr. 852, 858 (1975). Thus, "strict application of the [notice] requirement [is] necessary to achieve the goals of the CLRA." *Laster*, 407 F. Supp. 2d at 1195. Thus, a claim for damages under the CLRA should be dismissed even where the plaintiff provides notice ***after*** the lawsuit has been filed. *See Shein v. Canon U.S.A., Inc.*, No. CV08-07323, 2009 WL 1774287, at *8 (C.D. Cal. Sept. 22, 2009) (dismissing CLRA claim where plaintiffs did not provide notice before filing suit).

Here, Plaintiffs purport to assert a CLRA claim for monetary damages, alleging that they have "suffered economic damage as a result of defendant's violations of *Civil Code* § 1770" and "seek restitution from defendants for the cost paid for their inherently unsafe and dangerous vehicle." (FAC, ¶¶ 46-47). Plaintiffs, however, did not provide the statutorily required notice prior to the commencement of this action. Plaintiffs concede as much, stating in their Amended Complaint that they provided the notice on November 24, 2009, *after* Plaintiffs filed their original Complaint on November 18, 2009. (FAC, ¶ 45; Original Compl., Dkt # 1). Accordingly, Plaintiffs' CLRA claim should be dismissed with prejudice. *See Laster*, 407 F. Supp. 2d at 1196 ("Because Plaintiffs failed to provide notice to Defendants pursuant to § 1782(a), their claim for damages under the CLRA must be dismissed with prejudice."); *but see Shein*, 2009 WL 1774287, at *8 (dismissing CLRA claim without prejudice for failure to comply with notice requirement).

D. Plaintiffs' CLRA, UCL, and FAL Claims Should Be Dismissed Because Plaintiffs Fail To Sufficiently Allege Fraud Under These Statutes.

Plaintiffs' CLRA, UCL, and FAL claims are all based on the allegations that Toyota made some unspecified false representations or fraudulent omissions. (*See* FAC, ¶¶ 43, 50, 57, and 58). Plaintiffs' claims under these statutes fail because: (i)

Plaintiffs have not identified a single misrepresentation or omission made by Toyota, (ii) Plaintiffs have not adequately alleged that Toyota had a duty to disclose, and (iii) Plaintiffs did not plead these fraud-based claims with particularity.

1. Plaintiffs have not alleged a single misrepresentation made by Toyota.

The sole allegations in the Complaint that Toyota violated the CLRA, UCL, and FAL include nothing more than boilerplate language taken directly from the respective statutes. For example, in their CLRA claim, Plaintiffs state in conclusory fashion that Toyota violated three provisions of the CLRA that prohibit making representations that a product has characteristics, benefits, standards, or qualities that it does not have. (*See* FAC, ¶ 43). Plaintiffs, however, have not identified ***any*** representations whatsoever made by Toyota. The entire Complaint is completely devoid of a single representation, let alone misrepresentation, made by Toyota. Similarly, Plaintiffs' FAL claim alleges that Toyota disseminated advertising containing false or misleading statements. (*See* FAC, ¶ 58.) Yet, Plaintiffs have not identified a single false or misleading statement. In fact, Plaintiffs have not even alleged the nature or subject matter of any purported false or misleading statements.

Even if Plaintiffs' Complaint could be read to include allegations that Toyota represented that Plaintiffs' vehicles were reliable or of high quality, which it cannot, such vague statements about a product's quality would not be actionable under the CLRA, UCL or FAL. *See, e.g., Oestreicher v. Alienware Corp.*, 544 F. Supp. 2d 964, 973 (N.D. Cal. 2008) ("generalized and vague statements of product superiority" are not actionable) *aff'd*, 322 F. App'x 489 (9th Cir. 2009); *Stearns v. Select Comfort Retail Corp.*, No. 08-2746, 2009 WL 1635931, at *10-12 (N.D. Cal. June 5, 2009) (statements about a product's reliability, maintenance, and comfort are non-actionable puffery and cannot give rise to a fraud or 17200 claim); *Stickrath v. Globalstar, Inc.*, 527 F. Supp. 2d 992, 998 (N.D. Cal. 2007); *Summit Tech., Inc. v. High-Line Med. Instruments, Co.*, 933 F. Supp. 918, 931 (C.D. Cal.1996).

2. Plaintiffs have not adequately alleged a fraudulent omission.

A fraudulent omission is only actionable under the CLRA, UCL, and FAL if the omission is "contrary to a representation actually made by the defendant, or an omission of a fact the defendant was obliged to disclose." *Daugherty v. Am. Honda Motor Co.*, 144 Cal. App. 4th 824, 835, 51 Cal. Rptr. 3d 118, 126 (2006); *see also Hoey v. Sony Elecs.*, 515 F. Supp. 2d 1099, 1103 (N.D. Cal. 2007). Plaintiffs' attempts to assert CLRA, UCL, and FAL claims based on fraudulent omissions fail because Plaintiffs have not alleged that: (i) Toyota made any omissions of fact, (ii) any alleged omissions were contrary to representations made by Toyota, or (iii) Toyota had a duty to disclose the alleged defect.

First, as set forth above, Plaintiffs have not alleged a single fact that Toyota purportedly omitted or concealed. Plaintiffs' ***sole*** allegations of a fraudulent omission consist of three conclusory statements: (1) "Defendants' acts and omissions violate [several] provisions of the California Consumers Legal Remedies Act," (FAC ¶ 43); (2) "Defendants violated and continue to violate the UCL through . . . [f]ailing to disclose to Plaintiffs and Class Members that the vehicles sold to such consumers contain a defect," (FAC, ¶ 50(b)); and (3) "Such advertising contained statements that were false, misleading, or which omitted material information which Defendants were under a duty to disclose," (FAC, ¶ 58). These conclusory statements fall woefully short of alleging that Toyota omitted or concealed a material fact.

Second, Plaintiffs have not identified any representations made by Toyota that would create a duty to disclose the alleged defect. In fact, Plaintiffs have not identified ***any*** representations made by Toyota. The California Court of Appeal's opinion in *Daugherty v. American Honda* is instructive on this point. In *Daugherty*, car buyers filed a putative class action against Honda alleging that Honda violated the CLRA and UCL by failing to disclose an engine defect. 144 Cal. App. 4th at 827. The court held that although the plaintiffs alleged that Honda did not disclose the fact that their cars contained a defect, the plaintiffs failed "to identify any representation

by Honda that its automobiles had any characteristic they do not have, or are of a standard or quality they are not." *Id.* at 834. Affirming the trial court's dismissal of the CLRA claim, the court held that "the CLRA proscribes a concealment of characteristics or quality 'contrary to that represented.'" *Id.*

Here, Plaintiffs have similarly failed to identify any representation or duty to disclose sufficient to state a claim for violations of the CLRA, UCL, or FAL. Specifically, Plaintiffs fail to identify any representation by Toyota that Plaintiffs' vehicles had any characteristic that they do not have or are of a particular standard, quality, or grade that they are not. The fact that Plaintiffs' vehicles may have some defect—although they do not—is insufficient to establish a duty to disclose. *See Hoey*, 515 F. Supp. 2d at 1105. Accordingly, Plaintiffs' CLRA, UCL, and FAL claims should be dismissed. *See Daugherty*, 144 Cal. App. 4th at 834 (dismissing CLRA and UCL claims premised on a fraudulent omission where plaintiffs failed to identify any alleged representations relating to the product at issue).

Third, plaintiffs have not, and cannot, allege that Toyota had an independent duty to disclose facts regarding an allegedly defective ETCS-i. None of the circumstances that give rise to such a duty to disclose exist here, *see, e.g., Falk v. Gen. Motors Corp.*, 496 F. Supp. 2d 1088, 1095 (N.D. Cal. 2007). A duty to disclose is created in four circumstances: "(1) when the defendant is in a fiduciary relationship with the plaintiff; (2) when the defendant had exclusive knowledge of material facts not known to the plaintiff; (3) when the defendant actively conceals a material fact from the plaintiff; and (4) when the defendant makes partial representations but also suppresses some material fact." *Id.* Plaintiffs do not (and cannot) even allege that any of these circumstances are present here.

Plaintiffs will likely argue that Toyota had a duty to disclose because the alleged defect involved a safety risk. This is a misapprehension of the law. The fact that a safety risk is involved does not, alone, give rise to a duty to disclose. That a safety risk is involved merely satisfies the plaintiff's burden of showing that the

alleged nondisclosure relates to a material fact. *See Falk*, 496 F. Supp. 2d at 1096. Plaintiffs are still obligated to allege facts that satisfy the additional requirements of one of the four *Falk* factors. This, Plaintiffs have failed to do.

3. Plaintiffs have not set forth their claims with the requisite degree of specificity required by Rule 9(b).

CRLA, UCL, and FAL claims predicated on alleged fraud (either concealment or affirmative misrepresentations) must satisfy the heightened pleading requirements of Federal Rule of Civil Procedure 9(b). *See Stearns*, 2009 WL 1635931; *Neilson v. Union Bank of Cal., N.A.*, 290 F. Supp. 2d 1101, 1141 (C.D. Cal. 2003). Under Rule 9(b), Plaintiffs must plead with specificity the facts constituting the alleged fraud. *Id.* At a minimum, the Rule requires that Plaintiffs plead facts such as "time, place, persons, statements, and explanations of why the statements are misleading." *Ayala v. World Sav. Bank, FSB*, 616 F. Supp. 2d 1007, 1011 (C.D. Cal. 2009).

Here, Plaintiffs have failed to plead their statutory claims with the requisite level of specificity, and accordingly, their claims should be dismissed. *See Kinkade v. Trojan Express, LLC*, No. 08-1362, 2009 WL 799390 (C.D. Cal. Mar. 23, 2009) (dismissing fraud claim for failure to satisfy Rule 9(b)'s pleading requirement). The FAC consists only of vague and unspecified allegations that Toyota made false representations and failed to disclose the fact that the subject vehicles contained a defect. (*See* FAC, ¶¶ 43, 50(b), and 58). Such "conclusory allegations do not come close to satisfying the pleading requirements of Rule 9(b)." *See Stearns*, 2009 WL 1635931, at *9. Notably, Plaintiffs fail to identify a single representation of any kind made by Toyota, much less a material representation made with knowledge of its falsity. Plaintiffs have similarly failed to identify a material omission made by Toyota. Simply, Plaintiffs' Complaint falls far short of setting forth the "who, what, when, where, and how" required to state a fraud-based claim under the CLRA, UCL, and FAL. *See Cooper v. Pickett*, 137 F.3d 616 (9th Cir. 1997).

E. Plaintiffs' UCL Claim Should Also Be Dismissed Because Plaintiffs Have Not Sufficiently Alleged A Violation of the Unlawful or Unfair Prongs of § 17200.

In addition to fraudulent conduct, a business practice also violates the UCL if it is unlawful or unfair. *Berryman v. Merit Prop. Mgmt., Inc.,* 152 Cal. App. 4th 1544, 1554, 62 Cal. Rptr. 3d 177, 185 (2007). As with the fraudulent prong, Plaintiffs have not adequately alleged that Toyota engaged in any conduct that falls under the unlawful or unfair prongs of the UCL. First, Plaintiffs fail to state a claim for violation of the unlawful prong of the UCL. To violate the unlawful prong, a defendant's conduct must violate some other California statute. *Cel-Tech Commc'ns, Inc. v. Los Angeles Cellular Tel. Co.*, 20 Cal. 4th 163, 180, 83 Cal. Rptr. 2d 548, 569 (1999). Thus, to state a claim for an unlawful act under § 17200, Plaintiffs "must state with reasonable particularity the facts supporting the statutory elements" of the alleged violation. *Silicon Knights, Inc. v. Crystal Dynamics, Inc.*, 983 F. Supp. 1303, 1316 (N.D. Cal. 1997). While Plaintiffs allege that Toyota violated the CLRA and the FAL, both of those claims are subject to dismissal as discussed above, and thus, their UCL claim fails. To the extent Plaintiffs allege that Toyota violated some common law duty of disclosure, their claim still fails because common law claims cannot form the basis for a UCL claim. *See Hartless v. Clorox Co.*, No. 06CV2705, 2007 WL 3245260, at *5 (S.D. Cal. Nov. 2, 2007). Because Plaintiffs fail to state a claim under any California statute, they cannot satisfy the unlawful prong of the UCL, and their claim should be dismissed. *See Stearns*, 2009 WL 1635931; *see also Daugherty*, 144 Cal. App. 4th at 837 (holding that plaintiff could not state a violation of the unlawful prong because defendant did not violate any other California statutes).

Second, Plaintiffs fail to state a claim under the unfair prong of the UCL. An act is unfair under the UCL if "the consumer injury is substantial, is not outweighed by any countervailing benefits to the consumers or to competition, and is not an injury the consumers themselves could reasonably have avoided." *Daugherty*, 144 Cal. App.

4th at 839. Plaintiffs' Complaint falls short of satisfying these elements because the mere failure to disclose a defect does not cause a "substantial injury" as a matter of law. *See id.* at 838 (failure to disclose a defect cannot be characterized as causing a substantial injury to consumers). Moreover, Plaintiffs' Complaint merely recites the statutory elements of a UCL violation. To state a claim for an unfair business practice under § 17200, Plaintiffs "must set forth more than conclusory allegations that mirror the elements of the claim." *See Stearns*, 2009 WL 1635931, at *17.

F. Plaintiffs Fail to State Claims For Breaches of Implied Warranty of Merchantability and Fitness For Particular Purpose Because The Requisite Privity Does Not Exist Between Plaintiffs and Toyota.

In their fourth and fifth causes of action, Plaintiffs assert claims for breach of the implied warranty of merchantability and implied warranty of fitness for a particular purpose. (FAC, ¶¶ 61-71). These implied warranty claims fail as a matter of law because Plaintiffs do not (and cannot) allege vertical privity with Toyota to support a claim for breach of implied warranty.

It is well-established that "[p]rivity of contract is a prerequisite in California for recovery on a theory of breach of implied warranties of fitness and merchantability." *All W. Elecs., Inc. v. M-B-W, Inc.*, 64 Cal. App. 4th 717, 725, 75 Cal. Rptr. 2d 509, 514 (1998). "The term 'vertical privity' refers to links in the chain of distribution of goods. If the buyer and seller occupy adjoining links in the chain, they are in vertical privity with each other." *Harlan v. Roadtrek Motorhomes, Inc.*, No. 07-CV-686, 2009 WL 928309, at *14 n.13 (S.D. Cal. Apr. 2, 2009) (internal quotation omitted). "[T]here is no privity between the original seller and a subsequent purchaser who is in no way a party to the original sale.'" *All-West*, 64 Cal. App. 4th at 725.

"A demurrer is properly sustainable in an action [for] breach of an implied warranty when lack of privity between plaintiff and defendant is disclosed on the face of the complaint." *Anthony v. Kelsey-Hayes Co.*, 25 Cal. App. 3d 442, 448, 102 Cal. Rptr. 113, 116 (1972). Here, it is undisputed that Plaintiffs did not purchase their

vehicles from the defendants. Plaintiffs allege that the vehicles were purchased from dealerships. (FAC, ¶¶ 4, 5). Plaintiffs do not (and cannot) claim that Toyota sold the vehicles or was involved in any way in the negotiation of the purchases. Courts applying California law have repeatedly recognized the privity rule in rejecting implied warranty claims brought by purchasers against car manufacturers where the vehicle was purchased from a dealer. *See Clemens v. DaimlerChrysler Corp.*, 534 F.3d 1017, 1023 (9th Cir. 2008) (affirming dismissal of implied warranty claim where plaintiff purchased vehicle from dealer, explaining that consumer who purchases from retailer is not in privity with manufacturer); *Osborne v. Subaru of Am., Inc.*, 198 Cal. App. 3d 646, 656 n.6, 243 Cal. Rptr. 815, 821 n.6 (1988) ("[T]he distributor is normally in vertical privity with the manufacturer, and the ultimate retail buyer is normally in vertical privity with the dealer. But if the retail buyer seeks warranty recovery against a manufacturer with whom he has no direct contractual nexus, the manufacturer would seek insulation via the vertical privity defense."); *Harlan*, 2009 WL 928309, at *14 (granting motion for summary judgment on implied warranty claims because plaintiffs purchased motorhome from dealer and were not in vertical privity with defendant-manufacturer).

Because it is clear on the face of the Complaint that Plaintiffs cannot establish privity with Toyota, their implied warranty claims fail as a matter of law.[3]

G. Plaintiffs' Claim For Breach of Implied Warranty of Fitness for a Particular Purpose Also Fails Because of the Absence of a "Particular Purpose."

Plaintiffs' claim for breach of implied warranty of fitness for a particular

[3] While the absence of privity precludes either of the Plaintiffs from asserting any implied warranty claims against Toyota, Plaintiff Joe Morris's implied warranties claims fail because he has not experienced a manifestation of the alleged defect. (*See* FAC, ¶¶ 4-30). A product that has not even manifested a defect cannot be said to have violated its implied warranty of merchantability. *See Am. Suzuki Motor Corp. v Superior Ct. of Los Angeles County*, 37 Cal. App. 4th 1291, 1296-98, 44 Cal. Rptr. 2d 526, 529-31 (1995) (rejecting proposition that remote fear or expectation that vehicle would manifest defect could give rise to a claim for breach of the implied warranty of merchantability).

purpose fails for an additional reason. Plaintiffs do not (and cannot) allege that they purchased their vehicles for a "particular purpose," but rather attempt to assert the claim by alleging the ordinary purpose for vehicles. Plaintiffs assert that "Toyota knew, at the time it sold its vehicles to consumers, that such vehicles would be used by Plaintiffs and putative Class members *for the specific purpose of attempting to safely transport the driver and passengers from one point to another*." (FAC, ¶ 68) (emphasis added). Plaintiffs contend that the "design or manufacture is so defective as to cause such vehicles to suddenly and unintentionally accelerate and, subsequent to such acceleration, provide an insufficient safety mechanism to allow the driver to slow and stop the vehicle safely." (FAC, ¶ 70). The purpose alleged is the same purpose alleged for implied warranty of merchantability. (*See id.*, ¶¶ 63-64).

Plaintiffs cannot state a claim for breach of implied warranty of fitness for a particular purpose based on the ordinary purpose of the vehicles. In *American Suzuki Motor Corp. v. Superior Court of Los Angeles County*, 37 Cal. App. 4th 1291, 44 Cal. Rptr. 2d 526 (1995), the court held that plaintiffs had not identified any particular purpose for which they obtained their automobiles. "Because real parties have failed to identify any legally cognizable "particular purpose" for which they supposedly obtained their vehicles (other than the general purpose of providing transportation), no implied warranty of fitness claim against Suzuki has been stated." *Id.* at 1295 n.2, 44 Cal. Rptr. 2d at 528 n.2. *See also Harlan v. Roadtrek Motorhomes, Inc.*, No. 07-CV-0686, 2009 WL 928309, at *9 (S.D. Cal. Apr. 8, 2009) (granting summary judgment on claim and explaining that "Plaintiffs have not shown they intended to use the vehicle for any purpose beyond the ordinary uses"); *Stearns v. Select Comfort Retail Corp.*, No. 08-2746, 2009 WL 1635931, at *7 (N.D. Cal. June 5, 2009) (granting motion to dismiss and explaining that "Plaintiffs have not alleged a 'specific use' that is 'peculiar' to their business or their intended use of the beds" and "[d]espite Plaintiffs' conclusory arguments to the contrary, the FAC merely reiterates that the beds did not perform their ordinary function"). Plaintiffs do not state a claim for

implied warranty of fitness *for a particular purpose*.

H. Plaintiffs' Negligence Claim is Barred by the Economic Loss Rule.

Plaintiffs' negligence claim fails as a matter of law because the tort of negligence does not support a claim for purely economic losses absent personal injury or damage to property other than the product itself. *See County of Santa Clara v. Atl. Richfield Co.*, 137 Cal. App. 4th 292, 318, 40 Cal. Rptr. 3d 313, 335 (2006) (quoting *Zamora v. Shell Oil Co.*, 55 Cal. App. 4th 204, 210, 63 Cal. Rptr. 2d 762 (1997) ("[E]conomic loss alone, without physical injury, does not amount to the type of damage that will cause a negligence or strict liability cause of action to accrue.") This rule, commonly referred to as the "economic loss rule," is based on the premise that contract and warranty law should govern the economic relationship between a manufacturer and a consumer. *Seely v. White Motor Co.*, 63 Cal. 2d 9, 18-19, 45 Cal. Rptr. 17, 45 Cal. Rptr. 17, 23 (1965).

Recovery in tort for strict products liability or negligence "is limited solely to 'physical harm to person or property.'" *Jimenez v. Super. Ct. of San Diego County*, 29 Cal. 4th 473, 482, 127 Cal. Rptr. 2d 614, 622 (2002) (quoting *Seely*, 63 Cal. 2d at 18, 45 Cal. Rptr. 17). "Damages available under strict products liability do not include economic loss, which includes 'damages for inadequate value, costs of repair and replacement of the defective product or consequent loss of profits – without any claim of personal injury or damages to other property.'" *Jimenez*, 29 Cal. 4th at 482 (quoting *Sacramento Reg'l Transit Dist. v. Grumman Flxible,* 158 Cal. App. 3d 289, 294, 204 Cal. Rptr. 736, 739 (1984)). "The law of contractual warranty governs damage to the product itself." *Jimenez*, 29 Cal. 4th at 483.

Plaintiffs' negligence claim plainly does not survive this standard. Plaintiffs do not allege personal injury or property damage. Plaintiffs have not suffered such harm, and even expressly exclude from their putative class anyone who has suffered a personal injury. (FAC, ¶ 32). Rather, Plaintiffs seek redress for the alleged "economic damage" that they claim has resulted from owning vehicles that they

believe to be defective and inherently dangerous. (*Id.*, ¶¶ 75, 47). Plaintiff Joe Morris does not even allege that his vehicle has experienced any events of sudden, unintended acceleration. Plaintiffs' negligence claim is not cognizable under California law and should be dismissed with prejudice.

I. Plaintiffs' Request for Injunctive Relief in the Form of a Court-Ordered Nationwide Recall is Preempted by the National Traffic and Motor Vehicle Safety Act.

Plaintiffs not only seek an order requiring Toyota to recall vehicles it has sold to Plaintiffs and the putative class, Plaintiffs even seek an order "enjoining [Toyota] from selling any vehicles with an electronic throttle control in the United States" which has not been modified consistent with Plaintiffs' allegations. (FAC, ¶¶ 46, 53). Seeking an order forbidding Toyota from selling several models of vehicles and recalling vehicles it has already sold, Plaintiffs request forms of injunctive relief that are preempted by the National Traffic and Safety Act of 1966 (the "Safety Act"), 49 U.S.C. §§ 30101 *et seq.* The Safety Act vests authority over matters regarding motor vehicle safety in the Secretary of Transportation or his delegate, and the Secretary has delegated this authority to the National Highway Traffic Safety Administration ("the NHTSA"). *See* 49 U.S.C. §§ 30119, 105(d). The NHTSA is charged with establishing motor vehicle safety standards, investigating alleged defects or noncompliance, and issuing and administering motor vehicle recalls based on a determination of a defect impacting safety. *See* 49 U.S.C. §§ 30111, 30118-30120. 49 U.S.C. § 30112 prohibits the manufacturing and selling of vehicles that do not comply with the safety standards determined by the NHTSA, and 49 U.S.C. § 30116 requires manufacturers and distributors to repurchase or remedy vehicles that have been determined by the NHTSA to be defective or in noncompliance with the NHSTA standards but have not yet been sold to purchasers. In sum, the NHTSA has the authority to do precisely what Plaintiffs seek here – issue a vehicle safety standard and prevent the sale of (or recall) vehicles determined to be defective or noncompliant.

As Plaintiffs recognize, the NHTSA has been and continues to be intimately involved in these issues. In fact, Plaintiffs spend several paragraphs of their Complaint making various allegations about the NHTSA's investigations. (FAC, ¶¶ 25-27). *See, e.g.*, NHTSA, Office of Defects Investigation Reports (attached to Defendants' Motion to Dismiss as Exhibit B). There is a real and substantial possibility that court action on Plaintiffs' request for a court order enjoining the sale of any ETCS-i-equipped Toyota or Lexus vehicles may frustrate, interfere and conflict with the NHTSA's efforts to investigate and address these issues, including whether to issue an automotive recall.

Given the comprehensive federal administrative scheme that Congress has established for considering the relief sought by Plaintiffs, a "nationwide court-ordered recall would conflict directly with and frustrate the Safety Act." *Lilly v. Ford Motor Co.*, No. 00C7372, 2002 WL 84603, at *5 (N.D. Ill. Jan. 22, 2002). Several courts addressing such requests have held that the claims are preempted by the Safety Act. *See id.* (holding that the claim was preempted and explaining that "[i]t is clear that Congress did not intend for the federal courts to have authority to order recalls of motor vehicles on a nationwide basis for several model years."); *In re Bridgestone/Firestone Inc. Tires Prods. Liab. Litig.*, 153 F. Supp. 2d 935, 944-45 (S.D. Ind. 2001) (holding that request for nationwide recall was conflict preempted on the basis of frustration of Congress' purpose under the Safety Act of providing exclusive administration of recalls through the NHSTA); *see also Namovicz v. Cooper Tire & Rubber Co.*, 225 F. Supp. 2d 582, 584 (D. Md. 2001); *Coker v. DaimlerChrysler Corp.*, No. 01CVS1264, 2004 WL 32676 (N.C. Super. Jan. 5, 2004) *aff'd*, 172 N.C. App. 386, 617 S.E.2d 306 (2005).

Toyota recognizes and acknowledges that other courts have determined that requests for injunctive relief made in other cases were not preempted under the Safety Act. But, those courts noted that the plaintiffs were seeking something short of a court-ordered nationwide recall. *See, e.g., Chamberlan v. Ford Motor Co.*, 314 F.

Supp. 2d 953, 958, 965 (N.D. Cal. 2004) (suggesting that the remedy requested by plaintiffs may fall short of a recall and also distinguishing *Bridgestone* as a case seeking an injunctive remedy amounting to nationwide recall); *Kent v. DaimlerChrysler Corp.*, 200 F. Supp. 2d 1208, 1217 n.3 (N.D. Cal. 2002) (explaining that plaintiffs "do not seek a court-ordered recall, in contrast to the plaintiffs in *Bridgestone*").[4] Here, Plaintiffs unambiguously seek a nationwide recall of Toyota and Lexus vehicles with ETCS-i including vehicles sold and those yet to be sold. As a result, and given the NHTSA's ongoing involvement in investigating these issues, the prospect of a conflict between judicial proceedings and action by the NHTSA is patently clear, and this Court should conclude that Plaintiffs' request for injunctive relief is preempted by the Safety Act.[5]

IV. CONCLUSION

For the foregoing reasons, Toyota respectfully requests that the Court grant its Motion to Dismiss and dismiss Plaintiffs' Complaint in its entirety with prejudice.

Dated: February 8, 2010

Respectfully submitted,
ALSTON + BIRD LLP

/s/ Lisa Gilford
Lisa Gilford
Attorney for Defendants
TOYOTA MOTOR SALES, U.S.A., INC. and
TOYOTA MOTOR CORPORATION

[4] *See also Talalai v. Cooper Tire & Rubber Co.*, No. 00CV5694, 2001 WL 1877265, at *7 (D.N.J. Jan. 8, 2001) (expressly noting that "Complaint does not appear to be seeking a recall"); *In re Ford Motor Co. Speed Control Deactivation Switch Prods. Liab. Litig.*, No. MDL 1718, 2007 WL 2421480, at *5 (E.D. Mich. Aug. 24, 2007) (claim seeking exclusively money damages held not preempted by Safety Act).

[5] For these reasons as well, the court should defer to NHTSA under the doctrine of primary jurisdiction, which applies "whenever enforcement of [a] claim requires the resolution of issues which, under a regulatory scheme, have been placed within the special competence of an administrative body; in such a case the judicial process is suspended pending referral of such issues to the administrative body for its views." *Farmers Ins. Exch. v. Superior Ct.*, 2 Cal. 4th 377, 390, 6 Cal. Rptr. 2d 487, 496-97 (1992). As noted, Plaintiffs allege that complaints have initiated inquiries relating to Plaintiffs' allegations. (FAC, ¶¶ 25-27). This Court should defer to the NHTSA to determine whether the alleged defect exists because it is an issue within the special competence of that administrative agency.

CERTIFICATE OF SERVICE

I hereby certify that on February 8, 2010, I caused a copy of **THE TOYOTA DEFENDANTS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO DISMISS PLAINTIFFS' COMPLAINT** to be served upon the following counsel in the manner described below:

Via the Court's CM/ECF system:

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Attorneys for Defendants
TOYOTA MOTOR SALES, U.S.A., INC.,
and TOYOTA MOTOR CORPORATION

** Additional counsel listed on page 2*

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ERIC KMETZ and JOE MORRIS, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

TOYOTA MOTOR SALES, U.S.A., INC., TOYOTA MOTOR CORPORATION, and DOE DEFENDANTS 1-10,

Defendants.

Case No.: CV 2:09-08478 AHM (FMOx)

Honorable A. Howard Matz

REQUEST FOR JUDICIAL NOTICE FILED IN SUPPORT OF THE TOYOTA DEFENDANTS' MOTION TO DISMISS AND MOTION TO STRIKE

[Filed concurrently with Notice of Motion and Motion to Dismiss; Memorandum of Points and Authorities; Request for Judicial Notice; Appendix of Non-Federal and Out-of-State Authorities; Motion to Strike; and [Proposed] Orders]

Date: March 15, 2010
Time: 10:00 a.m.
Ctroom: 14

First Amended Complaint filed January 19, 2010

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and TOYOTA MOTOR CORPORATION

Defendants Toyota Motor Sales, U.S.A., Inc. and Toyota Motor Corporation ("Toyota" or "Defendants") hereby request that the Court take judicial notice of the Warranty attached as Exhibit A hereto. The Court may take judicial notice of the express warranties provided for Plaintiffs' vehicles. See *Hoey v. Sony Elecs., Inc.*, 515 F.Supp.2d 1099, 1103 (N.D. Cal. 2007). "[I]f a document is not attached to a complaint, it may [nonetheless] be incorporated by reference into a complaint if the plaintiff refers extensively to the document or the document forms the basis of the plaintiff's claim." *United States v. Richie*, 342 F.3d 903, 908 (9th Cir. 2003). Here, Plaintiffs' warranties are integral to the claims asserted in the Complaint.

