FILE START

Also Serve Statutory Agent:
CT Corporation System
1300 East Ninth Street
Cleveland, OH 44114

and

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

Also Serve Statutory Agent:
CT Corporation System
4169 Westport Road
Louisville, KY 40207

and

JOSEPH TOYOTA OF CINCINNATI,
9101 Colerain Avenue
Cincinnati, OH 45251

Also Serve Statutory Agent:
Joseph T of C, Co., Statutory Agent
250 East Fifth Street, Suite 285
Cincinnati, Ohio 45202

and

KINGS TOYOTA, INC.
9500 Kings Automall Drive
Cincinnati, Ohio 45249

Also Serve Statutory Agent:
Robert C. Reichert, Statutory Agent
9500 Kings Automall Drive
Cincinnati, Ohio 45249

Defendants.

Plaintiffs Joel Grunkemeyer ("Grunkemeyer"), Sharon Wilson ("Wilson"), and John Sukola ("Sukola") on behalf of themselves and all Ohio residents similarly situated (collectively "Plaintiffs"), state as follows:

NATURE OF THE ACTION

1. This case involves claims that Defendants Toyota Motor Sales, U.S.A., Inc., and its affiliates Toyota Motor Engineering and Manufacturing North America, Inc., Joseph Toyota of Cincinnati ("Joseph Toyota") and Kings Toyota, Inc. ("Kings Toyota") (collectively, "Toyota") have known since 2002 that accelerator pedals and mechanisms in its vehicles could stick, causing vehicles to speed uncontrollably, resulting in crashes causing serious injuries and deaths of occupants of Toyota vehicles. Through the fall of 2009, Toyota had received more than 2,000 complaints of unintended acceleration of its vehicles and had been the subject of multiple investigations by the federal government. However, in spite of the numerous complaints both by customers and the government, Toyota did nothing – other than deny there was a problem.

2. In August 2009, a California Highway Patrol Officer and his family were killed when their accelerator stuck and their brakes failed to stop their Toyota car. The vehicle crashed into an SUV, ran through a fence, rolled over and burst into flames.

3. After this tragedy and others like it, Toyota continued to attempt to minimize the problem, and conceal its extent. First, Toyota blamed the acceleration on "floor mats." Toyota informed customers that they could prevent any risk of danger by simply removing the floor mats on the drivers' side. As of November 2009, Toyota stated "there is no evidence to support" any other conclusion. Toyota stated that the National Highway Safety Administration supported the company's conclusion, but the agency responded by stating that Toyota's statement was "misleading and inaccurate."

4. On or about January 21, 2009, Plaintiff Grunkemeyer purchased a 2009 Toyota Corolla from Kings Toyota located in the Kings Automall. Grunkmeyer financed the purchase of the vehicle through Code Credit Union.

5. On or about January 1, 2010, Plaintiff Wilson purchased a 2010 Toyota Avalon from Joseph Toyota. Wilson financed the purchase of her vehicle through Toyota Motor Credit Corporation.

6. On or about January 6, 2007, Plaintiff Sukola purchased a 2007 Toyota Camry (VIN No. 4T1BE46K274640736) from Kings Toyota located in the Kings Automall. Sukola did not finance the purchase of the vehicle.

7. After years of covering up the life-threatening problems in its vehicles, on January 21, 2010, Toyota announced it was recalling nearly 2.3 million vehicles for the admitted reason of "sticking accelerator pedals." Toyota stated that its investigation, which it said it had only conducted "in recent months," "indicates there is a possibility that certain accelerator pedal mechanisms may, in rare instances, mechanically stick in a partially depressed position or return slowly to the idle position." The models recalled as of the filing of this Complaint were: RAV4 (2009-2010 Models), Corolla (2009-2010 Models), Matrix (2009-2010 Models), Avalon (2005-2010 Models), Highlander (2010 Model), Tundra (2007-2010 Models), Sequoia (2008-2010 Models), and Camry (2007-2010 Models). Thus, Toyota continued to downplay the problems by saying they were simply caused by floor mats and gas pedals that were the wrong size. Toyota covered up the fact that when it replaced the traditional mechanical throttle linkage in the late 1990s with a computer-controlled accelerator system, unlike American automobile companies. Toyota failed to include back-up safety systems that would prevent uncontrolled or sudden acceleration. On information and belief, Plaintiffs allege that Toyota omitted the back-up safety

systems in order to save money and increase profits. As a result of the lack of safety systems, there is no mechanical or electronic failsafe mechanism to allow drivers to stop Toyota vehicles in the event the computerized "driveby-wire" acceleration systems malfunction and engage in uncontrolled acceleration.

8. On January 26, 2010, Toyota announced it would stop selling the eight models, stating that preventing the sale of the vehicles was "necessary until a remedy is finalized." Despite believing that the problem was serious enough that it was "necessary" to keep additional vehicles from being driven, Toyota did nothing to prevent vehicles already sold from being operated nor did it offer to cancel purchases and refund the monies paid by its customers.

9. It was widely reported by media outlets that United States Transportation Secretary Ray Lahood ("LaHood") believes Toyota resisted recalling the vehicles even after the widespread report of problems with the now recalled vehicles. Lahood told the Associated Press in an article dated February 2, 2010, that federal officials had to "wake them up" to the seriousness of the safety issues that eventually led Toyota to recall the vehicles, including federal offcials making a visit to Toyota's headquarters in Japan. Lahood, who describes the situation as "the most serious safety recall that we have faced here at the Department of Transportation," said that Toyota, "should have taken it seriously from the very beginning when we first started discussing it with them." LaHood said, "Maybe they were a little safety deaf."

10. Instead of sending replacement parts to dealerships so that vehicles like Plaintiffs can be repaired, Toyota originally stated it is planning on sending the parts to Toyota factories so that Toyota can sell new cars while at the same time leaving millions of unsafe cars on American highways. Plaintiffs are unable to drive their Toyota vehicle due to the danger of serious injury and death that can result from sudden acceleration from unknown causes.

11. Venue is proper in Hamilton County, Ohio under Civil Rules 3(B)(3) and 3(B)(11), because Plaintiffs are Ohio residents who reside in and purchased their vehicles in Hamilton County, Ohio. Additionally, Defendants marketed and sold the vehicles in question to Plaintiffs in Hamilton County, Ohio. Moreover, the causes of action herein arose, in part, in this County, and several of the Defendants systematically conduct business in Hamilton County, Ohio. The Court has personal jurisdiction because Defendants do business in Ohio and have registered with the State to do business in Ohio.

PARTIES

12. Plaintiff Grunkemeyer is a resident of Hamilton County, Ohio.

13. Plaintiff Wilson is a resident of Hamilton County, Ohio.

14. Plaintiff Sukola is a resident of Warren County, Ohio.

15. Defendant Toyota Motor Sales, U.S.A., Inc. ("TMS-USA") is, and at all material times was, a California Corporation headquartered in Los Angeles. 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.

16. Toyota Motor Credit Corporation ("TMCC") is a wholly-owned subsidiary of TMSUSA and was incorporated in California in 1982. TMCC is the United States financing arm of Toyota Motor Corporation. The company provides retail leasing, retail and wholesale financing, and other financial services to Toyota dealers and their customers for the purchase of new and used cars and trucks.

17. Defendant Joseph Toyota is an Ohio corporation with its principal place of business in Hamilton County, Ohio. Joseph Toyota is the Toyota dealership where Plaintiff Wilson purchased her vehicle that is the subject of this litigation.

18. Defendant Kings Toyota is an Ohio corporation with its principal place of business in Warren County, Ohio. Kings Toyota is the Toyota dealership where Plaintiffs Grunkemeyer and Sukola purchased their vehicles which are the subject of this litigation.

CLASS ACTION ALLEGATIONS

19. Plaintiffs bring this action on behalf of themselves and all others similarly situated who are residents of the State of Ohio and entered into agreements to purchase vehicles manufactured by Toyota and that are subject to the sudden acceleration due to defective accelerators, defective electronic and computer systems, defective acceleration system components, and/or vehicle parts affecting the performance of that system, including, but not limited to electronic throttle control system parts, ETCS-Intelligent System parts, accelerator pedals and floor mats.

20. 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 Defendants.

21. This action may properly be maintained as a class action under Civil Rule 23 because the action satisfies the numerosity, typicality, adequacy, predominance and superiority requirements of the Rule.

22. Plaintiffs bring this action on behalf of class consisting of All residents of the State of Ohio who entered into agreements to purchase vehicles manufactured by Toyota and that are subject to the 2010 recalls concerning defective accelerators, acceleration system components or vehicle parts affecting the performance of that system, including, but not limited to electronic throttle control system parts, ETCS-Intelligent System parts, accelerator pedals and floor mats.

23. Plaintiffs and all Class Members seek damages and other relief, including but not limited to, reimbursement of costs, litigation expenses, interest to the extent legally applicable, punitive damages, attorneys' fees, injunctive relief, and any other relief to which they may be entitled in law and/or equity.

24. The number of Class Members is so numerous that joinder of all members is impracticable. Plaintiffs believe that the Class may consist of several thousand Ohio residents. The number of Class Members and the identity of the Class Members easily can be obtained through the records of the Defendants.

25. The claims of Plaintiffs are typical of the claims of the Class that they seek to represent. Defendants have treated all of the Class Members the same and all of the recalled vehicles possess similar defects. Additionally, each member of the Class is entitled to the same form of relief.

26. Plaintiffs will protect fairly and adequately the interests of the members of the Class. Plaintiffs' chosen counsel are experienced in class action litigation and will diligently and professionally prosecute the litigation.

27. Common questions of law and fact exist as to Plaintiffs and all members of the Class. The common issues include but are not limited to:

A. Whether Defendants should be declared financially responsible for notifying all class members of the defective nature of the recalled cars and for the costs and expenses of inspecting, repairing, and replacing of all such vehicles;

B. Whether the recalled cars are defective;

C. Whether design defects cause the recalled vehicles to crash;

D. Whether Defendants knew or became aware that the recalled vehicles were not properly designed, yet continued to manufacture, distribute, advertise, and market the cars without correcting the problems and while concealing the defective design from the public and the class;

E. Whether design defects in the recalled vehicles could have been remedied by Toyota by installing back-up safety systems that would prevent uncontrolled or sudden acceleration;

F. Whether Defendants engaged in a pattern and practice of deceiving and defrauding the class and suppressing the defective nature of the recalled cars;

G. Whether Defendants failed to give adequate warnings regarding the recalled cars;

H. Whether Defendants, through written advertising and other representations, created express or implied warranties that were breached;

I. Whether Defendants are strictly liable for damages to Plaintiffs and the members of the Class;

J. Whether Defendants acted negligently;

K. Whether Plaintiffs and the members of the Class are entitled to compensatory damages, and, if so, the nature of such damages;

L. Whether Plaintiffs and the members of the Class are entitled to punitive or exemplary damages and, if so, the nature of such damages; and

M. Whether Plaintiffs and members of the Class are entitled to an award of reasonable attorneys' fees, prejudgment interest, post-judgment interest and costs of suit.

28. A class action is superior to all other available methods to adjudicate this litigation. Additionally, common issues predominate over individual issues. The size of the Class renders joinder impracticable. The failure to certify the Class likely will prevent Ohio residents who are driving dangerous cars from pursuing their claims because of the expense of individual litigation. Individual litigation will be burdensome, time consuming, and repetitive. The class action device is preferable to individual litigation because it provides the benefits of unitary adjudication, economies of scale, and it provides access to the courts for thousands of Ohio residents who are driving dangerous cars. Accordingly, class certification pursuant to Rule 23(b)(3) of the Ohio Rules of Civil Procedure is desirable and appropriate.

29. Class certification pursuant to Rule 23(b)(1)(A) is appropriate because the prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications with respect to individual members of the Class. Individual litigation could result in some courts requiring Defendants to immediately replace all cars, stopping payments, and preserving documents and other courts permitting Defendants to delay replacements and permit Defendants to continue to collect payments from members of the class, and allow Defendants to selectively preserve important information. Obviously, Defendants could not comply with differing sets of inconsistent orders.

30. Class certification pursuant to Rule 23(b)(2) of the Ohio Rules of Civil Procedure is appropriate because Plaintiffs and all members of the Class seek declaratory and injunctive relief. The Class seeks an Order that declares their right to the immediate replacement of cars and entitlement to stop making payments.

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COUNT I
(Violation of Ohio Consumer Sales Practices Act, R.C. §§1345.01-1345.02)

31. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

32. The Ohio Consumer Sales Practices Act, R.C. §1345.02, prohibits unfair or deceptive consumer sales practices, including false advertising. Specifically, the Ohio Consumer Sales Practices Act prohibits "representing that goods ... have characteristics ... uses, [or] benefits which they do not have ..." "representing that goods or services are of a particular standard, quality or grade ... if they are of another" and "advertising goods or services with intent not to sell them as advertised."

33. The conduct of Defendants alleged above constitutes unfair and/or deceptive consumer sales practices in violation of R.C. §1345.02, because Defendants represented through advertising and other marketing communications that the vehicles were new and free from defects and could be driven safely in normal operation. Instead, the vehicles were not of the "standard, quality or grade" of new vehicles.

34. Defendants' conduct caused Plaintiffs damages as alleged herein.

35. Plaintiffs specifically do not allege herein a claim for violation of R.C. §1345.72.

36. As a result of the foregoing wrongful conduct of Defendants, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

COUNT II
(Violation of Ohio Deceptive Trade Practices Act., R.C. §4165.02)

37. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

38. Defendants' conduct violated the Ohio Deceptive Trade Practices Act, R.C. §4165, in that Defendants made false statements of fact, as alleged above, concerning the vehicles that Plaintiffs and Class members purchased.

39. Defendants' conduct caused Plaintiffs and Class members to purchase vehicles that they otherwise would not have had they known of the dangerous defect.

40. As a result of the foregoing wrongful conduct of Defendants, Plaintiffs and Class members have been damaged in an amount to be proved at trial. Defendants' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in conscious disregard for the rights of Plaintiffs and Class members. Plaintiffs and Class members are therefore entitled to an award of punitive damages.

COUNT III
(Breach of Contract)

41. Plaintiffs incorporate by reference and restates each and every allegation above as if fully rewritten herein.

42. Plaintiffs entered into a purchase agreement with Defendants which inured to the benefit of all Defendants.

43. The written purchase agreements between Plaintiffs and Defendants constitute legally binding agreements.

44. The purchase agreements provided that Class members would make payments and in return would receive a new vehicle that would operate properly without the undisclosed defects which Defendants knew about.

45. Defendants breached their agreements with Plaintiffs and other Class members, because the vehicles sold to the Class members were defective and not of a quality advertised by Toyota and that reasonably would be expected of a new automobile.

46. Plaintiffs and other Class members have fully performed their duties under the purchase agreements.

47. Defendants are liable for all damages suffered by Class members caused by such breaches of contract.

COUNT IV
(Fraudulent Concealment)

48. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

49. Toyota has known since at least 2002, and possibly as early as 2000, that its vehicles were subject to sudden and uncontrollable acceleration that placed occupants of its vehicles at great risk of death. Toyota was aware that there were at least 1,000 incidents of sudden acceleration attributed to the subject vehicles, and at least 19 fatalities attributed to the sudden acceleration of the subject vehicles from 2002 to 2009. Toyota knew that the risk of losing control of a vehicle in a high speed accident would be very frightening and dangerous to consumers and would cause Toyota's sales to decline. Toyota intentionally concealed the information, or acted with reckless regard for the truth, and denied the consuming public information that is highly relevant to their purchasing decision. Toyota fraudulently concealed the information for years, because it was more important to Toyota to increase sales and become the largest manufacturer in the world. Toyota sacrificed innocent, trusting lives for profit and hubris.

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50. Toyota's customers relied on Toyota's reputation coupled with the fact that Toyota did not disclose the acceleration problems, in purchasing or leasing Toyota's vehicles. The facts concealed were material, because if they had been disclosed Class members would not have bought the vehicles. The concealment was all the more effective because it came from one that had represented itself to be honorable and trustworthy.

51. As a result of their reliance, Plaintiffs and other Class members have been injured in an amount to be proved at trial, including, but not limited to the loss of value of the use of the vehicles they bought, the fear and other emotional trauma as a result of being forced to drive vehicles that Toyota has admitted are unsafe due to Toyota's refusal to provide replacement vehicles, and injuries and deaths resulting from accidents caused by sudden acceleration.

52. Defendants' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of Plaintiffs and other Class members. Plaintiffs and other Class members are therefore entitled to an award of punitive damages.

COUNT V
(Fraud)

53. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

54. Defendants represented to Plaintiffs and Class members in advertising and other forms of communication that the vehicles they were selling were new, had no significant defects and would perform and operate properly when driven in normal usage. In fact, Toyota affirmatively represents that its vehicles are "reliable."

55. The vehicles purchased by Plaintiffs and Class Members were, in fact, defective, unsafe and unreliable, because the vehicles were subject to sudden, extreme acceleration leading to personal injury or death.

56. The aforesaid representations of Defendants were material, because they were facts that would typically be relied on by a person purchasing or leasing a new motor vehicle. Toyota knew the representations were false, because it knew that more than 1,000 people had died in its vehicles between 2002 and 2009. Plaintiffs and Class members relied on the statements and others like them in purchasing their vehicles.

57. Toyota intentionally made the false statements in order to sell vehicles.

58. As a result of Toyota's conduct, Plaintiffs and Class members have been defrauded into leasing or purchasing vehicles that had undisclosed defects. Plaintiffs and Class members have been damaged in an amount to be proven at trial.

59. Defendants' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in conscious disregard for the rights of Plaintiffs and other Class members. Plaintiffs and other Class members are therefore entitled to an award of punitive damages.

COUNT VI
(Breach of Express Warranties)

60. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

61. Defendants made express warranties that new vehicles they sold would be fully operational, safe and highly reliable. The warranties were made in advertisements and statements by dealership salespeople. These affirmations of fact, including via commercial advertisements, are express warranties under the Uniform Commercial Code Section R.C. §1302.26.

62. Defendants breached these warranties because the vehicles sold to Plaintiffs and other Class members have been demonstrated to be unsafe, and, indeed, Toyota has now admitted the vehicles are unsafe by first recalling them and then ceasing their sale altogether. Toyota further breached the warranties by failing to provide safe automobiles after the problems were acknowledged and, instead, forcing customers to drive what were publicly identified as unsafe vehicles.

63. Plaintiffs and other Class members have been harmed as a result of the breaches of warranty. First, Plaintiffs and other Class members have received vehicles that were worth far less than what they paid to purchase the vehicles. Second, the Class has been subjected to the very real fear of a horrendous accident if their vehicle were to reach uncontrollable speeds -- and this is because Defendants have failed and refused to provide substitute vehicles while the defective ones are repaired.

64. Plaintiffs specifically exclude in this Complaint any claim for violation of R.C. §1345.72, and this cause of action is not based on that section.

65. Plaintiffs pray that all damages caused by these breaches be awarded.

COUNT VII
(Breach of Implied Warranty of Merchantability)

66. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

67. Defendants impliedly warranted under R.C. §1302.27 that their vehicles are fit for the ordinary purpose for which such a product is sold.

68. The ordinary purpose for which Defendants' vehicles are sold is to proved the purchaser with a vehicle that is capable of transporting the driver and passengers in reasonable

safety during normal operation, and without itself unduly endangering them or members of the public.

69. Defendants breached their implied warranty of merchantability by selling vehicles that have the propensity to suddenly and unintentionally accelerate, and which does not contain safety systems which would prevent such acceleration or allow a driver to safely slow and stop the vehicle when such acceleration occurred.

70. Plaintiffs and Class members have been damaged in an amount to proven at trial.

COUNT VIII
(Breach of Implied Warranty of Fitness for a Particular Purpose)

71. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

72. Defendants are, and at all relevant times has been, in the business of designing, manufacturing, distributing and selling motor vehicles to consumers.

73. Defendants knew, when it sold its vehicles to Plaintiffs and other Class members that such vehicles would be used by Plaintiffs and Class members for safely transporting occupants.

74. Defendants also knew that consumers who purchased its vehicles relied on Toyota's skill and expertise, judgment and knowledge in furnishing vehicles, including components thereof, that were able to transport occupants without unreasonable risk of harm to themselves or members of the public. Therefore, Toyota impliedly warranted under R.C. §1302.28 that the vehicles were fit for the purposes Plaintiffs and class member intended for them.

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75. Toyota's vehicles were not fit for that purpose in that their design, choice of components or manufacture is so defective as to cause such vehicles to suddenly and unintentionally accelerate, and such vehicle fail to provide an adequate means of braking or stopping vehicles that have so accelerated.

76. As a result, Plaintiffs and Class members have been damaged in an amount to be proved at trial.

COUNT IX
(Negligence)

77. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

78. Toyota had a duty to its customers as a manufacturer of motor vehicles to provide vehicles that, in their ordinary operation, would be safe. Toyota had a duty to adequately test its vehicles' safety before selling millions to American consumers. Toyota particularly had a duty to test vehicles for acceleration system problems once Toyota was on notice that its vehicles had a propensity to suddenly accelerate and/or once Toyota became aware that American consumers were dying in large numbers as a result of the problem.

79. Toyota breached its duty to Plaintiffs and Class members.

80. As a proximate cause of the breach, Plaintiffs and Class members have been damaged including, but not limited to, the financial loss of owning or leasing vehicles that are unsafe as well as being subject to the potential risk of injury.

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COUNT X
(Strict Product Liability)

81. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

82. Toyota is a manufacturer and supplier of automobiles.

83. The automobiles that were purchased by Plaintiffs and that were supplied by Toyota failed to comply with Toyota's representations, as alleged above, that the vehicles were safe, reliable and that they would accelerate and decelerate as users would reasonably expect.

84. The automobiles supplied by Toyota were defective because, as alleged above, they are subject to rapid acceleration without notice and without the ability to slow or stop the vehicle.

85. The vehicles were defective in design and manufacture because when they left the hands of Toyota they were more dangerous than an ordinary consumer would expect.

86. The vehicles supplied by Toyota were defective due to inadequate warning or instruction and because Toyota knew that the product was defective and created a risk of harm to consumers and failed to warn of said risk.

87. The vehicles supplied by Toyota failed to include back-up safety systems that would prevent uncontrolled or sudden acceleration.

88. The vehicles supplied by Toyota were defective due to inadequate post-marketing warning or instruction and because Toyota knew of the risk of rapid acceleration.

89. As a proximate result of the defective condition of Toyota's vehicles, Plaintiffs and Class members have been damaged in an amount to be proved at trial.

COUNT XII
(Punitive Damages)

90. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

91. Defendants have fraudulently concealed for years that their automobiles had defective acceleration systems that were causing numerous innocent lives to be lost on American highways. Defendants concealed this information in order to be able to continue to sell their defective, unsafe vehicles. Moreover, Defendants defrauded American consumers by representing that their vehicles were safe and reliable when they were secretly aware of the highly dangerous acceleration system. Defendants have violated Ohio's consumer laws by falsely advertising that their cars were safe and reliable when, in fact, they are defective.

92. Defendants conduct was knowing, intentional, with malice, demonstrated a complete lack of care and was in reckless disregard for the rights of Plaintiffs and other class members. Defendants' conduct has been outrageous and outside the bounds of decency. Defendants should be punished due their conduct of putting others at risk of serious injury and death in order to make more profit. Plaintiffs hereby request an award of punitive damages to appropriately punish Defendants for their extreme misconduct.

WHEREFORE, Plaintiffs Joel Grunkemeyer, Sharon Wilson, and John Sukola pray for relief as follows:

A. The certification of a Class consisting of all residents of the State of Ohio who entered into agreements to purchase vehicles manufactured by Toyota and that are subject to the sudden acceleration due to defective accelerators, defective electronic and computer systems, defective acceleration system components, and/or vehicle parts affecting the performance of that

system, including, but not limited to electronic throttle control system parts, ETCS-Intelligent System parts, accelerator pedals and floor mats;

B. An Order of an amount to be determined at trial awarding damages and requiring Defendants to provide, or reimburse Plaintiffs for the cost of obtaining, non-defective, replacement vehicles to all members of the Class until the vehicles owned by Class members have been repaired or have been replaced with vehicles that do not have defects in the accelerator or any other system;

C. An Order of an amount to be determined at trial awarding damages and requiring Defendants to provide any replacement parts first dealerships for repair of cars already sold, and only use such parts for manufacturing of new vehicles when all defective vehicles have been repaired;

D. An Order of an amount to be determined at trial awarding damages and requiring Defendants to reform their purchase and finance contracts with class members and cease collecting car payments from all Class members who purchased Toyota vehicles with defects alleged in this Complaint in an amount to be determined at trial;

E. An award of an amount to be determined at trial for any other compensatory damages that will fairly represent the injuries that Plaintiffs and members of the class suffered as proven at trial;

F. An award of an amount to be determined at trial for punitive damages that will fairly punish Defendants and serve as a deterrent to future misconduct that endangers the lives and safety of Ohio motorists and pedestrians. Defendants by withholding knowledge of dangerous conditions knowingly caused physical injuries to Ohio residents and caused Ohio residents economic loss.

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G. An award in an amount to be determined at trial for treble damages as provided for by the Ohio Consumer Sales Practices Act and Ohio Deceptive Trade Practices Act;

H. An award in an amount to be determined at trial for all attorneys' fees and costs incurred by Plaintiffs in the prosecution of these claims;

I. Such additional relief, legal or equitable, to which Plaintiffs may be entitled.

Dated: February 5, 2010

STRAUSS & TROY

By: _____

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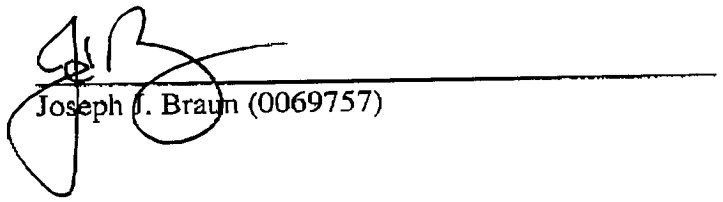
Attorneys for Plaintiffs

TOY-RQ-05E-00008778

JURY DEMAND

Plaintiffs hereby request trial by jury on all claims so triable.



Joseph J. Braun (0069757)

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PATRICIA M. BLANEY
CLERK OF COURTS
HAMILTON COUNTY, OHIO

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FILED

Richard S. Wayne (0022390)
Joseph J. Braun (0069757)
Attorneys for Plaintiffs

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

A1001119

Case No. _____
(Judge _____)

JOEL GRUNKEMEYER,
1041 Central Avenue
Cincinnati, OH 45202

and

SHARON WILSON,
9105 Tag Drive
Cincinnati, OH 45231

and

JOHN SUKOLA,
4939 Hathaway Road
Lebanon, OH 45036

Plaintiffs,

vs.

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

Serve Statutory Agent:
CT Corporation System
1300 East Ninth Street
Cleveland, OH 44114

and

TOYOTA MOTOR CREDIT CORPORATION,
19001 South Western Avenue
Torrance, CA 90501

CLASS ACTION COMPLAINT

(Jury Demand Endorsed Hereon)

(10)

ORIG, COMP, PARTIES, SUMMONS
( ) CERT MAIL ( ) SHERIFF ( ) WAVE
( ) PROCESS SERVER (X) NONE
CLERKS FEES _____ TIC
SECURITY FOR COST 465
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FILING CODE 4825

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2. In August 2009, a California Highway Patrol Officer and his family were killed when their accelerator stuck and their brakes failed to stop their Toyota car. The vehicle crashed into an SUV, ran through a fence, rolled over and burst into flames.

3. After this tragedy and others like it, Toyota continued to attempt to minimize the problem, and conceal its extent. First, Toyota blamed the acceleration on "floor mats." Toyota informed customers that they could prevent any risk of danger by simply removing the floor mats on the drivers' side. As of November 2009, Toyota stated "there is no evidence to support" any other conclusion. Toyota stated that the National Highway Safety Administration supported the company's conclusion, but the agency responded by stating that Toyota's statement was "misleading and inaccurate."

4. On or about January 21, 2009, Plaintiff Grunkemeyer purchased a 2009 Toyota Corolla from Kings Toyota located in the Kings Automall. Grunkmeyer financed the purchase of the vehicle through Code Credit Union.

5. On or about January 1, 2010, Plaintiff Wilson purchased a 2010 Toyota Avalon from Joseph Toyota. Wilson financed the purchase of her vehicle through Toyota Motor Credit Corporation.

6. On or about January 6, 2007, Plaintiff Sukola purchased a 2007 Toyota Camry (VIN No. 4T1BE46K274640736) from Kings Toyota located in the Kings Automall. Sukola did not finance the purchase of the vehicle.

7. After years of covering up the life-threatening problems in its vehicles, on January 21, 2010, Toyota announced it was recalling nearly 2.3 million vehicles for the admitted reason of "sticking accelerator pedals." Toyota stated that its investigation, which it said it had only conducted "in recent months," "indicates there is a possibility that certain accelerator pedal mechanisms may, in rare instances, mechanically stick in a partially depressed position or return slowly to the idle position." The models recalled as of the filing of this Complaint were: RAV4 (2009-2010 Models), Corolla (2009-2010 Models), Matrix (2009-2010 Models), Avalon (2005-2010 Models), Highlander (2010 Model), Tundra (2007-2010 Models), Sequoia (2008-2010 Models), and Camry (2007-2010 Models). Thus, Toyota continued to downplay the problems by saying they were simply caused by floor mats and gas pedals that were the wrong size. Toyota covered up the fact that when it replaced the traditional mechanical throttle linkage in the late 1990s with a computer-controlled accelerator system, unlike American automobile companies. Toyota failed to include back-up safety systems that would prevent uncontrolled or sudden acceleration. On information and belief, Plaintiffs allege that Toyota omitted the back-up safety

systems in order to save money and increase profits. As a result of the lack of safety systems, there is no mechanical or electronic failsafe mechanism to allow drivers to stop Toyota vehicles in the event the computerized "driveby-wire" acceleration systems malfunction and engage in uncontrolled acceleration.

8. On January 26, 2010, Toyota announced it would stop selling the eight models, stating that preventing the sale of the vehicles was "necessary until a remedy is finalized." Despite believing that the problem was serious enough that it was "necessary" to keep additional vehicles from being driven, Toyota did nothing to prevent vehicles already sold from being operated nor did it offer to cancel purchases and refund the monies paid by its customers.

9. It was widely reported by media outlets that United States Transportation Secretary Ray Lahood ("LaHood") believes Toyota resisted recalling the vehicles even after the widespread report of problems with the now recalled vehicles. Lahood told the Associated Press in an article dated February 2, 2010, that federal officials had to "wake them up" to the seriousness of the safety issues that eventually led Toyota to recall the vehicles, including federal offcials making a visit to Toyota's headquarters in Japan. Lahood, who describes the situation as "the most serious safety recall that we have faced here at the Department of Transportation," said that Toyota, "should have taken it seriously from the very beginning when we first started discussing it with them." LaHood said, "Maybe they were a little safety deaf."

10. Instead of sending replacement parts to dealerships so that vehicles like Plaintiffs can be repaired, Toyota originally stated it is planning on sending the parts to Toyota factories so that Toyota can sell new cars while at the same time leaving millions of unsafe cars on American highways. Plaintiffs are unable to drive their Toyota vehicle due to the danger of serious injury and death that can result from sudden acceleration from unknown causes.

11. Venue is proper in Hamilton County, Ohio under Civil Rules 3(B)(3) and 3(B)(11), because Plaintiffs are Ohio residents who reside in and purchased their vehicles in Hamilton County, Ohio. Additionally, Defendants marketed and sold the vehicles in question to Plaintiffs in Hamilton County, Ohio. Moreover, the causes of action herein arose, in part, in this County, and several of the Defendants systematically conduct business in Hamilton County, Ohio. The Court has personal jurisdiction because Defendants do business in Ohio and have registered with the State to do business in Ohio.

PARTIES

12. Plaintiff Grunkemeyer is a resident of Hamilton County, Ohio.

13. Plaintiff Wilson is a resident of Hamilton County, Ohio.

14. Plaintiff Sukola is a resident of Warren County, Ohio.

15. Defendant Toyota Motor Sales, U.S.A., Inc. ("TMS-USA") is, and at all material times was, a California Corporation headquartered in Los Angeles. 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.

16. Toyota Motor Credit Corporation ("TMCC") is a wholly-owned subsidiary of TMSUSA and was incorporated in California in 1982. TMCC is the United States financing arm of Toyota Motor Corporation. The company provides retail leasing, retail and wholesale financing, and other financial services to Toyota dealers and their customers for the purchase of new and used cars and trucks.

17. Defendant Joseph Toyota is an Ohio corporation with its principal place of business in Hamilton County, Ohio. Joseph Toyota is the Toyota dealership where Plaintiff Wilson purchased her vehicle that is the subject of this litigation.

18. Defendant Kings Toyota is an Ohio corporation with its principal place of business in Warren County, Ohio. Kings Toyota is the Toyota dealership where Plaintiffs Grunkemeyer and Sukola purchased their vehicles which are the subject of this litigation.