Dated: February 8, 2010

Respectfully submitted,
ALSTON + BIRD LLP

/s/ Lisa Gilford
Lisa Gilford
Attorney for Defendants

TOYOTA MOTOR SALES, U.S.A., INC. and
TOYOTA MOTOR CORPORATION

CERTIFICATE OF SERVICE

I hereby certify that on February 8, 2010, I caused a copy of **REQUEST FOR JUDICIAL NOTICE FILED IN SUPPORT OF THE TOYOTA DEFENDANTS' MOTION TO DISMISS AND MOTION TO STRIKE** to be served upon the following counsel in the manner described below:

Via the Court's CM/ECF system:

Michael Louis Kelly
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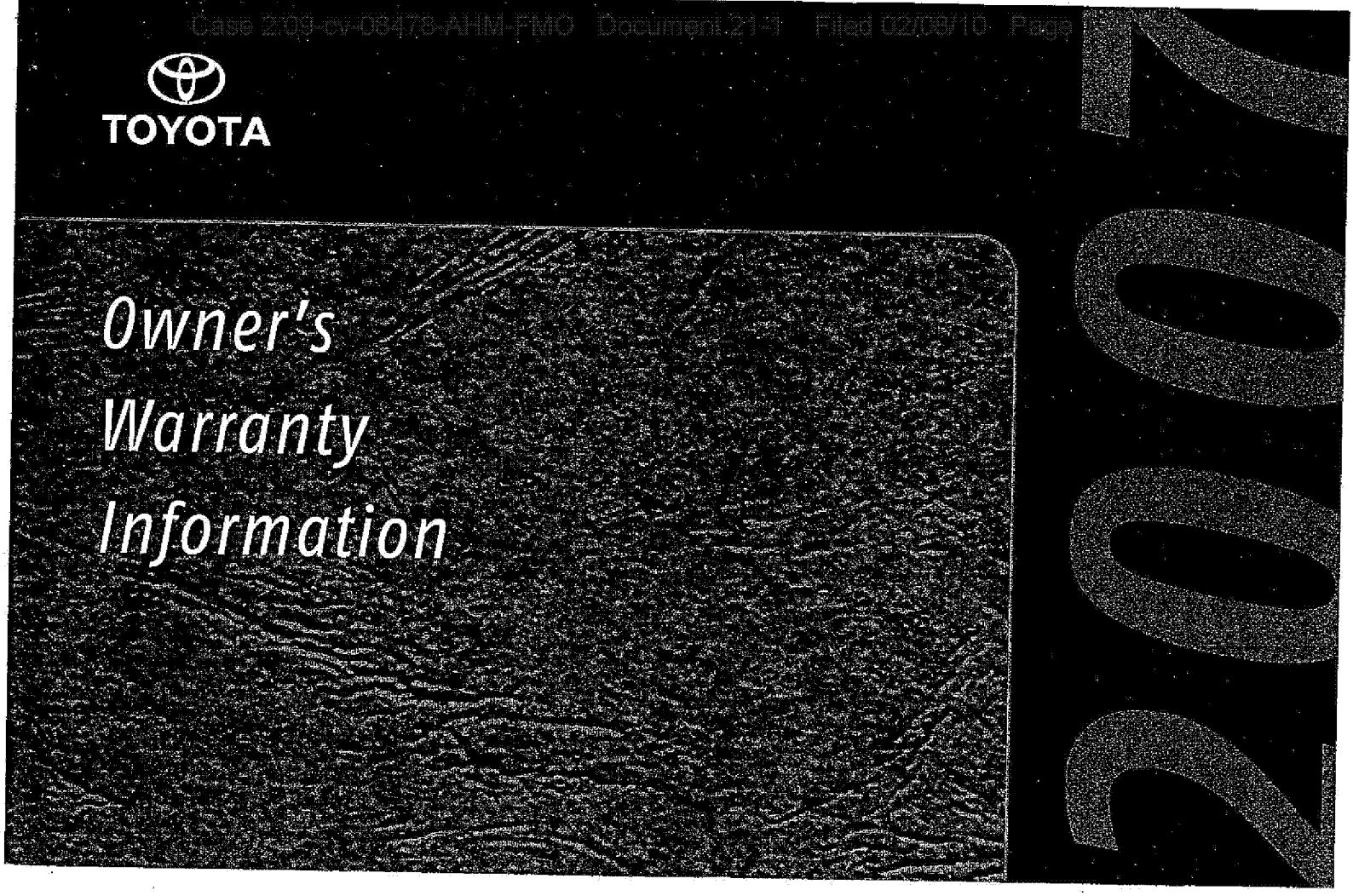
TOYOTA
Owner's
Warranty
Information

INTRODUCTION

Satisfaction Down the Road ____ 2
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YOUR RESPONSIBILITIES

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At Toyota, our top priority is always our customers. We know your Toyota is an important part of your life and something you depend on every day. That's why we're dedicated to building products of the highest quality and reliability.

Our excellent warranty coverage is evidence that we stand behind the quality of our vehicles. We're confident — as you should be — that your Toyota will provide you with many years of enjoyable driving.

To further demonstrate our commitment to our customers' satisfaction, occasionally we may establish a special policy adjustment to pay for specific repairs that are no longer covered by warranty. When we establish such a policy adjustment, we mail details to all applicable owners we have on record. That's why it's important to send in the card at the back of this booklet if you change your address or if you've purchased this vehicle from a previous owner.

To provide you with added protection against unexpected service costs, we offer Toyota Extra Care vehicle service agreements and Toyota Auto Care pre-paid maintenance programs. Both offer plans to meet a wide variety of needs. Your dealership can help you select the plan that's best for you.

Our goal is for every Toyota customer to enjoy outstanding quality, dependability and peace of mind throughout their ownership experience. We want you to be a satisfied member of the Toyota family for many miles to come.

This booklet describes the terms of Toyota warranty coverage as well as general owner responsibilities. A separate publication found in your glove box, the *Scheduled Maintenance Guide*, describes your vehicle's maintenance requirements. Be sure to review this publication carefully, since proper maintenance is required to ensure that warranty coverage remains intact.

All information in this booklet is the latest available at the time of publication and, with the exception of the emission control warranties, is subject to change without notice.

We realize that your confidence in the quality and reliability of our products was a key factor in your decision to buy a Toyota. We also know how disruptive the loss of transportation can be to your daily routine. That's why we're pleased to offer you the benefits of our Transportation Assistance Policy.

Under this policy, you are eligible for transportation assistance if your Toyota must be kept overnight for warranty-covered repairs. The policy applies when your vehicle must be kept overnight for any of the following reasons:

- The warranty repairs will take longer than one day to complete.
- The warrantable condition requires extensive diagnosis.
- The parts needed for the warranty repairs are not readily available and your vehicle is inoperative or unsafe to drive.

The policy does not apply when warranty repairs can be completed in one day but the vehicle must be kept overnight due to dealer or owner scheduling conflicts.

The Transportation Assistance Policy applies for the duration of the New Vehicle Limited Warranty. The policy applies to all 2007 model-year Toyotas sold and serviced by authorized Toyota dealerships in the mainland United States and Alaska.

For further details, please consult your Toyota dealer.

Both Toyota and your Toyota dealer are dedicated to serving your automotive needs. Your complete satisfaction is our first priority. Should you have a problem or concern – either during or after the warranty period – please take the following steps to ensure the quickest possible response:

Step 1

Discuss the situation with a dealership manager, such as the service manager or customer relations manager. In most cases, a satisfactory solution can be reached at this step.

Step 2

If the dealership does not address your concern to your satisfaction, call the Toyota Customer Experience Center at **(800)331-4331.** If you are hearing- or speech-impaired, call (800)443-4999 (TDD).

Please have the following information ready when you call:

- Your Toyota's vehicle identification number (located on the driver's side corner of the dashboard, under the window)
- Current mileage on your vehicle
- Name of your Toyota dealership

A Toyota customer relations representative will assist you in working with the dealership to find a satisfactory solution.

Step 3

If your concern has still not been resolved to your satisfaction, Toyota offers additional assistance through the Dispute Settlement Program, a dispute resolution program administered by the National Center for Dispute Settlement. The purpose of the Dispute Settlement Program is to resolve disputes through arbitration – a process by which two parties authorize an independent third party to hear and resolve a dispute. The program is informal and free of charge. To request that your

case be reviewed through the program, complete the customer claim form in the *Owner's Warranty Rights Notification* booklet (found in your glove box) and mail it to:

National Center for Dispute Settlement
P.O. Box 688
Mt. Clemens, MI 48046

If you would like to request a customer claim form, call the Toyota Customer Experience Center at (800)331-4331. When you call, please have your vehicle identification number, the current mileage on your Toyota and the names of your selling and servicing dealerships.

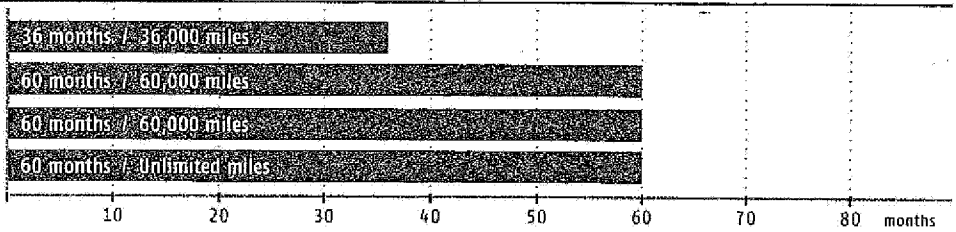
California residents: Toyota offers you assistance through an arbitration program called the California Dispute Settlement Program (CDSP). A brochure about the program is found in your glove box. For additional information, call the Toyota Customer Experience Center at (800)331-4331. You may also contact the CDSP directly at (888)300-6237. Failure to use the CDSP may affect your rights and remedies under California's "Lemon Laws."

Important: You must use the Dispute Settlement Program (or, in California, the CDSP) before seeking remedies through a court action pursuant to the Magnuson-Moss Warranty Act. You may also be required to use the Dispute Settlement Program or CDSP before seeking remedies under the "Lemon Laws" of your state. Please check the appropriate page of the *Owner's Warranty Rights Notification* booklet for the requirements applicable to your state.

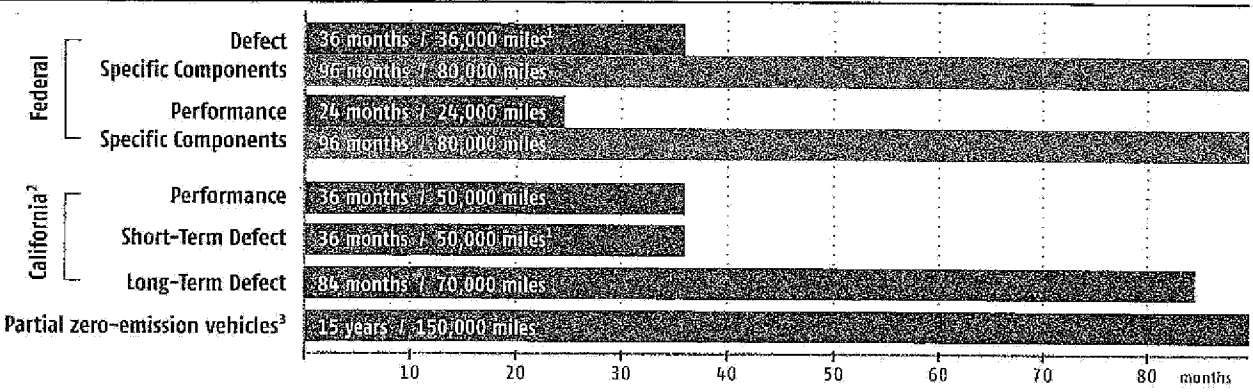
This information about the Dispute Settlement Programs is correct as of the date of printing. However, the programs may be changed without notice. For the most current information about the programs, call the Toyota Customer Experience Center at (800)331-4331.

TOY-RQ-05E-00004229

New Vehicle Limited Warranty



Emission Control Warranty



[1] Specific components may have longer coverage under terms of the Powertrain Warranty.
[2] Also applies to Maine, Massachusetts and Vermont vehicles equipped with a California Certified Emission Control System. Vehicles covered by this warranty are also covered by the Federal Emission Control Warranty.
[3] For Camry 4-cylinder models certified as partial zero-emission vehicles (PZEV) that are sold, registered and operated in California, Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island or Vermont, all emissions components are covered for 15 years or 150,000 miles, whichever occurs first, for performance and defect.

Who Is the Warrantor

The warrantor for these limited warranties is Toyota Motor Sales, U.S.A., Inc. ("Toyota"), 19001 South Western Avenue, Torrance, California 90509-2991, a California corporation.

Which Vehicles Are Covered

These warranties apply to all 2007 model-year Toyota vehicles, excluding Sienna and hybrid models, distributed by Toyota that are originally sold by an authorized dealer in the United States and normally operated or touring in the United States, U.S. territories or Canada. Warranty coverage is automatically transferred at no cost to subsequent vehicle owners.

Multiple Warranty Conditions

This booklet contains warranty terms and conditions that may vary depending on the part covered. A warranty for specific parts or systems, such as the Powertrain Warranty or Emission Performance Warranty, is governed by the coverage set forth in that warranty as well as the General Warranty Provisions.

When Warranty Begins

The warranty period begins on the vehicle's in-service date, which is the first date the vehicle is either delivered to an ultimate purchaser, leased, or used as a company car or demonstrator.

Repairs Made at No Charge

Repairs and adjustments covered by these warranties are made at no charge for parts and labor.

Parts Replacement

Any needed parts replacement will be made using new or remanufactured parts. The decision whether a part should be repaired or replaced will be made by the servicing Toyota dealership and/or Toyota. Parts scheduled to be replaced as required maintenance are warranted until their first replacement only.

Limitations

The performance of necessary repairs and adjustments is the exclusive remedy under these warranties or any implied warranties. Toyota does not authorize any person to create for it any other obligation or liability in connection with this vehicle.

Any implied warranty of merchantability or fitness for a particular purpose is limited to the duration of these written warranties. Some states do not allow restrictions on how long an implied warranty lasts, so this limitation may not apply to you.

Your Rights Under State Law

These warranties give you specific legal rights. You may also have other rights that vary from state to state.

WHAT IS COVERED AND HOW LONG

Basic Warranty

This warranty covers repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by Toyota, subject to the exceptions indicated under "What Is Not Covered" on pages 11–12.

Coverage is for 36 months or 36,000 miles, whichever occurs first, with the exception of wheel alignment and wheel balancing, which are covered for 12 months or 20,000 miles, whichever occurs first.

Powertrain Warranty

This warranty covers repairs needed to correct defects in materials or workmanship of any component listed in the next column and supplied by Toyota, subject to the exceptions indicated under "What Is Not Covered" on pages 11–12.

Coverage is for 60 months or 60,000 miles, whichever occurs first.

Engine

Cylinder block and head and all internal parts, timing gears and gaskets, timing chain/belt and cover, flywheel, valve covers, oil pan, oil pump, engine mounts, turbocharger housing and all internal parts, supercharger housing and all internal parts, engine control computer, water pump, fuel pump, seals and gaskets.

Transmission and Transaxle

Case and all internal parts, torque converter, clutch cover, transmission mounts, transfer case and all internal parts, engine control computer, seals and gaskets.

Front-Wheel-Drive System

Final drive housing and all internal parts, axle shafts, drive shafts, constant velocity joints, front hub and bearings, seals and gaskets.

Rear-Wheel-Drive System

Axle housing and all internal parts, propeller shafts, U-joints, axle shafts, drive shafts, bearings, supports, seals and gaskets.

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Restraint Systems Warranty

This warranty covers repairs needed to correct defects in materials or workmanship of any seatbelt or air bag system supplied by Toyota, subject to the exceptions indicated under "What Is Not Covered" on pages 11–12.

Coverage is for 60 months or 60,000 miles, whichever occurs first.

For vehicles sold and registered in the state of Kansas, the warranty for seatbelts and related components is 10 years, regardless of mileage.

Corrosion Perforation Warranty

This warranty covers repair or replacement of any original body panel that develops perforation from corrosion (rust-through), subject to the exceptions indicated under "What Is Not Covered" on pages 11–12.

Coverage is for 60 months, regardless of mileage.

For information on how to protect your vehicle from corrosion, see the section entitled "Corrosion Prevention and Appearance Care" in the *Owner's Manual*.

Towing

When your vehicle is inoperable due to failure of a warranted part, towing service to the nearest authorized Toyota dealership is covered.

WHAT IS NOT COVERED

This warranty does not cover damage or failures resulting directly or indirectly from any of the following:

- Fire, accidents or theft
- Abuse or negligence
- Misuse – for example, racing or overloading
- Improper repairs
- Alteration or tampering, including installation of non-Genuine Toyota Accessories
- Lack of or improper maintenance, including use of fluids other than those specified in the *Owner's Manual*
- Installation of non-Genuine Toyota Parts
- Airborne chemicals, tree sap, road debris (including stone chips), rail dust, salt, hail, floods, wind storms, lightning and other environmental conditions
- Water contamination

This warranty also does not cover the following:

Tires

Tires are covered by a separate warranty provided by the tire manufacturer. See page 26.

Normal Wear and Tear

Noise, vibration, cosmetic conditions and other deterioration caused by normal wear and tear.

Maintenance Expense

Normal maintenance services such as:

- Engine tune-ups
- Replacement of fluids and filters
- Lubrication
- Cleaning and polishing
- Replacement of spark plugs and fuses
- Replacement of worn wiper blades, brake pads/linings and clutch linings

Vehicles With Altered Odometer

Failure of a vehicle on which the odometer has been altered so that actual vehicle mileage cannot be readily determined.

Salvage or Total-Loss Vehicles

Any vehicle that has ever been issued a "salvage" title or similar title under any state's law; or has ever been declared a "total loss" or equivalent by a financial institution or insurer, such as by payment for a claim in lieu of repairs because the cost of repairs exceeded the cash value of the vehicle. This exclusion does not apply to the emission control warranties.

Incidental Damages

Incidental or consequential damages associated with a vehicle failure. Such damages include but are not limited to inconvenience; the cost of transportation, telephone calls and lodging; the loss of personal or commercial property; and the loss of pay or revenue.

Disclaimer of Extra Expenses and Damages

The performance of necessary repairs and adjustments is the exclusive remedy under this warranty or any implied warranty. Toyota does not authorize any person to create for it any other obligation or liability in connection with this vehicle. Toyota shall not be liable for incidental or consequential damages resulting from breach of this written warranty or any implied warranty. Any implied warranty of merchantability or fitness for a particular purpose is limited to the duration of this written warranty, except in states where this limitation is not allowed.

DISPUTE RESOLUTION

If a dispute arises regarding your warranty coverage, please follow the steps described under "If You Need Assistance" on pages 4–5. Please note that you must use the Dispute Settlement Program (or, in California, the CDSP) before seeking remedies through a court action pursuant to the Magnuson–Moss Warranty Act. You may also be required to use the Dispute Settlement Program or CDSP before seeking remedies under the "Lemon Laws" of your state. Please check the appropriate page of the *Owner's Warranty Rights Notification* booklet (located in your glove box) for the requirements applicable to your state.

Filed 02/08/10 Page 15 of 35

WHAT IS COVERED AND HOW LONG

Emission Defect Warranty

Toyota warrants that your vehicle:

- Was designed, built and equipped to conform at the time of sale with applicable federal emissions standards.
- Is free from defects in materials and workmanship that may cause the vehicle to fail to meet these standards.

Federal regulations require that this warranty be in effect for two years or 24,000 miles from the vehicle's in-service date, whichever occurs first. However, under the terms of the Basic Warranty, Toyota provides coverage of three years or 36,000 miles, whichever occurs first. Specific components may have longer coverage under the terms of the Powertrain Warranty. Additionally, components marked "8/80" in the parts list on pages 15–16 have coverage of eight years or 80,000 miles, whichever occurs first.

Emission Performance Warranty

Some states and localities have established vehicle inspection and maintenance (I/M) programs to encourage proper vehicle maintenance. If an EPA-approved I/M program is in force in your area, you are eligible for Emission Performance Warranty coverage.

Under the terms of the Emission Performance Warranty and federal regulations, Toyota will make all necessary repairs if both of the following occur:

- Your vehicle fails to meet applicable emissions standards as determined by an EPA-approved emissions test.
- This failure results or will result in some penalty to you — such as a fine or denial of the right to use your vehicle — under local, state or federal law.

This warranty is in effect for two years or 24,000 miles from the vehicle's in-service date, whichever occurs first. Additionally, components marked "8/80" in the parts list on pages 15–16 have coverage of eight years or 80,000 miles, whichever occurs first.

TOY-RQ-05E-00004238

WHAT IS NOT COVERED

These warranty obligations do not apply to failures or noncompliance caused by:

- The use of replacement parts not certified in accordance with aftermarket parts certification regulations.
- The use of replacement parts not equivalent in quality or design to original equipment parts.

Provisions under the "What Is Not Covered" section of the New Vehicle Limited Warranty also apply to this warranty.

WARRANTY PARTS LIST

Air/Fuel Metering System

- Air/fuel ratio feedback control system
- Cold-start enrichment system
- Deceleration control system
- Electronic fuel injection system components
  - Air flow sensor
  - Engine control module (8/80)
  - Throttle body
  - Other components

Air Induction System

- Intake manifold and intake air surge tank

Catalyst System

- Catalytic converter and protector (8/80)
- Constricted fuel filler neck
- Exhaust manifold
- Exhaust pipe (manifold to catalyst and/or catalyst to catalyst)

8/80 = Covered for eight years or 80,000 miles, whichever occurs first.

Evaporative Control System
- Charcoal canister
- Diaphragm valve
- Fuel filler cap
- Fuel tank
- Vapor liquid separator

Exhaust Gas Recirculation (EGR) System
- EGR gas temperature sensor
- EGR valve
- Associated parts

Ignition System
- Distributor and internal parts
- Ignition coil and ignitor
- Ignition wires
- Spark plugs*

Positive Crankcase Ventilation (PCV) System
- Oil filler cap
- PCV valve or orifice

Other Parts Used in Above Systems
- Data link connector (8/80)
- Hoses, clamps, fittings, tubing and mounting hardware
- Malfunction indicator light and bulb (8/80)
- Pulleys, belts and idlers
- Sealing gaskets and devices
- Sensors, solenoids, switches and valves

*Warranted until first required maintenance under terms of the California Emission Control Warranty.

8/80 = Covered for eight years or 80,000 miles, whichever occurs first.

MAINTENANCE

You are responsible for performance of the required maintenance indicated in the *Owner's Manual* and the *Scheduled Maintenance Guide.* Toyota will not deny a warranty claim solely because you do not have records to show that you maintained your vehicle. However, any failure or noncompliance caused by lack of maintenance is not covered by this warranty.

When maintenance and repairs are paid for by you, these services may be performed by you or by any automotive service provider you choose. Toyota will not deny a warranty claim solely because you used a service provider other than a Toyota dealership for maintenance and repairs. However, any failure or noncompliance caused by improper maintenance or repairs is not covered by this warranty.

REPLACEMENT PARTS

To ensure optimum performance and maintain the quality built into your vehicle's emission control systems, Toyota recommends the use of Genuine Toyota Parts when servicing or repairing the systems.

Warranty coverage is not dependent upon the use of any particular brand of replacement parts and you may elect to use non-Genuine Toyota Parts for maintenance and repairs. However, use of replacement parts that are not equivalent in quality to Genuine Toyota Parts may impair the effectiveness of the emission control systems.

If you use replacement parts that have maintenance or replacement schedules different from those of Genuine Toyota Parts, you must follow the maintenance and replacement schedules for the parts you are using. In addition, you should ensure that such parts are warranted by their manufacturers to be equivalent to Genuine Toyota Parts.

IF YOUR VEHICLE FAILS AN EMISSIONS TEST

If your vehicle fails an EPA-approved emissions test, you may make a claim under the Emission Performance Warranty. To do so, take your vehicle to an authorized Toyota dealership and present a copy of the emissions test report. Also, take your maintenance records in case they are needed.

If your claim qualifies for coverage, the dealership will repair your vehicle within 30 days (unless a shorter period is required by law). If your claim is denied, Toyota will notify you in writing of the reason within the same period. If we fail to do so, we will repair your vehicle free of charge. The only exceptions allowed are when you request or agree to a delay, or when a delay is caused by factors beyond the control of Toyota or the dealership.

For information on how to obtain service under the Emission Defect Warranty, see page 29, "Obtaining Warranty Service."

IF YOU HAVE QUESTIONS

If you have questions or concerns about your vehicle's federal emission warranty coverage, please follow the steps described under "If You Need Assistance" on pages 4–5. In the case of the Emission Performance Warranty, you may also request information from or report complaints to:

U.S. Environmental Protection Agency
Vehicle Programs & Compliance Division (6405J)
Attn: Warranty Complaints
401 M Street SW
Washington, D.C. 20460

Excluding Camry PZEV, vehicles equipped with a California Certified Emission Control System that are sold, registered and operated in California or any state that adopts California emission warranty provisions are also covered by the California Emission Control Warranty (see page 20). Currently, Maine, Massachusetts and Vermont are the only other states to which the California Emission Control Warranty applies.

DEALER CERTIFICATE

We (the dealership) want you to know that at the time your new Toyota vehicle is being delivered:

1) On the basis of written notification furnished by Toyota, we have knowledge that the vehicle is covered by an EPA Certificate of Conformity.
2) We have visually inspected those emission control devices or portions thereof that are visible without removing or adjusting any components or systems, emissions-related or otherwise. On the basis of this inspection, there are no apparent deficiencies in the installation of emission control devices by Toyota. (For purposes of this certificate, "emission control devices" is limited to devices installed on a vehicle for the sole or primary purpose of controlling emissions and which were not in general use before 1968.)
3) We have performed all emission control system preparations required by Toyota prior to the sale of the vehicle as set forth in Toyota's current pre-delivery service manual.
4) Except as may be provided in Paragraph 5, if this vehicle fails an EPA-approved emissions test within three months or 4,000 miles (whichever comes first) of delivery to the ultimate purchaser, and the vehicle has been maintained and used in accordance with the written instructions for proper maintenance and use, Toyota will remedy the nonconformity free of charge under the terms of the Emission Performance Warranty.
5) If vehicle was used as a company car or demonstrator, check box and complete the following:

   ☐ The vehicle with which this statement is delivered was placed into service as a company car or demonstrator prior to delivery. The Emission Performance Warranty period commenced on the date the vehicle was first placed into service, which was:

   _____
   Month Day Year

Note: The dealership makes no representation or warranty that the emission control system or any part thereof is without defect or that the system will perform properly. The Emission Performance Warranty referred to in Paragraph 4 and furnished with the vehicle is solely that of the manufacturer.

This statement is required by section 207 of the Clean Air Act (42 U.S.C. 7541) and the EPA regulations issued thereunder.

_____
Dealership Name

TOY-RQ-05E-00004243

YOUR WARRANTY RIGHTS AND OBLIGATIONS

The California Air Resources Board (CARB) and Toyota are pleased to explain the emission control system warranty for your 2007 vehicle. In California, new motor vehicles must be designed, built and equipped to meet the state's stringent anti-smog standards. CARB regulations require that Toyota must warrant the emission control system on your vehicle for the time periods indicated on this page, provided there has been no abuse, neglect or improper maintenance of your vehicle.

Your emission control system may include parts such as the fuel injection system, ignition system, catalytic converter and engine computer. Also included may be hoses, belts, connectors and other emissions-related assemblies.

Where a warrantable condition exists, Toyota will repair your vehicle at no cost to you, including diagnosis, parts and labor.

MANUFACTURER'S WARRANTY COVERAGE

1) For three years or 50,000 miles, whichever occurs first:*
   - If your vehicle fails a smog-check test, all necessary repairs and adjustments will be made by Toyota to ensure that your vehicle passes the test. This is your Emission Control System PERFORMANCE WARRANTY.
   - If any emissions-related part on your vehicle is defective, the part will be repaired or replaced by Toyota. This is your SHORT-TERM Emission Control System DEFECT WARRANTY. Covered parts are listed on pages 15–16. Specific components may have longer coverage under the terms of the Powertrain Warranty.

2) For seven years or 70,000 miles, whichever occurs first:*
   - If an emissions-related part listed on pages 22–23 is defective, the part will be repaired or replaced by Toyota. This is your LONG-TERM Emission Control System DEFECT WARRANTY.

*For Camry 4-cylinder models certified as partial zero-emission vehicles (PZEV) that are sold, registered and operated in California, Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island or Vermont, all emissions components are covered for 15 years or 150,000 miles, whichever occurs first, for performance and defect.

OWNER'S WARRANTY RESPONSIBILITIES

You are responsible for performance of the required maintenance indicated in the *Owner's Manual* and the *Scheduled Maintenance Guide*. Toyota recommends that you retain all receipts covering maintenance on your vehicle, but Toyota cannot deny warranty coverage solely for the lack of receipts or your failure to ensure the performance of all scheduled maintenance.

You are responsible for presenting your vehicle to a Toyota dealership as soon as a problem exists. The warranty repairs should be completed in a reasonable amount of time, not to exceed 30 days.

You should also be aware that Toyota may deny you warranty coverage if your vehicle or a part has failed due to abuse, neglect, improper maintenance or unapproved modifications.

If you have any questions regarding your warranty rights and responsibilities, you should contact Toyota Customer Experience at (800) 331-4331 or the California Air Resources Board, Mobile Source Control Division, at 9528 Telstar Avenue, P.O. Box 8001, El Monte, CA 91734-8001.

WHAT IS NOT COVERED

These warranty obligations do not apply to failures or noncompliance caused by:

- The use of replacement parts not certified in accordance with aftermarket parts certification regulations.
- The use of replacement parts not equivalent in quality or design to original equipment parts.

Provisions under the "What Is Not Covered" section of the New Vehicle Limited Warranty also apply to this warranty.

PARTS LIST: LONG-TERM EMISSION DEFECT WARRANTY

The parts listed here are covered for seven years or 70,000 miles from the vehicle's in-service date, whichever occurs first.