CLASS ACTION ALLEGATIONS

19. Plaintiffs bring this action on behalf of themselves and all others similarly situated who are residents of the State of Ohio and entered into agreements to purchase vehicles manufactured by Toyota and that are subject to the sudden acceleration due to defective accelerators, defective electronic and computer systems, defective acceleration system components, and/or vehicle parts affecting the performance of that system, including, but not limited to electronic throttle control system parts, ETCS-Intelligent System parts, accelerator pedals and floor mats.

20. 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 Defendants.

21. This action may properly be maintained as a class action under Civil Rule 23 because the action satisfies the numerosity, typicality, adequacy, predominance and superiority requirements of the Rule.

22. Plaintiffs bring this action on behalf of class consisting of All residents of the State of Ohio who entered into agreements to purchase vehicles manufactured by Toyota and that are subject to the 2010 recalls concerning defective accelerators, acceleration system components or vehicle parts affecting the performance of that system, including, but not limited to electronic throttle control system parts, ETCS-Intelligent System parts, accelerator pedals and floor mats.

23. Plaintiffs and all Class Members seek damages and other relief, including but not limited to, reimbursement of costs, litigation expenses, interest to the extent legally applicable, punitive damages, attorneys' fees, injunctive relief, and any other relief to which they may be entitled in law and/or equity.

24. The number of Class Members is so numerous that joinder of all members is impracticable. Plaintiffs believe that the Class may consist of several thousand Ohio residents. The number of Class Members and the identity of the Class Members easily can be obtained through the records of the Defendants.

25. The claims of Plaintiffs are typical of the claims of the Class that they seek to represent. Defendants have treated all of the Class Members the same and all of the recalled vehicles possess similar defects. Additionally, each member of the Class is entitled to the same form of relief.

26. Plaintiffs will protect fairly and adequately the interests of the members of the Class. Plaintiffs' chosen counsel are experienced in class action litigation and will diligently and professionally prosecute the litigation.

27. Common questions of law and fact exist as to Plaintiffs and all members of the Class. The common issues include but are not limited to:

A. Whether Defendants should be declared financially responsible for notifying all class members of the defective nature of the recalled cars and for the costs and expenses of inspecting, repairing, and replacing of all such vehicles;

B. Whether the recalled cars are defective;

C. Whether design defects cause the recalled vehicles to crash;

D. Whether Defendants knew or became aware that the recalled vehicles were not properly designed, yet continued to manufacture, distribute, advertise, and market the cars without correcting the problems and while concealing the defective design from the public and the class;

E. Whether design defects in the recalled vehicles could have been remedied by Toyota by installing back-up safety systems that would prevent uncontrolled or sudden acceleration;

F. Whether Defendants engaged in a pattern and practice of deceiving and defrauding the class and suppressing the defective nature of the recalled cars;

G. Whether Defendants failed to give adequate warnings regarding the recalled cars;

H. Whether Defendants, through written advertising and other representations, created express or implied warranties that were breached;

I. Whether Defendants are strictly liable for damages to Plaintiffs and the members of the Class;

J. Whether Defendants acted negligently;

K. Whether Plaintiffs and the members of the Class are entitled to compensatory damages, and, if so, the nature of such damages;

L. Whether Plaintiffs and the members of the Class are entitled to punitive or exemplary damages and, if so, the nature of such damages; and

M. Whether Plaintiffs and members of the Class are entitled to an award of reasonable attorneys' fees, prejudgment interest, post-judgment interest and costs of suit.

28. A class action is superior to all other available methods to adjudicate this litigation. Additionally, common issues predominate over individual issues. The size of the Class renders joinder impracticable. The failure to certify the Class likely will prevent Ohio residents who are driving dangerous cars from pursuing their claims because of the expense of individual litigation. Individual litigation will be burdensome, time consuming, and repetitive. The class action device is preferable to individual litigation because it provides the benefits of unitary adjudication, economies of scale, and it provides access to the courts for thousands of Ohio residents who are driving dangerous cars. Accordingly, class certification pursuant to Rule 23(b)(3) of the Ohio Rules of Civil Procedure is desirable and appropriate.

29. Class certification pursuant to Rule 23(b)(1)(A) is appropriate because the prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications with respect to individual members of the Class. Individual litigation could result in some courts requiring Defendants to immediately replace all cars, stopping payments, and preserving documents and other courts permitting Defendants to delay replacements and permit Defendants to continue to collect payments from members of the class, and allow Defendants to selectively preserve important information. Obviously, Defendants could not comply with differing sets of inconsistent orders.

30. Class certification pursuant to Rule 23(b)(2) of the Ohio Rules of Civil Procedure is appropriate because Plaintiffs and all members of the Class seek declaratory and injunctive relief. The Class seeks an Order that declares their right to the immediate replacement of cars and entitlement to stop making payments.

COUNT I
(Violation of Ohio Consumer Sales Practices Act, R.C. §§1345.01-1345.02)

31. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

32. The Ohio Consumer Sales Practices Act, R.C. §1345.02, prohibits unfair or deceptive consumer sales practices, including false advertising. Specifically, the Ohio Consumer Sales Practices Act prohibits "representing that goods ... have characteristics ... uses, [or] benefits which they do not have ..." "representing that goods or services are of a particular standard, quality or grade ... if they are of another" and "advertising goods or services with intent not to sell them as advertised."

33. The conduct of Defendants alleged above constitutes unfair and/or deceptive consumer sales practices in violation of R.C. §1345.02, because Defendants represented through advertising and other marketing communications that the vehicles were new and free from defects and could be driven safely in normal operation. Instead, the vehicles were not of the "standard, quality or grade" of new vehicles.

34. Defendants' conduct caused Plaintiffs damages as alleged herein.

35. Plaintiffs specifically do not allege herein a claim for violation of R.C. §1345.72.

36. As a result of the foregoing wrongful conduct of Defendants, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

COUNT II
(Violation of Ohio Deceptive Trade Practices Act., R.C. §4165.02)

37. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

TOY-RQ-05E-00008790

38. Defendants' conduct violated the Ohio Deceptive Trade Practices Act, R.C. §4165, in that Defendants made false statements of fact, as alleged above, concerning the vehicles that Plaintiffs and Class members purchased.

39. Defendants' conduct caused Plaintiffs and Class members to purchase vehicles that they otherwise would not have had they known of the dangerous defect.

40. As a result of the foregoing wrongful conduct of Defendants, Plaintiffs and Class members have been damaged in an amount to be proved at trial. Defendants' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in conscious disregard for the rights of Plaintiffs and Class members. Plaintiffs and Class members are therefore entitled to an award of punitive damages.

COUNT III
(Breach of Contract)

41. Plaintiffs incorporate by reference and restates each and every allegation above as if fully rewritten herein.

42. Plaintiffs entered into a purchase agreement with Defendants which inured to the benefit of all Defendants.

43. The written purchase agreements between Plaintiffs and Defendants constitute legally binding agreements.

44. The purchase agreements provided that Class members would make payments and in return would receive a new vehicle that would operate properly without the undisclosed defects which Defendants knew about.

TOY-RQ-05E-00008791

45. Defendants breached their agreements with Plaintiffs and other Class members, because the vehicles sold to the Class members were defective and not of a quality advertised by Toyota and that reasonably would be expected of a new automobile.

46. Plaintiffs and other Class members have fully performed their duties under the purchase agreements.

47. Defendants are liable for all damages suffered by Class members caused by such breaches of contract.

COUNT IV
(Fraudulent Concealment)

48. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

49. Toyota has known since at least 2002, and possibly as early as 2000, that its vehicles were subject to sudden and uncontrollable acceleration that placed occupants of its vehicles at great risk of death. Toyota was aware that there were at least 1,000 incidents of sudden acceleration attributed to the subject vehicles, and at least 19 fatalities attributed to the sudden acceleration of the subject vehicles from 2002 to 2009. Toyota knew that the risk of losing control of a vehicle in a high speed accident would be very frightening and dangerous to consumers and would cause Toyota's sales to decline. Toyota intentionally concealed the information, or acted with reckless regard for the truth, and denied the consuming public information that is highly relevant to their purchasing decision. Toyota fraudulently concealed the information for years, because it was more important to Toyota to increase sales and become the largest manufacturer in the world. Toyota sacrificed innocent, trusting lives for profit and hubris.

TOY-RQ-05E-00008792

50. Toyota's customers relied on Toyota's reputation coupled with the fact that Toyota did not disclose the acceleration problems, in purchasing or leasing Toyota's vehicles. The facts concealed were material, because if they had been disclosed Class members would not have bought the vehicles. The concealment was all the more effective because it came from one that had represented itself to be honorable and trustworthy.

51. As a result of their reliance, Plaintiffs and other Class members have been injured in an amount to be proved at trial, including, but not limited to the loss of value of the use of the vehicles they bought, the fear and other emotional trauma as a result of being forced to drive vehicles that Toyota has admitted are unsafe due to Toyota's refusal to provide replacement vehicles, and injuries and deaths resulting from accidents caused by sudden acceleration.

52. Defendants' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of Plaintiffs and other Class members. Plaintiffs and other Class members are therefore entitled to an award of punitive damages.

COUNT V
(Fraud)

53. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

54. Defendants represented to Plaintiffs and Class members in advertising and other forms of communication that the vehicles they were selling were new, had no significant defects and would perform and operate properly when driven in normal usage. In fact, Toyota affirmatively represents that its vehicles are "reliable."

TOY-RQ-05E-00008793

55. The vehicles purchased by Plaintiffs and Class Members were, in fact, defective, unsafe and unreliable, because the vehicles were subject to sudden, extreme acceleration leading to personal injury or death.

56. The aforesaid representations of Defendants were material, because they were facts that would typically be relied on by a person purchasing or leasing a new motor vehicle. Toyota knew the representations were false, because it knew that more than 1,000 people had died in its vehicles between 2002 and 2009. Plaintiffs and Class members relied on the statements and others like them in purchasing their vehicles.

57. Toyota intentionally made the false statements in order to sell vehicles.

58. As a result of Toyota's conduct, Plaintiffs and Class members have been defrauded into leasing or purchasing vehicles that had undisclosed defects. Plaintiffs and Class members have been damaged in an amount to be proven at trial.

59. Defendants' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in conscious disregard for the rights of Plaintiffs and other Class members. Plaintiffs and other Class members are therefore entitled to an award of punitive damages.

COUNT VI
(Breach of Express Warranties)

60. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

61. Defendants made express warranties that new vehicles they sold would be fully operational, safe and highly reliable. The warranties were made in advertisements and statements by dealership salespeople. These affirmations of fact, including via commercial advertisements, are express warranties under the Uniform Commercial Code Section R.C. §1302.26.

62. Defendants breached these warranties because the vehicles sold to Plaintiffs and other Class members have been demonstrated to be unsafe, and, indeed, Toyota has now admitted the vehicles are unsafe by first recalling them and then ceasing their sale altogether. Toyota further breached the warranties by failing to provide safe automobiles after the problems were acknowledged and, instead, forcing customers to drive what were publicly identified as unsafe vehicles.

63. Plaintiffs and other Class members have been harmed as a result of the breaches of warranty. First, Plaintiffs and other Class members have received vehicles that were worth far less than what they paid to purchase the vehicles. Second, the Class has been subjected to the very real fear of a horrendous accident if their vehicle were to reach uncontrollable speeds -- and this is because Defendants have failed and refused to provide substitute vehicles while the defective ones are repaired.

64. Plaintiffs specifically exclude in this Complaint any claim for violation of R.C. §1345.72, and this cause of action is not based on that section.

65. Plaintiffs pray that all damages caused by these breaches be awarded.

COUNT VII
(Breach of Implied Warranty of Merchantability)

66. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

67. Defendants impliedly warranted under R.C. §1302.27 that their vehicles are fit for the ordinary purpose for which such a product is sold.

68. The ordinary purpose for which Defendants' vehicles are sold is to proved the purchaser with a vehicle that is capable of transporting the driver and passengers in reasonable

safety during normal operation, and without itself unduly endangering them or members of the public.

69. Defendants breached their implied warranty of merchantability by selling vehicles that have the propensity to suddenly and unintentionally accelerate, and which does not contain safety systems which would prevent such acceleration or allow a driver to safely slow and stop the vehicle when such acceleration occurred.

70. Plaintiffs and Class members have been damaged in an amount to proven at trial.

COUNT VIII
(Breach of Implied Warranty of Fitness for a Particular Purpose)

71. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

72. Defendants are, and at all relevant times has been, in the business of designing, manufacturing, distributing and selling motor vehicles to consumers.

73. Defendants knew, when it sold its vehicles to Plaintiffs and other Class members that such vehicles would be used by Plaintiffs and Class members for safely transporting occupants.

74. Defendants also knew that consumers who purchased its vehicles relied on Toyota's skill and expertise, judgment and knowledge in furnishing vehicles, including components thereof, that were able to transport occupants without unreasonable risk of harm to themselves or members of the public. Therefore, Toyota impliedly warranted under R.C. §1302.28 that the vehicles were fit for the purposes Plaintiffs and class member intended for them.

TOY-RQ-05E-00008796

75. Toyota's vehicles were not fit for that purpose in that their design, choice of components or manufacture is so defective as to cause such vehicles to suddenly and unintentionally accelerate, and such vehicle fail to provide an adequate means of braking or stopping vehicles that have so accelerated.

76. As a result, Plaintiffs and Class members have been damaged in an amount to be proved at trial.

COUNT IX
(Negligence)

77. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

78. Toyota had a duty to its customers as a manufacturer of motor vehicles to provide vehicles that, in their ordinary operation, would be safe. Toyota had a duty to adequately test its vehicles' safety before selling millions to American consumers. Toyota particularly had a duty to test vehicles for acceleration system problems once Toyota was on notice that its vehicles had a propensity to suddenly accelerate and/or once Toyota became aware that American consumers were dying in large numbers as a result of the problem.

79. Toyota breached its duty to Plaintiffs and Class members.

80. As a proximate cause of the breach, Plaintiffs and Class members have been damaged including, but not limited to, the financial loss of owning or leasing vehicles that are unsafe as well as being subject to the potential risk of injury.

TOY-RQ-05E-00008797

COUNT X
(Strict Product Liability)

81. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

82. Toyota is a manufacturer and supplier of automobiles.

83. The automobiles that were purchased by Plaintiffs and that were supplied by Toyota failed to comply with Toyota's representations, as alleged above, that the vehicles were safe, reliable and that they would accelerate and decelerate as users would reasonably expect.

84. The automobiles supplied by Toyota were defective because, as alleged above, they are subject to rapid acceleration without notice and without the ability to slow or stop the vehicle.

85. The vehicles were defective in design and manufacture because when they left the hands of Toyota they were more dangerous than an ordinary consumer would expect.

86. The vehicles supplied by Toyota were defective due to inadequate warning or instruction and because Toyota knew that the product was defective and created a risk of harm to consumers and failed to warn of said risk.

87. The vehicles supplied by Toyota failed to include back-up safety systems that would prevent uncontrolled or sudden acceleration.

88. The vehicles supplied by Toyota were defective due to inadequate post-marketing warning or instruction and because Toyota knew of the risk of rapid acceleration.

89. As a proximate result of the defective condition of Toyota's vehicles, Plaintiffs and Class members have been damaged in an amount to be proved at trial.

COUNT XII
(Punitive Damages)

90. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

91. Defendants have fraudulently concealed for years that their automobiles had defective acceleration systems that were causing numerous innocent lives to be lost on American highways. Defendants concealed this information in order to be able to continue to sell their defective, unsafe vehicles. Moreover, Defendants defrauded American consumers by representing that their vehicles were safe and reliable when they were secretly aware of the highly dangerous acceleration system. Defendants have violated Ohio's consumer laws by falsely advertising that their cars were safe and reliable when, in fact, they are defective.

92. Defendants conduct was knowing, intentional, with malice, demonstrated a complete lack of care and was in reckless disregard for the rights of Plaintiffs and other class members. Defendants' conduct has been outrageous and outside the bounds of decency. Defendants should be punished due their conduct of putting others at risk of serious injury and death in order to make more profit. Plaintiffs hereby request an award of punitive damages to appropriately punish Defendants for their extreme misconduct.