Air/Fuel Metering System

- Air pump on Corolla equipped with 1ZZ-FE, Corolla Matrix equipped with 1ZZ-FE, Land Cruiser, Sequoia, Tacoma equipped with 2TR-FE, Tundra, 4Runner equipped with 2UZ-FE
- Engine control computer (engine control module)
- Throttle body

Air Induction System

- Intake manifold and intake air surge tank

Catalyst System

- Catalytic converter (warm-up three-way catalyst)
- Exhaust center pipe on Highlander, RAV4
- Exhaust front pipe on Avalon, Camry, Camry PZEV, Camry Solara, Corolla, Corolla Matrix 2WD, FJ Cruiser, Land Cruiser, Sequoia, Tacoma, Tundra, Yaris, 4Runner
- Exhaust front pipe no. 2 on FJ Cruiser, Sequoia, Tacoma equipped with 1GR-FE, Tundra, 4Runner
- Exhaust manifold on Avalon, Camry, Camry PZEV, Camry Solara, FJ Cruiser, Highlander, Land Cruiser, RAV4, Sequoia, Tacoma equipped with 1GR-FE, Tundra, 4Runner
- Exhaust manifold gasket on Land Cruiser, Sequoia, Tundra equipped with 2UZ-FE, Tundra equipped with 3UR-FE

Evaporative Control System

- Charcoal canister on Avalon, Camry, Camry Solara, RAV4, Yaris
- Fuel tank

Ignition System

- Knock sensor on Camry equipped with 2GR-FE, Camry Solara equipped with 3MZ-FE, FJ Cruiser, Land Cruiser, Sequoia, Tacoma equipped with 1GR-FE, Tundra, 4Runner

Other Parts Used in Above Systems

- Lock-up control solenoid on Camry equipped with 2GR-FE

MAINTENANCE

You are responsible for performance of the required maintenance indicated in the *Owner's Manual* and the *Scheduled Maintenance Guide*. Toyota will not deny a warranty claim solely because you do not have records to show that you maintained your vehicle. However, any failure or noncompliance caused by lack of maintenance is not covered by this warranty.

When maintenance and repairs are paid for by you, these services may be performed by you or by any automotive service provider you choose. Toyota will not deny a warranty claim solely because you used a service provider other than a Toyota dealership for maintenance and repairs. However, any failure or noncompliance caused by improper maintenance or repairs is not covered by this warranty.

REPLACEMENT PARTS

To ensure optimum performance and maintain the quality built into your vehicle's emission control systems, Toyota recommends the use of Genuine Toyota Parts when servicing or repairing the systems.

Warranty coverage is not dependent upon the use of any particular brand of replacement parts and you may elect to use non-Genuine Toyota Parts for maintenance and repairs. However, use of replacement parts that are not equivalent in quality to Genuine Toyota Parts may impair the effectiveness of the emission control systems.

If you use replacement parts that have maintenance or replacement schedules different from those of Genuine Toyota Parts, you must follow the maintenance and replacement schedules for the parts you are using. In addition, you should ensure that such parts are warranted by their manufacturers to be equivalent to Genuine Toyota Parts.

IF YOUR VEHICLE FAILS A SMOG-CHECK TEST

If your vehicle fails a smog-check test, you may make a claim under the Emission Performance Warranty. To do so, take your vehicle to an authorized Toyota dealership and present a copy of the smog-check test report. Also, take your maintenance records in case they are needed.

If your claim qualifies for coverage, the dealership will repair your vehicle within 30 days (unless a shorter period is required by law). If your claim is denied, Toyota will notify you in writing of the reason within the same period. If we fail to do so, we will repair your vehicle free of charge. The only exceptions allowed are when you request or agree to a delay, or when a delay is caused by factors beyond the control of Toyota or the dealership.

For information on how to obtain service under the Emission Defect Warranty, see page 29, "Obtaining Warranty Service."

REPAIR DELAYS

If a Toyota dealership is unable to complete repairs on your vehicle within 30 days, you may have the repairs made under Toyota's provisions for emergency warranty repairs. See page 29 for details.

IF YOU HAVE QUESTIONS

If you have questions or concerns about your vehicle's California emission warranty coverage, please follow the steps described under "If You Need Assistance" on pages 4–5. You may also request information from or report complaints to:

California Air Resources Board
Mobile Source Control Division
9528 Telstar Avenue
P.O. Box 8001
El Monte, CA 91734-8001
(800) 242-4450

Excluding Camry PZEV, vehicles equipped with a California Certified Emission Control System that are sold, registered and operated in California or any state that adopts California emission warranty provisions are covered by this warranty. Currently, Maine, Massachusetts and Vermont are the only other states to which this warranty applies. Vehicles covered by this warranty are also covered by the Federal Emission Control Warranty (see page 14).

OBTAINING WARRANTY SERVICE

The tires that come as original equipment on your vehicle are warranted by their manufacturer and not Toyota. A separate warranty statement for the tires is in your glove box.

To obtain service for a tire defect, take the tire to an authorized dealer of the tire manufacturer. (Refer to your local phone directory for dealer locations.) Your Toyota dealer may also be able to assist you in obtaining warranty service from the manufacturer.

For additional warranty information or service assistance, contact the tire manufacturer directly.

ORIGINAL EQUIPMENT TIRE MANUFACTURERS

BF Goodrich
One Park Way South
P.O. Box 19001
Greenville, SC 29602
(877)788-8899

Bridgestone/Firestone
535 Marriott Drive
Nashville, TN 37214
Bridgestone: (800)847-3272
Firestone: (800)356-4644

Continental Tire of North America
1800 Continental Blvd.
Charlotte, NC 28273
(800)847-3349

Dunlop Tires
1144 East Market Street
Akron, OH 44316
(800)321-2136

Goodyear Tire and Rubber Co.
1144 East Market Street
Akron, OH 44316
(800)321-2136

Michelin North America
One Park Way South
P.O. Box 19001
Greenville, SC 29602
(800)847-3435

Toyo Tire (U.S.A.) Corporation
6261 Katella Ave., Suite 2B
Cypress, CA 90630
(800)442-8696

Yokohama Tire Corporation
601 South Acacia Avenue
Fullerton, CA 92831
(800)722-9888

GENERAL INFORMATION

You are responsible for ensuring that your Toyota is operated and maintained according to the instructions in the *Owner's Manual* and the *Scheduled Maintenance Guide.*

You should keep detailed records of vehicle maintenance, since under some circumstances they may be required for warranty coverage. These records should include date of service, mileage at time of service and a description of service performed and/or parts installed. For your convenience, a maintenance log is included in the *Scheduled Maintenance Guide.* If you sell your vehicle, you should give your maintenance records to the new owner.

Toyota will not deny a warranty claim solely because you do not have records to show that you maintained your vehicle. However, damage or failures caused by lack of proper maintenance are not covered under warranty.

WHERE TO GO FOR MAINTENANCE

You may have maintenance performed on your vehicle by any qualified person or facility. However, Toyota recommends having maintenance performed by an authorized Toyota dealership.

Toyota dealership technicians are specially trained to maintain and repair Toyota vehicles. They stay current on the latest service information through Toyota technical bulletins, service publications and training courses. Many are also certified through the Toyota Certification Program, which involves a series of rigorous written examinations. Feel free to ask any Toyota dealership to show you its technicians' credentials.

You can be confident you're getting the best possible service for your vehicle when you take it to a Toyota dealership. Plus, a Toyota dealership will always use Genuine Toyota Parts designed specifically for your vehicle.

REPLACEMENT PARTS

Warranty coverage is not dependent upon the use of any particular brand of replacement parts. However, Toyota recommends using only Genuine Toyota Parts when you need to replace a part on your vehicle. Like all Toyota products, Genuine Toyota Parts are built to the highest standards of quality, durability and performance. They are also designed to fit your vehicle's exact specifications.

Your Toyota dealership maintains an extensive inventory of Genuine Toyota Parts to meet your vehicle service needs. And because it is linked electronically to Toyota's Parts Distribution Centers, the dealership has quick access to any parts it may not have in stock.

Genuine Toyota Parts are covered by their own warranty (see your dealer for details) or the remainder of any applicable New Vehicle Limited Warranty, whichever is longer. **Non-Genuine Toyota Parts, or any damage or failures resulting from their use, are not covered by any Toyota warranty.**

BY GEOGRAPHIC REGION

In the United States, U.S. Territories and Canada

To obtain warranty service in the United States, U.S. territories or Canada, take your vehicle to an authorized Toyota dealership. If your vehicle cannot be driven, contact your nearest Toyota dealership for towing assistance. You do not have to pay for towing to the nearest Toyota dealership if your vehicle is inoperable due to failure of a warranted part.

Outside the United States, U.S. Territories and Canada

If you are using your vehicle outside the United States, U.S. territories and Canada and need warranty service, contact a local Toyota dealership. Please note, however, that your vehicle may not be repaired free of charge because the local Toyota distributor may have no obligation to provide warranty service for your vehicle, and/or your vehicle may not comply with local regulatory or environmental requirements.

EMERGENCY REPAIRS

If your vehicle is inoperable or unsafe to drive and there is no Toyota dealership reasonably available to make repairs, you may perform the repairs yourself or have them performed by another automotive service provider. Toyota will reimburse you for any of the repairs that are covered by warranty. To receive reimbursement, present to an authorized Toyota dealership your paid repair invoices and any parts that were removed from the vehicle. You will be reimbursed for warranted parts at the manufacturer's suggested retail price and warranted labor at a geographically appropriate hourly rate multiplied by Toyota's recommended time allowance for the repair.

If your vehicle requires emergency repair, Toyota assumes no liability for subsequent failures caused by improper repairs or the use of non-Genuine Toyota Parts unless you have the vehicle properly repaired in a timely manner. To ensure that warranty coverage remains intact, have your vehicle inspected by an authorized Toyota dealership as soon as possible after an emergency repair.

TOY-RQ-05E-00004253

OWNER INFORMATION CHANGE FORM

Check one: ☐ Same owner, name and/or address has changed ☐ New owner, purchased vehicle used **EVV**

☐ Same owner, additional driver who should receive product/safety updates

Vehicle Identification Number (required to process change)

Effective date of this information Mo. / Day / Year

☐ Mr. ☐ Mrs. ☐ Ms. ☐ Miss ☐ Dr.

First name | M.I. | Last name

Company name — Check here if address below is for company ☐

Street address or P.O. Box | Apt. or suite number

City | State | Zip code

Primary phone number | Alternate phone number

E-mail address

This information is obtained solely for the use of Toyota Motor Sales, U.S.A., Inc.
Toyota occasionally sends special promotional offers to registered owners. Check here if you prefer not to receive these offers. ☐

TOYOTA

If your name or address has changed or you purchased your Toyota as a used vehicle, please complete and mail the attached card, even if your warranty coverage has expired. This will enable Toyota to contact you with important product or safety updates concerning your vehicle. If the card is no longer attached, please call the Toyota Customer Experience Center at (800) 331-4331.

www.toyota.com

This publication pertains to the following 2007 Toyota models:

- Avalon
- Camry
- Camry Solara
- Corolla
- Corolla Matrix
- FJ Cruiser
- Highlander
- Land Cruiser
- RAV4
- Sequoia
- Tacoma
- Tundra
- Yaris
- 4Runner

TOYOTA

00505-07TWB

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ERIC KMETZ and JOE MORRIS, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

TOYOTA MOTOR SALES, U.S.A., INC., TOYOTA MOTOR CORPORATION, and DOE DEFENDANTS 1-10,

Defendants.

Case No.: CV 2:09-08478 AHM (FMOx)

Honorable A. Howard Matz

THE TOYOTA DEFENDANTS' NOTICE OF MOTION AND MOTION TO STRIKE ALL CLASS ALLEGATIONS FROM PLAINTIFFS' FIRST AMENDED COMPLAINT

Fed. R. Civ. Proc. 12(f) and 23(d)(1)(D)

[Filed concurrently with Memorandum of Points and Authorities; Request for Judicial Notice; Appendix of Non-Federal and Out-of-State Authorities; Motion to Dismiss; and [Proposed] Orders]

Date: March 15, 2010
Time: 10:00 a.m.
Ctroom: 14

First Amended Complaint filed January 19, 2010

TOY-RQ-05E-00004259

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and TOYOTA MOTOR CORPORATION

TO ALL PARTIES AND TO THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT on March 15, 2010 at 10:00 a.m. or as soon thereafter as counsel may be heard in Courtroom 14 of the above-entitled Court, located at 312 North Spring Street, Room 170, Los Angeles, California 90012, Defendants Toyota Motor Sales, U.S.A., Inc. and Toyota Motor Corporation (collectively "Toyota"), will and hereby do move, pursuant to Federal Rules of Civil Procedure 12(f) and 23(d)(1)(D), to strike the following allegations from the First Amended Complaint in this action:

All Putative Class Allegations from Plaintiffs' First Amended Complaint including Paragraphs 31 through 41.

This motion is made on the grounds that, as set forth more fully in the accompanying Memorandum of Points and Authorities, Plaintiffs purport to represent a putative class of individuals who, like Plaintiff Mary Ann Parker, have not experienced a manifestation of an alleged unintended acceleration defect. Such putative class members plainly lack standing to pursue the claims asserted against Toyota and cannot properly be included in any putative class action.

This Motion is made following the conference of counsel pursuant to Local Rule 7-3 which took place on January 29, 2010.

Dated: February 8, 2010

Respectfully submitted,
ALSTON + BIRD LLP

/s/ Lisa Gilford
Lisa Gilford
Attorney for Defendants

TOYOTA MOTOR SALES, U.S.A., INC. and
TOYOTA MOTOR CORPORATION

CERTIFICATE OF SERVICE

I hereby certify that on February 8, 2010, I caused a copy of **THE TOYOTA DEFENDANTS' NOTICE OF MOTION AND MOTION TO STRIKE ALL CLASS ALLEGATIONS FROM PLAINTIFFS' FIRST AMENDED COMPLAINT** to be served upon the following counsel in the manner described below:

Via the Court's CM/ECF system:

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Attorneys for Plaintiffs Eric Kmetz and Joe Morris

By: /s/ Lisa Gilford
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TOY-RQ-05E-00004262

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** Additional counsel listed on page 2*

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ERIC KMETZ and JOE MORRIS, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

TOYOTA MOTOR SALES, U.S.A., INC., TOYOTA MOTOR CORPORATION, and DOE DEFENDANTS 1-10,

Defendants.

Case No.: CV 2:09-08478 AHM (FMOx)

Honorable A. Howard Matz

THE TOYOTA DEFENDANTS' NOTICE OF MOTION AND MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT

Fed. R. Civ. Proc. 12(b)(6)

[Filed concurrently with Memorandum of Points and Authorities; Request for Judicial Notice; Appendix of Non-Federal and Out-of-State Authorities; Motion to Strike; and [Proposed] Orders]

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TOY-RQ-05E-00004263

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and TOYOTA MOTOR CORPORATION

TOY-RQ-05E-00004264

TO ALL PARTIES AND TO THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT Defendants Toyota Motor Sales, U.S.A., Inc. and Toyota Motor Corporation ("Toyota" or "Defendants") will and hereby do move, pursuant to Federal Rule of Civil Procedure 12(b)(6), for an order dismissing the First Amended Complaint in this action. The motion to dismiss will be heard in the courtroom of the Honorable A. Howard Matz, United States District Court for the Central District of California, 312 North Spring Street, Room 170, Los Angeles, California 90012 on March 15, 2010 at 10:00 a.m. or as soon thereafter as counsel may be heard.

This motion is made on the grounds that, as set forth more fully in the accompanying Memorandum of Points and Authorities, the First Amended Complaint fails to state facts sufficient to constitute a claim for relief or cause of action against Defendants. More specifically, Plaintiffs lack standing under Article III to assert any of their claims. Plaintiffs have not adequately alleged injury-in-fact. Nor have Plaintiffs alleged that Toyota failed to honor its warranty, or to repair any allegedly defective components. Plaintiff Joe Morris has not even alleged that he experienced sudden, unintended acceleration or any manifestation of the defect.

Plaintiffs have also failed to allege the standing prerequisites of the Consumer Legal Remedies Act (Cal. Civ. Code § 1770, "CLRA"), the Unfair Competition Law (Cal. Bus. & Prof. Code § 17200, "UCL"), the False Advertising Law (Cal. Bus. & Prof. Code § 17500, "FAL"), namely, that they relied on alleged misrepresentations made by Toyota in purchasing their vehicles.

Plaintiffs have not adequately alleged fraud under these statutes, nor have they plead fraud with the requisite particularity. Plaintiffs have not alleged that Toyota made any misrepresentations to Plaintiffs, and they cannot demonstrate that Toyota had a duty to disclose the alleged defect. Plaintiffs' UCL claim also fails because they have not set forth violations of the unlawful or unfair prongs of the law. Plaintiffs' CLRA claim for monetary damages should be dismissed because Plaintiffs failed to

TOY-RQ-05E-00004265

comply with the Act's pre-suit notice requirement. Moreover, Plaintiff has not adequately alleged violations of the unlawful, fraudulent or unfair prongs of the UCL.

Plaintiffs' claims for breaches of various implied warranties fail as a matter of law. Plaintiffs are not in vertical privity with any of the Defendants. Moreover, regardless of privity, Plaintiff Morris has not stated a viable breach of warranty claim because he does not allege that his vehicle manifested the alleged defect. Plaintiffs' claim for breach of the implied warranty of fitness for a particular purpose also fails as a matter of law because Plaintiffs do not (and cannot) allege a particular purpose for the vehicles. Rather, Plaintiffs attempt to assert this claim based on the ordinary purpose of the vehicles.

Plaintiffs' negligence claim fails because it is barred by the economic loss doctrine. Under the economic loss rule, in actions for negligence, a manufacturer's liability is limited to damages for physical injuries to person or property. There is no recovery for economic loss alone.

Finally, Plaintiffs' request for a court ordered recall preventing Toyota from selling any vehicles with Toyota's current ETCS-i system is preempted by the National Traffic and Motor Vehicle Safety Act of 1966 ("Safety Act"), 49 U.S.C. § 30101 *et seq.* The Safety Act and its implementing regulations set forth a comprehensive regulatory framework for the federal government to address the recall of automobiles for safety concerns and vests this authority in the National Highway Traffic Safety Administration ("the NHTSA"). Plaintiffs' requested injunctive relief would frustrate these governmental objectives, usurp the role of the NHTSA, and is therefore preempted.

This motion is and will be based on this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities, the accompanying Request for Judicial Notice, the Motion to Strike being filed concurrently herewith, any and all other pleadings on file in this action, any reply papers that may be filed in support of the motion, and such further evidence or argument as may be presented at, or in

connection with, the hearing on the motion.

This motion is made following the conference of counsel pursuant to L.R. 7-3 which took place on January 29, 2010.

Dated: February 8, 2010

Respectfully submitted,
ALSTON + BIRD LLP

/s/ Lisa Gilford
Lisa Gilford
Attorney for Defendants

TOYOTA MOTOR SALES, U.S.A., INC. and
TOYOTA MOTOR CORPORATION

CERTIFICATE OF SERVICE

I hereby certify that on February 8, 2010, I caused a copy of **THE TOYOTA DEFENDANTS' NOTICE OF MOTION AND MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT** to be served upon the following counsel in the manner described below:

Via the Court's CM/ECF system:

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ERIC KMETZ, and JOE MORRIS, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

TOYOTA MOTOR SALES, U.S.A., INC., TOYOTA MOTOR CORPORATION, and DOE DEFENDANTS 1-10

Defendants.

Case No. 2:09-CV-08478 AHM-FMO

Assigned to the Honorable A. Howard Matz

PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO THE TOYOTA DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT

[Filed concurrently with Opposition to Motion to Strike and Request for Judicial Notice]

Date: March 15, 2010
Time: 10:00 a.m.
Crtroom: 14

(First Amended Complaint filed January 19, 2010)

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MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiffs Eric Kmetz and Joe Morris hereby respectfully submit their Opposition to Defendants' Motion to Dismiss Plaintiffs' First Amended Complaint.

I. INTRODUCTION

Plaintiffs Eric Kmetz and Joe Morris are California consumers who purchased Toyota and Lexus automobiles in California. They have sued Defendants Toyota Motor Sales, U.S.A., Inc., and Toyota Motor Corporation (collectively "Toyota") for violation of California's consumer protection laws, for breach of implied warranties, and for negligence. They seek to represent other similarly situated Toyota and Lexus owners in a class action against Toyota based upon highly dangerous defects in their vehicles.

The gravamen of Plaintiffs' First Amended Complaint ("FAC") is that Toyota and Lexus vehicles equipped with an electronic throttle control system ("ETC") are defective because they have the propensity for sudden unintended acceleration, resulting in the potential for serious injury or death to both vehicle occupants and the general public. Toyota knew from numerous consumer complaints that their vehicles were susceptible to incidents of sudden, unintended, and uncontrollable acceleration, and posed a significant risk of injury and death to vehicle occupants, other motorists, and pedestrians, but sold them anyway. FAC ¶ 28. Toyota had a duty to disclose this defect because 1) it publicly created, through its marketing campaign, the image of its vehicles as safe and reliable; and 2) the vehicle defect causes Toyota's vehicles to become inherently dangerous products to the driver, passengers, and the general public. FAC ¶ 30. The Los Angeles Times, in a front page article on December 23, 2009, described what occurred:

> A peerless reputation for quality and safety has helped Toyota become the world's largest automaker. But even as its sales have soared, the company has delayed recalls, kept a tight lid on disclosure of potential problems and attempted to blame human error in cases where owners

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> claimed vehicles were defective. After Toyota this fall announced its biggest recall to address the sudden-acceleration problem, it insisted publicly that no defect existed. This drew a rare public rebuke from the [NHTSA], which chastised the automaker for making "inaccurate and misleading statements." FAC ¶ 14.

The case at bar is one of the first class action cases filed against Toyota, related to the unintended acceleration defects. Since this case was filed, over sixty other class actions lawsuits based upon the same general set of facts have been filed and are now pending before other courts around the country. Accordingly, this is one of the first cases in which a court will determine whether consumers can state a claim against Toyota.

Plaintiffs respectfully submit that the facts of this case, and the factual allegations in the FAC, unmistakably support claims against Toyota under California's consumer protection laws, common law and warranty law. Toyota cannot conceal *for years* the fact that their vehicles have a defect that causes unintended acceleration, continue to sell their vehicles, and cause harm to consumers, without violating our laws.

This class action lawsuit against Toyota should not be dismissed based upon Toyota's arguments that the standards for pleading in federal court somehow have not been met. Moreover, if any technical defect in the pleading exists, the Court should grant leave to amend.

II. ARGUMENT

A. The Standard of Review on a Motion to Dismiss

"The motion to dismiss for failure to state a claim is viewed with disfavor and is rarely granted." *Gilligan v. Jamco Develop. Corp.*, 108 F.3d 246, 249 (9th Cir. 1997). A 12(b)(6) dismissal is proper only in "extraordinary cases." *United States v. Redwood City*, 640 F.2d 963, 966 (9th Cir. 1981). In ruling on a Rule12(b)(6) motion, a court "must accept the allegations in the complaint as true, and draw all

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reasonable inferences in favor of the plaintiff." *Catholic League for Religious and Civil Rights v. City and County of San Francisco*, 567 F.3d 595, 599 (9th Cir. 2009). The complaint must be construed on "the assumption all the allegations in the complaint are true (even if doubtful in fact)." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (internal citations and quotations omitted). "[O]nce a claim for relief has been stated, a plaintiff receives the benefit of imagination, so long as the hypotheses are consistent with the complaint." *Id.* at 563 (internal quotations omitted). "A well-pleaded complaint may proceed even if it appears that a recovery is very remote and unlikely." *Id.* at 555 (internal citations and quotations omitted).

B. Plaintiffs Have Adequately Alleged Standing

1. Plaintiff Morris Has Proper Article III Standing

Plaintiff Morris, who has not experienced unintended acceleration, has Article III standing because he has suffered economic damages. The opinion in *Cole v. General Motors Corp.*, 484 F.3d 717 (5th Cir 2007), is instructive. *Cole* involved defective electronic sensors, "SISMs," that caused airbags to inflate unexpectedly. GM argued, like Toyota, that the plaintiffs lacked standing "because the air bags in their vehicles never deployed inadvertently, and therefore, they cannot have suffered an injury in fact . . . without actual deployment, plaintiffs' injury is speculative because plaintiffs can only claim that the SISMs in their vehicles were potentially defective." *Id.* at 722. The Fifth Circuit rejected the argument, noting first that "plaintiffs argue that . . . they have suffered economic loss satisfying the injury-in-fact requirement because the SISMs in all DeVilles were defective at the moment of purchase. . . .[in that] they received DeVilles with air bags that could deploy unexpectedly, without a crash." *Id.* at 722. The Fifth Circuit went on to hold that plaintiffs had Article III standing and its reasoning applies here:

> [A]lthough plaintiffs do not assert physical injuries (either their own or those of other persons), they do assert their own actual economic injuries . . . that each plaintiff suffered economic injury at the moment [they]

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> purchased a DeVille because each DeVille was defective. . . . Plaintiffs seek recovery for their actual economic harm (e.g., overpayment, loss in value, or loss of usefulness) emanating from the loss of their benefit of the bargain. . . . [P]laintiffs may bring claims under . . . express and implied warranties . . .. Whether recovery . . . is permitted under governing law is a separate question; it is sufficient for standing purposes that the plaintiffs seek recovery for an economic harm that they allege they have suffered.

Id. at 723.

In *Trew v. Volvo Cars of N. Am., LLC*, Case No. CIV-S-051379, 2006 WL 306904 (E.D. Cal. Feb. 8, 2006), the plaintiff alleged thatVolvo installed defective electronic throttle modules ("ETMs") that can cause a vehicle to shake, surge, or lose power. The plaintiff further alleged that Volvo initially denied that the problem existed, then recalled the vehicles, and, thereafter continued to conceal the problem. The plaintiff asserted, among other claims, a claim for unfair competition. Volvo moved to dismiss the UCL claim on the grounds that the plaintiff lacked standing because she had not sustained an injury in fact.

The plaintiff argued she had sustained an injury in fact, even though her vehicle had not failed, on two independent grounds. First, she contended that although the vehicle had not failed, it would. Second, she alleged "she would have paid less for her vehicle if she had known about the defective ETM." *Id.* at *6. The court denied Volvo's motion on both grounds. The court found the plaintiff had both Article III standing and UCL standing. *Id.*

Like the plaintiff in *Trew,* Plaintiffs here allege that they have sustained economic damages, an injury in fact, and have lost the benefit of the bargain when they paid for a vehicle with an undisclosed defect in the ETC. *See, also, Shin v. BMW of N. Am.*, Case No. 09-cv-398, 2009 WL 2163509, *3 (C.D. Cal. Jul. 16, 2009) (noting that in pleading a fraudulent omissions claims under the UCL and CLRA

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based on the sale of defective alloy wheels, the plaintiffs "made the requisite allegations: They would not have purchased their vehicles at the price they paid or would have purchased the vehicle with different wheels.") *(citing Falk v. General Motors Corp.*, 496 F. Supp. 2d 1088, 1095-99 (N.D. Cal. 2007); *Falk*, 496 F. Supp. 2d at 1096 (upholding complaint because "plaintiffs also argue that had they known of the possibility of a failed speedometer, they would not have paid the full asking price for their GM vehicles").

Similarly, in *Sanchez v. Wal-Mart Stores, Inc.*, Case No. 06-cv-2573, 2008 WL 3272101 (E.D. Cal. Aug. 6, 2008), the defendants contended the plaintiff did not suffer an "injury in fact" and lacked standing to pursue a UCL claim because the product she purchased did not malfunction. The court rejected that argument and held:

> To have standing under the UCL Sanchez need only demonstrate that she spent or lost money due to an unfair business practice. . . . Through this action, Sanchez seeks an order of restitution to recover money lost from having to replace an allegedly defective stroller that she purchased from Wal-Mart due to an unfair business practice. She also seeks injunctive relief in the form of a recall. This is minimally sufficient to confer standing to assert a claim for relief under the UCL.

Id. at *3.

Although the facts in *Sanchez*, unlike here, did not support a claim that the plaintiff bought the stroller due to a material omission, the court held that "there is still an issue of fact as to whether Sanchez 'lost money' because she possessed a less valuable stroller than that for which she bargained due to an alleged defect that was not disclosed by Wal-Mart." *Id.*

In the instant case, Plaintiff Morris alleges that his vehicle and those of putative class members have common defects which cause sudden and unintended acceleration and put all owners of such vehicles at a constant risk for their safety. Plaintiff Morris

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further alleges that he and members of the putative class each paid for a defective car which they would not have bought, or would have paid substantially less for, had they known of the defect, and that their vehicles' resale value has been reduced. FAC ¶¶5, 47. Thus, Plaintiff Morris has standing.[1]

2. Plaintiffs Have Adequately Alleged an Injury-In-Fact

Plaintiffs have adequately pled that they have suffered injury-in-fact. Plaintiffs have specifically alleged that but for the alleged conduct of Toyota, "Plaintiff[s] would not have purchased [their] vehicle[s], or would not have purchased [their] vehicle[s] for the price paid." FAC ¶¶ 4, 5. Plaintiffs have also alleged that their vehicles have "further suffered a diminution in resale value due to press reports and recalls related to the sudden, unexpected acceleration of Toyota and Lexus vehicles." FAC ¶¶ 4, 5. At the pleading stage, the Court must accept these allegations as true, and thus, Plaintiffs have met their burden.

The majority of Defendants' citations to "benefit of their bargain" cases are completely inapposite and are not, as Defendants would like the Court to believe, warranty cases at all.[2] Unlike the situation in those cases, Plaintiffs here have specifically alleged injury-in-fact. Further, Defendants' discussion of *Thiedemann v. Mercedes-Benz USA, LLC*, 183 N.J. 234 (N.J. 2005) is equally inapposite. First, even apart from the fact that *Thiedemann* addresses a New Jersey statute with different requirements, including a specific requirement of an "ascertainable loss" which does

[1] Furthermore, Defendants' reliance on *Am. Suzuki Motor Corp. v Sup. Ct.*, 37 Cal. App. 4th 1291, 1296-98 (Cal. Ct. App. 1995) is misplaced. The implied warranty claims in *American Suzuki* "were not decided on the ground a defect must have resulted in the product malfunctioning in order to give rise to a suit for breach of warranty. Rather, they were decided on the ground that since there was no history of the products failing they were not, as a matter of law, defective." *Hicks v. Kaufman & Broad Home Corp.*, 89 Cal. App. 4th 908, 923-24 (Cal. Ct. App. 2001). Here, there is a clear history of Toyota's cars failing.

[2] *Peterson v. Cellco P'ship*, 164 Cal. App. 4th 1583, 1591 (Cal. Ct. App. 2008) (plaintiffs failed to allege they paid more for insurance due to deception); *Baggett v. Hewlett-Packard Co.*, Case No. 07-cv-667, 2009 WL 3178066, at *3 (C.D. Cal. Sept. 29, 2009) (plaintiff failed to allege printer cartridge did not provide the promised 2000 color pages); *Laster v. T-Mobile USA, Inc.*, Case No. 05-cv-1167, 2009 WL 4842801, *6 (S.D. Cal. Dec. 14, 2009) (at summary judgment, plaintiff failed to show evidence of reliance upon advertisement).