WHEREFORE, Plaintiffs Joel Grunkemeyer, Sharon Wilson, and John Sukola pray for relief as follows:

A. The certification of a Class consisting of all residents of the State of Ohio who entered into agreements to purchase vehicles manufactured by Toyota and that are subject to the sudden acceleration due to defective accelerators, defective electronic and computer systems, defective acceleration system components, and/or vehicle parts affecting the performance of that

system, including, but not limited to electronic throttle control system parts, ETCS-Intelligent System parts, accelerator pedals and floor mats;

B. An Order of an amount to be determined at trial awarding damages and requiring Defendants to provide, or reimburse Plaintiffs for the cost of obtaining, non-defective, replacement vehicles to all members of the Class until the vehicles owned by Class members have been repaired or have been replaced with vehicles that do not have defects in the accelerator or any other system;

C. An Order of an amount to be determined at trial awarding damages and requiring Defendants to provide any replacement parts first dealerships for repair of cars already sold, and only use such parts for manufacturing of new vehicles when all defective vehicles have been repaired;

D. An Order of an amount to be determined at trial awarding damages and requiring Defendants to reform their purchase and finance contracts with class members and cease collecting car payments from all Class members who purchased Toyota vehicles with defects alleged in this Complaint in an amount to be determined at trial;

E. An award of an amount to be determined at trial for any other compensatory damages that will fairly represent the injuries that Plaintiffs and members of the class suffered as proven at trial;

F. An award of an amount to be determined at trial for punitive damages that will fairly punish Defendants and serve as a deterrent to future misconduct that endangers the lives and safety of Ohio motorists and pedestrians. Defendants by withholding knowledge of dangerous conditions knowingly caused physical injuries to Ohio residents and caused Ohio residents economic loss.

G. An award in an amount to be determined at trial for treble damages as provided for by the Ohio Consumer Sales Practices Act and Ohio Deceptive Trade Practices Act;

H. An award in an amount to be determined at trial for all attorneys' fees and costs incurred by Plaintiffs in the prosecution of these claims;

I. Such additional relief, legal or equitable, to which Plaintiffs may be entitled.

Dated: February 5, 2010

STRAUSS & TROY

By: _____

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Joseph J. Braun (0069757)
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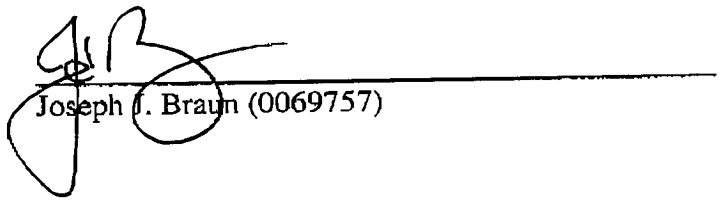
Attorneys for Plaintiffs

TOY-RQ-05E-00008801

JURY DEMAND

Plaintiffs hereby request trial by jury on all claims so triable.



Joseph J. Braun (0069757)

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CLERK OF COURTS
HAMILTON COUNTY, OHIO

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FILED

Richard S. Wayne (0022390)
Joseph J. Braun (0069757)
Attorneys for Plaintiffs

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

A1001119

Case No. _____
(Judge _____)

JOEL GRUNKEMEYER,
1041 Central Avenue
Cincinnati, OH 45202

and

SHARON WILSON,
9105 Tag Drive
Cincinnati, OH 45231

and

JOHN SUKOLA,
4939 Hathaway Road
Lebanon, OH 45036

Plaintiffs,

vs.

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

Serve Statutory Agent:
CT Corporation System
1300 East Ninth Street
Cleveland, OH 44114

and

TOYOTA MOTOR CREDIT CORPORATION,
19001 South Western Avenue
Torrance, CA 90501

CLASS ACTION COMPLAINT

(Jury Demand Endorsed Hereon)

(10)

ORIG, COMP, PARTIES, SUMMONS
( ) CERT MAIL ( ) SHERIFF ( ) WAVE
( ) PROCESS SERVER (X) NONE
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CLERK OF COURTS
HAMILTON COUNTY, OH

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FILED

Richard S. Wayne (0022390)
Joseph J. Braun (0069757)
Attorneys for Plaintiffs

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

JOEL GRUNKEMEYER,
1041 Central Avenue
Cincinnati, OH 45202

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A1001119

Case No. _____

(Judge _____)

CLASS ACTION COMPLAINT

(Jury Demand Endorsed Hereon)

(10)

ORIG, COMP, PARTIES, SUMMONS
( ) CERT MAIL ( ) SHERIFF ( ) WAVE
( ) PROCESS SERVER (X) NONE
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SECURITY FOR COST 665
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Also Serve Statutory Agent:
CT Corporation System
1300 East Ninth Street
Cleveland, OH 44114

and

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

Also Serve Statutory Agent:
CT Corporation System
4169 Westport Road
Louisville, KY 40207

and

JOSEPH TOYOTA OF CINCINNATI,
9101 Colerain Avenue
Cincinnati, OH 45251

Also Serve Statutory Agent:
Joseph T of C, Co., Statutory Agent
250 East Fifth Street, Suite 285
Cincinnati, Ohio 45202

and

KINGS TOYOTA, INC.
9500 Kings Automall Drive
Cincinnati, Ohio 45249

Also Serve Statutory Agent:
Robert C. Reichert, Statutory Agent
9500 Kings Automall Drive
Cincinnati, Ohio 45249

Defendants.

TOY-RQ-05E-00008805

Plaintiffs Joel Grunkemeyer ("Grunkemeyer"), Sharon Wilson ("Wilson"), and John Sukola ("Sukola") on behalf of themselves and all Ohio residents similarly situated (collectively "Plaintiffs"), state as follows:

NATURE OF THE ACTION

1. This case involves claims that Defendants Toyota Motor Sales, U.S.A., Inc., and its affiliates Toyota Motor Engineering and Manufacturing North America, Inc., Joseph Toyota of Cincinnati ("Joseph Toyota") and Kings Toyota, Inc. ("Kings Toyota") (collectively, "Toyota") have known since 2002 that accelerator pedals and mechanisms in its vehicles could stick, causing vehicles to speed uncontrollably, resulting in crashes causing serious injuries and deaths of occupants of Toyota vehicles. Through the fall of 2009, Toyota had received more than 2,000 complaints of unintended acceleration of its vehicles and had been the subject of multiple investigations by the federal government. However, in spite of the numerous complaints both by customers and the government, Toyota did nothing – other than deny there was a problem.

2. In August 2009, a California Highway Patrol Officer and his family were killed when their accelerator stuck and their brakes failed to stop their Toyota car. The vehicle crashed into an SUV, ran through a fence, rolled over and burst into flames.

3. After this tragedy and others like it, Toyota continued to attempt to minimize the problem, and conceal its extent. First, Toyota blamed the acceleration on "floor mats." Toyota informed customers that they could prevent any risk of danger by simply removing the floor mats on the drivers' side. As of November 2009, Toyota stated "there is no evidence to support" any other conclusion. Toyota stated that the National Highway Safety Administration supported the company's conclusion, but the agency responded by stating that Toyota's statement was "misleading and inaccurate."

TOY-RQ-05E-00008806

4. On or about January 21, 2009, Plaintiff Grunkemeyer purchased a 2009 Toyota Corolla from Kings Toyota located in the Kings Automall. Grunkmeyer financed the purchase of the vehicle through Code Credit Union.

5. On or about January 1, 2010, Plaintiff Wilson purchased a 2010 Toyota Avalon from Joseph Toyota. Wilson financed the purchase of her vehicle through Toyota Motor Credit Corporation.

6. On or about January 6, 2007, Plaintiff Sukola purchased a 2007 Toyota Camry (VIN No. 4T1BE46K274640736) from Kings Toyota located in the Kings Automall. Sukola did not finance the purchase of the vehicle.

7. After years of covering up the life-threatening problems in its vehicles, on January 21, 2010, Toyota announced it was recalling nearly 2.3 million vehicles for the admitted reason of "sticking accelerator pedals." Toyota stated that its investigation, which it said it had only conducted "in recent months," "indicates there is a possibility that certain accelerator pedal mechanisms may, in rare instances, mechanically stick in a partially depressed position or return slowly to the idle position." The models recalled as of the filing of this Complaint were: RAV4 (2009-2010 Models), Corolla (2009-2010 Models), Matrix (2009-2010 Models), Avalon (2005-2010 Models), Highlander (2010 Model), Tundra (2007-2010 Models), Sequoia (2008-2010 Models), and Camry (2007-2010 Models). Thus, Toyota continued to downplay the problems by saying they were simply caused by floor mats and gas pedals that were the wrong size. Toyota covered up the fact that when it replaced the traditional mechanical throttle linkage in the late 1990s with a computer-controlled accelerator system, unlike American automobile companies. Toyota failed to include back-up safety systems that would prevent uncontrolled or sudden acceleration. On information and belief, Plaintiffs allege that Toyota omitted the back-up safety

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systems in order to save money and increase profits. As a result of the lack of safety systems, there is no mechanical or electronic failsafe mechanism to allow drivers to stop Toyota vehicles in the event the computerized "driveby-wire" acceleration systems malfunction and engage in uncontrolled acceleration.

8. On January 26, 2010, Toyota announced it would stop selling the eight models, stating that preventing the sale of the vehicles was "necessary until a remedy is finalized." Despite believing that the problem was serious enough that it was "necessary" to keep additional vehicles from being driven, Toyota did nothing to prevent vehicles already sold from being operated nor did it offer to cancel purchases and refund the monies paid by its customers.

9. It was widely reported by media outlets that United States Transportation Secretary Ray Lahood ("LaHood") believes Toyota resisted recalling the vehicles even after the widespread report of problems with the now recalled vehicles. Lahood told the Associated Press in an article dated February 2, 2010, that federal officials had to "wake them up" to the seriousness of the safety issues that eventually led Toyota to recall the vehicles, including federal offcials making a visit to Toyota's headquarters in Japan. Lahood, who describes the situation as "the most serious safety recall that we have faced here at the Department of Transportation," said that Toyota, "should have taken it seriously from the very beginning when we first started discussing it with them." LaHood said, "Maybe they were a little safety deaf."

10. Instead of sending replacement parts to dealerships so that vehicles like Plaintiffs can be repaired, Toyota originally stated it is planning on sending the parts to Toyota factories so that Toyota can sell new cars while at the same time leaving millions of unsafe cars on American highways. Plaintiffs are unable to drive their Toyota vehicle due to the danger of serious injury and death that can result from sudden acceleration from unknown causes.

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11. Venue is proper in Hamilton County, Ohio under Civil Rules 3(B)(3) and 3(B)(11), because Plaintiffs are Ohio residents who reside in and purchased their vehicles in Hamilton County, Ohio. Additionally, Defendants marketed and sold the vehicles in question to Plaintiffs in Hamilton County, Ohio. Moreover, the causes of action herein arose, in part, in this County, and several of the Defendants systematically conduct business in Hamilton County, Ohio. The Court has personal jurisdiction because Defendants do business in Ohio and have registered with the State to do business in Ohio.

PARTIES

12. Plaintiff Grunkemeyer is a resident of Hamilton County, Ohio.

13. Plaintiff Wilson is a resident of Hamilton County, Ohio.

14. Plaintiff Sukola is a resident of Warren County, Ohio.

15. Defendant Toyota Motor Sales, U.S.A., Inc. ("TMS-USA") is, and at all material times was, a California Corporation headquartered in Los Angeles. 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.

16. Toyota Motor Credit Corporation ("TMCC") is a wholly-owned subsidiary of TMSUSA and was incorporated in California in 1982. TMCC is the United States financing arm of Toyota Motor Corporation. The company provides retail leasing, retail and wholesale financing, and other financial services to Toyota dealers and their customers for the purchase of new and used cars and trucks.

17. Defendant Joseph Toyota is an Ohio corporation with its principal place of business in Hamilton County, Ohio. Joseph Toyota is the Toyota dealership where Plaintiff Wilson purchased her vehicle that is the subject of this litigation.

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18. Defendant Kings Toyota is an Ohio corporation with its principal place of business in Warren County, Ohio. Kings Toyota is the Toyota dealership where Plaintiffs Grunkemeyer and Sukola purchased their vehicles which are the subject of this litigation.

CLASS ACTION ALLEGATIONS

19. Plaintiffs bring this action on behalf of themselves and all others similarly situated who are residents of the State of Ohio and entered into agreements to purchase vehicles manufactured by Toyota and that are subject to the sudden acceleration due to defective accelerators, defective electronic and computer systems, defective acceleration system components, and/or vehicle parts affecting the performance of that system, including, but not limited to electronic throttle control system parts, ETCS-Intelligent System parts, accelerator pedals and floor mats.

20. 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 Defendants.

21. This action may properly be maintained as a class action under Civil Rule 23 because the action satisfies the numerosity, typicality, adequacy, predominance and superiority requirements of the Rule.

22. Plaintiffs bring this action on behalf of class consisting of All residents of the State of Ohio who entered into agreements to purchase vehicles manufactured by Toyota and that are subject to the 2010 recalls concerning defective accelerators, acceleration system components or vehicle parts affecting the performance of that system, including, but not limited to electronic throttle control system parts, ETCS-Intelligent System parts, accelerator pedals and floor mats.

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23. Plaintiffs and all Class Members seek damages and other relief, including but not limited to, reimbursement of costs, litigation expenses, interest to the extent legally applicable, punitive damages, attorneys' fees, injunctive relief, and any other relief to which they may be entitled in law and/or equity.

24. The number of Class Members is so numerous that joinder of all members is impracticable. Plaintiffs believe that the Class may consist of several thousand Ohio residents. The number of Class Members and the identity of the Class Members easily can be obtained through the records of the Defendants.

25. The claims of Plaintiffs are typical of the claims of the Class that they seek to represent. Defendants have treated all of the Class Members the same and all of the recalled vehicles possess similar defects. Additionally, each member of the Class is entitled to the same form of relief.

26. Plaintiffs will protect fairly and adequately the interests of the members of the Class. Plaintiffs' chosen counsel are experienced in class action litigation and will diligently and professionally prosecute the litigation.

27. Common questions of law and fact exist as to Plaintiffs and all members of the Class. The common issues include but are not limited to:

A. Whether Defendants should be declared financially responsible for notifying all class members of the defective nature of the recalled cars and for the costs and expenses of inspecting, repairing, and replacing of all such vehicles;

B. Whether the recalled cars are defective;

C. Whether design defects cause the recalled vehicles to crash;

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D. Whether Defendants knew or became aware that the recalled vehicles were not properly designed, yet continued to manufacture, distribute, advertise, and market the cars without correcting the problems and while concealing the defective design from the public and the class;

E. Whether design defects in the recalled vehicles could have been remedied by Toyota by installing back-up safety systems that would prevent uncontrolled or sudden acceleration;

F. Whether Defendants engaged in a pattern and practice of deceiving and defrauding the class and suppressing the defective nature of the recalled cars;

G. Whether Defendants failed to give adequate warnings regarding the recalled cars;

H. Whether Defendants, through written advertising and other representations, created express or implied warranties that were breached;

I. Whether Defendants are strictly liable for damages to Plaintiffs and the members of the Class;

J. Whether Defendants acted negligently;

K. Whether Plaintiffs and the members of the Class are entitled to compensatory damages, and, if so, the nature of such damages;

L. Whether Plaintiffs and the members of the Class are entitled to punitive or exemplary damages and, if so, the nature of such damages; and

M. Whether Plaintiffs and members of the Class are entitled to an award of reasonable attorneys' fees, prejudgment interest, post-judgment interest and costs of suit.

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28. A class action is superior to all other available methods to adjudicate this litigation. Additionally, common issues predominate over individual issues. The size of the Class renders joinder impracticable. The failure to certify the Class likely will prevent Ohio residents who are driving dangerous cars from pursuing their claims because of the expense of individual litigation. Individual litigation will be burdensome, time consuming, and repetitive. The class action device is preferable to individual litigation because it provides the benefits of unitary adjudication, economies of scale, and it provides access to the courts for thousands of Ohio residents who are driving dangerous cars. Accordingly, class certification pursuant to Rule 23(b)(3) of the Ohio Rules of Civil Procedure is desirable and appropriate.

29. Class certification pursuant to Rule 23(b)(1)(A) is appropriate because the prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications with respect to individual members of the Class. Individual litigation could result in some courts requiring Defendants to immediately replace all cars, stopping payments, and preserving documents and other courts permitting Defendants to delay replacements and permit Defendants to continue to collect payments from members of the class, and allow Defendants to selectively preserve important information. Obviously, Defendants could not comply with differing sets of inconsistent orders.

30. Class certification pursuant to Rule 23(b)(2) of the Ohio Rules of Civil Procedure is appropriate because Plaintiffs and all members of the Class seek declaratory and injunctive relief. The Class seeks an Order that declares their right to the immediate replacement of cars and entitlement to stop making payments.

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COUNT I
(Violation of Ohio Consumer Sales Practices Act, R.C. §§1345.01-1345.02)

31. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

32. The Ohio Consumer Sales Practices Act, R.C. §1345.02, prohibits unfair or deceptive consumer sales practices, including false advertising. Specifically, the Ohio Consumer Sales Practices Act prohibits "representing that goods ... have characteristics ... uses, [or] benefits which they do not have ..." "representing that goods or services are of a particular standard, quality or grade ... if they are of another" and "advertising goods or services with intent not to sell them as advertised."

33. The conduct of Defendants alleged above constitutes unfair and/or deceptive consumer sales practices in violation of R.C. §1345.02, because Defendants represented through advertising and other marketing communications that the vehicles were new and free from defects and could be driven safely in normal operation. Instead, the vehicles were not of the "standard, quality or grade" of new vehicles.

34. Defendants' conduct caused Plaintiffs damages as alleged herein.

35. Plaintiffs specifically do not allege herein a claim for violation of R.C. §1345.72.

36. As a result of the foregoing wrongful conduct of Defendants, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

COUNT II
(Violation of Ohio Deceptive Trade Practices Act., R.C. §4165.02)

37. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

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38. Defendants' conduct violated the Ohio Deceptive Trade Practices Act, R.C. §4165, in that Defendants made false statements of fact, as alleged above, concerning the vehicles that Plaintiffs and Class members purchased.

39. Defendants' conduct caused Plaintiffs and Class members to purchase vehicles that they otherwise would not have had they known of the dangerous defect.

40. As a result of the foregoing wrongful conduct of Defendants, Plaintiffs and Class members have been damaged in an amount to be proved at trial. Defendants' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in conscious disregard for the rights of Plaintiffs and Class members. Plaintiffs and Class members are therefore entitled to an award of punitive damages.

COUNT III
(Breach of Contract)

41. Plaintiffs incorporate by reference and restates each and every allegation above as if fully rewritten herein.

42. Plaintiffs entered into a purchase agreement with Defendants which inured to the benefit of all Defendants.

43. The written purchase agreements between Plaintiffs and Defendants constitute legally binding agreements.

44. The purchase agreements provided that Class members would make payments and in return would receive a new vehicle that would operate properly without the undisclosed defects which Defendants knew about.

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45. Defendants breached their agreements with Plaintiffs and other Class members, because the vehicles sold to the Class members were defective and not of a quality advertised by Toyota and that reasonably would be expected of a new automobile.

46. Plaintiffs and other Class members have fully performed their duties under the purchase agreements.

47. Defendants are liable for all damages suffered by Class members caused by such breaches of contract.

COUNT IV
(Fraudulent Concealment)

48. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

49. Toyota has known since at least 2002, and possibly as early as 2000, that its vehicles were subject to sudden and uncontrollable acceleration that placed occupants of its vehicles at great risk of death. Toyota was aware that there were at least 1,000 incidents of sudden acceleration attributed to the subject vehicles, and at least 19 fatalities attributed to the sudden acceleration of the subject vehicles from 2002 to 2009. Toyota knew that the risk of losing control of a vehicle in a high speed accident would be very frightening and dangerous to consumers and would cause Toyota's sales to decline. Toyota intentionally concealed the information, or acted with reckless regard for the truth, and denied the consuming public information that is highly relevant to their purchasing decision. Toyota fraudulently concealed the information for years, because it was more important to Toyota to increase sales and become the largest manufacturer in the world. Toyota sacrificed innocent, trusting lives for profit and hubris.

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50. Toyota's customers relied on Toyota's reputation coupled with the fact that Toyota did not disclose the acceleration problems, in purchasing or leasing Toyota's vehicles. The facts concealed were material, because if they had been disclosed Class members would not have bought the vehicles. The concealment was all the more effective because it came from one that had represented itself to be honorable and trustworthy.

51. As a result of their reliance, Plaintiffs and other Class members have been injured in an amount to be proved at trial, including, but not limited to the loss of value of the use of the vehicles they bought, the fear and other emotional trauma as a result of being forced to drive vehicles that Toyota has admitted are unsafe due to Toyota's refusal to provide replacement vehicles, and injuries and deaths resulting from accidents caused by sudden acceleration.

52. Defendants' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of Plaintiffs and other Class members. Plaintiffs and other Class members are therefore entitled to an award of punitive damages.

COUNT V
(Fraud)

53. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

54. Defendants represented to Plaintiffs and Class members in advertising and other forms of communication that the vehicles they were selling were new, had no significant defects and would perform and operate properly when driven in normal usage. In fact, Toyota affirmatively represents that its vehicles are "reliable."

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55. The vehicles purchased by Plaintiffs and Class Members were, in fact, defective, unsafe and unreliable, because the vehicles were subject to sudden, extreme acceleration leading to personal injury or death.

56. The aforesaid representations of Defendants were material, because they were facts that would typically be relied on by a person purchasing or leasing a new motor vehicle. Toyota knew the representations were false, because it knew that more than 1,000 people had died in its vehicles between 2002 and 2009. Plaintiffs and Class members relied on the statements and others like them in purchasing their vehicles.

57. Toyota intentionally made the false statements in order to sell vehicles.

58. As a result of Toyota's conduct, Plaintiffs and Class members have been defrauded into leasing or purchasing vehicles that had undisclosed defects. Plaintiffs and Class members have been damaged in an amount to be proven at trial.

59. Defendants' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in conscious disregard for the rights of Plaintiffs and other Class members. Plaintiffs and other Class members are therefore entitled to an award of punitive damages.

COUNT VI
(Breach of Express Warranties)

60. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

61. Defendants made express warranties that new vehicles they sold would be fully operational, safe and highly reliable. The warranties were made in advertisements and statements by dealership salespeople. These affirmations of fact, including via commercial advertisements, are express warranties under the Uniform Commercial Code Section R.C. §1302.26.

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62. Defendants breached these warranties because the vehicles sold to Plaintiffs and other Class members have been demonstrated to be unsafe, and, indeed, Toyota has now admitted the vehicles are unsafe by first recalling them and then ceasing their sale altogether. Toyota further breached the warranties by failing to provide safe automobiles after the problems were acknowledged and, instead, forcing customers to drive what were publicly identified as unsafe vehicles.

63. Plaintiffs and other Class members have been harmed as a result of the breaches of warranty. First, Plaintiffs and other Class members have received vehicles that were worth far less than what they paid to purchase the vehicles. Second, the Class has been subjected to the very real fear of a horrendous accident if their vehicle were to reach uncontrollable speeds -- and this is because Defendants have failed and refused to provide substitute vehicles while the defective ones are repaired.

64. Plaintiffs specifically exclude in this Complaint any claim for violation of R.C. §1345.72, and this cause of action is not based on that section.

65. Plaintiffs pray that all damages caused by these breaches be awarded.

COUNT VII
(Breach of Implied Warranty of Merchantability)

66. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

67. Defendants impliedly warranted under R.C. §1302.27 that their vehicles are fit for the ordinary purpose for which such a product is sold.

68. The ordinary purpose for which Defendants' vehicles are sold is to proved the purchaser with a vehicle that is capable of transporting the driver and passengers in reasonable

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safety during normal operation, and without itself unduly endangering them or members of the public.

69. Defendants breached their implied warranty of merchantability by selling vehicles that have the propensity to suddenly and unintentionally accelerate, and which does not contain safety systems which would prevent such acceleration or allow a driver to safely slow and stop the vehicle when such acceleration occurred.

70. Plaintiffs and Class members have been damaged in an amount to proven at trial.

COUNT VIII
(Breach of Implied Warranty of Fitness for a Particular Purpose)

71. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

72. Defendants are, and at all relevant times has been, in the business of designing, manufacturing, distributing and selling motor vehicles to consumers.

73. Defendants knew, when it sold its vehicles to Plaintiffs and other Class members that such vehicles would be used by Plaintiffs and Class members for safely transporting occupants.

74. Defendants also knew that consumers who purchased its vehicles relied on Toyota's skill and expertise, judgment and knowledge in furnishing vehicles, including components thereof, that were able to transport occupants without unreasonable risk of harm to themselves or members of the public. Therefore, Toyota impliedly warranted under R.C. §1302.28 that the vehicles were fit for the purposes Plaintiffs and class member intended for them.

TOY-RQ-05E-00008820

75. Toyota's vehicles were not fit for that purpose in that their design, choice of components or manufacture is so defective as to cause such vehicles to suddenly and unintentionally accelerate, and such vehicle fail to provide an adequate means of braking or stopping vehicles that have so accelerated.

76. As a result, Plaintiffs and Class members have been damaged in an amount to be proved at trial.

COUNT IX
(Negligence)

77. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

78. Toyota had a duty to its customers as a manufacturer of motor vehicles to provide vehicles that, in their ordinary operation, would be safe. Toyota had a duty to adequately test its vehicles' safety before selling millions to American consumers. Toyota particularly had a duty to test vehicles for acceleration system problems once Toyota was on notice that its vehicles had a propensity to suddenly accelerate and/or once Toyota became aware that American consumers were dying in large numbers as a result of the problem.

79. Toyota breached its duty to Plaintiffs and Class members.

80. As a proximate cause of the breach, Plaintiffs and Class members have been damaged including, but not limited to, the financial loss of owning or leasing vehicles that are unsafe as well as being subject to the potential risk of injury.

TOY-RQ-05E-00008821

COUNT X
(Strict Product Liability)

81. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

82. Toyota is a manufacturer and supplier of automobiles.

83. The automobiles that were purchased by Plaintiffs and that were supplied by Toyota failed to comply with Toyota's representations, as alleged above, that the vehicles were safe, reliable and that they would accelerate and decelerate as users would reasonably expect.

84. The automobiles supplied by Toyota were defective because, as alleged above, they are subject to rapid acceleration without notice and without the ability to slow or stop the vehicle.

85. The vehicles were defective in design and manufacture because when they left the hands of Toyota they were more dangerous than an ordinary consumer would expect.

86. The vehicles supplied by Toyota were defective due to inadequate warning or instruction and because Toyota knew that the product was defective and created a risk of harm to consumers and failed to warn of said risk.

87. The vehicles supplied by Toyota failed to include back-up safety systems that would prevent uncontrolled or sudden acceleration.

88. The vehicles supplied by Toyota were defective due to inadequate post-marketing warning or instruction and because Toyota knew of the risk of rapid acceleration.

89. As a proximate result of the defective condition of Toyota's vehicles, Plaintiffs and Class members have been damaged in an amount to be proved at trial.

TOY-RQ-05E-00008822

COUNT XII
(Punitive Damages)

90. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

91. Defendants have fraudulently concealed for years that their automobiles had defective acceleration systems that were causing numerous innocent lives to be lost on American highways. Defendants concealed this information in order to be able to continue to sell their defective, unsafe vehicles. Moreover, Defendants defrauded American consumers by representing that their vehicles were safe and reliable when they were secretly aware of the highly dangerous acceleration system. Defendants have violated Ohio's consumer laws by falsely advertising that their cars were safe and reliable when, in fact, they are defective.

92. Defendants conduct was knowing, intentional, with malice, demonstrated a complete lack of care and was in reckless disregard for the rights of Plaintiffs and other class members. Defendants' conduct has been outrageous and outside the bounds of decency. Defendants should be punished due their conduct of putting others at risk of serious injury and death in order to make more profit. Plaintiffs hereby request an award of punitive damages to appropriately punish Defendants for their extreme misconduct.

WHEREFORE, Plaintiffs Joel Grunkemeyer, Sharon Wilson, and John Sukola pray for relief as follows:

A. The certification of a Class consisting of all residents of the State of Ohio who entered into agreements to purchase vehicles manufactured by Toyota and that are subject to the sudden acceleration due to defective accelerators, defective electronic and computer systems, defective acceleration system components, and/or vehicle parts affecting the performance of that

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system, including, but not limited to electronic throttle control system parts, ETCS-Intelligent System parts, accelerator pedals and floor mats;

B. An Order of an amount to be determined at trial awarding damages and requiring Defendants to provide, or reimburse Plaintiffs for the cost of obtaining, non-defective, replacement vehicles to all members of the Class until the vehicles owned by Class members have been repaired or have been replaced with vehicles that do not have defects in the accelerator or any other system;

C. An Order of an amount to be determined at trial awarding damages and requiring Defendants to provide any replacement parts first dealerships for repair of cars already sold, and only use such parts for manufacturing of new vehicles when all defective vehicles have been repaired;

D. An Order of an amount to be determined at trial awarding damages and requiring Defendants to reform their purchase and finance contracts with class members and cease collecting car payments from all Class members who purchased Toyota vehicles with defects alleged in this Complaint in an amount to be determined at trial;

E. An award of an amount to be determined at trial for any other compensatory damages that will fairly represent the injuries that Plaintiffs and members of the class suffered as proven at trial;

F. An award of an amount to be determined at trial for punitive damages that will fairly punish Defendants and serve as a deterrent to future misconduct that endangers the lives and safety of Ohio motorists and pedestrians. Defendants by withholding knowledge of dangerous conditions knowingly caused physical injuries to Ohio residents and caused Ohio residents economic loss.

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G. An award in an amount to be determined at trial for treble damages as provided for by the Ohio Consumer Sales Practices Act and Ohio Deceptive Trade Practices Act;

H. An award in an amount to be determined at trial for all attorneys' fees and costs incurred by Plaintiffs in the prosecution of these claims;

I. Such additional relief, legal or equitable, to which Plaintiffs may be entitled.

Dated: February 5, 2010

STRAUSS & TROY

By: _____

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Attorneys for Plaintiffs

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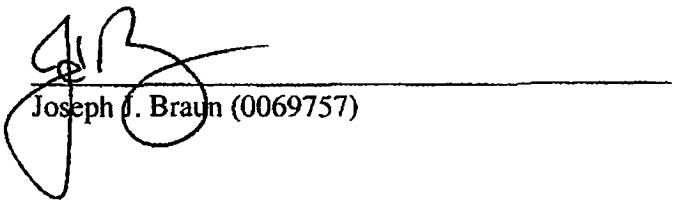
JURY DEMAND

Plaintiffs hereby request trial by jury on all claims so triable.



Joseph J. Braun (0069757)

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PATRICIA M. CLANCY
CLERK OF COURTS
HAMILTON COUNTY, OH

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FILED

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and

SHARON WILSON,
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Cincinnati, OH 45231

and

JOHN SUKOLA,
4939 Hathaway Road
Lebanon, OH 45036

Plaintiffs,

vs.

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

Serve Statutory Agent:
CT Corporation System
1300 East Ninth Street
Cleveland, OH 44114

and

TOYOTA MOTOR CREDIT CORPORATION,
19001 South Western Avenue
Torrance, CA 90501

A1001119

Case No. _____

(Judge _____)

CLASS ACTION COMPLAINT

(Jury Demand Endorsed Hereon)

(10)

ORIG, COMP, PARTIES, SUMMONS
( ) CERT MAIL ( ) SHERIFF ( ) WAVE
( ) PROCESS SERVER (X) NONE
CLERKS FEES _____ TIC
SECURITY FOR COST 665
DEPOSITED BY 22390
FILING CODE 4825

D86927114 INI

Also Serve Statutory Agent:
CT Corporation System
1300 East Ninth Street
Cleveland, OH 44114

and

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

Also Serve Statutory Agent:
CT Corporation System
4169 Westport Road
Louisville, KY 40207

and

JOSEPH TOYOTA OF CINCINNATI,
9101 Colerain Avenue
Cincinnati, OH 45251

Also Serve Statutory Agent:
Joseph T of C, Co., Statutory Agent
250 East Fifth Street, Suite 285
Cincinnati, Ohio 45202

and

KINGS TOYOTA, INC.
9500 Kings Automall Drive
Cincinnati, Ohio 45249

Also Serve Statutory Agent:
Robert C. Reichert, Statutory Agent
9500 Kings Automall Drive
Cincinnati, Ohio 45249

Defendants.

TOY-RQ-05E-00008828

Plaintiffs Joel Grunkemeyer ("Grunkemeyer"), Sharon Wilson ("Wilson"), and John Sukola ("Sukola") on behalf of themselves and all Ohio residents similarly situated (collectively "Plaintiffs"), state as follows:

NATURE OF THE ACTION

1. This case involves claims that Defendants Toyota Motor Sales, U.S.A., Inc., and its affiliates Toyota Motor Engineering and Manufacturing North America, Inc., Joseph Toyota of Cincinnati ("Joseph Toyota") and Kings Toyota, Inc. ("Kings Toyota") (collectively, "Toyota") have known since 2002 that accelerator pedals and mechanisms in its vehicles could stick, causing vehicles to speed uncontrollably, resulting in crashes causing serious injuries and deaths of occupants of Toyota vehicles. Through the fall of 2009, Toyota had received more than 2,000 complaints of unintended acceleration of its vehicles and had been the subject of multiple investigations by the federal government. However, in spite of the numerous complaints both by customers and the government, Toyota did nothing – other than deny there was a problem.

2. In August 2009, a California Highway Patrol Officer and his family were killed when their accelerator stuck and their brakes failed to stop their Toyota car. The vehicle crashed into an SUV, ran through a fence, rolled over and burst into flames.