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not exist under California law, what Defendants fail to tell the Court is that *Thiedemann* was a decision on summary judgment, not at the motion to dismiss stage. *Id.* Thus, the basis for the *Theidemann* court's decision was that some of the plaintiffs, who *had already had their vehicle repaired under warranty and at no cost*, failed to provide sufficient evidence, expert or otherwise, at the summary judgment stage, to support their claim for diminution in value. *Id.* at 251-252. Further, the defect alleged in *Theidemann* was a faulty fuel-gauge that did not accurately reflect a *full* tank, which, as the court in *Theidemann* noted, did not threaten plaintiffs' safety in any way. *Id.*[3]

Here, Plaintiffs have specifically alleged that the defects in their vehicles "pose[] a significant risk of injury and death to vehicle occupants, other motorists, and pedestrians," that "the lack of ... safety systems allows the ETC to set the engine throttle to any position regardless of the position of the accelerator, and with no mechanical or electronic failsafe mechanism to allow the driver to effectively stop or slow the car," and that "Toyota has taken no steps to remedy this dangerous condition." FAC ¶¶ 4-5, 22, 29. Further, not only have Plaintiffs alleged that their vehicles have suffered a diminution in resale value, they have also alleged that had they known of these defects, they would have never purchased their vehicle at all and certainly not for the price paid. FAC ¶¶ 4-5. Again, at the pleading stage, the Court must accept these allegations as true, and thus, Defendants' argument fails.[4]

[3] This case is much more similar to *In re Ford Motor Co. E-350 Van Prods. Liab. Litig. (No. II)*, Case No. 03-4558-MDL-1687, 2008 WL 4126264, *25 (D. N.J. Sept. 2, 2008) where the court, applying California law, found that plaintiff has adequately pled injury-in-fact and denied the motion to dismiss where the plaintiff alleged "that the E350 vans have diminished in monetary value because they are incapable of safely transporting 15 passengers."

[4] Further, outside evidence also supports Plaintiffs' allegations. Plaintiffs, in their Request for Judicial Notice ("PRJN") include a press release issued by Kelley Blue Book which explicitly states that used Toyota values for recalled models will have declined 2.5 - 4.5 percent as of February 12, 2010. The release further states "[w]e are seeing a softening of both used Toyota values *and the New Car Blue Book values of new Toyotas* this week," that "[t]he latest kbb.com study results show 27 percent of those who said they were considering a Toyota prior to the recall now say they no longer are considering the brand," and that "[n]ow nearly half (49 percent) of the car shoppers who have defected from Toyota say they are not sure if they will consider the brand again, even once Toyota's problems are resolved." PRJN Ex. E.

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C. Plaintiffs Properly Fulfilled the Notice Requirement for Claiming Damages Under the CLRA

Toyota argues the "pre-lawsuit" notice described in Cal. Civil Code 1782(a) is insufficient. Motion to Dismiss ("MTD") 12: 20-22. While pre-suit notice is one way to properly give notice of a damages claim under the CLRA, Toyota ignores that it, in fact, received a proper CLRA notice more that 30 days prior to the filing of the FAC, and that such notice is sufficient as a matter of law.

In a recent decision of the California Court of Appeals this exact issue was adjudicated. In *Morgan v. AT&T Wireless Services Inc.*, 177 Cal. App. 4th 1235 (Cal. Ct. App. 2009) the plaintiff served a CLRA notice more than 30 days prior to the filing of his second amended complaint but *subsequent* to filing of not just the initial complaint but also a first amended complaint. *Id.* at 1260. Defendant AT&T argued, "plaintiffs' CLRA claim fails because plaintiffs did not send the required notice before commencement of the lawsuit." *Id.* The Court of Appeal disagreed, finding that AT&T's position was "contrary to the express language of the notice statute" and that plaintiffs "were not required to provide notice before filing the original or first amended complaints because they did not seek damages under the CLRA in those complaints." *Id.* The court went on to explain that no pre-suit notice was required under 1782(d) and that the "statute contemplates that a consumer may amend a complaint for injunctive relief to add a request for damages under the CLRA. ***Indeed, the statute expressly allows such an amendment***, as long as it is done 30 days or more after filing of the original complaint and compliance with the notice requirement." *Id.* (emphasis added).

Similarly, in *Stickrath v. Globalstar, Inc.*, 527 F. Supp. 2d 992, 1001 (N.D. Cal. 2007), the defendants argued that plaintiffs failed to comply with the CLRA's notice requirements and that the CLRA claim therefore had to be dismissed. The Court found that plaintiffs' original lawsuit was filed "admittedly before notifying Defendant of the alleged CLRA violations, but this was not improper." *Id.* The court

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went on to explain that, pursuant to Cal. Civ. Code § 1782(d), when a suit for injunctive relief is brought in accordance with the CLRA, "[n]ot less than 30 days after the commencement of [such] an action ... and after compliance with subdivision (a), the consumer may amend his or her complaint without leave of court to include a request for damages." *Id.* The court denied defendants' motion and found that plaintiffs' amendment was timely because plaintiffs in that case sent a certified CLRA letter on April 26, 2007, and amended their complaint to seek damages under the CLRA on June 29, 2007, which was more than the 30 days after notice was given. *Id.* at 1001-1002.

The above cases clearly demonstrate that the CLRA notice requirements were met here. Plaintiffs filed their original complaint on November 18, 2009 with explicit language stating in paragraph 39 "[i]f no appropriate ... remedy has been given, or agreed to be given, to Plaintiffs and the putative class within 30 days of such [CLRA] letter, Plaintiffs will amend this Complaint to add a request for damages under this cause of action." On November 24, 2009, as described in paragraph 47 of the FAC and admitted in the Motion to Dismiss at 13:15-17, Plaintiffs sent the required notice. On January 19, 2010, which is more than 30 days after Plaintiffs sent the notice, Plaintiffs filed their First Amended complaint, modifying that paragraph to now read: "Over 30 days have passed since notice was given, and Defendants have failed to take or agree to take the remedies asked for in the notice. Thus, Plaintiffs are entitled to damages in addition to all other appropriate remedies." (FAC ¶ 47) As stated in *Morgan v. AT&T,* "[b]ecause plaintiffs in this case alleged that they sent the required notice to AT&T more than 30 days before they filed the third amended complaint and that AT&T failed to correct the alleged wrongs, the trial court erred by sustaining the demurrer for failure to comply with the CLRA notice requirements." 177 Cal. App. 4th at 1261. The CLRA notice requirements have been satisfied in this case.

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D. Plaintiffs Sufficiently Allege Claims for Deceptive Business Practices Under the CLRA, UCL, and FAL

"Fraudulent" or deceptive business practices under the CLRA, UCL, and FAL are not the same as common law fraud. It is well established that "fraudulent," as used in the statutes at issue, does not refer to the common law tort of fraud but only to the requirement that members of the public "are likely to be deceived" by the conduct. *Bank of the West v. Sup. Ct.*, 2 Cal. 4th 1254, 1267 (Cal. 1992).

Courts have recognized as far back as 1935 that cases of fraudulent business practices under unfair competition laws can be brought without even a single untrue statement or omission. *See, e.g., Am. Philatelic Soc. v. Claibourne*, 3 Cal. 2d 689 (Cal. 1935). Toyota, by selling a vehicle susceptible to sudden unintended acceleration resulting in the possibility of serious injury or death to the occupants and the general public, is guilty of deceptive business practices under California's consumer protection laws because that *conduct*, in and of itself, and separate and apart from any misrepresentation or omission, is deceptive.

1. Allegations of Specific Misrepresentations are Unnecessary to State a Claim Under the CLRA, UCL and FAL

Defendants make much of the purported fact that Plaintiffs do not identify any specific representations or misrepresentations made by Toyota. What Defendants fail to recognize is that allegations of specific misrepresentations are simply unnecessary to state a cause of action under the CLRA, UCL and FAL.

The FAC specifically alleges that "one of Toyota's main selling points for its vehicles is that such cars are reputed to be safe and reliable." FAC ¶¶ 4, 5. The FAC supports this allegation by citation to a Los Angeles Times article stating "[a] peerless reputation for quality and safety has helped Toyota become the world's largest automaker" and to other evidence of Toyota's past actions taken to protect its reputation for producing safe and reliable vehicles. FAC ¶¶ 14-16, 23-29.

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Further, Toyota has admitted as much in a public letter by its President, Akio Toyoda, stating:

> More than 70 years ago, Toyota entered the auto business based on a simple, but powerful, principle: that Toyota would build the highest-quality, safest and most reliable automobiles in the world.
>
> * * *
>
> When consumers purchase a Toyota, they are not simply purchasing a car, truck or van. They are placing their trust in our company. The past few weeks, however, have made clear that Toyota has not lived up to the high standards we set for ourselves. More important, we have not lived up to the high standards you have come to expect from us.

PRJN Ex. A.

Any vehicle manufacturer that sold a vehicle knowing it had a defect that could cause it to accelerate unintentionally would be guilty of deceptive conduct. However, it is even more deceptive for Toyota to do so. Toyota trades on its reputation for safety and reliability, and consumers are highly likely to be deceived when Toyota puts into the stream of commerce vehicles that have a defect that make them, at the very least, unsafe and unreliable. As noted above, Toyota's own President has admitted that Toyota has effectively marketed its reputation for safety, reliability, and trust, creating such expectations from the consumer.

This is further evidenced by statements made in Toyota's most recent television commercial, attempting to regain that trust, which states, in relevant part "[f]or over 50 years... providing you with safe... reliable... high-quality vehicles has been our first priority. In recent days, our company has not been living up to the standards you've come to expect from us." PRJN Ex. C (ellipses in original).

Toyota admits through its public statements that for over 50 years it has marketed to the public a reputation for reliability, safety, and quality, that the public has such expectation from Toyota, and that Toyota has not lived up to this standard.

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Thus, Toyota essentially admits not just that the public was likely to be deceived, but that it *has* been deceived by Toyota's conduct. That Toyota now argues that Plaintiffs' claims fail is belied by its own public admissions.

As the California Supreme Court has held, a long-term promotional campaign "may seek to persuade by cumulative impact, not by a particular representation on a particular date. . . . Plaintiffs should be able to base their cause of action upon an allegation that they acted in response to an advertising campaign even if they cannot recall the specific advertisements." *Committee on Children's Television, Inc. v. General Foods Corp.*, 35 Cal. 3d 197, 219 (Cal. 1983); *See, also, In re Tobacco II Cases*, 46 Cal. 4th 298, 328 (Cal. 2009) ("*Tobacco II*") ("where, as here, a plaintiff alleges exposure to a long-term advertising campaign, the plaintiff is not required to plead with an unrealistic degree of specificity that the plaintiff relied on particular advertisements or statements.") In the instant case, Plaintiffs have specifically alleged that they "relied upon Toyota's carefully crafted reputation for safety and reliability in choosing [their] vehicle[s]." Further, Toyota has admitted as much in its own public statements. PRJN Ex. A-D. Thus, Plaintiffs have met their burden under *Children's Television*.

2. Plaintiffs Have Adequately Alleged Material Omissions

As Defendants, themselves, correctly recognize, deceptive omissions are actionable under the CLRA, UCL and FAL if the omission is "contrary to a representation actually made by defendant, or *an omission of a fact the defendant was obliged to disclose*." *Daugherty v. Am. Honda Motor Co.*, 144 Cal. App. 4th 824, 835 (Cal. Ct. App. 2006); MTD 15:2-5 (emphasis added). As discussed above, Plaintiffs have adequately pled, under the first prong, that Defendants' omission in failing to disclose the potentially life-threatening defects in its vehicles was contrary to Defendants' "carefully crafted reputation for safety and reliability." FAC ¶¶ 4, 5. Plaintiffs have also adequately pled, under the second prong, that Defendants' failure to disclose the propensity of its vehicles equipped with ETC to experience sudden

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unintended acceleration was a material fact which Defendants were obligated to disclose.

As courts have long recognized, and as Defendants acknowledge, under California law, Defendants have a duty to disclose "when the defendant had exclusive knowledge of material facts not known to the plaintiff." *Deteresa v. Am. Broadcasting Cos., Inc.*, 121 F.3d 460, 467 (9th Cir. 1997); MTD at 16:20-21. In the instant case, Plaintiffs have alleged that Toyota has known for years that its cars equipped with ETC are susceptible to sudden unintended acceleration, but that it has failed to disclose such knowledge to the public, and took no steps to remedy this dangerous condition. FAC ¶¶ 14-30.

The case of *Falk v. General Motors Corp.*, 496 F. Supp. 2d 1088 (N.D. Cal. 2007), is exactly on point. In *Falk,* the court found that plaintiffs succeeded in stating a deceptive conduct claim based on the following:

> Plaintiffs allege that members of the public are likely to be deceived because GM violated its duty to disclose the potential for known defects in its speedometers. Relying on *Chamberlan*, plaintiffs argue that a reasonable customer would expect a speedometer to last for the lifetime of a car and would have reconsidered the purchase if he or she had known of the alleged defect. As stated, plaintiffs adequately plead that GM had a duty to disclose the existence of a known defect to its customers. If GM had this duty, yet failed to follow through with it, members of the public would very likely be deceived.

Id. at 1098 (citing *Chamberlan v. Ford Motor Co.*, 314 F. Supp. 2d 953 (N.D. Cal. 2004).

The *Falk* case is completely analogous to the case at bar. Plaintiffs here allege that they and members of the public were likely to be deceived because Toyota violated its duty to disclose that defects in its vehicles equipped with ETC have the potential to cause sudden unintended acceleration. A reasonable consumer would

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have expected that the Toyota vehicle he or she purchased would only accelerate when the accelerator is pressed. If a reasonable consumer knew the vehicle might suddenly accelerate on its own, risking injury or death to the vehicle occupants and the general public, that consumer would have likely reconsidered purchasing that vehicle. Certainly, the existence of such propensity would be material to a consumer's car-purchasing decision. As Plaintiffs specifically allege, had they known of such defects, they would have either not purchased the vehicle, or would have paid much less for such purchase. FAC ¶¶ 4-5. In sum, Toyota had a duty to disclose the propensity of its vehicles to experience incidents of sudden, unintended acceleration because that fact would be highly material to any consumer's decision to purchase a vehicle but failed to disclose such material fact. Thus, members of the public were deceived.

Plaintiffs also allege that Toyota had knowledge of the defect because (i) there have been "nearly 2,000 sudden-acceleration cases for Toyota vehicles built since 2001," (ii) there are at least "records of 19 fatalities," (iii) "a 2007 National Highway Traffic and Safety Administration ("NHTSA") survey of 600 Lexus owners that found that 10% complained they had experienced sudden acceleration" and (iv) "at all relevant times, Toyota had full knowledge of the numerous complaints regarding its vehicles, that such vehicles were susceptible to incidents of sudden, unintended acceleration, and thus such vehicles posed a significant risk of injury and death to vehicle occupants, other motorists, and pedestrians." FAC ¶¶ 23-28. These allegations are more than sufficient to carry Plaintiffs' burden.

Defendants reliance on *Daugherty v. Am. Honda*, 144 Cal. App. 4th 824 (Cal. Ct. App. 2006) is misplaced. The defect in *Daugherty* related to a problem with Honda's F22 engine which the court held might "in the fullness of time" cause an oil leak. *Id.* at 827, 838. Essentially holding that the type of defect alleged would not be material to a consumer, the court opined that "[i]n order to be deceived, members of the public must have had an expectation or an assumption about the matter in

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question." *Id.* at 838. The court then went on to hold that the plaintiff and members of the public could not have reasonably held any expectations that an oil leak would not occur well after the warranty period had expired. *Id.*

Unlike the situation in *Daugherty*, however, it is absurd to argue that Plaintiffs and members of the public would find the fact that their vehicles have a propensity to sudden unintended acceleration resulting in the possibility of serious injury or death immaterial to their purchasing decision. It is equally absurd to argue that Plaintiffs and members of the public held no expectation or assumption that their vehicles would be free of such defect. Regardless of the absurdity of such arguments, however, in the instant case, Plaintiffs have also specifically alleged that "but for Toyota's failure to disclose that its vehicles are susceptible to incidents of sudden, unintended acceleration, and thus such vehicles posed a significant risk of injury and death to vehicle occupants, other motorists, and pedestrians, Plaintiff[s] . . . would not have purchased [their] vehicle[s]." FAC ¶¶ 4, 5. At the pleading stage, the Court must accept such allegations as true. Thus, Plaintiffs have more than met their burden to allege a material omission.

3. Plaintiffs Plead their Claims with Adequate Specificity

Defendants' only complaint, in discussing Rule 9(b), is that "[n]otably, Plaintiffs fail to identify a single representation of any kind made by Toyota, much less a material misrepresentation made with knowledge of its falsity. Plaintiffs have similarly failed to identify a material omission made by Toyota." MTD 17:22-25. Thus, the only issue Defendants bring before the Court with regard to Rule 9(b) is whether Plaintiffs adequately plead representations or omissions with sufficient particularity.[5]

This Court recently recognized in *Shin v. BMW of N. Am.*, Case No. 09-cv-398, 2009 WL 2163509, at *4 (C.D. Cal. Jul. 16, 2009), that where the plaintiffs' claims

[5] Defendants do not argue that Plaintiffs' claims are grounded in fraud nor do they argue that Plaintiffs have not pled knowledge of falsity and intent to defraud with particularity. MTD 17.

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are not grounded in fraud, "Rule 9(b) heightened pleading requirements only apply to allegations that describe fraudulent conduct." As most recently reaffirmed by the California Supreme Court in *Tobacco II* and the Ninth Circuit's decision in *Williams v. Gerber Products Co.*, 552 F.3d 934 (9th Cir. 2008) the "fraudulent business practice prong of the UCL has been understood to be distinct from common law fraud. A [common law] fraudulent deception must be actually false, known to be false by the perpetrator and reasonably relied upon by a victim who incurs damages. None of these elements are required to state a claim" under the UCL. *Tobacco II*, 46 Cal. 4th at 312 (internal citations and quotations omitted). As stated in *Nordberg v. Trilegiant Corp.*, 445 F. Supp. 2d 1082, 1097 (N.D. Cal. 2006) "[t]o require that plaintiffs prove more than the statute requires would undercut the intent of the legislature in creating a remedy separate and apart from common law fraud." Thus, Rule 9(b) is inapplicable to any portion of the FAC actually challenged by Defendants. Nevertheless, Plaintiffs have met the pleading requirements for specificity even under Rule 9(b).

As discussed in detail above, under California's consumer protection laws, Plaintiffs are not required to allege a specific material misrepresentation, rather, they can allege a course of conduct which forms the basis for Plaintiffs' reliance. *Committee on Children's Television, Inc. v. General Foods Corp.*, 35 Cal. 3d 197, 219 (Cal. 1983). Here, Plaintiffs have pled that "one of the main selling points for [Toyota's] vehicles is that such cars are reputed to be safe and reliable" and that Plaintiffs relied upon such reputation. FAC ¶¶ 4, 5. Plaintiffs have pled that evidence for such allegations stems from various advertisements by Toyota and from a story in the Los Angeles Times detailing Toyota's reputation, and its conduct attempting to shield such reputation. FAC ¶¶ 12-16. Plaintiffs have also requested that the Court take judicial notice of statements made by Toyota's President, the COO of its North American operations, and those made in a current Toyota advertisement, all of which admit that the main selling point for Toyota's vehicles is their reputation for safety

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and reliability.[6] PRJN Exs. A-D. Thus, Plaintiffs have pled with adequate specificity both the course of conduct upon which Plaintiffs relied, as well as the evidence supporting such allegation.

Further, and belying Defendants' argument, Plaintiffs have certainly, and very specifically, alleged the material omission made by Toyota, namely, the propensity of its vehicles equipped with ETC to suddenly and unintentionally accelerate.

As the Northern District acknowledged in *Falk*:

> Clearly, a plaintiff in a fraud by omission suit will not be able to specify the time, place, and specific content of an omission as precisely as would a plaintiff in a false representation claim. Another judge in this district has recognized that a fraud by omission claim can succeed without the same level of specificity required by a normal fraud claim. See, e.g., *Washington v. Baenziger*, 673 F. Supp. 1478, 1482 (N.D. Cal. 1987) (Weigel, J.) ("Where the fraud consists of omissions on the part of the defendants, the plaintiff may find alternative ways to plead the particular circumstances of the fraud. [F]or example, a plaintiff cannot plead either the specific time of the omission or the place, as he is not alleging an act, but a failure to act.") (internal citations and quotations omitted); see also *David K. Lindemuth Co. v. Shannon Financial Corp.*, 637 F. Supp. 991, 995 (N.D. Cal. 1986) (Weigel, J.). Accordingly, plaintiffs' fraud by omission claim will not be dismissed purely for failure to precisely state the time and place of the fraudulent conduct.

Falk v. General Motors Corp., 496 F.Supp.2d 1088, 1098 -1099 (N.D. Cal. 2007).

Similarly, Judge Guilford in this district cited *Falk* with approval, holding:

> A plaintiff alleging fraudulent concealment need not meet the same heightened pleading standard as plaintiffs alleging other types of fraud.

[6] Under Fed. Rule. Evid. 801(d)(2) these statements are admissions by a party-opponent and are non-hearsay. However, if the Court should deny Plaintiffs' request for judicial notice, Plaintiffs' request leave to amend to add such facts.

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> *Swartz v. KPMG LLP*, 476 F.3d 756, 764 (9th Cir. 2007). This is because a plaintiff alleging fraudulent concealment will "not be able to specify the time, place, and specific content of an omission as precisely as would a plaintiff in a false representation claim."

Kinkade v. Trojan Express, LLC, Case No. 08-cv-1362 2009 WL 799390 at *3 (C.D. Cal. Mar. 23, 2009) (citing *Falk*, 496 F.Supp.2d at 1098-99).

Here, Plaintiffs have alleged, as far as possible, the nature of the omission (failure to disclose the propensity of Toyota's ETC equipped vehicles to unintentionally accelerate), the timing (Toyota had knowledge of complaints since 2002 and continues to fail to remedy the condition), and the persons (Toyota). Plaintiffs have also specifically alleged how Toyota had knowledge (through complaints made directly to it regarding accidents and through NHTSA complaints), and that Toyota failed to take steps which would have mitigated the consequences of the defect (by installing a brake-override failsafe measure). Plaintiffs respectfully submit that they need not do more in this situation. Under any pleading standard, Plaintiffs have adequately alleged violations of the CLRA, UCL, and FAL.

4. Plaintiffs Have Sufficiently Alleged a Violation of the Unlawful and Unfair Prongs of § 17200

a. The Unlawful Prong of § 17200

The UCL incorporates other laws and treats violations of them as unlawful practices independently actionable; indeed, a violation of almost any law may serve as a basis for a UCL claim. *Plascencia v. Lending 1st Mortgage*, 259 F.R.D. 437, 448 (N.D. Cal. 2009) ("*Plascencia III*"). Thus, to the extent any of Plaintiffs other statutory causes of action survive, Plaintiffs' UCL cause of action must also survive under the unlawful prong of § 17200.

b. The Unfair Prong of § 17200

In a one paragraph argument, Toyota claims that Plaintiff has not satisfied the "unfair" prong of the UCL because the injury alleged is not substantial, relying again

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on *Daugherty*. MTD 18-19. The argument is without merit. As this Court recently held in *Shin*:

> Plaintiffs can establish unfair conduct under the UCL by showing that the consumer injury was substantial, the injury was not outweighed by any countervailing benefits to consumers, and consumers themselves could not reasonably have avoided the injury. *Camacho v. Automobile Club of Southern California*, 142 Cal. App. 4th 1394, 1403 (Cal. Ct. App. 2006). The parties' contentions turn on the relative costs and benefits of the disclosures BMW did make or the disclosures Plaintiffs claim it could easily have made. It is not appropriate for the Court to make such assessments on the basis of pleading allegations and the judicially noticed sales brochures.

Shin, 2009 WL 2163509 at *2.

Here, Plaintiffs have specifically alleged that in addition to economic damages suffered by Plaintiffs and the putative class, the defect in question causes Toyota's vehicles to pose "a significant risk of injury and death to vehicle occupants, other motorists, and pedestrians." FAC ¶¶ 4-5. Thus, similarly to *Shin*, Plaintiffs would respectfully submit that it is not appropriate for this Court to make an assessment of whether Plaintiffs' injury is sufficiently substantial based solely upon Defendants' bald allegation that it is not.

E. Privity Is Not Required for Implied Warranty Claims[7]

In all California consumer sales, the Song-Beverly Consumer Warranty Act creates a "manufacturer's . . implied warranty that the goods are merchantable." Cal. Civil Code § 1792. The Song-Beverly Act applies to goods sold at retail in

[7] Plaintiffs recognize that the FAC does not expressly reference Song-Beverly Act in its implied warranty cause of action. If the Court deems that such reference is necessary in order to obtain the benefits of the Act, Plaintiffs respectfully request leave to amend to add a specific reference to the Act. Further, Plaintiffs concede that the FAC, as currently pled, does not adequately state a claim for breach of implied warranty of fitness for a particular purpose, however, Plaintiffs also request leave to amend to appropriately allege such claim.

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California. *Morgan v. Harmonix Music Systems, Inc.*, Case No. C08-5211, 2009 WL 2031765 (N.D. Cal. Jul. 30, 2009). Accordingly, it applies to this case.

The Act expressly provides remedies **to the consumer** for breach of this warranty **by the manufacturer**. Cal. Civil Code § 1794. Thus, the Northern District held just recently that, "The plain language of the Song-Beverly Act does not require vertical contractual privity between a manufacturer and a consumer," and denied the manufacturer's motion to dismiss to the extent it was based on lack of privity. *Nvidia GPU Litig.*, Case No. 08-cv-4312, 2009 WL 4020104, *4 (N.D. Cal. Nov. 19, 2009). The Central District is in accord, observing that to require vertical privity "ignores the plain language of the Song-Beverly Act." *Gusse v. Damon Corp.*, 470 F. Supp. 2d 1110, 1116, n. 9 (C.D. Cal. 2007).

F. Plaintiffs' Negligence Claim and the Economic Loss Rule

Plaintiffs concede that the FAC does not currently adequately allege a claim for negligence, however, Plaintiffs respectfully request leave to amend to add specific allegations related to property damage to satisfy the economic loss rule.

G. Plaintiffs' Request for Injunctive Relief Is Not Preempted by the Safety Act

Toyota argues that Plaintiffs' requests for injunctive relief are preempted by the National Traffic and Motor Vehicle Safety Act of 1966 ("Safety Act"). The case of *Chamberlan v. Ford Motor Co.*, 314 F. Supp. 2d 953 (N.D. Cal. 2004) one of the more recent federal court decisions on this issue, and, arguably, the most detailed and reasoned decision, is directly on point as to why the injunctive relief sought by Plaintiffs is not preempted.

In *Chamberlan*, whose facts are clearly analogous to the facts at issue in this case, Plaintiffs brought a class action lawsuit, seeking injunctive relief, against Ford in connection with vehicles that were experiencing, in large numbers, intake manifolds that were prematurely cracking. This defect exposed individuals, including the cars' drivers and passengers, to serious risk of injury. *Id.* at 955. Ford, as Toyota

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has done here, moved to dismiss on the grounds of preemption. *Id.* The Court engaged in an extended and detailed analysis of the preemption argument, and concluded, due to many factors, that preemption did not exist. A similar result should obtain here.

First, the court in *Chamberlan* found that there was a presumption against preemption because, as in the present case, Plaintiffs sought relief in the field of motor vehicle safety and fraudulent or unfair business practices, which are both areas traditionally regulated by the States. *Id.* at 958-959. Given such presumption, in order to find preemption, Defendants must show that it was Congress' "clear and manifest" intent to preempt State law. *Id.* at 962 (citing *California v. ARC Am. Corp.*, 490 U.S. 93, 101 (1989)). This is an extremely heavy burden which Defendants in the instant case simply do not meet.

Defendants in *Chamberlan* argued, as Defendants do here, that a court-ordered "recall" would be conflict preempted.[8] In *Chamberlan*, defendant Ford set out two main arguments in support of its argument for conflict preemption: 1) frustration of congressional objective of uniformity and 2) interference with the goal of providing an exclusive federal remedy. Defendants in the instant case essentially do the same. On the first issue, the court in *Chamberlan* explained that the intent of the Safety Act was only, incidently, to promote uniformity, but that the primary purpose was clearly set forth in the Safety Act itself: "the purpose of this chapter is to reduce traffic accidents and deaths and injuries to persons resulting from traffic accidents." *Id.* at 962, quoting 49 U.S.C. § 30101.[9] The court explained that though legislative history did show some "federal interest in uniformity of motor vehicle safety regulation and administration of recalls, uniformity is at best a secondary goal." *Id.* at 963. Certainly, given the potential for serious injury or death due to the nature of the

[8] The defendants in *Chamberlan* did not argue in their motion to dismiss that there was any express preemption and neither do Defendants in the instant case. Further, although defendants in *Chamberlan* argued that field preemption existed, Defendants in the instant case do not. *See*, MTD 23-25.

[9] At the time of the decision, the act was located at 15 U.S.C. § 1381 *et seq.*

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alleged defects in the instant case, not just to the vehicle occupants, but also to members of the general public, Congress' interest, as well as that of the State of California, in promoting safety and reducing traffic accidents and deaths and injuries to persons resulting from traffic accidents can only be enhanced through the furtherance of this action.

In their second argument, defendant Ford asserted, as do Defendants here, that plaintiffs' claim "frustrates congressional objectives because it conflicts with the methods established in the recall provisions of the" Safety Act. *Id.* at 964. However, the *Chamberlan* court noted that the savings clause of Safety Act at 49 U.S.C. § 30103(d) specifically describes that a remedy under § 30118 "is in addition to the other rights and remedies under other laws of the United States or a State." *Id.* The court then conducted a detailed analysis of the cases defendant Ford cited, including those Defendants cite here, and found that they did not withstand scrutiny.

Defendant Ford, similar to Defendants here, relied primarily on the reasoning set forth in *In re Bridgestone/Firestone Inc. Tires Prods. Liab. Litig*, 153 F. Supp. 2d 935 (S.D. Ind. 2001) ("*Bridgestone I*") and similar cases. The court in *Chamberlan*, however, explained that the court's decision in *Bridgestone I* and similar cases is "based upon reasoning this Court finds unpersuasive" because the court in *Bridgestone I* defined the field at issue too narrowly as "recalls" rather than the broader fields of motor vehicle safety and/or consumer protection, and, therefore found that the presumption against preemption did not apply because states have never assumed a significant role in "recalls." *Chamberlan*, 314 F. Supp. 2d at 965.[10]

The court finally stated that whether an area in question is "traditionally an area of State or federal regulation affects the weight to be given to facts such as

[10] The *Chamberlan* court similarly found the other cases cited by Defendants here unpersuasive, stating that "[t]he remaining two recall cases that Defendant cites in support of its conflict preemption argument are no more persuasive. *Lilly v. Ford Motor Co.*, 2002 WL 84603 (N.D. Ill. Jan. 22, 2002), followed *Bridgestone I* and is distinguishable on its facts and unpersuasive in its reasoning for the same reasons as that case. *Namovicz v. Cooper Tire & Rubber Co.*, 2001 WL 327886 (D. Md. Feb. 26, 2001), is inapposite because it held claims for injunctive relief field-preempted, not conflict-preempted." *Chamberlan*, 314 F. Supp. 2d at 966-67.