3. After this tragedy and others like it, Toyota continued to attempt to minimize the problem, and conceal its extent. First, Toyota blamed the acceleration on "floor mats." Toyota informed customers that they could prevent any risk of danger by simply removing the floor mats on the drivers' side. As of November 2009, Toyota stated "there is no evidence to support" any other conclusion. Toyota stated that the National Highway Safety Administration supported the company's conclusion, but the agency responded by stating that Toyota's statement was "misleading and inaccurate."

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4. On or about January 21, 2009, Plaintiff Grunkemeyer purchased a 2009 Toyota Corolla from Kings Toyota located in the Kings Automall. Grunkmeyer financed the purchase of the vehicle through Code Credit Union.

5. On or about January 1, 2010, Plaintiff Wilson purchased a 2010 Toyota Avalon from Joseph Toyota. Wilson financed the purchase of her vehicle through Toyota Motor Credit Corporation.

6. On or about January 6, 2007, Plaintiff Sukola purchased a 2007 Toyota Camry (VIN No. 4T1BE46K274640736) from Kings Toyota located in the Kings Automall. Sukola did not finance the purchase of the vehicle.

7. After years of covering up the life-threatening problems in its vehicles, on January 21, 2010, Toyota announced it was recalling nearly 2.3 million vehicles for the admitted reason of "sticking accelerator pedals." Toyota stated that its investigation, which it said it had only conducted "in recent months," "indicates there is a possibility that certain accelerator pedal mechanisms may, in rare instances, mechanically stick in a partially depressed position or return slowly to the idle position." The models recalled as of the filing of this Complaint were: RAV4 (2009-2010 Models), Corolla (2009-2010 Models), Matrix (2009-2010 Models), Avalon (2005-2010 Models), Highlander (2010 Model), Tundra (2007-2010 Models), Sequoia (2008-2010 Models), and Camry (2007-2010 Models). Thus, Toyota continued to downplay the problems by saying they were simply caused by floor mats and gas pedals that were the wrong size. Toyota covered up the fact that when it replaced the traditional mechanical throttle linkage in the late 1990s with a computer-controlled accelerator system, unlike American automobile companies. Toyota failed to include back-up safety systems that would prevent uncontrolled or sudden acceleration. On information and belief, Plaintiffs allege that Toyota omitted the back-up safety

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systems in order to save money and increase profits. As a result of the lack of safety systems, there is no mechanical or electronic failsafe mechanism to allow drivers to stop Toyota vehicles in the event the computerized "driveby-wire" acceleration systems malfunction and engage in uncontrolled acceleration.

8. On January 26, 2010, Toyota announced it would stop selling the eight models, stating that preventing the sale of the vehicles was "necessary until a remedy is finalized." Despite believing that the problem was serious enough that it was "necessary" to keep additional vehicles from being driven, Toyota did nothing to prevent vehicles already sold from being operated nor did it offer to cancel purchases and refund the monies paid by its customers.

9. It was widely reported by media outlets that United States Transportation Secretary Ray Lahood ("LaHood") believes Toyota resisted recalling the vehicles even after the widespread report of problems with the now recalled vehicles. Lahood told the Associated Press in an article dated February 2, 2010, that federal officials had to "wake them up" to the seriousness of the safety issues that eventually led Toyota to recall the vehicles, including federal offcials making a visit to Toyota's headquarters in Japan. Lahood, who describes the situation as "the most serious safety recall that we have faced here at the Department of Transportation," said that Toyota, "should have taken it seriously from the very beginning when we first started discussing it with them." LaHood said, "Maybe they were a little safety deaf."

10. Instead of sending replacement parts to dealerships so that vehicles like Plaintiffs can be repaired, Toyota originally stated it is planning on sending the parts to Toyota factories so that Toyota can sell new cars while at the same time leaving millions of unsafe cars on American highways. Plaintiffs are unable to drive their Toyota vehicle due to the danger of serious injury and death that can result from sudden acceleration from unknown causes.

TOY-RQ-05E-00008831

11. Venue is proper in Hamilton County, Ohio under Civil Rules 3(B)(3) and 3(B)(11), because Plaintiffs are Ohio residents who reside in and purchased their vehicles in Hamilton County, Ohio. Additionally, Defendants marketed and sold the vehicles in question to Plaintiffs in Hamilton County, Ohio. Moreover, the causes of action herein arose, in part, in this County, and several of the Defendants systematically conduct business in Hamilton County, Ohio. The Court has personal jurisdiction because Defendants do business in Ohio and have registered with the State to do business in Ohio.

PARTIES

12. Plaintiff Grunkemeyer is a resident of Hamilton County, Ohio.

13. Plaintiff Wilson is a resident of Hamilton County, Ohio.

14. Plaintiff Sukola is a resident of Warren County, Ohio.

15. Defendant Toyota Motor Sales, U.S.A., Inc. ("TMS-USA") is, and at all material times was, a California Corporation headquartered in Los Angeles. 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.

16. Toyota Motor Credit Corporation ("TMCC") is a wholly-owned subsidiary of TMSUSA and was incorporated in California in 1982. TMCC is the United States financing arm of Toyota Motor Corporation. The company provides retail leasing, retail and wholesale financing, and other financial services to Toyota dealers and their customers for the purchase of new and used cars and trucks.

17. Defendant Joseph Toyota is an Ohio corporation with its principal place of business in Hamilton County, Ohio. Joseph Toyota is the Toyota dealership where Plaintiff Wilson purchased her vehicle that is the subject of this litigation.

TOY-RQ-05E-00008832

18. Defendant Kings Toyota is an Ohio corporation with its principal place of business in Warren County, Ohio. Kings Toyota is the Toyota dealership where Plaintiffs Grunkemeyer and Sukola purchased their vehicles which are the subject of this litigation.

CLASS ACTION ALLEGATIONS

19. Plaintiffs bring this action on behalf of themselves and all others similarly situated who are residents of the State of Ohio and entered into agreements to purchase vehicles manufactured by Toyota and that are subject to the sudden acceleration due to defective accelerators, defective electronic and computer systems, defective acceleration system components, and/or vehicle parts affecting the performance of that system, including, but not limited to electronic throttle control system parts, ETCS-Intelligent System parts, accelerator pedals and floor mats.

20. 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 Defendants.

21. This action may properly be maintained as a class action under Civil Rule 23 because the action satisfies the numerosity, typicality, adequacy, predominance and superiority requirements of the Rule.

22. Plaintiffs bring this action on behalf of class consisting of All residents of the State of Ohio who entered into agreements to purchase vehicles manufactured by Toyota and that are subject to the 2010 recalls concerning defective accelerators, acceleration system components or vehicle parts affecting the performance of that system, including, but not limited to electronic throttle control system parts, ETCS-Intelligent System parts, accelerator pedals and floor mats.

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23. Plaintiffs and all Class Members seek damages and other relief, including but not limited to, reimbursement of costs, litigation expenses, interest to the extent legally applicable, punitive damages, attorneys' fees, injunctive relief, and any other relief to which they may be entitled in law and/or equity.

24. The number of Class Members is so numerous that joinder of all members is impracticable. Plaintiffs believe that the Class may consist of several thousand Ohio residents. The number of Class Members and the identity of the Class Members easily can be obtained through the records of the Defendants.

25. The claims of Plaintiffs are typical of the claims of the Class that they seek to represent. Defendants have treated all of the Class Members the same and all of the recalled vehicles possess similar defects. Additionally, each member of the Class is entitled to the same form of relief.

26. Plaintiffs will protect fairly and adequately the interests of the members of the Class. Plaintiffs' chosen counsel are experienced in class action litigation and will diligently and professionally prosecute the litigation.

27. Common questions of law and fact exist as to Plaintiffs and all members of the Class. The common issues include but are not limited to:

A. Whether Defendants should be declared financially responsible for notifying all class members of the defective nature of the recalled cars and for the costs and expenses of inspecting, repairing, and replacing of all such vehicles;

B. Whether the recalled cars are defective;

C. Whether design defects cause the recalled vehicles to crash;

TOY-RQ-05E-00008834

D. Whether Defendants knew or became aware that the recalled vehicles were not properly designed, yet continued to manufacture, distribute, advertise, and market the cars without correcting the problems and while concealing the defective design from the public and the class;

E. Whether design defects in the recalled vehicles could have been remedied by Toyota by installing back-up safety systems that would prevent uncontrolled or sudden acceleration;

F. Whether Defendants engaged in a pattern and practice of deceiving and defrauding the class and suppressing the defective nature of the recalled cars;

G. Whether Defendants failed to give adequate warnings regarding the recalled cars;

H. Whether Defendants, through written advertising and other representations, created express or implied warranties that were breached;

I. Whether Defendants are strictly liable for damages to Plaintiffs and the members of the Class;

J. Whether Defendants acted negligently;

K. Whether Plaintiffs and the members of the Class are entitled to compensatory damages, and, if so, the nature of such damages;

L. Whether Plaintiffs and the members of the Class are entitled to punitive or exemplary damages and, if so, the nature of such damages; and

M. Whether Plaintiffs and members of the Class are entitled to an award of reasonable attorneys' fees, prejudgment interest, post-judgment interest and costs of suit.

TOY-RQ-05E-00008835

28. A class action is superior to all other available methods to adjudicate this litigation. Additionally, common issues predominate over individual issues. The size of the Class renders joinder impracticable. The failure to certify the Class likely will prevent Ohio residents who are driving dangerous cars from pursuing their claims because of the expense of individual litigation. Individual litigation will be burdensome, time consuming, and repetitive. The class action device is preferable to individual litigation because it provides the benefits of unitary adjudication, economies of scale, and it provides access to the courts for thousands of Ohio residents who are driving dangerous cars. Accordingly, class certification pursuant to Rule 23(b)(3) of the Ohio Rules of Civil Procedure is desirable and appropriate.

29. Class certification pursuant to Rule 23(b)(1)(A) is appropriate because the prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications with respect to individual members of the Class. Individual litigation could result in some courts requiring Defendants to immediately replace all cars, stopping payments, and preserving documents and other courts permitting Defendants to delay replacements and permit Defendants to continue to collect payments from members of the class, and allow Defendants to selectively preserve important information. Obviously, Defendants could not comply with differing sets of inconsistent orders.

30. Class certification pursuant to Rule 23(b)(2) of the Ohio Rules of Civil Procedure is appropriate because Plaintiffs and all members of the Class seek declaratory and injunctive relief. The Class seeks an Order that declares their right to the immediate replacement of cars and entitlement to stop making payments.

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COUNT I
(Violation of Ohio Consumer Sales Practices Act, R.C. §§1345.01-1345.02)

31. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

32. The Ohio Consumer Sales Practices Act, R.C. §1345.02, prohibits unfair or deceptive consumer sales practices, including false advertising. Specifically, the Ohio Consumer Sales Practices Act prohibits "representing that goods ... have characteristics ... uses, [or] benefits which they do not have ..." "representing that goods or services are of a particular standard, quality or grade ... if they are of another" and "advertising goods or services with intent not to sell them as advertised."

33. The conduct of Defendants alleged above constitutes unfair and/or deceptive consumer sales practices in violation of R.C. §1345.02, because Defendants represented through advertising and other marketing communications that the vehicles were new and free from defects and could be driven safely in normal operation. Instead, the vehicles were not of the "standard, quality or grade" of new vehicles.

34. Defendants' conduct caused Plaintiffs damages as alleged herein.

35. Plaintiffs specifically do not allege herein a claim for violation of R.C. §1345.72.

36. As a result of the foregoing wrongful conduct of Defendants, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

COUNT II
(Violation of Ohio Deceptive Trade Practices Act., R.C. §4165.02)

37. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

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38. Defendants' conduct violated the Ohio Deceptive Trade Practices Act, R.C. §4165, in that Defendants made false statements of fact, as alleged above, concerning the vehicles that Plaintiffs and Class members purchased.

39. Defendants' conduct caused Plaintiffs and Class members to purchase vehicles that they otherwise would not have had they known of the dangerous defect.

40. As a result of the foregoing wrongful conduct of Defendants, Plaintiffs and Class members have been damaged in an amount to be proved at trial. Defendants' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in conscious disregard for the rights of Plaintiffs and Class members. Plaintiffs and Class members are therefore entitled to an award of punitive damages.

COUNT III
(Breach of Contract)

41. Plaintiffs incorporate by reference and restates each and every allegation above as if fully rewritten herein.

42. Plaintiffs entered into a purchase agreement with Defendants which inured to the benefit of all Defendants.

43. The written purchase agreements between Plaintiffs and Defendants constitute legally binding agreements.

44. The purchase agreements provided that Class members would make payments and in return would receive a new vehicle that would operate properly without the undisclosed defects which Defendants knew about.

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45. Defendants breached their agreements with Plaintiffs and other Class members, because the vehicles sold to the Class members were defective and not of a quality advertised by Toyota and that reasonably would be expected of a new automobile.

46. Plaintiffs and other Class members have fully performed their duties under the purchase agreements.

47. Defendants are liable for all damages suffered by Class members caused by such breaches of contract.

COUNT IV
(Fraudulent Concealment)

48. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

49. Toyota has known since at least 2002, and possibly as early as 2000, that its vehicles were subject to sudden and uncontrollable acceleration that placed occupants of its vehicles at great risk of death. Toyota was aware that there were at least 1,000 incidents of sudden acceleration attributed to the subject vehicles, and at least 19 fatalities attributed to the sudden acceleration of the subject vehicles from 2002 to 2009. Toyota knew that the risk of losing control of a vehicle in a high speed accident would be very frightening and dangerous to consumers and would cause Toyota's sales to decline. Toyota intentionally concealed the information, or acted with reckless regard for the truth, and denied the consuming public information that is highly relevant to their purchasing decision. Toyota fraudulently concealed the information for years, because it was more important to Toyota to increase sales and become the largest manufacturer in the world. Toyota sacrificed innocent, trusting lives for profit and hubris.

TOY-RQ-05E-00008839

50. Toyota's customers relied on Toyota's reputation coupled with the fact that Toyota did not disclose the acceleration problems, in purchasing or leasing Toyota's vehicles. The facts concealed were material, because if they had been disclosed Class members would not have bought the vehicles. The concealment was all the more effective because it came from one that had represented itself to be honorable and trustworthy.

51. As a result of their reliance, Plaintiffs and other Class members have been injured in an amount to be proved at trial, including, but not limited to the loss of value of the use of the vehicles they bought, the fear and other emotional trauma as a result of being forced to drive vehicles that Toyota has admitted are unsafe due to Toyota's refusal to provide replacement vehicles, and injuries and deaths resulting from accidents caused by sudden acceleration.

52. Defendants' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of Plaintiffs and other Class members. Plaintiffs and other Class members are therefore entitled to an award of punitive damages.

COUNT V
(Fraud)

53. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

54. Defendants represented to Plaintiffs and Class members in advertising and other forms of communication that the vehicles they were selling were new, had no significant defects and would perform and operate properly when driven in normal usage. In fact, Toyota affirmatively represents that its vehicles are "reliable."

TOY-RQ-05E-00008840

55. The vehicles purchased by Plaintiffs and Class Members were, in fact, defective, unsafe and unreliable, because the vehicles were subject to sudden, extreme acceleration leading to personal injury or death.

56. The aforesaid representations of Defendants were material, because they were facts that would typically be relied on by a person purchasing or leasing a new motor vehicle. Toyota knew the representations were false, because it knew that more than 1,000 people had died in its vehicles between 2002 and 2009. Plaintiffs and Class members relied on the statements and others like them in purchasing their vehicles.

57. Toyota intentionally made the false statements in order to sell vehicles.

58. As a result of Toyota's conduct, Plaintiffs and Class members have been defrauded into leasing or purchasing vehicles that had undisclosed defects. Plaintiffs and Class members have been damaged in an amount to be proven at trial.

59. Defendants' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in conscious disregard for the rights of Plaintiffs and other Class members. Plaintiffs and other Class members are therefore entitled to an award of punitive damages.

COUNT VI
(Breach of Express Warranties)

60. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

61. Defendants made express warranties that new vehicles they sold would be fully operational, safe and highly reliable. The warranties were made in advertisements and statements by dealership salespeople. These affirmations of fact, including via commercial advertisements, are express warranties under the Uniform Commercial Code Section R.C. §1302.26.

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62. Defendants breached these warranties because the vehicles sold to Plaintiffs and other Class members have been demonstrated to be unsafe, and, indeed, Toyota has now admitted the vehicles are unsafe by first recalling them and then ceasing their sale altogether. Toyota further breached the warranties by failing to provide safe automobiles after the problems were acknowledged and, instead, forcing customers to drive what were publicly identified as unsafe vehicles.

63. Plaintiffs and other Class members have been harmed as a result of the breaches of warranty. First, Plaintiffs and other Class members have received vehicles that were worth far less than what they paid to purchase the vehicles. Second, the Class has been subjected to the very real fear of a horrendous accident if their vehicle were to reach uncontrollable speeds -- and this is because Defendants have failed and refused to provide substitute vehicles while the defective ones are repaired.