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comprehensiveness or delegation of authority in determining whether a State law is conflict-preempted because it interferes with a congressional goal." *Id.* at 966. The court stated that because motor vehicle safety is an area that States traditionally regulate, the comprehensiveness of the federal regulatory scheme in this area does not weigh as heavily as it otherwise would. *Id.*

The *Chamberlan* court denied Ford's motion to dismiss for preemption because the defendant did not carry its burden "to demonstrate a sufficiently specific 'actual conflict' with [Safety Act] provisions, subsidiary regulations, or with congressional objectives" and, thus, the defendant failed to demonstrate Congress' "clear and manifest" intent to preempt State law which is "required where, as here, the presumption against preemption applies." *Id.* at 967.

Plaintiffs respectfully submit that the detailed analysis of the preemption issue conducted by Judge Wilken of the Northern District in *Chamberlan* is correct, and that similarly, this Court should deny Defendants' motion to dismiss on that basis. Other than baldly asserting that "there is a real and substantial possibility that court action on Plaintiffs' request for a court order enjoining the sale of any ETCS-I-equipped Toyota or Lexus vehicles may frustrate, interfere and conflict with the NHTSA's efforts to investigate and address these issues, including whether to issue an automotive recall," Defendants do not even try to explain why allowing this action to go forward presents an "actual conflict" with Safety Act provisions, subsidiary regulations, or with congressional objectives. Thus, as in *Chamberlan*, Defendants have completely failed to meet their heavy burden of demonstrating Congress' clear and manifest intent to preempt this action.[11]

[11] Further, any injunctive relief asked for by Plaintiffs must, of course, be approved and ordered by this Court. At the stage any such relief is being actually considered, Defendants can certainly again argue, and the Court then analyze in a concrete situation with the benefit of evidence, discovery, and a full hearing, whether the specific injunctive relief may, at that point, result in an actual conflict with a specific regulation or objective. To do so now, at the pleading stage, however, is pure speculation.

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The Northern District's decision in *Kent v. DaimlerChrysler Corp.*, 200 F. Supp. 2d 1208 (N.D.Cal. 2002) is similarly on point. Just as Defendants do here, defendants in *Kent* asserted "that Plaintiffs' claims give rise to conflict preemption because of the 'prospect' of conflict between this judicial proceeding and the NHTSA investigation." *Id.* at 1217; MTD 25:8-10 ("the *prospect* of a conflict between judicial proceedings and action by the NHTSA is patently clear") (emphasis added). The Northern District analyzed the issue as follows:

> A "prospect" of conflict, however, is not sufficient to give rise to preemption based on frustration of purpose. . . . [I]n order to constitute an actual conflict, the state law at issue must conflict with the intent of Congress in a specific and concrete way. . . . Here, no such conflict has been demonstrated. At most, Defendant has demonstrated that the relief sought by Plaintiffs might conflict with some future action of NHTSA as it investigates the alleged defect at issue in this action.
>
> Further, the court is not convinced that an actual conflict arises simply because allowing actions such as this one will permit members of the public who are not satisfied with the progress of an NHTSA investigation to seek judicial relief and thereby "divert resources and attention from NHTSA and disturb the careful administrative procedure envisioned by Congress." Indeed, the Savings Clause of the Safety Act explicitly allows members of the public to do just that on an individual basis, even though the same argument could be made with respect to such actions. Rather, the case law discussed above shows that a much more specific type of conflict must be demonstrated in order to support a finding of conflict preemption. Because Defendant has not demonstrated that such a conflict exists, the Court finds that Plaintiffs claims are not preempted by the Safety Act, at least at this stage of the case.

Kent, 200 F. Supp. 2d at 1217 -1218 (internal citations omitted).

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The same reasoning as that in *Kent* applies here, and, Plaintiffs respectfully submit the same result should follow.

H. The Doctrine Of Primary Jurisdiction Is Not Applicable

For purposes of primary jurisdiction analysis, the Northern District's decision in *Kent v. DaimlerChrysler Corp.*, 200 F.Supp.2d 1208 (N.D.Cal. 2002) is, again, completely on point. In *Kent,* the plaintiffs alleged that the defendant's vehicles had a defect that caused them to self-shift from park to reverse. This alleged defect was the subject of a pending investigation by NHTSA. Plaintiffs in *Kent* alleged that because of the defect, they were "at undue risk of suffering irreparable physical injuries or death," but plaintiffs did not allege that they had experienced the self-shifting themselves. *Id.* at 1210.

The court refused to invoke primary jurisdiction because plaintiffs' claims did not raise "issues of fact not within the conventional experience of judges." *Id.* at 1218-19. The danger of self-shifting in *Kent* was not beyond the competence of judges to evaluate, and neither is the unintended acceleration of the Toyota vehicles. *Id.* In addition, the court held against the primary jurisdiction argument on a separate, alternative basis: "because Defendant has not identified any specific conflict between this action and the on-going NHTSA investigation of the same problem" the primary jurisdiction doctrine was not necessary "either to ensure uniformity of regulation or because NHTSA is better-equipped than the Court to address the issues raised by Plaintiffs' claims." *Id.* The same analysis and result should apply here.

III. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court deny Toyota's Motion to Dismiss as to all causes of action not conceded by Plaintiffs, and grant leave to amend any causes of action conceded by Plaintiffs or which the Court deems insufficiently pled. *See*, Fed. R. Civ. P. 15(a) ("The court shall freely give leave where justice so requires"); *Silva v. Bieluch*, 351 F.3d 1045, 1048 (11th Cir. 2003) (court should grant a plaintiff at least one opportunity to amend).

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RESPECTFULLY SUBMITTED,

DATED: February 22, 2010

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ERIC KMETZ, and JOE MORRIS, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

TOYOTA MOTOR SALES, U.S.A., INC., TOYOTA MOTOR CORPORATION, and DOE DEFENDANTS 1-10,

Defendants.

Case No. 2:09-CV-08478 AHM-FMO

Assigned to the Honorable A. Howard Matz

PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO THE TOYOTA DEFENDANTS' MOTION TO STRIKE ALL CLASS ALLEGATIONS FROM PLAINTIFFS' FIRST AMENDED COMPLAINT

[Filed concurrently with Opposition to Motion to Dismiss and Request for Judicial Notice]

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MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiffs Eric Kmetz and Joe Morris hereby respectfully submit their Opposition to Defendants' Motion to Strike All Class Allegations from Plaintiffs' First Amended Complaint.

I. INTRODUCTION

Plaintiffs Eric Kmetz and Joe Morris are California consumers who purchased Toyota and Lexus automobiles in California. They have sued Defendants Toyota Motor Sales, U.S.A., Inc., and Toyota Motor Corporation (collectively "Toyota") for violations of California's consumer protection laws, for breach of implied warranties, and for negligence. They seek to represent other similarly situated Toyota and Lexus owners in a class action against Toyota based upon highly dangerous defects in their vehicles.

Plaintiffs' First Amended Complaint ("FAC") alleges that Toyota and Lexus vehicles equipped with an Electronic Throttle Control ("ETC") system are defective because they have the potential for instances of unintended acceleration. Plaintiff Eric Kmetz has personally experienced this sudden, unexpected acceleration of his vehicle while driving. Plaintiff Joe Morris has not experienced the unintended acceleration, but has nevertheless been damaged in that the vehicle he purchased is susceptible to this defect, rendering it less valuable than it would be if it were not equipped with the defective ETC system. Plaintiffs seek to represent classes of consumers who presently own Toyota vehicles equipped with an electronic throttle control system, whether or not they have personally experienced unintended acceleration.

By its Motion to Strike, Toyota seeks to strike the entirety of the class allegations because the class definitions include all consumers who own Toyota vehicles equipped with the electronic throttle control system. The class definition does not "carve out" consumers who have not personally experienced unintended acceleration. In the context of a class action, granting such a motion would be

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tantamount to dismissing the case. As explained below, there are no grounds to grant this drastic motion.

II. ARGUMENT

A. A MOTION TO STRIKE IS A DISFAVORED MOTION THAT IS RARELY GRANTED

The statutory purpose of a motion to strike is to eliminate from a pleading an "insufficient defense or any redundant, immaterial, impertinent or scandalous matter." Fed. R. Civ. P. 12(f). In practice, striking a party's pleadings is an extreme measure that is viewed with disfavor by courts and is rarely granted. *Stanbury Law Firm v. I.R.S.*, 221 F.3d 1059, 1063 (8th Cir. 2000). Striking the class allegations in this case would be the equivalent of dismissing the case because the primary purpose of the case is to obtain redress for the class. A motion to strike should not be granted "unless it is clear that the matter to be stricken could have no possible bearing on the subject matter of the litigation." *Colaprico v. Sun Microsystems, Inc.*, 758 F. Supp. 1335, 1339 (N.D.Cal. 1991).

In the present case, Toyota's motion is clearly tactical in nature. It asks this Court to throw out one of the most important and newsworthy class actions in the country, affecting the rights of millions of consumers to band together to present their claims as a class, *without the benefit of a class certification hearing.*

Moreover, the motion is not based upon any clear demonstration that the alleged classes of consumers could not possibly have claims against Toyota. It is based, instead, upon Toyota's dubious theory, before any discovery, that consumers who purchased vehicles that could potentially careen out of control at any time, have not sustained any economic injury.

As explained below, this is not an appropriate issue for determination on a motion to strike, and no clear basis for striking the class allegations at the pleading stage exists.

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B. THE COURT SHOULD NOT DECIDE CLASS ISSUES IN THE CONTEXT OF A MOTION TO STRIKE

A motion to strike is rarely an appropriate tool for adjudicating class action issues. In *Shabaz v. Polo Ralph Lauren Corp.*, 586 F. Supp. 2d 1205, 1211 (C.D. Cal. 2008), the court noted that class allegations have been stricken where, for example, class relief has already been provided in a State court action, or where putative class members could not state a claim upon which relief could be granted, even though the class representative could. *Id.* However, *where it is not plain from the face of the complaint* that the Plaintiffs' class action allegations must fail, "such issues would be better dealt with at a fully briefed class certification hearing." *Id.*

California courts employ the same sound wisdom.[1] It is rarely appropriate to dispose of a class action on the pleadings, before the parties and the Court have had a proper opportunity to thoroughly consider the facts and legal issues and determine whether class treatment of consumer claims is advantageous. Thus,

---

[1] "California's judicial policy [is to allow] potential class action plaintiffs to have their action measured on its merits to determine whether trying their suits as a class action would bestow the requisite benefits upon the litigants and the judicial process to justify class action litigation." *Beckstead v. Superior Court*, 21 Cal. App. 3d 780, 783 (1971). "In order to effect this judicial policy, the California Supreme Court has mandated that a candidate complaint for class action consideration, if at all possible, be allowed to survive the pleading stages of litigation." *Id. citing La Sala v. American Sav. & Loan Assn.*, 5 Cal. 3d 864, 868-869 (1971) (reversing trial court's sustaining of demurrer against class action suit); *Vasquez v. Superior Court*, 4 Cal. 3d 800, 816 (1971) (same); *Daar v. Yellow Cab Co.*, 67 Cal. 2d 695, 716-717 (1967) (same); *Jones v. H.F. Ahmanson & Co.*, 1 Cal. 3d 93, 121 (1969) (affirming trial court's overruling of demurrer attacking class allegations).

"The wisdom of allowing survival is elementary. Class action litigation is proper whenever it may be determined that it is more beneficial to the litigants and to the judicial process to try a suit in one action rather than in several actions.... It is clear that the more intimate the judge becomes with the character of the action, the more intelligently he may make the determination. If the judicial machinery encourages the decision to be made at the pleading stages and the judge decides against class litigation, he divests the court of the power to later alter that decision.... Therefore, because the sustaining of demurrers without leave to amend represents the earliest possible determination of the propriety of class action litigation, it should be looked upon with disfavor." *Beckstead*, 21 Cal. App. 3d at 783.

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when a motion to strike class allegations is made, the Court must first consider whether the issue is premature, and better left for determination under Fed. R. Civ. P. 23. (*See, e.g., Saunders v. Apple Inc.*, 2009 WL 150950, *9-10 (N.D. Cal. Jan. 21, 2009).

In the present case, the Toyota defect/recall situation is a national travesty, the facts of which are developing almost daily. The rights of literally millions of consumers with defective vehicles are at risk. The issue of whether millions of consumers, whose defective Toyota vehicles have not yet accelerated unintentionally, can band together in a class action, is too important to be determined on Toyota's three-page Motion to Strike.[2]

The motion should be denied on that ground alone, and class issues left for determination after discovery and a full hearing on a motion for class certification.

C. PLAINTIFF MORRIS AND OTHER CLASS MEMBERS WHO HAVE NOT EXPERIENCED UNINTENDED ACCELERATION HAVE STANDING

Plaintiffs have pled that they have sustained injury because "they now own a vehicle which is defective and inherently dangerous, regardless of the manifestation of the defect. Plaintiffs have further suffered economic damage in that their vehicle's resale value has been reduced." (FAC ¶ 47; *See, also*, Plaintiffs' Request for Judicial Notice ("PRJN") at Exhibit E "Kbb.com: Toyota Brand Consideration, Vehicle Interest, Values Continue to Decline").

Plaintiff Morris, who has not experienced unintended acceleration, has Article III standing because he has suffered economic damages. The opinion in *Cole v. General Motors Corp.*, 484 F.3d 717 (5th Cir 2007) is instructive. *Cole* involved defective electronic sensors, "SISMs," that caused airbags to inflate

[2] Further, the cases Toyota cites to support its requested relief at the end of its short brief (at 2:20-3:7) also are inapposite, as all of them are orders at the class certification stage, based on developed evidence and certification arguments, not orders striking class allegations at the pleading stage.

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unexpectedly. GM argued, like Toyota, that the plaintiffs lacked standing "because the air bags in their vehicles never deployed inadvertently, and therefore, they cannot have suffered an injury in fact . . . without actual deployment, plaintiffs' injury is speculative because plaintiffs can only claim that the SISMs in their vehicles were potentially defective." *Id.* at 722. The Fifth Circuit rejected the argument, noting first that:

> plaintiffs argue that even though they have not suffered physical injury, they have suffered economic loss satisfying the injury-in-fact requirement because the SISMs in all DeVilles were defective at the moment of purchase. Plaintiffs allege that they contracted to purchase DeVilles with side impact air bags that would deploy only [with] side impact but that they received DeVilles with air bags that could deploy unexpectedly, without a crash as the car is started or during normal driving.

Id. at 722. The Fifth Circuit went on to hold that plaintiffs had Article III standing and its reasoning applies here:

> [A]lthough plaintiffs do not assert physical injuries (either their own or those of other persons), they do assert their own actual economic injuries . . . that each plaintiff suffered economic injury at the moment [they] purchased a DeVille because each DeVille was defective. . . . Plaintiffs seek recovery for their actual economic harm (e.g., overpayment, loss in value, or loss of usefulness) emanating from the loss of their benefit of the bargain. . . . [P]laintiffs may bring claims under . . . express and implied warranties . . .. Whether recovery . . . is permitted under governing law is a separate question; it is sufficient for standing purposes that the plaintiffs seek recovery for an economic harm that they allege they have suffered.

Id. at 723.

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TOY-RQ-05E-00004308

In *Trew v. Volvo Cars of N. Am., LLC*, 2006 WL 306904 (E.D.Cal. Feb. 8, 2006), the plaintiff alleged thatVolvo installed defective electronic throttle modules ("ETMs") that can cause a vehicle to shake, surge, or lose power. The plaintiff further alleged that Volvo initially denied that the problem existed, then recalled the vehicles, and, thereafter continued to conceal the problem. The plaintiff asserted, among other claims, a claim for unfair competition. Volvo moved to dismiss the UCL claim on the grounds that the plaintiff lacked standing because she had not sustained an injury in fact.

The plaintiff argued she had sustained an injury in fact, even though her vehicle had not failed, on two independent grounds. First, she contended that although the vehicle had not failed, it would. Second, she alleged "she would have paid less for her vehicle if she had known about the defective ETM." *Id.* at *6. The court denied Volvo's motion on both grounds. The court found the plaintiff had both Article III standing and UCL standing. *Id.*

Like the plaintiff in *Trew,* Plaintiffs here allege that they have sustained economic damages, an injury in fact, and have lost the benefit of the bargain when they paid for a vehicle with an undisclosed defect in the ETC. *See, also, Shin v. BMW of N. Am.*, 2009 WL 2163509, *3 (C.D. Cal. Jul. 16, 2009) (noting that in pleading fraudulent omissions claims under the UCL and CLRA based on the sale of defective alloy wheels, the plaintiffs "made the requisite allegations: They would not have purchased their vehicles at the price they paid or would have purchased the vehicle with different wheels.") *(citing Falk v. General Motors Corp.*, 496 F. Supp. 2d 1088, 1095-99 (N.D. Cal. 2007); *Falk*, 496 F. Supp. 2d at 1096 (upholding complaint because "plaintiffs also argue that had they known of the possibility of a failed speedometer, they would not have paid the full asking price for their GM vehicles").

Similarly, in *Sanchez v. Wal-Mart Stores, Inc.* 2008 WL 3272101, *2 (E.D. Cal. Aug. 6, 2008), the defendants contended the plaintiff did not suffer an "injury

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in fact" and lacked standing to pursue a UCL claim because the product she purchased did not malfunction. The court rejected that argument and held:

> To have standing under the UCL Sanchez need only demonstrate that she spent or lost money due to an unfair business practice. . . . Through this action, Sanchez seeks an order of restitution to recover money lost from having to replace an allegedly defective stroller that she purchased from Wal-Mart due to an unfair business practice. She also seeks injunctive relief in the form of a recall. This is minimally sufficient to confer standing to assert a claim for relief under the UCL.

Id. at *3.

Although the facts in *Sanchez*, unlike here, did not support a claim that the plaintiff bought the stroller due to a material omission, the court held that "there is still an issue of fact as to whether Sanchez 'lost money' because she possessed a less valuable stroller than that for which she bargained due to an alleged defect that was not disclosed by Wal-Mart." *Id.* at *3.

In the instant case, Plaintiff Morris alleges that his vehicle and those of putative class members have common defects which cause sudden and unintended acceleration and put all owners of such vehicles at a constant risk for their safety. Plaintiff Morris further alleges that he and members of the putative class each paid for a defective vehicle which they would not have bought, or would have paid substantially less for, had they known of the defect, and that their vehicles' resale value has been reduced. (FAC ¶¶5, 47) Thus, Plaintiff Morris has standing.

Although at this stage of the proceedings, the Court must take Plaintiffs' allegations as true, outside evidence further supports Plaintiffs' allegations. Under Fed. R. Civ. P. 201, the Court can take judicial notice of the press release issued by Kelley Blue Book on February 10, 2010 which explicitly states that used Toyota values for recalled models reported by Kelley Blue Book will have

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declined 2.5 - 4.5 percent as of February 12, 2010. The release further states "[w]e are seeing a softening of both used Toyota values *and the New Car Blue Book values of new Toyotas* this week," that "[t]he latest kbb.com study results show 27 percent of those who said they were considering a Toyota prior to the recall now say they no longer are considering the brand," and that "[n]ow nearly half (49 percent) of the car shoppers who have defected from Toyota say they are not sure if they will consider the brand again, even once Toyota's problems are resolved." PRJN Ex. E.

Each of these statements in the Kelley Blue Book press release explicitly supports Plaintiffs' allegations that they, and members of the putative class, have suffered damages because they have purchased a car which they otherwise would not have purchased but for Toyota's deceptive practices, paid less for such car even if they had purchased it, and that their current car's resale value has declined as a result of Toyota's actions and inactions.

"Generally standing in a class action is assessed solely with respect to class representatives, not unnamed members of the class." *In re General Motors Corporation Dex-Cool Products Liability Litigation*, 241 F.R.D. 305, 310 (S.D. Ill. 2007); *see, also*, 1 Newberg & Conte, *Newberg on Class Actions* (3d ed.1992) § 2.07, p. 2-41 ("the standing issue focuses on whether the plaintiff is properly before the court, not whether ... absent class members are properly before the court"); 7AA Wright et al., *Federal Practice and Procedure* (3d ed.2005) § 1785.1, pp. 388-389 ("Representative parties who have a direct and substantial interest have standing; the question whether they may be allowed to present claims on behalf of others who have similar, but not identical, interests depends not on standing, but on an assessment of typicality and adequacy of representation").[3]

[3] Further, as the California Supreme Court recently made clear in *In re Tobacco II Cases*, the standard for absent class members in California is even more lenient. *In re Tobacco II Cases*, 46 Cal. 4th 298, 324 (2009).

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For the same reason that Plaintiff Morris has standing, other class members who have not experienced unintended acceleration have sustained damages and have "standing." As clearly alleged in the FAC, they have all sustained economic damages.

D. THE COURT CANNOT DETERMINE ON THE FACE OF THE PLEADING THAT "THE VAST MAJORITY" OF THE PUTATIVE CLASS MEMBERS HAVE NOT SUSTAINED ECONOMIC INJURIES

Toyota's Motion to Strike does not actually identify or discuss the class allegations that it seeks to have stricken. The class definitions are contained in paragraph 31 of the complaint:

> Nationwide class: All persons who reside in the United States and who presently own a Toyota vehicle equipped with an electronic throttle control system.
>
> California class: All persons who reside in California or are California citizens and who presently own a Toyota vehicle equipped with an electronic throttle control system.[4]

Toyota does not discuss these allegations because it would like the Court to look behind the pleadings and determine that the "vast majority" of class members "have not experienced a manifestation of the alleged defect" and that "[t]heir vehicles have not malfunctioned in any way." Defendants' Motion to Strike ("MTS") p. 2:10-16.

In an attempt to find support for its assertion in the pleadings, Toyota directs the Court to paragraphs 23-25 of the FAC, which discusses reports of thousands of complaints and accidents. MTS p. 2:16. Toyota's unstated

[4] Excluded from the proposed Class are persons who have suffered or possess a right of action for personal injury or wrongful death as a result of the sudden unintended acceleration of their Toyota vehicle.

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contention is that because the "vast majority" of Toyota owners have not been injured or killed or had accidents as a result of unintended acceleration, the "vast majority" of class members do not have malfunctioning vehicles and have not sustained any economic injury. Toyota's argument demonstrates another reason why the motion to strike must be denied. Toyota strains the pleadings to construe them as alleging that only a small fraction of Toyota vehicles have "manifested" the defect. The pleadings, however, are silent as to the number of vehicles which have had incidents of unintended acceleration.

All the FAC alleges is specific NHTSA and Toyota data included in press reports of complaints and accidents involving unintended acceleration. That cannot be read to mean the converse, as Toyota would like to Court to do, namely, that every vehicle not identified in such press reports has not experienced unintended acceleration. In actual fact, the number or percentage of vehicles that have malfunctioned is not known. Similarly, only discovery can determine if the defect is "manifested" in some mechanical way that may be apparent to experts, but not readily apparent to drivers. Toyota also ignores, as discussed above, that regardless of whether or not a specific Toyota owner has personally experienced an unintended acceleration event, he or she still has suffered economic injuries as a result of Toyota's actions and inaction. Thus, Toyota's motion to strike must be denied on this additional ground as well.

III. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court deny Toyota's Motion to Strike Class Allegations from Plaintiffs' First Amended Complaint in its entirety.

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TOY-RQ-05E-00004313

RESPECTFULLY SUBMITTED,

DATED: February 22, 2010

KIRTLAND & PACKARD LLP

By: /s/ Behram V. Parekh
MICHAEL LOUIS KELLY
BEHRAM V. PAREKH
HEATHER M. PETERSON

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TOY-RQ-05E-00004314

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Counsel for Plaintiffs and all others similarly situated

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ERIC KMETZ, and JOE MORRIS, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

TOYOTA MOTOR SALES, U.S.A., INC., TOYOTA MOTOR CORPORATION, and DOE DEFENDANTS 1-10,

Defendants.

Case No. 2:09-CV-08478 AHM-FMO

Assigned to the Honorable A. Howard Matz

PLAINTIFFS' REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF OPPOSITIONS TO DEFENDANTS' MOTION TO DISMISS AND MOTION TO STRIKE

[Filed concurrently with Opposition to Motion to Dismiss and Opposition to Motion to Strike]

Date: March 15, 2010
Time: 10:00 a.m.
Crtroom: 14

(First Amended Complaint filed January 19, 2101)

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Plaintiffs respectfully request that the Court take judicial notice of the statements made by Defendants Toyota Motor Corporation and Toyota Motor Sales U.S.A., Inc., attached as Exhibits A through D hereto and a press release issued by Kelley Blue Book, attached as Exhibit E hereto. Federal Rule of Evidence 201 authorizes this Court to take judicial notice of facts where they are "not subject to reasonable dispute in that" they are "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Fed. Rule Evid. 201(b). Further, the Rule mandates that judicial notice be taken where it is "requested by a party and supplied with the necessary information," Fed. Rule Evid. at 201(d), and authorizes judicial notice "at any stage of the proceeding," Fed. Rule Evid. at 201(f).

The facts for which the Plaintiffs request judicial notice can and should be judicially noticed because they are "not subject to reasonable dispute." Exhibits A-D are party-admissions about Toyota which come straight from the President of Defendant Toyota Motor Corporation, Akio Toyoda, the President and COO of Toyota Motor Sales U.S.A., Inc., James Lentz, and a television commercial approved and aired by Toyota nationwide. Each of these items is available, in full, in the section on Toyota's own website related to its recalls, www.toyota.com/recall. Thus, whether such statements were made or not is easily verifiable through ready reference to sources whose accuracy cannot reasonably be questioned, namely, Toyota's own website. Further, these statements themselves are admissions of Toyota Motor Sales U.S.A., Inc. and its parent, Toyota Motor Corporation. Thus, these statements are not hearsay and are admissible under Fed. R. Evid. 801(d)(2).

The final exhibit, Exhibit E, is a press release issued by Kelley Blue Book regarding the declining values of Toyota vehicles. The Kelly Blue Book has been recognized as a reliable reference for valuation of vehicles. See, e.g., *Hall v. City of Santa Barbara*, 833 F.2d 1270, 1274 n. 5 (9th Cir.1986) (recognizing the Kelley

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Blue Book as "the standard reference for prices" of vehicles and mobile homes). Federal courts have taken judicial notice regarding Kelley Blue Book and its reliability regarding vehicle values. See *ITT Comm. Finance Corp. v. Unlimited Automotive, Inc.*, 814 F.Supp. 664, 668 (N.D.Ill. 1992)(taking judicial notice that Kelley's Blue Book is an authoritative guide to the valuation of recreational vehicles). The Kelley Blue Book is viewed by consumers and courts alike as an accurate and verifiable authority regarding a vehicle's value. Thus, the press release issued by the company detailing the specific declining values of Toyota's vehicles and determined by Kelley Blue Book, attached as Exhibit E, can equally be viewed as an accurate and verifiable source and the appropriate subject of judicial notice.

Although at the motion to dismiss stage, Courts typically take judicial notice of items such as press releases when asked to by Defendants, the same principle applies in this instance, where Defendants seek to dismiss Plaintiffs' claims by contesting issues which Defendants have admitted or are otherwise authoritatively available. *Wietschner v. Monterey Pasta Co.*, 294 F.Supp.2d 1102, 1109 (N.D. Cal. 2003) (taking judicial notice of press releases "necessary to Plaintiffs' allegations, even if not explicitly referenced in the Complaint"). See also, e.g., *Ieradi v. Mylan Laboratories, Inc.*, 230 F.3d 594, 597-98 (3d Cir. 2000) (taking judicial notice of information in a newspaper article); *Peters v. Delaware River Port Authority*, 16 F.3d 1346, 1356-57 (3d Cir.1994) (appellate court may take judicial notice of newspaper articles); *Blair v. City of Pomona*, 223 F.3d 1074 (9th Cir. 2000) (taking judicial notice of an independent commission's report on the code of silence among police officers); *Heliotrope Gen., Inc. v. Ford Motor Co.*, 189 F.3d 971, 981 (9th Cir. 1999) (taking judicial notice of information contained in news articles).

For the above reasons, Plaintiffs respectfully request that the Court take judicial notice of the following documents:

A. Letter by Toyota Motor Corporation President Akio Toyoda, published

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in the Washington Post and other national newspapers on February 9, 2010, entitled "Toyota's Plan to Repair Its Public Image" and also linked to on Toyota's website at www.toyota.com/recall.

B. Letter by Toyota Motor Sales U.S.A., Inc., President and COO, James Lentz, published on Toyota's website at www.toyota.com/recall.

C. Slides from Toyota's television commercial entitled "Commitment" including a transcript of all text, which is displayed as sub-titles on the slides. This commercial has aired nationally on various networks and is also available on Toyota's website at www.toyota.com/recall. These slides are directly printed from that website.

D. A printout of Toyota's website page, www.toyota.com/recall, which provides links to each of the documents in Exhibits A through C.

E. Kelly Blue Book press release entitled "Toyota Brand Consideration, Vehicle Interest, Values Continue to Decline," published at Kbb.com on February 10, 2010.

RESPECTFULLY SUBMITTED,

DATED: February 22, 2010

KIRTLAND & PACKARD LLP

By: /s/ Behram V. Parekh
MICHAEL LOUIS KELLY
BEHRAM V. PAREKH
HEATHER M. PETERSON

Counsel for Plaintiffs and all others similarly situated

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Exhibit A

TOY-RQ-05E-00004319

The Washington Post

Toyota's plan to repair its public image

By Akio Toyoda
Tuesday, February 9, 2010; A17

More than 70 years ago, Toyota entered the auto business based on a simple, but powerful, principle: that Toyota would build the highest-quality, safest and most reliable automobiles in the world. The company has always put the needs of our customers first and made the constant improvement of our vehicles a top priority. That is why 80 percent of all Toyotas sold in the United States over the past 20 years are still on the road today.

When consumers purchase a Toyota, they are not simply purchasing a car, truck or van. They are placing their trust in our company. The past few weeks, however, have made clear that Toyota has not lived up to the high standards we set for ourselves. More important, we have not lived up to the high standards you have c ome to expect from us. I am deeply disappointed by that and apologize. As the president of Toyota, I take personal responsibility. That is why I am personally leading the effort to restore trust in our word and in our products.

For much of Toyota's history, we have ensured the quality and reliability of our vehicles by placing a device called an andon cord on every production line -- and empowering any team member to halt production if there's an assembly problem. Only when the problem is resolved does the line begin to move again.