64. Plaintiffs specifically exclude in this Complaint any claim for violation of R.C. §1345.72, and this cause of action is not based on that section.

65. Plaintiffs pray that all damages caused by these breaches be awarded.

COUNT VII
(Breach of Implied Warranty of Merchantability)

66. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

67. Defendants impliedly warranted under R.C. §1302.27 that their vehicles are fit for the ordinary purpose for which such a product is sold.

68. The ordinary purpose for which Defendants' vehicles are sold is to proved the purchaser with a vehicle that is capable of transporting the driver and passengers in reasonable

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safety during normal operation, and without itself unduly endangering them or members of the public.

69. Defendants breached their implied warranty of merchantability by selling vehicles that have the propensity to suddenly and unintentionally accelerate, and which does not contain safety systems which would prevent such acceleration or allow a driver to safely slow and stop the vehicle when such acceleration occurred.

70. Plaintiffs and Class members have been damaged in an amount to proven at trial.

COUNT VIII
(Breach of Implied Warranty of Fitness for a Particular Purpose)

71. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

72. Defendants are, and at all relevant times has been, in the business of designing, manufacturing, distributing and selling motor vehicles to consumers.

73. Defendants knew, when it sold its vehicles to Plaintiffs and other Class members that such vehicles would be used by Plaintiffs and Class members for safely transporting occupants.

74. Defendants also knew that consumers who purchased its vehicles relied on Toyota's skill and expertise, judgment and knowledge in furnishing vehicles, including components thereof, that were able to transport occupants without unreasonable risk of harm to themselves or members of the public. Therefore, Toyota impliedly warranted under R.C. §1302.28 that the vehicles were fit for the purposes Plaintiffs and class member intended for them.

TOY-RQ-05E-00008843

75. Toyota's vehicles were not fit for that purpose in that their design, choice of components or manufacture is so defective as to cause such vehicles to suddenly and unintentionally accelerate, and such vehicle fail to provide an adequate means of braking or stopping vehicles that have so accelerated.

76. As a result, Plaintiffs and Class members have been damaged in an amount to be proved at trial.

COUNT IX
(Negligence)

77. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

78. Toyota had a duty to its customers as a manufacturer of motor vehicles to provide vehicles that, in their ordinary operation, would be safe. Toyota had a duty to adequately test its vehicles' safety before selling millions to American consumers. Toyota particularly had a duty to test vehicles for acceleration system problems once Toyota was on notice that its vehicles had a propensity to suddenly accelerate and/or once Toyota became aware that American consumers were dying in large numbers as a result of the problem.

79. Toyota breached its duty to Plaintiffs and Class members.

80. As a proximate cause of the breach, Plaintiffs and Class members have been damaged including, but not limited to, the financial loss of owning or leasing vehicles that are unsafe as well as being subject to the potential risk of injury.

TOY-RQ-05E-00008844

COUNT X
(Strict Product Liability)

81. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

82. Toyota is a manufacturer and supplier of automobiles.

83. The automobiles that were purchased by Plaintiffs and that were supplied by Toyota failed to comply with Toyota's representations, as alleged above, that the vehicles were safe, reliable and that they would accelerate and decelerate as users would reasonably expect.

84. The automobiles supplied by Toyota were defective because, as alleged above, they are subject to rapid acceleration without notice and without the ability to slow or stop the vehicle.

85. The vehicles were defective in design and manufacture because when they left the hands of Toyota they were more dangerous than an ordinary consumer would expect.

86. The vehicles supplied by Toyota were defective due to inadequate warning or instruction and because Toyota knew that the product was defective and created a risk of harm to consumers and failed to warn of said risk.

87. The vehicles supplied by Toyota failed to include back-up safety systems that would prevent uncontrolled or sudden acceleration.

88. The vehicles supplied by Toyota were defective due to inadequate post-marketing warning or instruction and because Toyota knew of the risk of rapid acceleration.

89. As a proximate result of the defective condition of Toyota's vehicles, Plaintiffs and Class members have been damaged in an amount to be proved at trial.

TOY-RQ-05E-00008845

COUNT XII
(Punitive Damages)

90. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

91. Defendants have fraudulently concealed for years that their automobiles had defective acceleration systems that were causing numerous innocent lives to be lost on American highways. Defendants concealed this information in order to be able to continue to sell their defective, unsafe vehicles. Moreover, Defendants defrauded American consumers by representing that their vehicles were safe and reliable when they were secretly aware of the highly dangerous acceleration system. Defendants have violated Ohio's consumer laws by falsely advertising that their cars were safe and reliable when, in fact, they are defective.

92. Defendants conduct was knowing, intentional, with malice, demonstrated a complete lack of care and was in reckless disregard for the rights of Plaintiffs and other class members. Defendants' conduct has been outrageous and outside the bounds of decency. Defendants should be punished due their conduct of putting others at risk of serious injury and death in order to make more profit. Plaintiffs hereby request an award of punitive damages to appropriately punish Defendants for their extreme misconduct.

WHEREFORE, Plaintiffs Joel Grunkemeyer, Sharon Wilson, and John Sukola pray for relief as follows:

A. The certification of a Class consisting of all residents of the State of Ohio who entered into agreements to purchase vehicles manufactured by Toyota and that are subject to the sudden acceleration due to defective accelerators, defective electronic and computer systems, defective acceleration system components, and/or vehicle parts affecting the performance of that

TOY-RQ-05E-00008846

system, including, but not limited to electronic throttle control system parts, ETCS-Intelligent System parts, accelerator pedals and floor mats;

B. An Order of an amount to be determined at trial awarding damages and requiring Defendants to provide, or reimburse Plaintiffs for the cost of obtaining, non-defective, replacement vehicles to all members of the Class until the vehicles owned by Class members have been repaired or have been replaced with vehicles that do not have defects in the accelerator or any other system;

C. An Order of an amount to be determined at trial awarding damages and requiring Defendants to provide any replacement parts first dealerships for repair of cars already sold, and only use such parts for manufacturing of new vehicles when all defective vehicles have been repaired;

D. An Order of an amount to be determined at trial awarding damages and requiring Defendants to reform their purchase and finance contracts with class members and cease collecting car payments from all Class members who purchased Toyota vehicles with defects alleged in this Complaint in an amount to be determined at trial;

E. An award of an amount to be determined at trial for any other compensatory damages that will fairly represent the injuries that Plaintiffs and members of the class suffered as proven at trial;

F. An award of an amount to be determined at trial for punitive damages that will fairly punish Defendants and serve as a deterrent to future misconduct that endangers the lives and safety of Ohio motorists and pedestrians. Defendants by withholding knowledge of dangerous conditions knowingly caused physical injuries to Ohio residents and caused Ohio residents economic loss.

TOY-RQ-05E-00008847

G. An award in an amount to be determined at trial for treble damages as provided for by the Ohio Consumer Sales Practices Act and Ohio Deceptive Trade Practices Act;

H. An award in an amount to be determined at trial for all attorneys' fees and costs incurred by Plaintiffs in the prosecution of these claims;

I. Such additional relief, legal or equitable, to which Plaintiffs may be entitled.

Dated: February 5, 2010

STRAUSS & TROY

By: _____

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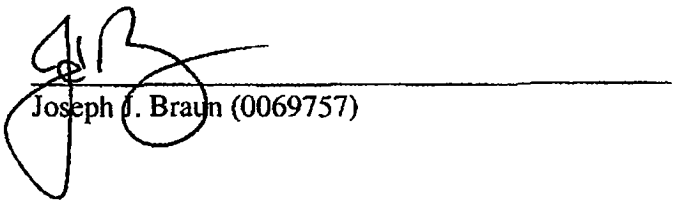
Attorneys for Plaintiffs

TOY-RQ-05E-00008848

JURY DEMAND

Plaintiffs hereby request trial by jury on all claims so triable.



Joseph J. Braun (0069757)

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PATRICIA M. PLANEY
CLERK OF COURTS
HAMILTON COUNTY, OHIO

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FILED

Richard S. Wayne (0022390)
Joseph J. Braun (0069757)
Attorneys for Plaintiffs

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

A1001119

Case No. _____
(Judge _____)

JOEL GRUNKEMEYER,
1041 Central Avenue
Cincinnati, OH 45202

and

SHARON WILSON,
9105 Tag Drive
Cincinnati, OH 45231

and

JOHN SUKOLA,
4939 Hathaway Road
Lebanon, OH 45036

Plaintiffs,

vs.

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

Serve Statutory Agent:
CT Corporation System
1300 East Ninth Street
Cleveland, OH 44114

and

TOYOTA MOTOR CREDIT CORPORATION,
19001 South Western Avenue
Torrance, CA 90501

CLASS ACTION COMPLAINT

(Jury Demand Endorsed Hereon)

(10)

ORIG, COMP, PARTIES, SUMMONS
( ) CERT MAIL ( ) SHERIFF ( ) WAVE
( ) PROCESS SERVER (X) NONE
CLERKS FEES _____ TIC
SECURITY FOR COST 465
DEPOSITED BY 22390
FILING CODE 4825

D86927114 INI

Also Serve Statutory Agent:
CT Corporation System
1300 East Ninth Street
Cleveland, OH 44114

and

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

Also Serve Statutory Agent:
CT Corporation System
4169 Westport Road
Louisville, KY 40207

and

JOSEPH TOYOTA OF CINCINNATI,
9101 Colerain Avenue
Cincinnati, OH 45251

Also Serve Statutory Agent:
Joseph T of C, Co., Statutory Agent
250 East Fifth Street, Suite 285
Cincinnati, Ohio 45202

and

KINGS TOYOTA, INC.
9500 Kings Automall Drive
Cincinnati, Ohio 45249

Also Serve Statutory Agent:
Robert C. Reichert, Statutory Agent
9500 Kings Automall Drive
Cincinnati, Ohio 45249

Defendants.

Plaintiffs Joel Grunkemeyer ("Grunkemeyer"), Sharon Wilson ("Wilson"), and John Sukola ("Sukola") on behalf of themselves and all Ohio residents similarly situated (collectively "Plaintiffs"), state as follows:

NATURE OF THE ACTION

1. This case involves claims that Defendants Toyota Motor Sales, U.S.A., Inc., and its affiliates Toyota Motor Engineering and Manufacturing North America, Inc., Joseph Toyota of Cincinnati ("Joseph Toyota") and Kings Toyota, Inc. ("Kings Toyota") (collectively, "Toyota") have known since 2002 that accelerator pedals and mechanisms in its vehicles could stick, causing vehicles to speed uncontrollably, resulting in crashes causing serious injuries and deaths of occupants of Toyota vehicles. Through the fall of 2009, Toyota had received more than 2,000 complaints of unintended acceleration of its vehicles and had been the subject of multiple investigations by the federal government. However, in spite of the numerous complaints both by customers and the government, Toyota did nothing – other than deny there was a problem.

2. In August 2009, a California Highway Patrol Officer and his family were killed when their accelerator stuck and their brakes failed to stop their Toyota car. The vehicle crashed into an SUV, ran through a fence, rolled over and burst into flames.

3. After this tragedy and others like it, Toyota continued to attempt to minimize the problem, and conceal its extent. First, Toyota blamed the acceleration on "floor mats." Toyota informed customers that they could prevent any risk of danger by simply removing the floor mats on the drivers' side. As of November 2009, Toyota stated "there is no evidence to support" any other conclusion. Toyota stated that the National Highway Safety Administration supported the company's conclusion, but the agency responded by stating that Toyota's statement was "misleading and inaccurate."

4. On or about January 21, 2009, Plaintiff Grunkemeyer purchased a 2009 Toyota Corolla from Kings Toyota located in the Kings Automall. Grunkmeyer financed the purchase of the vehicle through Code Credit Union.

5. On or about January 1, 2010, Plaintiff Wilson purchased a 2010 Toyota Avalon from Joseph Toyota. Wilson financed the purchase of her vehicle through Toyota Motor Credit Corporation.

6. On or about January 6, 2007, Plaintiff Sukola purchased a 2007 Toyota Camry (VIN No. 4T1BE46K274640736) from Kings Toyota located in the Kings Automall. Sukola did not finance the purchase of the vehicle.

7. After years of covering up the life-threatening problems in its vehicles, on January 21, 2010, Toyota announced it was recalling nearly 2.3 million vehicles for the admitted reason of "sticking accelerator pedals." Toyota stated that its investigation, which it said it had only conducted "in recent months," "indicates there is a possibility that certain accelerator pedal mechanisms may, in rare instances, mechanically stick in a partially depressed position or return slowly to the idle position." The models recalled as of the filing of this Complaint were: RAV4 (2009-2010 Models), Corolla (2009-2010 Models), Matrix (2009-2010 Models), Avalon (2005-2010 Models), Highlander (2010 Model), Tundra (2007-2010 Models), Sequoia (2008-2010 Models), and Camry (2007-2010 Models). Thus, Toyota continued to downplay the problems by saying they were simply caused by floor mats and gas pedals that were the wrong size. Toyota covered up the fact that when it replaced the traditional mechanical throttle linkage in the late 1990s with a computer-controlled accelerator system, unlike American automobile companies. Toyota failed to include back-up safety systems that would prevent uncontrolled or sudden acceleration. On information and belief, Plaintiffs allege that Toyota omitted the back-up safety

systems in order to save money and increase profits. As a result of the lack of safety systems, there is no mechanical or electronic failsafe mechanism to allow drivers to stop Toyota vehicles in the event the computerized "driveby-wire" acceleration systems malfunction and engage in uncontrolled acceleration.

8. On January 26, 2010, Toyota announced it would stop selling the eight models, stating that preventing the sale of the vehicles was "necessary until a remedy is finalized." Despite believing that the problem was serious enough that it was "necessary" to keep additional vehicles from being driven, Toyota did nothing to prevent vehicles already sold from being operated nor did it offer to cancel purchases and refund the monies paid by its customers.

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10. Instead of sending replacement parts to dealerships so that vehicles like Plaintiffs can be repaired, Toyota originally stated it is planning on sending the parts to Toyota factories so that Toyota can sell new cars while at the same time leaving millions of unsafe cars on American highways. Plaintiffs are unable to drive their Toyota vehicle due to the danger of serious injury and death that can result from sudden acceleration from unknown causes.

11. Venue is proper in Hamilton County, Ohio under Civil Rules 3(B)(3) and 3(B)(11), because Plaintiffs are Ohio residents who reside in and purchased their vehicles in Hamilton County, Ohio. Additionally, Defendants marketed and sold the vehicles in question to Plaintiffs in Hamilton County, Ohio. Moreover, the causes of action herein arose, in part, in this County, and several of the Defendants systematically conduct business in Hamilton County, Ohio. The Court has personal jurisdiction because Defendants do business in Ohio and have registered with the State to do business in Ohio.

PARTIES

12. Plaintiff Grunkemeyer is a resident of Hamilton County, Ohio.

13. Plaintiff Wilson is a resident of Hamilton County, Ohio.

14. Plaintiff Sukola is a resident of Warren County, Ohio.

15. Defendant Toyota Motor Sales, U.S.A., Inc. ("TMS-USA") is, and at all material times was, a California Corporation headquartered in Los Angeles. 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.

16. Toyota Motor Credit Corporation ("TMCC") is a wholly-owned subsidiary of TMSUSA and was incorporated in California in 1982. TMCC is the United States financing arm of Toyota Motor Corporation. The company provides retail leasing, retail and wholesale financing, and other financial services to Toyota dealers and their customers for the purchase of new and used cars and trucks.

17. Defendant Joseph Toyota is an Ohio corporation with its principal place of business in Hamilton County, Ohio. Joseph Toyota is the Toyota dealership where Plaintiff Wilson purchased her vehicle that is the subject of this litigation.

18. Defendant Kings Toyota is an Ohio corporation with its principal place of business in Warren County, Ohio. Kings Toyota is the Toyota dealership where Plaintiffs Grunkemeyer and Sukola purchased their vehicles which are the subject of this litigation.

CLASS ACTION ALLEGATIONS

19. Plaintiffs bring this action on behalf of themselves and all others similarly situated who are residents of the State of Ohio and entered into agreements to purchase vehicles manufactured by Toyota and that are subject to the sudden acceleration due to defective accelerators, defective electronic and computer systems, defective acceleration system components, and/or vehicle parts affecting the performance of that system, including, but not limited to electronic throttle control system parts, ETCS-Intelligent System parts, accelerator pedals and floor mats.

20. 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 Defendants.

21. This action may properly be maintained as a class action under Civil Rule 23 because the action satisfies the numerosity, typicality, adequacy, predominance and superiority requirements of the Rule.