Two weeks ago, I pulled the andon cord for our company. I ordered production of eight models in five plants across North America temporarily stopped so that we could focus on fixing our customers' vehicles that might be affected by sticking accelerator pedals. Today, Toyota team members and dealers across North America are working around the clock to repair all recalled vehicles.

But to regain the trust of American drivers and their families, more is needed. We are taking responsibility for our mistakes, learning from them and acting immediately to address the concerns of consumers and independent

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The Washington Post

Toyota's plan to repair its public image

government regulators.

First, I have launched a top-to-bottom review of our global operations to ensure that problems of this magnitude do not happen again and that we not only meet but exceed the high safety standards that have defined our long history. As part of this, we will establish an Automotive Center of Quality Excellence in the United States, where a team of our top engineers will focus on strengthening our quality management and quality control across North America.

Second, to ensure that our quality-control operations are in line with best industry practices, we will ask a blue-ribbon safety advisory group composed of respected outside experts in quality management to independently review our operations and make sure that we have eliminated any deficiencies in our processes. The findings of these experts will be made available to the public, as will Toyota's responses to these findings.

Third, we fully understand that we need to more aggressively investigate complaints we hear directly from consumers and move more quickly to address any safety issues we identify. That is what we are doing by addressing customer concerns about the Prius and Lexus HS250h anti-lock brake systems.

We also are putting in place steps to do a better job within Toyota of sharing important quality and safety information across our global operations. This shortcoming contributed to the current situation. With respect to sticking accelerator pedals, we failed to connect the dots between problems in Europe and problems in the United States because the European situation related primarily to right-hand-drive vehicles.

Toyota will increase its outreach to government agencies charged with protecting the safety of motorists and passengers. I have spoken with U.S. Transportation Secretary Ray LaHood and given him my personal assurance that lines of communications with safety agencies and regulators will be kept open, that we will communicate more frequently and that we will be more vigilant in responding to those officials on all matters.

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The Washington Post

Toyota's plan to repair its public image

In recent years, much has been written about what we call "the Toyota Way" -- the values and principles at the heart of our company. Chief among these is our unwavering commitment to continuous improvement: going to the source of a problem and fixing it. While problems with our cars have been rare over the years, the issues that Toyota is addressing today are by far the most serious we have ever faced.

But great companies learn from their mistakes, and we know that we have to win back the trust of our customers by adhering to the very values on which that trust was first built. The hundreds of thousands of men and women at Toyota operations worldwide -- including the 172,000 team members and dealers in North America -- are among the best in the auto industry. Whatever problems have occurred within our company, the strength and commitment to fix them resides within our company as well.

You have my commitment that Toyota will revitalize the simple but powerful principle that has guided us for 50 years: Toyota will build the highest-quality, safest and most reliable automobiles in the world.

The writer is president of Toyota Motor Co.

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Exhibit B

TOY-RQ-05E-00004323

TOYOTA
moving forward

Toyota's Pledge To You.

More than 70 years ago, Toyota was founded with one mission in mind — to provide our customers with the safest, most reliable vehicles in the world. That's why 80% of all Toyota cars and trucks sold in the United States over the last 20 years are still on the road today.*

We're proud of our heritage and recognize that, lately, we haven't lived up to it. All 172,000 Toyota employees and dealership personnel in North America are working around the clock to make things right for you and earn back your trust.

We've launched a comprehensive program, led personally by our President, Akio Toyoda, to improve quality controls worldwide — from when we design your vehicle to the day you stop using it — and respond more effectively when there's an issue.

Here's what we are doing:

1. We are launching a top-to-bottom review of every process related to quality in design, production, sales and service, and verifying the causes that prompted our recent recalls.

2. We're improving communications with our customers to gather information faster and further strengthening our dialogue with our regulators.

3. When we learn about a problem our customers are experiencing, we'll investigate without delay, and we'll quickly address any safety issues we find.

4. We'll ask outside experts to confirm that the enhanced quality controls we're putting in place conform to best industry practices.

At Toyota, we have always believed that continuous improvement — doing better every day — is the best guarantee of success. And we believe that the best companies learn from their mistakes. We know we need to do better. We are committed to doing just that.

Sincerely,

Jim Lentz

Jim Lentz
President and Chief Operating Officer
Toyota Motor Sales, U.S.A., Inc.

To find out all the latest information about the recalls, please visit:
toyota.com

©2010 Toyota Motor Sales, U.S.A., Inc.
*Based on R. L. Polk & Co. U.S. Vehicles in Operation registration statistics 1989-2009, as of January 1, 2009.

Toyota Customer Experience Center:
1-800-331-4331

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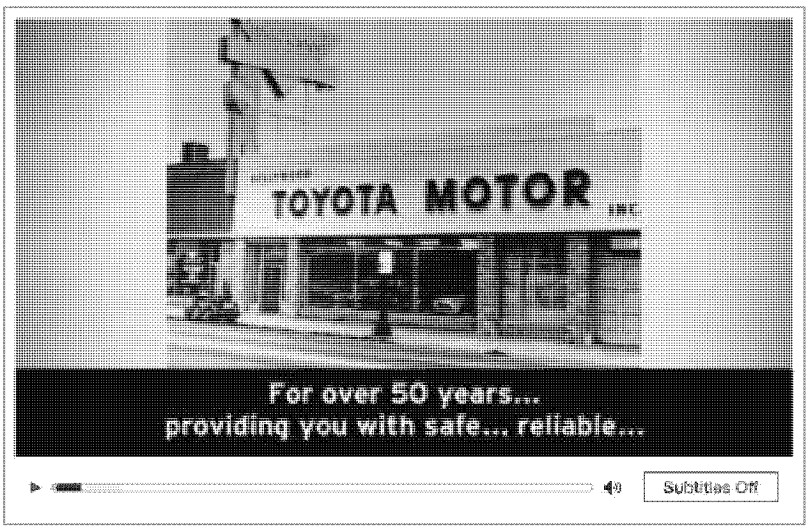
Exhibit C

TOY-RQ-05E-00004325

"Commitment" Television Commercial

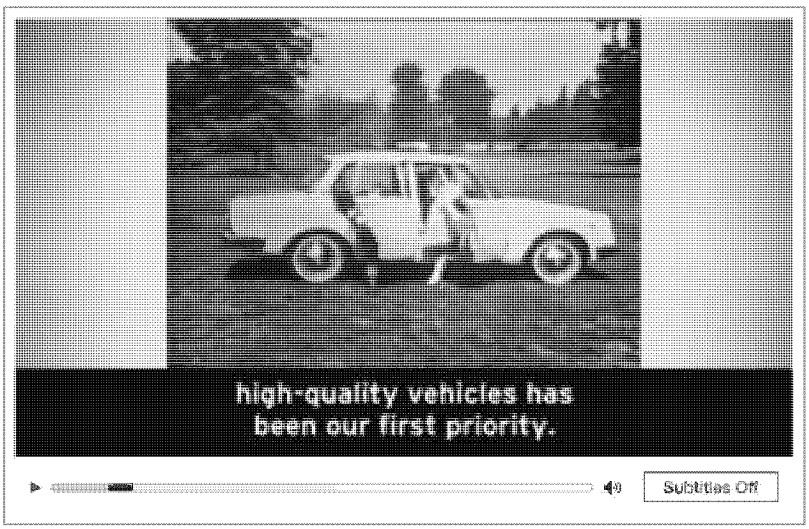


Toyota is working around the clock to fix recalled Toyota vehicles.

Recall Home

©2008-2010 Toyota Motor Sales, U.S.A., Inc. All information applies to U.S. vehicles only.

"Commitment" Television Commercial



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"Commitment" Television Commercial

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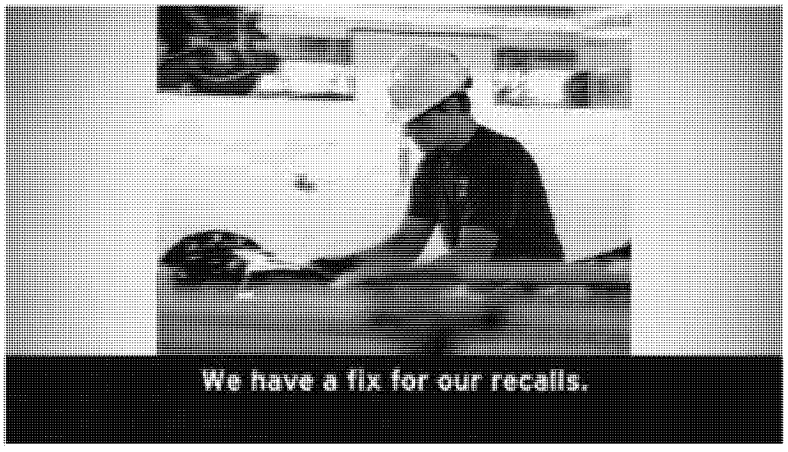
"Commitment" Television Commercial



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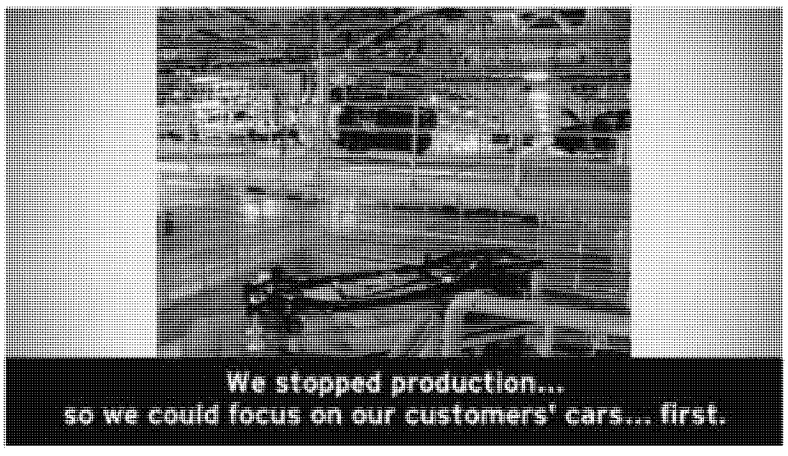

Toyota is working around the clock to fix recalled Toyota vehicles.

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Toyota is working around the clock to fix recalled Toyota vehicles.

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"Commitment" Television Commercial

Toyota is working around the clock to fix recalled Toyota vehicles.

Recall Home

| ©2008-2010 Toyota Motor Sales, U.S.A., Inc. All information applies to U.S. vehicles only.

"Commitment" Television Commercial

Toyota is working around the clock to fix recalled Toyota vehicles.

Recall Home

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"Commitment" Television Commercial

Toyota is working around the clock to fix recalled Toyota vehicles.

Recall Home

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LAW OFFICES
KIRTLAND & PACKARD LLP

Exhibit D

TOY-RQ-05E-00004337

Recall Information:

We recognize you may have experienced lengthy wait times when calling our Customer Experience Center. We apologize for this. Listed below is all the information our Customer Experience representatives are providing to customers.

For the very latest news:

Is your vehicle involved?

Below are the vehicles involved in the recent recalls. Click on your vehicle for more information:

2005-2010 Avalon
2007-2010 Camry
2009-2010 Corolla
2008-2010 Highlander
2009-2010 Matrix
2004-2009 Prius
2010 Prius
2009-2010 RAV4
2008-2010 Sequoia
2005-2010 Tacoma
2007-2010 Tundra
2009-2010 VENZA

Videos:

2010 Prius Anti-Lock Brake System (ABS)
A remedy to the inconsistent brake feel of the Anti-lock Brake System (ABS) as part of the voluntary safety recall for the 2010 Prius.

An Important Update: 02.11.10
Toyota talks about how dealerships are taking actions for the recalls.

"Commitment" TV Commercial
Watch the Toyota "Commitment" television commercial.

Important Message
From Jim Lentz, President and Chief Operating Officer, Toyota Motor Sales, U.S.A., Inc.

Stopping Procedure
Learn the proper procedure for bringing your vehicle to a safe stop if you experience a sticking accelerator pedal.

Pedal Assembly
A steel reinforcement bar eliminates the excess friction that can cause the pedal to stick.

Floor Mat Entrapment
The potential risk for floor mat entrapment of accelerator pedals in certain Toyota models.

Electronic Throttle Control

Latest Update:

Read an important message from Jim Lentz, President and Chief Operating Officer of Toyota Motor Sales, U.S.A, Inc. Click here to read Toyota's Pledge To You.

- Posted February 10, 2010

Toyota Motor Corporation President Akio Toyoda outlines the company's plans for earning back customer trust in an op-ed in *The Washington Post*. Click here to read the op-ed.

Read the latest information on the 2010 Prius.

- Posted February 8, 2010

Here's the latest update on the recall:

1. We're starting to send letters this weekend to owners involved in the recall to schedule an appointment at their dealer.
2. Dealerships have extended their hours - some of them working 24/7 - to fix your vehicle as quickly as possible.
3. Trained technicians have begun making repairs.

Our entire organization of 172,000 North American employees and dealership personnel has been mobilized. And we're doubling our quality control efforts across the company.

Ensuring your safety is our highest priority. We will continue to update you with accurate and timely information about the status of the recall in the days and weeks ahead.

- Posted February 5, 2010

What we're doing:

Recently, Toyota announced two safety recalls that cover some of its models. Both recall campaigns address conditions related to the accelerator pedal. The first recall, "Floor Mat Entrapment," regards the potential for an unsecured or incompatible driver's floor mat to interfere with the accelerator pedal and cause it to get stuck in the wide-open position.

The second recall, "Pedal," is being conducted because there is a possibility that certain accelerator pedal mechanisms may mechanically stick in a partially depressed position or return slowly to the idle position.

Is your Toyota subject to one or both of the recalls? Select your model from the list at left to learn whether either or both of these recalls apply to your Toyota vehicle and what you should expect regarding the recall remedies.

If you have additional questions or concerns that have not been addressed here, please contact the Toyota Customer Experience Center at 1-800-331-4331. The Toyota Customer Experience Center hours are: Mon.–Fri. 5:00 am-6:00 pm PST, Sat.–Sun. 7:00 am-4:00 pm PST.

Electronic Throttle Control Systems (ETCS) have enhanced vehicle safety by making possible functions such as vehicle skid control and traction control. Learn how they work and the multiple fail-safe systems built into your Toyota's ETCS.

Visit the official Toyota YouTube Channel to watch videos about the recall.

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Exhibit E

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Kbb.com: Toyota Brand Consideration, Vehicle Interest, Values Continue to Decline

Study Shows Week-Over-Week, More Consumers Defecting from Toyota, Lexus, Scion Brands

IRVINE, Calif., Feb. 10 /PRNewswire/ -- According to the latest Kelley Blue Book www.kbb.com Market Intelligence data, Toyota consideration and interest has dropped even further in the past week as the company continues to issue massive recall announcements. The latest kbb.com study results show 27 percent of those who said they were considering a Toyota prior to the recall now say they no longer are considering the brand for their next vehicle purchase, an increase of six percent from the 21 percent who indicated they had defected from Toyota the prior week (immediately following the initial recall announcement).

In addition, now 28 percent of those who said they were considering a Scion and 23 percent of those who said they were considering a Lexus prior to the Toyota recalls, now say they are no longer considering those brands.

Now nearly half (49 percent) of the car shoppers who have defected from Toyota say they are not sure if they will consider the brand again, even once Toyota's problems are resolved.

Kelley Blue Book updates its famous Blue Book® Values on a weekly basis, and the values continue to fall for Toyota models affected by the recall announcements. On February 5, 2010, company analysts initially decreased the used-car values of recalled Toyotas by 1 - 3 percent in response to the slowing demand for Toyota models in the marketplace following the consumer recall. This coming Friday, February 12, Kelley Blue Book will once again adjust values for these vehicles downward by an additional 1.5 percent on concerns around the growing supply of unsold Toyotas on both dealer lots and at auctions. The latest announcements about new 2010 Priuses and late-model 2009-2010 Corollas also have affected not just used-car values, but also new-car (transaction) values. After the latest Prius recall news, consumers can pick up a brand-new 2010 Prius closer to dealer invoice price than its suggested retail price, a difference of $1,000 - $1,500.

Kelley Blue Book Values Summary for Toyota

- **All Used Recalled Toyota Models:** Used-car values declined 1-3 percent (depending on the model) on February 5, 2010, and will drop an additional 1.5 percent on Friday, February 12, 2010
- **New 2010 Prius:** New Car Blue Book® Value (transaction price) will drop by $1,000 - $1,500 on February 12, 2010
- **Used Prius, 2009 and older models:** Used-car value dropped 1.5 percent on February 5, 2010, and will drop an additional 1.5 percent on February 12, 2010
- **Used Corolla, 2009 and older models:** Used-car values dropped 1.5 percent on February 5, 2010, and will drop an additional 1.5 percent on February 12, 2010

"We are seeing a softening of both used Toyota values and the New Car Blue Book values of new Toyotas this week," said Juan Flores, director of vehicle valuation, Kelley Blue Book. "The softening of values is a product of weakened consumer demand, and the realization that Toyota is going to have to offer lower prices to get some consumers to consider Toyota vehicles again."

In addition to the values decline, site traffic from Kelley Blue Book's kbb.com detailed in the company's Market Watch® report also shows a continued decline in Toyota interest in the wake of the recall announcements. Toyota models have seen an overall 25 percent decline in page views since the recall news initially broke. Even Toyota models not specifically involved in the recall continue to see a decline in page views, demonstrating the negative impact the recall is having on current interest in all Toyota vehicles, not just the models named in the recall.

"It seems the longer Toyota is the subject of daily headlines with the continuing recall news, the more consumers are reacting negatively by defecting from Toyota, Lexus and Scion. We are seeing shoppers on kbb.com lean more toward competitors, especially the domestics like Ford and Chevy who are offering enticing conquest incentives," said James Bell, executive market analyst for Kelley Blue Book's kbb.com. "Toyota is going to have to work extra hard for quite some time to overcome the 'double-whammy' it is seeing with the continuing drop in values and consumer brand consideration."

When comparing Toyota's perceived safety ratings in Kelley Blue Book Market Intelligence's Brand Watch® survey from the week prior to the recall to the past week, the brand has experienced a drop from 8.4 to 7.0 (on a 10-point scale).

Some of Toyota's primary competitors are benefiting from the negative impact of the recall news. Many car shoppers now indicate they are considering brands they were not considering prior to the Toyota recall news, showing increased interest in Ford (eight percent), Chevrolet (seven percent), Hyundai (five percent) and Honda (five percent).

Of those competing brands offering specific incentives to Toyota owners/shoppers, Ford is garnering the most consumer attention, with 16 percent of car shoppers saying they were not considering a Ford prior to the Toyota recall but now are (due to Ford's Toyota-specific incentives). Chevrolet is in second place with eight percent saying they were not considering a Chevy prior to the recall news, but now are (due to Chevy's Toyota- specific incentives).

Toyota's share of dealer leads submitted by consumers on Kelley Blue Book's kbb.com also have experienced a decline since the recall news was announced, demonstrating the immediate impact the recall is having on Toyota dealers across the United States who are seeing fewer consumers interested in the models they sell.

This Kelley Blue Book Market Intelligence study on the Toyota recall was fielded to a total of 691 in-market car shoppers on Kelley Blue Book's kbb.com from January 29 – February 8, 2010 (Wave One was January 29 – February 1, 2010 with 406 respondents; Wave Two was February 4 – 8, 2010 with 285 respondents). Brand Watch data cited compared Toyota brand consideration from January 12-18, 2010 to February 4-8, 2010. Market Watch data cited compared Toyota model page views on kbb.com from the week of January 18, 2010 to the week of February 1, 2010.

About Kelley Blue Book (www.kbb.com)

Since 1926, Kelley Blue Book, The Trusted Resource®, has provided vehicle buyers and sellers with the new and used vehicle information they need to accomplish their goals with confidence. The company's top-rated Web site, www.kbb.com, provides the most up-to-date pricing and values, including the New Car Blue Book® Value, which reveals what people actually are paying for new cars. The company also reports vehicle pricing and values via products and services, including software products and the famous Blue Book® Official Guide. According to the C.A. Walker Research Solutions, Inc. - 2009 Spring Automotive Web Site Usefulness Study, kbb.com is the most useful automotive information Web site among new and used vehicle shoppers, and half of online vehicle shoppers visit kbb.com. Kelley Blue Book's kbb.com also is a W3 Gold Award winner, sanctioned by the International Academy of Visual Arts. Kbb.com is a leading provider of new car prices, used car Blue Book Values, car reviews, new cars for sale, used cars for sale, and car dealer locations.

SOURCE Kelley Blue Book

(FMOx), DISCOVERY, RELATED-G

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
(Western Division - Los Angeles)
CIVIL DOCKET FOR CASE #: 2:09-cv-08478-AHM-FMO

Eric Kmetz et al v. Toyota Motor Sales, U.S.A., Inc. et al
Assigned to: Judge A. Howard Matz
Referred to: Magistrate Judge Fernando M. Olguin
Related Case: 2:09-cv-08143-AHM-FMO
Cause: 28:1332 Diversity-Fraud

Date Filed: 11/18/2009
Jury Demand: Plaintiff
Nature of Suit: 370 Fraud or Truth-In-Lending
Jurisdiction: Diversity

Plaintiff

Eric Kmetz
on behalf of themselves and all others similarly situated

represented by **Behram V Parekh**
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Plaintiff

Joe Morris
on behalf of themselves and all other similarly situated

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TOY-RQ-05E-00004343

ATTORNEY TO BE NOTICED

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Lisa Gilford
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Doe Defendants
1-10

Date Filed	#	Docket Text
11/18/2009	1	COMPLAINT against Defendants Toyota Motor Corporation, Doe Defendants, Toyota Motor Sales, U.S.A., Inc. (Filing fee $ 350 PAID.) Jury Demanded., filed by Plaintiffs Eric Kmetz, Joe Morris. (et) (ds). (Entered: 11/20/2009)
11/18/2009		20 DAY Summons Issued re Complaint - (Discovery) 1 as to Defendants Toyota Motor Corporation, Doe Defendants 1-10, Toyota Motor Sales, U.S.A., Inc. (et) (Entered: 11/20/2009)
11/18/2009	2	CERTIFICATE of Interested Parties filed by Plaintiff Eric Kmetz, Joe Morris. (et) (ds). (Entered: 11/20/2009)
11/24/2009	3	PROOF OF SERVICE Executed by Plaintiffs Eric Kmetz, Joe Morris, upon Toyota Motor Sales, U.S.A., Inc. served on 11/19/2009, answer due 12/9/2009. The Summons

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		and Complaint were served by Personal service, by Federal statute, upon CT Corporation, Margaret Wilson, Agent for Service of Process. Due Dilligence declaration not attached. Original Summons not returned. (Parekh, Behram) (Entered: 11/24/2009)
11/25/2009	4	ORDER RE TRANSFER PURSUANT TO GENERAL ORDER 08-05 -Related Case- filed. Related Case No: CV09-08143 AHM(FMOx). Case transferred from Magistrate Judge Robert N. Block and Judge Christina A. Snyder to Judge A. Howard Matz and Magistrate Judge Fernando M. Olguin for all further proceedings. The case number will now reflect the initials of the transferee Judge CV 09-08478 AHM (FMOx).Signed by Judge A. Howard Matz (rn) (Entered: 11/25/2009)
12/02/2009	5	FIRST STIPULATION Extending Time to Answer the complaint as to Toyota Motor Corporation answer now due 1/4/2010; Toyota Motor Sales, U.S.A., Inc. answer now due 1/4/2010, filed by defendants Toyota Motor Corporation; Toyota Motor Sales, U.S.A., Inc..(Gilford, Lisa) (Entered: 12/02/2009)
12/03/2009	6	INITIAL ORDER FOLLOWING FILING OF COMPLAINT ASSIGNED TO JUDGE MATZ: Counsel for plaintiff shall serve this Order on all defendant and/or their counsel along with the summons and complaint, or if that is not practicable as soon as possible thereafter. If this case was assigned to this Court after being removed from State Court, the defendant who removed the case shall serve this Order on all other parties. This case has been assigned to the calendar of Judge A. Howard Matz (see document for further details). All documents which are required to be filed in an electronic format pursuant to General Order No. 08-02 must be filed electronically no later than midnight on the date due, unless otherwise ordered by the Court. Courtesy copies are required for all e-filed documents and must be delivered to the drop box in the entrance way to chambers, to the left of Courtroom 14, located at 312 N. Spring Street, Spring Street level, no later than noon the following business day. (jp) (Entered: 12/03/2009)
12/29/2009	7	APPLICATION for attorney Cari K. Dawson to Appear Pro Hac Vice (PHV Fee of $185 receipt number 0973000000006333911 paid.) filed by Defendants Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Inc.. (Gilford, Lisa) (Entered: 12/29/2009)
12/29/2009	8	APPLICATION for attorney Derin B. Dickerson to Appear Pro Hac Vice (PHV Fee of $185 receipt number 0973000000006333979 paid.) filed by Defendants Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Inc.. (Gilford, Lisa) (Entered: 12/29/2009)
12/29/2009	9	APPLICATION for attorney Kyle G.A. Wallace to Appear Pro Hac Vice (PHV Fee of $185 receipt number 0973000000006334040 paid.) filed by Defendants Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Inc.. (Gilford, Lisa) (Entered: 12/29/2009)
12/29/2009	10	STIPULATION for Extension of Time to File Answer to 02/08/2010 filed by Defendants Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Inc.. (Attachments: # 1 Proposed Order)(Gilford, Lisa) (Entered: 12/29/2009)
12/30/2009	11	ORDER by Judge A. Howard Matz granting Application to Appear Pro Hac Vice by Attorney Derin B. Dickerson on behalf of defendants Toyota Motor Corporation, Toyota Motor Sales USA Inc, designating Lisa Gilford as local counsel (PHV FEE PAID) 8 . (jp) (Entered: 12/30/2009)
12/30/2009	13	ORDER by Judge A. Howard Matz: granting 7 Application to Appear Pro Hac Vice by Attorney Cari K. Dawson on behalf of defendant Toyota Motor Sales UA, Inc., et al, designating Lisa Gilford as local counsel. (se) (Entered: 01/05/2010)

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12/30/2009	14	ORDER by Judge A. Howard Matz: granting 9 Application to Appear Pro Hac Vice by Attorney Kyle G.A. Wallace on behalf of defendant Toyota Motor Sales USA, Inc., et al., designating Kisa Gilford as local counsel. (se) (Entered: 01/05/2010)
01/04/2010	12	STIPULATION AND ORDER by Judge A. Howard Matz GRANTING Order for Plaintiffs to File First Amended Complaint and Stipulation to Extend Time to Answer 10 on or before 2/8/10. (se) (Entered: 01/04/2010)
01/11/2010	15	STIPULATION for Extension of Time to Amend filed by Plaintiff Eric Kmetz, Joe Morris. (Attachments: # 1 Proposed Order Clarifying Due Date for Filing of First Amended Complaint)(Peterson, Heather) (Entered: 01/11/2010)
01/12/2010	16	ORDER by Judge A. Howard Matz GRANTING Stipulation Clarifying Extension of Time to File FAC 15 : First Amended Complaint shall be filed by 1/19/2010. Defendants shall answer or respond to FAC by 2/8/10. (se) (Entered: 01/12/2010)
01/19/2010	17	FIRST AMENDED COMPLAINT against Defendants Toyota Motor Sales, U.S.A., Inc., Toyota Motor Corporation, Doe Defendants; amending Complaint 1 ; filed by Plaintiffs Eric Kmetz, Joe Morris. Demand for Jury Trial. (mg) (jp). (Entered: 01/20/2010)
02/08/2010	18	NOTICE OF MOTION AND MOTION to Dismiss Plaintiff's First Amended Complaint filed by Defendants Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Inc.. Motion set for hearing on 3/15/2010 at 10:00 AM before Judge A. Howard Matz. (Attachments: # 1 Memorandum of Points and Authoritites, # 2 Proposed Order) (Gilford, Lisa) (Entered: 02/08/2010)
02/08/2010	19	APPENDIX filed by Defendants Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Inc.. Re: MOTION to Dismiss Plaintiff's First Amended Complaint 18 (Attachments: # 1 Exhibit 1 to Appendix of Non-Federal Out of State Authorities, # 2 Exhibit 2 to Appendix of Non-Federal Out of State Authorities, # 3 Exhibit 3 to Appendix of Non-Federal Out of State Authorities, # 4 Exhibit 4 to Appendix of Non-Federal Out of State Authorities, # 5 Exhibit 5 to Appendix of Non-Federal Out of State Authorities, # 6 Exhibit 6 to Appendix of Non-Federal Out of State Authorities, # 7 Exhibit 7 to Appendix of Non-Federal Out of State Authorities, # 8 Exhibit 8 to Appendix of Non-Federal Out of State Authorities, # 9 Exhibit 9 to Appendix of Non-Federal Out of State Authorities, # 10 Exhibit 10 to Appendix of Non-Federal Out of State Authorities, # 11 Exhibit 11 to Appendix of Non-Federal Out of State Authorities, # 12 Exhibit 12 to Appendix of Non-Federal Out of State Authorities, # 13 Exhibit 13 to Appendix of Non-Federal Out of State Authorities, # 14 Exhibit 14 to Appendix of Non-Federal Out of State Authorities, # 15 Exhibit 15 to Appendix of Non-Federal Out of State Authorities, # 16 Exhibit 16 to Appendix of Non-Federal Out of State Authorities, # 17 Exhibit 17 to Appendix of Non-Federal Out of State Authorities, # 18 Exhibit 18 to Appendix of Non-Federal Out of State Authorities, # 19 Exhibit 19 to Appendix of Non-Federal Out of State Authorities, # 20 Exhibit 20 to Appendix of Non-Federal Out of State Authorities, # 21 Exhibit 21 to Appendix of Non-Federal Out of State Authorities, # 22 Exhibit 22 to Appendix of Non-Federal Out of State Authorities, # 23 Exhibit 23 to Appendix of Non-Federal Out of State Authorities, # 24 Exhibit 24 to Appendix of Non-Federal Out of State Authorities, # 25 Exhibit 25 to Appendix of Non-Federal Out of State Authorities, # 26 Exhibit 26 to Appendix of Non-Federal Out of State Authorities, # 27 Exhibit 27 to Appendix of Non-Federal Out of State Authorities, # 28 Exhibit 28 to Appendix of Non-Federal Out of State Authorities, # 29 Exhibit 29 to Appendix of Non-Federal Out of State Authorities, # 30 Exhibit 30 to Appendix of Non-Federal Out of State Authorities, # 31

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		Exhibit 31 to Appendix of Non-Federal Out of State Authorities, # 32 Exhibit 32 to Appendix of Non-Federal Out of State Authorities, # 33 Exhibit 33 to Appendix of Non-Federal Out of State Authorities, # 34 Exhibit 34 to Appendix of Non-Federal Out of State Authorities, # 35 Exhibit 35 to Appendix of Non-Federal Out of State Authorities, # 36 Exhibit 36 to Appendix of Non-Federal Out of State Authorities, # 37 Exhibit 37 to Appendix of Non-Federal Out of State Authorities, # 38 Exhibit 38 to Appendix of Non-Federal Out of State Authorities, # 39 Exhibit 39 to Appendix of Non-Federal Out of State Authorities, # 40 Exhibit 40 to Appendix of Non-Federal Out of State Authorities, # 41 Exhibit 41 to Appendix of Non-Federal Out of State Authorities, # 42 Exhibit 42 to Appendix of Non-Federal Out of State Authorities, # 43 Exhibit 43 to Appendix of Non-Federal Out of State Authorities, # 44 Exhibit 44 to Appendix of Non-Federal Out of State Authorities, # 45 Exhibit 45 to Appendix of Non-Federal Out of State Authorities)(Gilford, Lisa) (Entered: 02/08/2010)
02/08/2010	20	*Certification* of Interested Parties filed by Defendants Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Inc., identifying Eric Kmetz, Joe Morris. (Gilford, Lisa) (Entered: 02/08/2010)
02/08/2010	21	REQUEST FOR JUDICIAL NOTICE re MOTION to Dismiss Plaintiff's First Amended Complaint 18 filed by Defendants Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Inc.. (Attachments: # 1 Exhibit A to Request for Judicial Notice)(Gilford, Lisa) (Entered: 02/08/2010)
02/08/2010	22	NOTICE OF MOTION AND MOTION to Strike All Class Allegations from Plaintiffs' First Amended Complaint MOTION to Dismiss Plaintiff's First Amended Complaint 18 filed by Defendants Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Inc.. Motion set for hearing on 3/15/2010 at 10:00 AM before Judge A. Howard Matz. (Attachments: # 1 Memorandum of Points and Authorities in Support of Motion to Strike, # 2 Proposed Order Granting Motion to Strike)(Gilford, Lisa) (Entered: 02/08/2010)
02/08/2010	23	APPENDIX filed by Defendants Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Inc.. Re: MOTION to Strike All Class Allegations from Plaintiffs' First Amended Complaint MOTION to Dismiss Plaintiff's First Amended Complaint 18 MOTION to Strike All Class Allegations from Plaintiffs' First Amended Complaint MOTION to Dismiss Plaintiff's First Amended Complaint 18 22 (Attachments: # 1 Exhibit 1 to Appendix of Non-Federal and Out of State Authorities, # 2 Exhibit 2 to Appendix of Non-Federal and Out of State Authorities, # 3 Exhibit 3 to Appendix of Non-Federal and Out of State Authorities, # 4 Exhibit 4 to Appendix of Non-Federal and Out of State Authorities, # 5 Exhibit 5 to Appendix of Non-Federal and Out of State Authorities, # 6 Exhibit 6 to Appendix of Non-Federal and Out of State Authorities, # 7 Exhibit 7 to Appendix of Non-Federal and Out of State Authorities, # 8 Exhibit 8 to Appendix of Non-Federal and Out of State Authorities, # 9 Exhibit 9 to Appendix of Non-Federal and Out of State Authorities, # 10 Exhibit 10 to Appendix of Non-Federal and Out of State Authorities, # 11 Exhibit 11 to Appendix of Non-Federal and Out of State Authorities, # 12 Exhibit 12 to Appendix of Non-Federal and Out of State Authorities, # 13 Exhibit 13 to Appendix of Non-Federal and Out of State Authorities, # 14 Exhibit 14 to Appendix of Non-Federal and Out of State Authorities, # 15 Exhibit 15 to Appendix of Non-Federal and Out of State Authorities, # 16 Exhibit 16 to Appendix of Non-Federal and Out of State Authorities, # 17 Exhibit 17 to Appendix of Non-Federal and Out of State Authorities, # 18 Exhibit 18 to Appendix of Non-Federal and Out of State Authorities, # 19 Exhibit 19 to Appendix of Non-Federal and Out of State

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		Authorities, # 20 Exhibit 20 to Appendix of Non-Federal and Out of State Authorities, # 21 Exhibit 21 to Appendix of Non-Federal and Out of State Authorities, # 22 Exhibit 22 to Appendix of Non-Federal and Out of State Authorities, # 23 Exhibit 23 to Appendix of Non-Federal and Out of State Authorities, # 24 Exhibit 24 to Appendix of Non-Federal and Out of State Authorities, # 25 Exhibit 25 to Appendix of Non-Federal and Out of State Authorities, # 26 Exhibit 26 to Appendix of Non-Federal and Out of State Authorities, # 27 Exhibit 27 to Appendix of Non-Federal and Out of State Authorities, # 28 Exhibit 28 to Appendix of Non-Federal and Out of State Authorities, # 29 Exhibit 29 to Appendix of Non-Federal and Out of State Authorities, # 30 Exhibit 30 to Appendix of Non-Federal and Out of State Authorities, # 31 Exhibit 31 to Appendix of Non-Federal and Out of State Authorities, # 32 Exhibit 32 to Appendix of Non-Federal and Out of State Authorities, # 33 Exhibit 33 to Appendix of Non-Federal and Out of State Authorities, # 34 Exhibit 34 to Appendix of Non-Federal and Out of State Authorities, # 35 Exhibit 35 to Appendix of Non-Federal and Out of State Authorities, # 36 Exhibit 36 to Appendix of Non-Federal and Out of State Authorities, # 37 Exhibit 37 to Appendix of Non-Federal and Out of State Authorities, # 38 Exhibit 38 to Appendix of Non-Federal and Out of State Authorities, # 39 Exhibit 39 to Appendix of Non-Federal and Out of State Authorities, # 40 Exhibit 40 to Appendix of Non-Federal and Out of State Authorities, # 41 Exhibit 41 to Appendix of Non-Federal and Out of State Authorities, # 42 Exhibit 42 to Appendix of Non-Federal and Out of State Authorities, # 43 Exhibit 43 to Appendix of Non-Federal and Out of State Authorities, # 44 Exhibit 44 to Appendix of Non-Federal and Out of State Authorities, # 45 Exhibit 45 to Appendix of Non-Federal and Out of State Authorities)(Gilford, Lisa) (Entered: 02/08/2010)
02/18/2010	24	STIPULATION for Relief from Civ. LR 23-3 filed by Plaintiff Eric Kmetz, Joe Morris. (Attachments: # 1 Proposed Order Re Relief from Civ. LR 23-3)(Parekh, Behram) (Entered: 02/18/2010)
02/18/2010	25	ORDER by Judge A. Howard Matz Re Relief From Civ.L.R. 23-3. The parties having Stipulated 24 to be relieved from Local Rule 23-3 and good cause appearing, it is hereby ORDERED: The parties shall be relieved from Local Rule 23-3. The parties shall submit a proposed schedule on the class certification motion prior to the first Case Management Conference. (mg) (Entered: 02/19/2010)
02/19/2010	26	NOTICE of Related Case(s) filed by Plaintiff Eric Kmetz, Joe Morris. *and Notice of Pendency of Other Actions or Proceedings* Related Case(s): 2:09-cv-8143, 2:09-cv-9158, 2:09-cv-9386, 8:10-cv-105, 2:10-cv-710, 2:10-cv-706, 2:10-cv-799, 2:10-cv-849, 2:10-cv-942, 2:10-cv-946, 2:10-cv-947, 2:10-cv-1030, 2:10-cv-1039, 2:10-cv-1073, 2:10-cv-1089, 2:10-cv-1094, 8:10-cv-183, 2:10-cv-1153 (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D)(Parekh, Behram) (Entered: 02/19/2010)
02/22/2010	27	MEMORANDUM in Opposition to MOTION to Dismiss Plaintiff's First Amended Complaint 18 filed by Plaintiffs Eric Kmetz, Joe Morris. (Parekh, Behram) (Entered: 02/22/2010)
02/22/2010	28	MEMORANDUM in Opposition to MOTION to Strike All Class Allegations from Plaintiffs' First Amended Complaint MOTION to Dismiss Plaintiff's First Amended Complaint 18 MOTION to Strike All Class Allegations from Plaintiffs' First Amended Complaint MOTION to Dismiss Plaintiff's First Amended Complaint 18 22 filed by Plaintiffs Eric Kmetz, Joe Morris. (Parekh, Behram) (Entered: 02/22/2010)

TOY-RQ-05E-00004349

02/22/2010	29	REQUEST FOR JUDICIAL NOTICE re MOTION to Strike All Class Allegations from Plaintiffs' First Amended Complaint MOTION to Dismiss Plaintiff's First Amended Complaint 18 MOTION to Strike All Class Allegations from Plaintiffs' First Amended Complaint MOTION to Dismiss Plaintiff's First Amended Complaint 18 22 , MOTION to Dismiss Plaintiff's First Amended Complaint 18 filed by Plaintiffs Eric Kmetz, Joe Morris. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E)(Parekh, Behram) (Entered: 02/22/2010)

PACER Service Center

Transaction Receipt

02/25/2010 06:32:04

PACER Login:	wb0242	**Client Code:**	056707-383593
Description:	Docket Report	**Search Criteria:**	2:09-cv-08478-AHM-FMO End date: 2/25/2010
Billable Pages:	7	**Cost:**	0.56

TOY-RQ-05E-00004350

FILE START

CT Corporation

Service of Process Transmittal

01/21/2010
CT Log Number 516037203

TO: Dorothy Sutton, Administrative Assistant
Toyota Motor Sales, U.S.A., Inc.
19001 S. Western Ave., HQ11
Torrance, CA 90501

RE: **Process Served in Massachusetts**

FOR: Toyota Motor Sales, U.S.A., Inc. (Domestic State: CA)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION:	Patricia Shea, Pltf. vs. Haddad Motor Group and Toyota Motor Sales (U.S.A), Inc., Dfts. *Name discrepancy noted.*
DOCUMENT(S) SERVED:	Summons, Proof of Service Form, Scheduling Order, Cover Sheet, Complaint and Jury Demand,
COURT/AGENCY:	Berkshire Superior Court, Berkshire County, MA Case # BECV2009-00365-A
NATURE OF ACTION:	Product Liability Litigation - Breach of Warranty - Failure to repair rattle in the steering column
ON WHOM PROCESS WAS SERVED:	C T Corporation System, Boston, MA
DATE AND HOUR OF SERVICE:	By Process Server on 01/21/2010 at 14:15
APPEARANCE OR ANSWER DUE:	Within 20 days, exclusive of the day of service - Summons // 2/17/2010 - Return filed with Court (See document for additional deadlines)
ATTORNEY(S) / SENDER(S):	Michael O. Shea Law Office of Michael O. Shea, P.C. 451 Main Street Wilbraham, MA 01095 413-596-8005
ACTION ITEMS:	SOP Papers with Transmittal, via Fed Ex 2 Day , 791254218820 Image SOP Email Notification, Shari Goldsworthy shari_goldsworthy@toyota.com Email Notification, Webster Burns webster_burns@toyota.com Email Notification, Dorothy Sutton dorothy_sutton@toyota.com
SIGNED:	C T Corporation System
PER:	Dahrlena Mitchell
ADDRESS:	155 Federal Street Suite 700 Boston, MA 02110
TELEPHONE:	617-757-6404

Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of package only, not contents.

Commonwealth of Massachusetts

BERKSHIRE, ss.

SUPERIOR COURT
CIVIL ACTION
No. BECV2009-00365-A

Patrick Shea, Plaintiff(s)

v.

Haddad Motor Group and Toyota Motor Sales (U.S.A), Inc., Defendant(s)

SUMMONS

To the above-named Defendant: Toyota Motor Sales (U.S.A), Inc.

You are hereby summoned and required to serve upon Michael O. Shea, Esq. Law Office of Michael O. Shea, P.C. plaintiff's attorney, whose address is 451 Main St., Wilbraham, MA 01095, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You are also required to file your answer to the complaint in the office of the Clerk of this court at Pittsfield either before service upon plaintiff's attorney or within a reasonable time thereafter.

Unless otherwise provided by Rule 13(a), your answer must state as a counterclaim any claim which you may have against the plaintiff which arises out of the transaction or occurrence that is the subject matter of the plaintiff's claim or you will thereafter be barred from making such claim in any other action.

Witness, BARBARA J. ROUSE, Esquire at Pittsfield, the 8th day of January, in the year of our Lord two thousand and ten

Barbara J. Rouse CLERK.

A true copy Attest:
11/21/2018
Deputy Sheriff Suffolk County

NOTES.

1. This summons is issued pursuant to Rule 4 of the Massachusetts Rules of Civil Procedure.
2. When more than one defendant is involved, the names of all defendants should appear in the caption. If a separate summons is used for each defendant, each should be addressed to the particular defendant.
3. TO PLAINTIFF'S ATTORNEY: PLEASE CIRCLE TYPE OF ACTION INVOLVED

(1) — (TORT) — (2) MOTOR VEHICLE TORT — (3) (CONTRACT) — (4) — EQUITABLE RELIEF — (5) — OTHER

Form · CIV. P. · 1 — 6-75 — 2500

NOTICE TO DEFENDANT—You need not appear personally in court to answer the complaint, but if you claim to have a defense, either you or your attorney must serve a copy of your written answer within 20 days as specified herein and also file the original in the Clerk's Office.

PROOF OF SERVICE OF PROCESS

I hereby certify and return that on ....., 20 ....., I served a copy of the within summons, together with a copy of the complaint in this action, upon the within-named defendant, in the following manner (See Mass. R. Civ. P. 4 (d) (1-5):

.....

.....

.....

Dated: ....., 20 .....

.....

N.B. TO PROCESS SERVER:—

PLEASE PLACE **DATE** YOU MAKE SERVICE ON DEFENDANT IN THIS BOX **ON THE ORIGINAL AND ON COPY SERVED ON DEFENDANT.**

, 20 .

COMMONWEALTH OF MASSACHUSETTS

BERKSHIRE, ss.

SUPERIOR COURT

CIVIL ACTION

No. .....

....., Plff(s).

v.

....., Deft(s).

SUMMONS

(Mass. R. Civ. P. 4)

TOY-RQ-05E-00004359

Commonwealth of Massachusetts
County of Berkshire
The Superior Court

CIVIL DOCKET # **BECV2009-00365-A**
Courtroom Superior Court-2nd Floor

RE: **Shea v Haddad Motor Group et al**
TO:

Michael O Shea, Esquire
451 Main Street
Wilbraham, MA 01095-

SCHEDULING ORDER FOR F TRACK

You are hereby notified that this case is on the track referenced above as per Superior Court Standing Order 1-88. The order requires that the various stages of litigation described below must be completed not later than the deadlines indicated, and case shall be resolved and judgment shall issue **09/10/2011**.

STAGES OF LITIGATION	DEADLINES		
	SERVED BY	**FILED BY**	**HEARD BY**
Service of process made and return filed with the Court	02/17/2010	02/17/2010	
Response to the complaint filed (also see MRCP 12)		03/19/2010	
All motions under MRCP 12, 19, and 20	03/19/2010	04/18/2010	05/18/2010
All motions under MRCP 15	03/19/2010	04/18/2010	05/18/2010
All discovery requests and depositions served and non-expert depositions completed	09/15/2010		
All motions under MRCP 56	10/15/2010	11/14/2010	
Final pre-trial conference held and/or firm trial date set			03/14/2011
Case shall be resolved and judgment shall issue by **09/10/2011**			**09/10/2011**

- **The final pre-trial deadline is not the scheduled date of the conference.**
- **You will be notified of that date at a later time.**
- **Counsel for plaintiff must serve this tracking order on defendant before the deadline for filing return of service.**

Dated: 11/19/2009

Deborah S. Capeless
Clerk of the Court

Telephone: (413) 499-7487

A True Copy
Attest: Deborah S. Capeless
Clerk

Disabled individuals who need handicap accommodations should contact the Administrative Office of the Superior Court at (617) 788-8130 --Check website as to status of case: http://**ma-trialcourts.org/tcic** 405357 inidoc01 cuddjaso

CIVIL ACTION COVER SHEET	DOCKET NO.(S) BECV2009-00365-A	Trial Court of Massachusetts Superior Court Department County: Berkshire

PLAINTIFF(S)	DEFENDANT(S)
Patrick Shea	Haddad Motor Group and Toyota Motor Sales, USA, Inc.
ATTORNEY, FIRM NAME, ADDRESS AND TELEPHONE (413) 596-8005 Michael O. Shea, Esq. 451 Main Street, Wilbraham, MA 01095 Board of Bar Overseers number:	ATTORNEY (if known)

Origin code and track designation

Place an x in one box only:

- [x] 1. F01 Original Complaint
- [ ] 2. F02 Removal to Sup.Ct. C.231,s.104 (Before trial) (F)
- [ ] 3. F03 Retransfer to Sup.Ct. C.231,s.102C (X)
- [ ] 4. F04 District Court Appeal c.231, s. 97 &104 (After trial) (X)
- [ ] 5. F05 Reactivated after rescript; relief from judgment/Order (Mass.R.Civ.P. 60) (X)
- [ ] 6. E10 Summary Process Appeal (X)

TYPE OF ACTION AND TRACK DESIGNATION (See reverse side)

CODE NO.	TYPE OF ACTION (specify)	TRACK	IS THIS A JURY CASE?
A99	Breach of Contract	(F)	(/) Yes ( ) No

The following is a full, itemized and detailed statement of the facts on which plaintiff relies to determine money damages. For this form, disregard double or treble damage claims; indicate single damages only.

TORT CLAIMS

(Attach additional sheets as necessary)

A. Documented medical expenses to date:
   1. Total hospital expenses ..... $ .....
   2. Total Doctor expenses ..... $ .....
   3. Total chiropractic expenses ..... $ .....
   4. Total physical therapy expenses ..... $ .....
   5. Total other expenses (describe) ..... $ .....

   Subtotal $ .....

B. Documented lost wages and compensation to date ..... $ .....
C. Documented property damages to date ..... $ .....
D. Reasonably anticipated future medical and hospital expenses ..... $ .....
E. Reasonably anticipated lost wages ..... $ .....
F. Other documented items of damages (describe) ..... $ .....

G. Brief description of plaintiff's injury, including nature and extent of injury (describe) ..... $ .....

TOTAL $ .....

CONTRACT CLAIMS

(Attach additional sheets as necessary)

Provide a detailed description of claim(s):

Breach of Contract and Chapter 93A violations

In excess of

TOTAL $ 25,000.00

PLEASE IDENTIFY, BY CASE NUMBER, NAME AND COUNTY, ANY RELATED ACTION PENDING IN THE SUPERIOR COURT DEPARTMENT N/A

"I hereby certify that I have complied with the requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods."

Signature of Attorney of Record _____ DATE: 11/18/09

AOTC-6 mtc005-11/99

COMMONWEALTH OF MASSACHUSETTS

BERKSHIRE, ss.

SUPERIOR COURT
DOCKET NO.:
BECV2009-00365-A

PATRICK SHEA,

Plaintiff

v.

HADDAD MOTOR GROUP and TOYOTA MOTOR SALES (U.S.A.), INC.,

Defendants

COMPLAINT AND JURY DEMAND

Parties

1. The Plaintiff, Patrick Shea (hereinafter referred to as "Plaintiff"), is a natural person currently residing at 37 Derryfield Ave, Springfield, Hampden County, Massachusetts.

2. The Defendant, Haddad Motor Group (hereinafter referred to as the "Defendant Haddad" or collectively as "Defendants"), is a corporation with a principal address of 130 Pittsfield-Lenox Road, Pittsfield, Berkshire County, Massachusetts.

3. The Defendant, Toyota Motor Sales (U.S.A.), Inc., (hereinafter referred to as "Defendant Toyota" or collectively as "Defendants"), is a corporation with a principle address of 19001 S. Western Avenue, Torrance, Los Angeles County, California.

Facts

4. The Plaintiff purchased his 2009 Toyota Tacoma from the Defendant Haddad on or about June 12, 2009.

5. On or about June 29, 2009, the Plaintiff called the Defendant Haddad to report a rattle

sound in middle upper steering column. The Defendant Haddad's service department denied any problems of this nature.

6. On or about July 1, 2009, the Plaintiff called the Defendant Haddad's service department again to report the continued rattle in the steering column. The Plaintiff made an appointment to have his truck brought in on or about July 7, 2009, and the Defendant Haddad's service manager again denied the problem stating that he "never heard of this kind of problem."

7. On or about July 9, 2009, the Plaintiff again brought the vehicle to the Defendant Haddad for repair which required the Plaintiff to take time off from work. The Defendant Haddad's service department once again was unable to establish a problem.

8. On or about July 30, 2009, the Plaintiff made yet another call to set an appointment at the Defendant Haddad for on or about August 11, 2009. The Plaintiff spoke to Scott O'Connell and Jim Torrico, employees of the Defendant Haddad. On or about August 11, 2009, the Plaintiff brought the vehicle to the Defendant Haddad, and this time the Defendant Haddad's service department picked up on the problem and ordered a replacement part which was the intermediate steering shaft. The Plaintiff made an appointment for on or about August 19, 2009 for this repair.

9. On or about August 19, 2009, while the Plaintiff was traveling to the Defendant Haddad's service department, the vehicle's cruise control light switched on and the vehicle began to accelerate from 65mph to 85mph. The Plaintiff attempted to shut off the cruise control and brake several times, but the vehicle would not stop accelerating. The vehicle reached a speed of 95mph and then 100mph and was out of control. The Plaintiff then put the vehicle into neutral and put on the brakes to control it and bring it to a stop in the breakdown lane. Smoke was pouring heavily out from under the hood and wheel wells. The Plaintiff then shut off and

TOY-RQ-05E-00004363

restarted the vehicle and was able to drive to the Defendant Haddad's service department. The Defendant Haddad's service department denied this problem and denied a history of the Toyota Tacoma of having any accelerating problems. The Plaintiff went back to the Defendant Haddad's dealership, took the plates off his vehicle and asked Jim Torrico for a new vehicle or loaner until they could find a new vehicle. Jim Torrico refused to remedy the situation; and, instead, he threatened to tow the vehicle to the Plaintiff's house or impound it at the Plaintiff's expense.

10. The Plaintiff has made repeated attempts to resolve the above-referenced mechanical issues, not the least of which was the unexplained and very dangerous acceleration of the vehicle.

Count I
BREACH OF CONTRACT—M.G.L. c. 90, Section 7N1/2
(Plaintiff v. Defendant Haddad)

11. The Plaintiff repeats and realleges the previous allegations made herein and incorporates the same herein by reference.

12. At the time of the Plaintiff's purchase of the vehicle from the Defendant Haddad on June 12, 2009, the Plaintiff had in effect a contract for the bill of sale that contained an express and/or implied warranty on the vehicle.

13. Under M.G.L. c. 90, Section 7N1/2, if the manufacturer, its agent or authorized dealer does not conform the vehicle to any such applicable express or implied warranty by curing any nonconformity after a reasonable number of attempts, the manufacturer shall accept return of the vehicle from the consumer.

14. In instances in which a vehicle is sold and subsequently returned, the manufacturer shall refund the full contract price of the vehicle, including all credits and allowances for any trade-in

TOY-RQ-05E-00004364

vehicle, less any cash award that was made by the manufacturer in an attempt to resolve the dispute and was accepted by the consumer, and a reasonable allowance for use, or shall offer to replace the vehicle.

15. The Plaintiff has fully complied with the terms of the contract with the Defendants by returning the nonconforming vehicle to the Defendant Haddad and requesting a replacement vehicle and/or a loaner vehicle until the dispute is resolved.

16. The Defendants have breached their contract with the Plaintiff by failing to offer the Plaintiff a new replacement vehicle or a loaner vehicle and by causing the Plaintiff unnecessary costs and damages.

WHEREFORE, the Plaintiff, Patrick Shea, demands judgment against the Defendant Haddad for breach of contract and for all damages available.

Count II
UNFAIR AND DECEPTIVE PRACTICES-M.G.L. c. 93A
(Plaintiff v. Defendant Haddad)

17. The Plaintiff repeats and realleges the previous allegations made herein and incorporates the same herein by reference.

18. On September 11, 2009, the Plaintiff, through his Counsel, sent to the Defendants a written demand for relief as required by Chapter 93A.

19. The Plaintiff was injured by Defendants' use or employment of methods, acts and/or practices declared unlawful by Chapter 93A, Section 2, et.seq., or a rule or regulation issued thereunder.

20. The Defendants responded to the Chapter 93A letter, but failed to make a reasonable tender of settlement as required by law.

TOY-RQ-05E-00004365

21. The failure of the Defendants to grant relief upon demand was a willful or knowing violation of Chapter 93A, or was made in bad faith with knowledge or reason to know that the acts or practices complained of were in violation of Chapter 93A.

WHEREFORE, the Plaintiff, Patrick Shea, demands judgment against the Defendant Haddad, for the amount of his actual damages and for punitive damages in the amount of three times his actual losses, plus attorney's fees, interest and costs.

Count III
BREACH OF CONTRACT—M.G.L. c. 90, Section 7N1/2
(Plaintiff v. Defendant Toyota)

22. The Plaintiff repeats and realleges the previous allegations made herein and incorporates the same herein by reference.

23. At the time of the Plaintiff's purchase of the vehicle from the Defendant Haddad on June 12, 2009, the Plaintiff had in effect a contract for the bill of sale that contained an express and/or implied warranty on the vehicle.

24. Under M.G.L. c. 90, Section 7N1/2, if the manufacturer, its agent or authorized dealer does not conform the vehicle to any such applicable express or implied warranty by curing any nonconformity after a reasonable number of attempts, the manufacturer shall accept return of the vehicle from the consumer.

25. In instances in which a vehicle is sold and subsequently returned, the manufacturer shall refund the full contract price of the vehicle, including all credits and allowances for any trade-in vehicle, less any cash award that was made by the manufacturer in an attempt to resolve the dispute and was accepted by the consumer, and a reasonable allowance for use, or shall offer to replace the vehicle.

TOY-RQ-05E-00004366

26. The Plaintiff has fully complied with the terms of the contract with the Defendants by returning the nonconforming vehicle to the Defendant Haddad and requesting a replacement vehicle and/or a loaner vehicle until the dispute is resolved.

27. The Defendants have breached their contract with the Plaintiff by failing to offer the Plaintiff a new replacement vehicle or a loaner vehicle as required under M.G.L. c. 90 and by causing the Plaintiff damages and expenses.

WHEREFORE, the Plaintiff, Patrick Shea, demands judgment against the Defendant Toyota for breach of contract and for all damages available.

Count IV
UNFAIR AND DECEPTIVE PRACTICES-M.G.L. c. 93A
(Plaintiff v. Defendant Toyota)

28. The Plaintiff repeats and realleges the previous allegations made herein and incorporates the same herein by reference.

29. On September 11, 2009, the Plaintiff, through his Counsel, sent to the Defendants a written demand for relief as required by Chapter 93A.

30. The Plaintiff was injured by Defendants' use or employment of methods, acts and/or practices declared unlawful by Chapter 93A, Section 2, et.seq., or a rule or regulation issued thereunder.

31. The Defendants responded to the Chapter 93A letter, but failed to make a reasonable tender of settlement as required by law.

32. The failure of the Defendants to grant relief upon demand was a willful or knowing violation of Chapter 93A, or was made in bad faith with knowledge or reason to know that the acts or practices complained of were in violation of Chapter 93A.

TOY-RQ-05E-00004367

WHEREFORE, the Plaintiff, Patrick Shea, demands judgment against the Defendant Toyota for unfair and deceptive practices and for all damages available under Chapter 93A.

Count V
DEFECTIVE PRODUCT/MANUFACTURING
(Plaintiff v. Defendant Toyota)

33. The Plaintiff repeats and realleges the previous allegations made herein and incorporates the same herein by reference.

34. The Defendant Toyota owed a duty of due care to the Plaintiff and the general public to manufacture safe products for sale to the public, including the Plaintiff.

35. The Defendant Toyota negligently and/or intentionally breached that duty by manufacturing an inherently unsafe product and selling it to the Plaintiff.

WHEREFORE, the Plaintiff, Patrick Shea, demands judgment against the Defendant Toyota in the amount of his actual damages and for all other remedies available at law and in equity.

THE PLAINTIFF DEMANDS A JURY TRIAL ON ALL COUNTS SO TRIABLE IN THE SUPERIOR COURT.

Respectfully submitted,

The Plaintiff
PATRICK SHEA
By His Attorney

Date: November 18, 2009

MICHAEL O. SHEA, ESQ.
BBO No.: 555474
Law Office Of Michael O. Shea, P.C.
451 Main Street
Wilbraham, MA 01095
Telephone: (413) 596-8005
Facsimile: (413) 596-8095

TOY-RQ-05E-00004368

COMMONWEALTH OF MASSACHUSETTS

BERKSHIRE, ss. SUPERIOR COURT
DOCKET NO.:

PATRICK SHEA,

Plaintiff

v.

HADDAD MOTOR GROUP and TOYOTA MOTOR SALES (U.S.A.), INC.,

Defendants

COMPLAINT AND JURY DEMAND

Parties

1. The Plaintiff, Patrick Shea (hereinafter referred to as "Plaintiff"), is a natural person currently residing at 37 Derryfield Ave, Springfield, Hampden County, Massachusetts.

2. The Defendant, Haddad Motor Group (hereinafter referred to as the "Defendant Haddad" or collectively as "Defendants"), is a corporation with a principal address of 130 Pittsfield-Lenox Road, Pittsfield, Berkshire County, Massachusetts.

3. The Defendant, Toyota Motor Sales (U.S.A.), Inc., (hereinafter referred to as "Defendant Toyota" or collectively as "Defendants"), is a corporation with a principle address of 19001 S. Western Avenue, Torrance, Los Angeles County, California.

Facts

4. The Plaintiff purchased his 2009 Toyota Tacoma from the Defendant Haddad on or about June 12, 2009.

5. On or about June 29, 2009, the Plaintiff called the Defendant Haddad to report a rattle

sound in middle upper steering column. The Defendant Haddad's service department denied any problems of this nature.

6. On or about July 1, 2009, the Plaintiff called the Defendant Haddad's service department again to report the continued rattle in the steering column. The Plaintiff made an appointment to have his truck brought in on or about July 7, 2009, and the Defendant Haddad's service manager again denied the problem stating that he "never heard of this kind of problem."

7. On or about July 9, 2009, the Plaintiff again brought the vehicle to the Defendant Haddad for repair which required the Plaintiff to take time off from work. The Defendant Haddad's service department once again was unable to establish a problem.

8. On or about July 30, 2009, the Plaintiff made yet another call to set an appointment at the Defendant Haddad for on or about August 11, 2009. The Plaintiff spoke to Scott O'Connell and Jim Torrico, employees of the Defendant Haddad. On or about August 11, 2009, the Plaintiff brought the vehicle to the Defendant Haddad, and this time the Defendant Haddad's service department picked up on the problem and ordered a replacement part which was the intermediate steering shaft. The Plaintiff made an appointment for on or about August 19, 2009 for this repair.

9. On or about August 19, 2009, while the Plaintiff was traveling to the Defendant Haddad's service department, the vehicle's cruise control light switched on and the vehicle began to accelerate from 65mph to 85mph. The Plaintiff attempted to shut off the cruise control and brake several times, but the vehicle would not stop accelerating. The vehicle reached a speed of 95mph and then 100mph and was out of control. The Plaintiff then put the vehicle into neutral and put on the brakes to control it and bring it to a stop in the breakdown lane. Smoke was pouring heavily out from under the hood and wheel wells. The Plaintiff then shut off and

TOY-RQ-05E-00004370

restarted the vehicle and was able to drive to the Defendant Haddad's service department. The Defendant Haddad's service department denied this problem and denied a history of the Toyota Tacoma of having any accelerating problems. The Plaintiff went back to the Defendant Haddad's dealership, took the plates off his vehicle and asked Jim Torrico for a new vehicle or loaner until they could find a new vehicle. Jim Torrico refused to remedy the situation; and, instead, he threatened to tow the vehicle to the Plaintiff's house or impound it at the Plaintiff's expense.

10. The Plaintiff has made repeated attempts to resolve the above-referenced mechanical issues, not the least of which was the unexplained and very dangerous acceleration of the vehicle.

Count I
BREACH OF CONTRACT—M.G.L. c. 90, Section 7N1/2
(Plaintiff v. Defendant Haddad)

11. The Plaintiff repeats and realleges the previous allegations made herein and incorporates the same herein by reference.

12. At the time of the Plaintiff's purchase of the vehicle from the Defendant Haddad on June 12, 2009, the Plaintiff had in effect a contract for the bill of sale that contained an express and/or implied warranty on the vehicle.

13. Under M.G.L. c. 90, Section 7N1/2, if the manufacturer, its agent or authorized dealer does not conform the vehicle to any such applicable express or implied warranty by curing any nonconformity after a reasonable number of attempts, the manufacturer shall accept return of the vehicle from the consumer.

14. In instances in which a vehicle is sold and subsequently returned, the manufacturer shall refund the full contract price of the vehicle, including all credits and allowances for any trade-in

TOY-RQ-05E-00004371

vehicle, less any cash award that was made by the manufacturer in an attempt to resolve the dispute and was accepted by the consumer, and a reasonable allowance for use, or shall offer to replace the vehicle.

15. The Plaintiff has fully complied with the terms of the contract with the Defendants by returning the nonconforming vehicle to the Defendant Haddad and requesting a replacement vehicle and/or a loaner vehicle until the dispute is resolved.

16. The Defendants have breached their contract with the Plaintiff by failing to offer the Plaintiff a new replacement vehicle or a loaner vehicle and by causing the Plaintiff unnecessary costs and damages.

WHEREFORE, the Plaintiff, Patrick Shea, demands judgment against the Defendant Haddad for breach of contract and for all damages available.

Count II
UNFAIR AND DECEPTIVE PRACTICES-M.G.L. c. 93A
(Plaintiff v. Defendant Haddad)

17. The Plaintiff repeats and realleges the previous allegations made herein and incorporates the same herein by reference.

18. On September 11, 2009, the Plaintiff, through his Counsel, sent to the Defendants a written demand for relief as required by Chapter 93A.

19. The Plaintiff was injured by Defendants' use or employment of methods, acts and/or practices declared unlawful by Chapter 93A, Section 2, et.seq., or a rule or regulation issued thereunder.

20. The Defendants responded to the Chapter 93A letter, but failed to make a reasonable tender of settlement as required by law.

TOY-RQ-05E-00004372

21. The failure of the Defendants to grant relief upon demand was a willful or knowing violation of Chapter 93A, or was made in bad faith with knowledge or reason to know that the acts or practices complained of were in violation of Chapter 93A.

WHEREFORE, the Plaintiff, Patrick Shea, demands judgment against the Defendant Haddad, for the amount of his actual damages and for punitive damages in the amount of three times his actual losses, plus attorney's fees, interest and costs.

Count III
BREACH OF CONTRACT—M.G.L. c. 90, Section 7N1/2
(Plaintiff v. Defendant Toyota)

22. The Plaintiff repeats and realleges the previous allegations made herein and incorporates the same herein by reference.

23. At the time of the Plaintiff's purchase of the vehicle from the Defendant Haddad on June 12, 2009, the Plaintiff had in effect a contract for the bill of sale that contained an express and/or implied warranty on the vehicle.

24. Under M.G.L. c. 90, Section 7N1/2, if the manufacturer, its agent or authorized dealer does not conform the vehicle to any such applicable express or implied warranty by curing any nonconformity after a reasonable number of attempts, the manufacturer shall accept return of the vehicle from the consumer.

25. In instances in which a vehicle is sold and subsequently returned, the manufacturer shall refund the full contract price of the vehicle, including all credits and allowances for any trade-in vehicle, less any cash award that was made by the manufacturer in an attempt to resolve the dispute and was accepted by the consumer, and a reasonable allowance for use, or shall offer to replace the vehicle.

TOY-RQ-05E-00004373

26. The Plaintiff has fully complied with the terms of the contract with the Defendants by returning the nonconforming vehicle to the Defendant Haddad and requesting a replacement vehicle and/or a loaner vehicle until the dispute is resolved.

27. The Defendants have breached their contract with the Plaintiff by failing to offer the Plaintiff a new replacement vehicle or a loaner vehicle as required under M.G.L. c. 90 and by causing the Plaintiff damages and expenses.

WHEREFORE, the Plaintiff, Patrick Shea, demands judgment against the Defendant Toyota for breach of contract and for all damages available.

Count IV
UNFAIR AND DECEPTIVE PRACTICES-M.G.L. c. 93A
(Plaintiff v. Defendant Toyota)

28. The Plaintiff repeats and realleges the previous allegations made herein and incorporates the same herein by reference.

29. On September 11, 2009, the Plaintiff, through his Counsel, sent to the Defendants a written demand for relief as required by Chapter 93A.

30. The Plaintiff was injured by Defendants' use or employment of methods, acts and/or practices declared unlawful by Chapter 93A, Section 2, et.seq., or a rule or regulation issued thereunder.

31. The Defendants responded to the Chapter 93A letter, but failed to make a reasonable tender of settlement as required by law.

32. The failure of the Defendants to grant relief upon demand was a willful or knowing violation of Chapter 93A, or was made in bad faith with knowledge or reason to know that the acts or practices complained of were in violation of Chapter 93A.

TOY-RQ-05E-00004374

WHEREFORE, the Plaintiff, Patrick Shea, demands judgment against the Defendant Toyota for unfair and deceptive practices and for all damages available under Chapter 93A.

Count V
DEFECTIVE PRODUCT/MANUFACTURING
(Plaintiff v. Defendant Toyota)

33. The Plaintiff repeats and realleges the previous allegations made herein and incorporates the same herein by reference.

34. The Defendant Toyota owed a duty of due care to the Plaintiff and the general public to manufacture safe products for sale to the public, including the Plaintiff.

35. The Defendant Toyota negligently and/or intentionally breached that duty by manufacturing an inherently unsafe product and selling it to the Plaintiff.

WHEREFORE, the Plaintiff, Patrick Shea, demands judgment against the Defendant Toyota in the amount of his actual damages and for all other remedies available at law and in equity.

THE PLAINTIFF DEMANDS A JURY TRIAL ON ALL COUNTS SO TRIABLE IN THE SUPERIOR COURT.

Respectfully submitted,

The Plaintiff
PATRICK SHEA
By His Attorney

Date: November 18, 2009

MICHAEL O. SHEA, ESQ.
BBO No.: 555474
Law Office Of Michael O. Shea, P.C.
451 Main Street
Wilbraham, MA 01095
Telephone: (413) 596-8005
Facsimile: (413) 596-8095

TOY-RQ-05E-00004375

HADDAD OF THE BERKSHIRES

Driving to please.

Glenn Griffith
Toyota Motor Distributors
550 Forbes Blvd
Mansfield, MA 02048
508-261-2507

Dear Glenn,

Enclosed is a copy of a lawsuit between Patrick Shea v. Haddad Toyota & Toyota Motor Sales, Inc. Could you please indemnify us. I am attaching all correspond and a timeline.

Respectfully,

George L Haddad
President
Haddad Toyota

LAW OFFICE
OF
MICHAEL O. SHEA, P.C.

451 MAIN STREET
WILBRAHAM, MA 01095

TEL: 413.596.8005
FAX: 413.596.8095

December 10, 2009

VIA FACSIMILE& REGULAR MAIL
FACSIMILE NO.: (413)242-0136
Jim Torrico, Service Manager
Haddad Dealership Pittsfield
Pittsfield-Lenox Road, P.O. Box 3029
Pittsfield, MA 01202

Re: ***Shea v. Haddad Motor Group and Toyota Motor Sales, USA,Inc.***

Dear Mr. Torrico:

I am responding to your request to remove the Toyota Tacoma from the dealership. Since the vehicle has been retumed to you and Toyota, my Client will not be removing the vehicle from your lot. I have enclosed a copy of the Complaint and Jury Demand filed in the Berkshire County Superior Court on November 18, 2009.

Please advise as to whether you will accept service of the same or indicate whether you would like me to have the sheriff serve it.

Very truly yours,

Michael O. Shea

To whom it may concern,

Haddad Toyota has repaired any concerns it could isolate. The acceleration may have been caused by the floor mat that was bunched around the gas pedal, as no codes were generated by the acceleration in the onboard computer that the Tacoma has.

The vehicle is on our lot with no plates. This will be a concern for Mr. Shea and his insurance company, as it currently has no insurance, unless Mr. Shea has some arrangement with his insurance company.

This has been forwarded to Toyota, the manufacturer, who carries the warranty that Haddad administers for them.

If I can be of any further assistance, please feel free to contact myself. As of 9-15-2009, there will be storage fees for this vehicle.

Thank you,

D Michael Coggins

General Manager

413-445-4535

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3 [illegible]

SERVICE DEPARTMENT HOURS
8:00 a.m. to 5:00 p.m.
Monday - Friday

R/O Open Date	R/O Number
8/11/09	6069468/1
Time Received	**Time Promised**
7:48	8/11 17:00
Current Mileage	**Mileage Out**
3147	

Estimate of Repairs	Service Advisor / Key Tag #
	CHRIS CHURCH/7238

748-7658

[redacted]

SPRINGFIELD, MA [redacted]

Work Phone	Vehicle Identification Number
	3TMLU42N69M[redacted]

Home Phone	Delivery Date	In-Service Date
[redacted]	6/12/09	6/12/09

Year	Make	Model	Body	Color	License Number
2009	TOYOTA	TACOMA	PU	SILVER	
28131					

Job Number	Description of Work	Code
1.	Customer Reports: CUST STATES IS GETTING A RATTLE IN UPPER PART OF STEERING COLUMN RIGHT UNDER THE HORN, HAVE TO HIT BUMPS ON DRIVER SIDE TO HEAR IT, IT IS INTERMITT	Customer Pay
2.	Customer Reports: CUSTOMER STATES SCOTT O WANTS TO DRIVE VEHICLE	Customer Pay
3.		
4.		
5.		

TERMS: STRICTLY CASH UNLESS ARRANGEMENTS MADE

"I hereby authorize the repair work above to be done along with the necessary material and agree that you are not responsible for loss or damage to vehicle or articles left in the vehicle in case of fire, theft, or any other cause beyond your control or for any delays caused by unavailability of parts or delays in parts shipments by the supplier or transporter. I hereby grant you or your employees permission to operate the vehicle herein described on streets, highways, or elsewhere for testing and/or inspection. An express mechanic's lien is hereby acknowledged on above vehicle to secure the amount of repairs thereto."

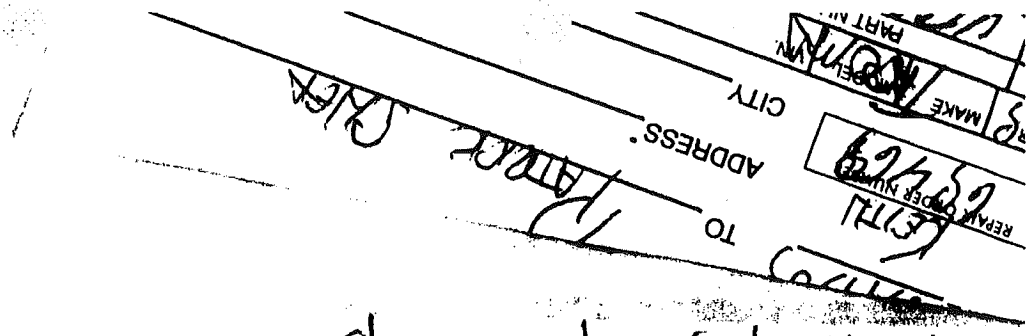
DISCLAIMER OF WARRANTIES.

Any warranties on the products sold hereby are those made by the manufacturer. The seller hereby expressly disclaims all warranties either express or implied, including any implied warranty of merchantability or fitness for a particular purpose and the seller neither assumes nor authorizes any other person to assume for it any liability in connection with the sale of said products. Any limitation contained herein does not apply where prohibited by law.

X [redacted]

3.00

(C) 2003 ARKONA, Inc. - Dealership Application Group (800) 946-1028



Steering intermediate shaft

524 Cs. Rattle in upper Part of Steering Column. Verify Noise As a Klunking (Soft & heavy but Cussioned) @ 20+ mph over Rough Surface. Remove Airbag ⊖ Remove Column upper Covers ⊖ Remove Cluster Face & knee bolster ⊖ examine & isolate Tilt & Telescope Mechanism ⊖ check ball Joints, Tie Rod ends, Sway bar Links & Mounts. Struts & Caps ⊖ Check body mount ⊖ Remove Column Cover @ floor identify Intermediate Shaft vibration dampner [redacted] Isolate dampner noise Gone. order dampner & Reassemble

STRAIGHT TIME HOURS	FLAT RATE	R/O NO. 069467	TIME	OFF 10 AUG 11 14.93
(W)	cent	OPER. NO.		
		EMP. NO. 524		ON AUG 11 13.54

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7:30 a.m. to 5:00 p.m. Mon - Wed, Fri
7:30 a.m. - 6:00 p.m.-Thursday
8:00 a.m. - 1:00 p.m.-Saturday
SALES DEPARTMENT HOURS
8:30 a.m. to 8:00 p.m. Mon - Thurs
8:30 a.m. - 6:00 p.m. Fri, Sat
11:00 a.m. - 5:00 p.m. Sunday
BODY SHOP HOURS
8:00 a.m. to 5:00 p.m. Mon - Fri

8/11/09	6069468/1
8/13/09	Reprint
3147	3147
CHRIS CHURCH/7238	
3TMLU42N69M[redacted]	
6/12/09	6/12/09

[redacted]
SPRINGFIELD, MA [redacted]

2009	TOYOTA	TACOMA	PU	SILVER	
28131					

#1 - MR Customer Reports: CUST STATES IS GETTING A RATTLE IN UPPER PART OF STEERING COLUMN RIGHT UNDER THE HORN, HAVE TO HIT BUMPS ON DRIVER SIDE TO HEAR IT, IT IS INTERMITT	
Caused by ORDERED INTERMEDIATE STEERING SHAFT	
Work performed by keith verge (524)	Internal

TERMS: STRICTLY CASH UNLESS ARRANGEMENTS ARE MADE. "I hereby authorize the repair work hereinafter to be done along with the necessary material and agree that you are not responsible for loss or damage to vehicle or articles left in the vehicle in case of fire, theft, or any other cause beyond your control or for any delays caused by unavailability of parts or delays in parts shipments by the supplier or transporter. I hereby grant you or your employees permission to operate the vehicle herein described on streets, highways, or elsewhere for the purpose of testing and/or inspection. An express mechanic's lien is hereby acknowledged on above vehicle to secure the amount of repairs thereto."

DISCLAIMER OF WARRANTIES. Any warranties on the products sold hereby are those made by the manufacturer. The seller hereby expressly disclaims all warranties either express or implied, including any implied warranty of merchantability or fitness for a particular purpose, and the seller neither assumes nor authorizes any other person to assume for it any liability in connection with the sale of said products. Any limitation contained herein does not apply where prohibited by law.

"LIMITED LABOR LIABILITY"

The repair facility guarantees the labor used in performing the repairs listed on this repair order for a period of 90 days or 4,000 miles (whichever comes first) from the date such repairs were completed. If our repair or replacement fails in normal service within that period, we'll fix it free of charge.

DISPOSAL OF HAZARDOUS WASTE

The State of Massachusetts requires that all hazardous waste (Oil, Solvents, Anti-Freeze, etc.) must be disposed of by a licensed contractor in an environmentally safe manner. Any charges for disposal of hazardous waste reflects our conformity to state law in addition to our concern for the environment.

X

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LABOR	.00
PARTS	.00
DEDUCTIBLE	.00
SUBLET	.00
SHOP SUPPLIES	.00
HAZARDOUS MATERIALS	.00
SALES TAX OR TAX I.D.	.00
SPECIAL ORDER DEPOSIT	.00
DISCOUNTS	.00
TOTAL DUE	.00

Your concerns are important to us. If you have any questions or comments, PLEASE CALL LIZ SHEEHAN CUSTOMER RELATIONS MANAGER:(413)445-4535

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-4-

SERVICE DEPARTMENT HOURS
8:00 a.m. to 5:00 p.m.
Monday - Friday

R O Open Date	R O Number
7/07/09	6067139/1
Time Received	Time Promised
7:44	7/07 17:00
Current Mileage	Mileage Out
1669	
Estimate of Repairs	Service Advisor / Key Tag #
	CHRIS CHURCH/9718

[redacted]
SPRINGFIELD, MA [redacted]

Work Phone	Vehicle Identification Number
[redacted]	3TMLU42N69M[redacted]
	Delivery Date / In Service Date
	6/12/09 6/12/09

Year	Make	Model	Body	Color	License Number
2009	TOYOTA	TACOMA	PU	SILVER	

28131

Job Number	Description of Work	Code
1.	Customer Reports: CUSTOMER STATES WHEN HITTING A BUMP THERE IS A RAT TLE IN STEERING COLUMN ITSELF CAN HEAR IT ON AT BUMP OVER 45 MPH HAS TO BE A SER IOUS BUMP-	WARR-TOYOTA
2.		
3.		
4.		
5.		

TERMS: STRICTLY CASH UNLESS ARRANGEMENTS MADE

"I hereby authorize the repair work above to be done along with the necessary material and agree that you are not responsible for loss or damage to vehicle or articles left in the vehicle in case of fire, theft, or any other cause beyond your control or for any delays caused by unavailability of parts or delays in parts shipments by the supplier or transporter. I hereby grant you or your employees permission to operate the vehicle herein described on streets, highways, or elsewhere for testing and/or inspection. An express mechanic's lien is hereby acknowledged on above vehicle to secure the amount of repairs thereto."

DISCLAIMER OF WARRANTIES.

Any warranties on the products sold hereby are those made by the manufecturer. The seller hereby expressly disclaims all warranties either express or implied, including any implied warranty of merchantability or fitness for a particular purpose and the seller neither assumes nor authorizes any other person to assume for it any liability in connection with the sale of said products. Any limitation contained herein does not apply where prohibited by law.

X [redacted]

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SERVICE & PARTS DEPARTMENT HOURS
7:30 a.m. to 5:00 p.m. Mon - Wed, Fri
7:30 a.m. - 6:00 p.m.-Thursday
8:00 a.m. - 1:00 p.m.-Saturday

SALES DEPARTMENT HOURS
8:30 a.m. to 8:00 p.m. Mon - Thurs
8:30 a.m. - 6:00 p.m. Fri, Sat
11:00 a.m. - 5:00 p.m. Sunday

BODY SHOP HOURS
8:00 a.m. to 5:00 p.m. Mon - Fri

R O Open Date	R O Number
7/07/09	6067139/1
R O Close Date	Status
7/07/09	Reprint
Mileage In	Mileage Out
1669	1669
Service Advisor Tag#	
CHRIS CHURCH/9718	
Vehicle Identification	
3TMLU42N69M[redacted]	
Delivery Date	Service Date
6/12/09	6/12/09

[redacted]
SPRINGFIELD, MA 01118

[redacted]

Year	Make	Model	Body	Color	Service Number
2009	TOYOTA	TACOMA	PU	SILVER	
28131					

DESCRIPTION OF LABOR ORDERS	AMOUNT
#1 - MR Customer Reports: CUSTOMER STATES WHEN HITTING A BUMP THERE IS A RATTLE IN STEERING COLUMN. IS MOST PREVALENT ON SERIOUS BUMPS AT SPEED OF 45 MPH Caused by UNABLE TO ESTABLISH PROBLEM. "SERIOUS BUMPS" AT SPEED OF 45 MPH WOULD EXPECT TO GENERATE RATTLES. RAISED ON LIFT. INSPECTED UNDERCARRIAGE AND STEERING COLUMN AND LINKAGES. CUSTOMER TEST DROVE WITH TECHNICIAN 135 TO DEMONSTRATE CONCERN. WILL DRIVE A FRIEND'S TRUCK TO COMPARE AND RETURN IF NEEDED FOR REEVALUATION. Work performed by keith verge (524)	Internal

TERMS: STRICTLY CASH UNLESS ARRANGEMENTS ARE MADE. "I hereby authorize the repair work hereinafter to be done along with the necessary material and agree that you are not responsible for loss or damage to vehicle or articles left in the vehicle in case of fire, theft, or any other cause beyond your control or for any delays caused by unavailability of parts or delays in parts shipments by the supplier or transporter. I hereby grant you or your employees permission to operate the vehicle herein described on streets, highways, or elsewhere for the purpose of testing and/or inspection. An express mechanic's lien is hereby acknowledged on above vehicle to secure the amount of repairs thereto."

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"LIMITED LABOR LIABILITY"

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DISPOSAL OF HAZARDOUS WASTE

The State of Massachusetts requires that all hazardous waste (Oil, Solvents, Anti-Freeze, etc.) must be disposed of by a licensed contractor in an environmentally safe manner. Any charges for disposal of hazardous waste reflects our conformity to state law in addition to our concern for the environment.

NO RETURN ON ELECTRICAL OR SAFETY ITEMS OR SPECIAL ORDERS

X

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LABOR	.00
PARTS	.00
DEDUCTIBLE	.00
SUBLET	.00
SHOP SUPPLIES	.00
HAZARDOUS MATERIALS	.00
SALES TAX OR TAX I.D.	.00
SPECIAL ORDER DEPOSIT	.00
DISCOUNTS	.00
TOTAL DUE	.00

Your concerns are important to us. If you have any questions or comments, PLEASE CALL LIZ SHEEHAN CUSTOMER RELATIONS MANAGER:(413)445-4535

ROAD
ERSHIPS
HE BERKSHIRES
EEP · HYUNDAI
O Box 3029 Pittsfield, MA 01202
00) 444-2442 Fax: (413) 242-0136
ww.haddadauto.com

SERVICE DEPARTMENT HOURS
8:00 a.m. to 5:00 p.m.
Monday - Friday

R/O Open Date	R/O Number
8/19/09	6070043/1
7:52	8/19 17:00
3674	
	CHRIS CHURCH/7505

[redacted]

INGFIELD, MA [redacted]

[redacted]

3TMLU42N69M[redacted]

				6/12/09	6/12/09
2009	TOYOTA	TACOMA	PU	SILVER	
28131					

1.	Customer Reports: SOP..CUST STATES IS GETTING A RATTLE IN UPPER PART OF STEERING COLUMN	Customer Pay
2.	Customer Reports: CUSTOMER STATES THAT ON THE WAY HERE CAR REVED UP AND ACCELERATED ON ITS OWN AND HAD SMOKE COME FROM THE FRONT QUARTER PANEL. CUSTOMER PULLED OVER SHUT CAR OFF AND CAR STARTED EVERYTHING WAS FINE. 85-mph.	Customer Pay
3.	WARRANTY 9 91/83	
4.		
5.		

TERMS: STRICTLY CASH UNLESS ARRANGEMENTS MADE

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X [redacted]

Tech Mileage Check
Miles In 3674
Miles Out _____
Tech Initials _____

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#1

524 C/s. Rattle/klunk from steering column. Previous Testing Concluded Intermediate shaft could be isolated & fault stopped. Replace intermediate shaft.

STRAIGHT TIME (HOURS)	FLAT RATE	R/O NO.	TIME	OFF
(1)	.9	OPER. NO.	#1	AUG 19 19
		EMP. NO. 524		ON AUG 19 19

PARTS RETURNED
45220-04010

#2

524: Car has unrestrained floor mat on drivers floor Mat was pushed forward when I got in it. NO other cause, could be discerned can not duplicate

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SALES DEPARTMENT HOURS
8:30 a.m. to 8:00 p.m. Mon - Thurs
8:30 a.m. - 6:00 p.m. Fri, Sat
11:00 a.m. - 5:00 p.m. Sunday
BODY SHOP HOURS
8:00 a.m. to 5:00 p.m. Mon - Fri

R O Open Date	R O Number
8/19/09	6070043/1
R O Close Date	Status
8/25/09	Pre-Invoice
Mileage In	Mileage Out
3674	3675
Service Advisor Name #	
CHRIS CHURCH/7505	
3TMLU42N69M[redacted]	
Delivery Date	Service Date
6/12/09	6/12/09

[redacted]
SPRINGFIELD, MA [redacted]

Year	Make	Model	Body	Color	License Number
2009	TOYOTA	TACOMA	PU	SILVER	
28131					

DESCRIPTION OF COMPLAINT/REPAIR	ACCOUNT
#1 - Customer Reports: SOP..CUST STATES IS GETTING A RATTLE IN UPPER PART OF STEERING COLUMN	
Caused by REPLACED INTERMEDIATE STEERING SHAFT	
Corrected by 441991: (91) (83)	
Work performed by keith verge (524)	Warranty
Installed 45220-04010 :SHAFT ASSY, STEERING Qty: 1	Warranty
#2 - Customer Reports: CUSTOMER STATES THAT ON THE WAY HERE CAR REVED UP AND ACCELERATED ON ITS OWN AND HAD SMOKE FROM FRONT QUARTER PANEL.CUSTOMER PULLED OVER, SHUT OFF RESTARTED WITH NO TROUBLE. WAS GOING 85 MPH.	
Caused by TEST DROVE AND WAS UNABLE TO DUPLICATE CONCERN NO CODES OR CHECK ENGINE LIGHT ON AT THIS TIME. UPON VISUAL INSPECTION FOUND FLOOR MAT ROLLED UP UNDER GAS PEDAL, AND POSSIBLY CAUSED THROTTLE TO STICK.	
Work performed by keith verge (524)	Internal

TERMS: STRICTLY CASH UNLESS ARRANGEMENTS ARE MADE. "I hereby authorize the repair work hereinafter to be done along with the necessary material and agree that you are not responsible for loss or damage to vehicle or articles left in the vehicle in case of fire, theft, or any other cause beyond your control or for any delays caused by unavailability of parts or delays in parts shipments by the supplier or transporter. I hereby grant you or your employees permission to operate the vehicle herein described on streets, highways, or elsewhere for the purpose of testing and/or inspection. An express mechanic's lien is hereby acknowledged on above vehicle to secure the amount of repairs thereto."

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DISPOSAL OF HAZARDOUS WASTE

The State of Massachusetts requires that all hazardous waste (Oil, Solvents, Anti-Freeze, etc.) must be disposed of by a licensed contractor in an environmentally safe manner. Any cherges for disposal of hazardous waste reflects our conformity to state law in addition to our concern for the environment.

NO RETURN ON ELECTRICAL OR SAFETY ITEMS OR SPECIAL ORDERS.

X

(C) 2003 ARKONA, Inc. - Dealership Application Group (800)445-1028

LABOR	.00
PARTS	.00
DEDUCTIBLE	.00
SUBLET	.00
SHOP SUPPLIES	.00
HAZARDOUS MATERIALS	.00
SALES TAX OR TAX I.D.	.00
SPECIAL ORDER DEPOSIT	.00
DISCOUNTS	.00
TOTAL DUE	.00

Your concerns are important to us. If you have any questions or comments, PLEASE CALL LIZ SHEEHAN CUSTOMER RELATIONS MANAGER:(413)445-4535

524: Can not Verify Concern. Test Conditions
Dean impossible to duplicate & Achieve Results
Simultaneously. Any "Serious bump" over 45mph
Would produce Rattles IN Any Vehicle.
Inspect Steering Column & Linkages. NPF.

Certified Mail Provides:

- A mailing receipt
- A unique identifier for your mailpiece
- A record of delivery kept by the Postal Service for two years

Important Reminders:

- Certified Mail may ONLY be combined with First-Class Mails or Priority Mails.
- Certified Mail is not available for any class of international mail.
- NO INSURANCE COVERAGE IS PROVIDED with Certified Mail.
- For an additional fee, delivery may be requested to provide proof of delivery. To obtain Return Receipt service, please complete and attach a Return Receipt (PS Form 3811) to the article and add applicable postage to cover the fee. Endorse mailpiece "Return Receipt Requested". To receive a fee waiver for a duplicate return receipt, a USPS postmark on your Certified Mail receipt is required.
- If a postmark on the Certified Mail receipt is desired, please present the article at the post office for postmarking. If a postmark on the Certified Mail receipt is not needed, detach and affix label with postage and mail.
- For an additional fee, delivery may be restricted to the addressee or addressee's authorized agent. Advise the clerk or mark the mailpiece with the endorsement "Restricted Delivery".
- If a postmark on the Certified Mail receipt is desired, please present the article at the post office for postmarking. If a postmark on the Certified Mail receipt is not needed, detach and affix label with postage and mail.

IMPORTANT: Save this receipt and present it when making an inquiry.

PS Form 3800, August 2006 (Reverse) PSN 7530-02-000-9047

[redacted]

[redacted] the reverse [redacted] you. [redacted] the mailpiece, [redacted]

[redacted]

Wilbraham, MA [redacted]

x [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) [illegible] Leas

C. Date of Delivery 09/14/09

D. Is delivery address different from item 1? ☐ Yes

If YES, enter delivery address below: ☐ No

3. Service Type

☒ Certified Mail ☐ Express Mail

☐ Registered ☒ Return Receipt for Merchandise

☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7007 2560 0003 1455 5794

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

SHEA, PATRICK

PLEADING

TOY-RQ-05E-00004389