22. Plaintiffs bring this action on behalf of class consisting of All residents of the State of Ohio who entered into agreements to purchase vehicles manufactured by Toyota and that are subject to the 2010 recalls concerning defective accelerators, acceleration system components or vehicle parts affecting the performance of that system, including, but not limited to electronic throttle control system parts, ETCS-Intelligent System parts, accelerator pedals and floor mats.

23. Plaintiffs and all Class Members seek damages and other relief, including but not limited to, reimbursement of costs, litigation expenses, interest to the extent legally applicable, punitive damages, attorneys' fees, injunctive relief, and any other relief to which they may be entitled in law and/or equity.

24. The number of Class Members is so numerous that joinder of all members is impracticable. Plaintiffs believe that the Class may consist of several thousand Ohio residents. The number of Class Members and the identity of the Class Members easily can be obtained through the records of the Defendants.

25. The claims of Plaintiffs are typical of the claims of the Class that they seek to represent. Defendants have treated all of the Class Members the same and all of the recalled vehicles possess similar defects. Additionally, each member of the Class is entitled to the same form of relief.

26. Plaintiffs will protect fairly and adequately the interests of the members of the Class. Plaintiffs' chosen counsel are experienced in class action litigation and will diligently and professionally prosecute the litigation.

27. Common questions of law and fact exist as to Plaintiffs and all members of the Class. The common issues include but are not limited to:

A. Whether Defendants should be declared financially responsible for notifying all class members of the defective nature of the recalled cars and for the costs and expenses of inspecting, repairing, and replacing of all such vehicles;

B. Whether the recalled cars are defective;

C. Whether design defects cause the recalled vehicles to crash;

D. Whether Defendants knew or became aware that the recalled vehicles were not properly designed, yet continued to manufacture, distribute, advertise, and market the cars without correcting the problems and while concealing the defective design from the public and the class;

E. Whether design defects in the recalled vehicles could have been remedied by Toyota by installing back-up safety systems that would prevent uncontrolled or sudden acceleration;

F. Whether Defendants engaged in a pattern and practice of deceiving and defrauding the class and suppressing the defective nature of the recalled cars;

G. Whether Defendants failed to give adequate warnings regarding the recalled cars;

H. Whether Defendants, through written advertising and other representations, created express or implied warranties that were breached;

I. Whether Defendants are strictly liable for damages to Plaintiffs and the members of the Class;

J. Whether Defendants acted negligently;

K. Whether Plaintiffs and the members of the Class are entitled to compensatory damages, and, if so, the nature of such damages;

L. Whether Plaintiffs and the members of the Class are entitled to punitive or exemplary damages and, if so, the nature of such damages; and

M. Whether Plaintiffs and members of the Class are entitled to an award of reasonable attorneys' fees, prejudgment interest, post-judgment interest and costs of suit.

28. A class action is superior to all other available methods to adjudicate this litigation. Additionally, common issues predominate over individual issues. The size of the Class renders joinder impracticable. The failure to certify the Class likely will prevent Ohio residents who are driving dangerous cars from pursuing their claims because of the expense of individual litigation. Individual litigation will be burdensome, time consuming, and repetitive. The class action device is preferable to individual litigation because it provides the benefits of unitary adjudication, economies of scale, and it provides access to the courts for thousands of Ohio residents who are driving dangerous cars. Accordingly, class certification pursuant to Rule 23(b)(3) of the Ohio Rules of Civil Procedure is desirable and appropriate.

29. Class certification pursuant to Rule 23(b)(1)(A) is appropriate because the prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications with respect to individual members of the Class. Individual litigation could result in some courts requiring Defendants to immediately replace all cars, stopping payments, and preserving documents and other courts permitting Defendants to delay replacements and permit Defendants to continue to collect payments from members of the class, and allow Defendants to selectively preserve important information. Obviously, Defendants could not comply with differing sets of inconsistent orders.

30. Class certification pursuant to Rule 23(b)(2) of the Ohio Rules of Civil Procedure is appropriate because Plaintiffs and all members of the Class seek declaratory and injunctive relief. The Class seeks an Order that declares their right to the immediate replacement of cars and entitlement to stop making payments.

TOY-RQ-05E-00008859

COUNT I
(Violation of Ohio Consumer Sales Practices Act, R.C. §§1345.01-1345.02)

31. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

32. The Ohio Consumer Sales Practices Act, R.C. §1345.02, prohibits unfair or deceptive consumer sales practices, including false advertising. Specifically, the Ohio Consumer Sales Practices Act prohibits "representing that goods ... have characteristics ... uses, [or] benefits which they do not have ..." "representing that goods or services are of a particular standard, quality or grade ... if they are of another" and "advertising goods or services with intent not to sell them as advertised."

33. The conduct of Defendants alleged above constitutes unfair and/or deceptive consumer sales practices in violation of R.C. §1345.02, because Defendants represented through advertising and other marketing communications that the vehicles were new and free from defects and could be driven safely in normal operation. Instead, the vehicles were not of the "standard, quality or grade" of new vehicles.

34. Defendants' conduct caused Plaintiffs damages as alleged herein.

35. Plaintiffs specifically do not allege herein a claim for violation of R.C. §1345.72.

36. As a result of the foregoing wrongful conduct of Defendants, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

COUNT II
(Violation of Ohio Deceptive Trade Practices Act., R.C. §4165.02)

37. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

TOY-RQ-05E-00008860

38. Defendants' conduct violated the Ohio Deceptive Trade Practices Act, R.C. §4165, in that Defendants made false statements of fact, as alleged above, concerning the vehicles that Plaintiffs and Class members purchased.

39. Defendants' conduct caused Plaintiffs and Class members to purchase vehicles that they otherwise would not have had they known of the dangerous defect.

40. As a result of the foregoing wrongful conduct of Defendants, Plaintiffs and Class members have been damaged in an amount to be proved at trial. Defendants' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in conscious disregard for the rights of Plaintiffs and Class members. Plaintiffs and Class members are therefore entitled to an award of punitive damages.

COUNT III
(Breach of Contract)

41. Plaintiffs incorporate by reference and restates each and every allegation above as if fully rewritten herein.

42. Plaintiffs entered into a purchase agreement with Defendants which inured to the benefit of all Defendants.

43. The written purchase agreements between Plaintiffs and Defendants constitute legally binding agreements.

44. The purchase agreements provided that Class members would make payments and in return would receive a new vehicle that would operate properly without the undisclosed defects which Defendants knew about.

TOY-RQ-05E-00008861

45. Defendants breached their agreements with Plaintiffs and other Class members, because the vehicles sold to the Class members were defective and not of a quality advertised by Toyota and that reasonably would be expected of a new automobile.

46. Plaintiffs and other Class members have fully performed their duties under the purchase agreements.

47. Defendants are liable for all damages suffered by Class members caused by such breaches of contract.

COUNT IV
(Fraudulent Concealment)

48. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

49. Toyota has known since at least 2002, and possibly as early as 2000, that its vehicles were subject to sudden and uncontrollable acceleration that placed occupants of its vehicles at great risk of death. Toyota was aware that there were at least 1,000 incidents of sudden acceleration attributed to the subject vehicles, and at least 19 fatalities attributed to the sudden acceleration of the subject vehicles from 2002 to 2009. Toyota knew that the risk of losing control of a vehicle in a high speed accident would be very frightening and dangerous to consumers and would cause Toyota's sales to decline. Toyota intentionally concealed the information, or acted with reckless regard for the truth, and denied the consuming public information that is highly relevant to their purchasing decision. Toyota fraudulently concealed the information for years, because it was more important to Toyota to increase sales and become the largest manufacturer in the world. Toyota sacrificed innocent, trusting lives for profit and hubris.

TOY-RQ-05E-00008862

50. Toyota's customers relied on Toyota's reputation coupled with the fact that Toyota did not disclose the acceleration problems, in purchasing or leasing Toyota's vehicles. The facts concealed were material, because if they had been disclosed Class members would not have bought the vehicles. The concealment was all the more effective because it came from one that had represented itself to be honorable and trustworthy.

51. As a result of their reliance, Plaintiffs and other Class members have been injured in an amount to be proved at trial, including, but not limited to the loss of value of the use of the vehicles they bought, the fear and other emotional trauma as a result of being forced to drive vehicles that Toyota has admitted are unsafe due to Toyota's refusal to provide replacement vehicles, and injuries and deaths resulting from accidents caused by sudden acceleration.

52. Defendants' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of Plaintiffs and other Class members. Plaintiffs and other Class members are therefore entitled to an award of punitive damages.

COUNT V
(Fraud)

53. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

54. Defendants represented to Plaintiffs and Class members in advertising and other forms of communication that the vehicles they were selling were new, had no significant defects and would perform and operate properly when driven in normal usage. In fact, Toyota affirmatively represents that its vehicles are "reliable."

TOY-RQ-05E-00008863

55. The vehicles purchased by Plaintiffs and Class Members were, in fact, defective, unsafe and unreliable, because the vehicles were subject to sudden, extreme acceleration leading to personal injury or death.

56. The aforesaid representations of Defendants were material, because they were facts that would typically be relied on by a person purchasing or leasing a new motor vehicle. Toyota knew the representations were false, because it knew that more than 1,000 people had died in its vehicles between 2002 and 2009. Plaintiffs and Class members relied on the statements and others like them in purchasing their vehicles.

57. Toyota intentionally made the false statements in order to sell vehicles.

58. As a result of Toyota's conduct, Plaintiffs and Class members have been defrauded into leasing or purchasing vehicles that had undisclosed defects. Plaintiffs and Class members have been damaged in an amount to be proven at trial.

59. Defendants' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in conscious disregard for the rights of Plaintiffs and other Class members. Plaintiffs and other Class members are therefore entitled to an award of punitive damages.

COUNT VI
(Breach of Express Warranties)

60. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

61. Defendants made express warranties that new vehicles they sold would be fully operational, safe and highly reliable. The warranties were made in advertisements and statements by dealership salespeople. These affirmations of fact, including via commercial advertisements, are express warranties under the Uniform Commercial Code Section R.C. §1302.26.

TOY-RQ-05E-00008864

62. Defendants breached these warranties because the vehicles sold to Plaintiffs and other Class members have been demonstrated to be unsafe, and, indeed, Toyota has now admitted the vehicles are unsafe by first recalling them and then ceasing their sale altogether. Toyota further breached the warranties by failing to provide safe automobiles after the problems were acknowledged and, instead, forcing customers to drive what were publicly identified as unsafe vehicles.

63. Plaintiffs and other Class members have been harmed as a result of the breaches of warranty. First, Plaintiffs and other Class members have received vehicles that were worth far less than what they paid to purchase the vehicles. Second, the Class has been subjected to the very real fear of a horrendous accident if their vehicle were to reach uncontrollable speeds -- and this is because Defendants have failed and refused to provide substitute vehicles while the defective ones are repaired.

64. Plaintiffs specifically exclude in this Complaint any claim for violation of R.C. §1345.72, and this cause of action is not based on that section.

65. Plaintiffs pray that all damages caused by these breaches be awarded.

COUNT VII
(Breach of Implied Warranty of Merchantability)

66. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

67. Defendants impliedly warranted under R.C. §1302.27 that their vehicles are fit for the ordinary purpose for which such a product is sold.

68. The ordinary purpose for which Defendants' vehicles are sold is to proved the purchaser with a vehicle that is capable of transporting the driver and passengers in reasonable

safety during normal operation, and without itself unduly endangering them or members of the public.

69. Defendants breached their implied warranty of merchantability by selling vehicles that have the propensity to suddenly and unintentionally accelerate, and which does not contain safety systems which would prevent such acceleration or allow a driver to safely slow and stop the vehicle when such acceleration occurred.

70. Plaintiffs and Class members have been damaged in an amount to proven at trial.

COUNT VIII
(Breach of Implied Warranty of Fitness for a Particular Purpose)

71. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

72. Defendants are, and at all relevant times has been, in the business of designing, manufacturing, distributing and selling motor vehicles to consumers.

73. Defendants knew, when it sold its vehicles to Plaintiffs and other Class members that such vehicles would be used by Plaintiffs and Class members for safely transporting occupants.

74. Defendants also knew that consumers who purchased its vehicles relied on Toyota's skill and expertise, judgment and knowledge in furnishing vehicles, including components thereof, that were able to transport occupants without unreasonable risk of harm to themselves or members of the public. Therefore, Toyota impliedly warranted under R.C. §1302.28 that the vehicles were fit for the purposes Plaintiffs and class member intended for them.

TOY-RQ-05E-00008866

75. Toyota's vehicles were not fit for that purpose in that their design, choice of components or manufacture is so defective as to cause such vehicles to suddenly and unintentionally accelerate, and such vehicle fail to provide an adequate means of braking or stopping vehicles that have so accelerated.

76. As a result, Plaintiffs and Class members have been damaged in an amount to be proved at trial.

COUNT IX
(Negligence)

77. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

78. Toyota had a duty to its customers as a manufacturer of motor vehicles to provide vehicles that, in their ordinary operation, would be safe. Toyota had a duty to adequately test its vehicles' safety before selling millions to American consumers. Toyota particularly had a duty to test vehicles for acceleration system problems once Toyota was on notice that its vehicles had a propensity to suddenly accelerate and/or once Toyota became aware that American consumers were dying in large numbers as a result of the problem.

79. Toyota breached its duty to Plaintiffs and Class members.

80. As a proximate cause of the breach, Plaintiffs and Class members have been damaged including, but not limited to, the financial loss of owning or leasing vehicles that are unsafe as well as being subject to the potential risk of injury.

COUNT X
(Strict Product Liability)

81. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

82. Toyota is a manufacturer and supplier of automobiles.

83. The automobiles that were purchased by Plaintiffs and that were supplied by Toyota failed to comply with Toyota's representations, as alleged above, that the vehicles were safe, reliable and that they would accelerate and decelerate as users would reasonably expect.

84. The automobiles supplied by Toyota were defective because, as alleged above, they are subject to rapid acceleration without notice and without the ability to slow or stop the vehicle.

85. The vehicles were defective in design and manufacture because when they left the hands of Toyota they were more dangerous than an ordinary consumer would expect.

86. The vehicles supplied by Toyota were defective due to inadequate warning or instruction and because Toyota knew that the product was defective and created a risk of harm to consumers and failed to warn of said risk.

87. The vehicles supplied by Toyota failed to include back-up safety systems that would prevent uncontrolled or sudden acceleration.

88. The vehicles supplied by Toyota were defective due to inadequate post-marketing warning or instruction and because Toyota knew of the risk of rapid acceleration.

89. As a proximate result of the defective condition of Toyota's vehicles, Plaintiffs and Class members have been damaged in an amount to be proved at trial.

COUNT XII
(Punitive Damages)

90. Plaintiffs incorporate by reference and restate each and every allegation above as if fully rewritten herein.

91. Defendants have fraudulently concealed for years that their automobiles had defective acceleration systems that were causing numerous innocent lives to be lost on American highways. Defendants concealed this information in order to be able to continue to sell their defective, unsafe vehicles. Moreover, Defendants defrauded American consumers by representing that their vehicles were safe and reliable when they were secretly aware of the highly dangerous acceleration system. Defendants have violated Ohio's consumer laws by falsely advertising that their cars were safe and reliable when, in fact, they are defective.

92. Defendants conduct was knowing, intentional, with malice, demonstrated a complete lack of care and was in reckless disregard for the rights of Plaintiffs and other class members. Defendants' conduct has been outrageous and outside the bounds of decency. Defendants should be punished due their conduct of putting others at risk of serious injury and death in order to make more profit. Plaintiffs hereby request an award of punitive damages to appropriately punish Defendants for their extreme misconduct.

WHEREFORE, Plaintiffs Joel Grunkemeyer, Sharon Wilson, and John Sukola pray for relief as follows:

A. The certification of a Class consisting of all residents of the State of Ohio who entered into agreements to purchase vehicles manufactured by Toyota and that are subject to the sudden acceleration due to defective accelerators, defective electronic and computer systems, defective acceleration system components, and/or vehicle parts affecting the performance of that

system, including, but not limited to electronic throttle control system parts, ETCS-Intelligent System parts, accelerator pedals and floor mats;

B. An Order of an amount to be determined at trial awarding damages and requiring Defendants to provide, or reimburse Plaintiffs for the cost of obtaining, non-defective, replacement vehicles to all members of the Class until the vehicles owned by Class members have been repaired or have been replaced with vehicles that do not have defects in the accelerator or any other system;

C. An Order of an amount to be determined at trial awarding damages and requiring Defendants to provide any replacement parts first dealerships for repair of cars already sold, and only use such parts for manufacturing of new vehicles when all defective vehicles have been repaired;

D. An Order of an amount to be determined at trial awarding damages and requiring Defendants to reform their purchase and finance contracts with class members and cease collecting car payments from all Class members who purchased Toyota vehicles with defects alleged in this Complaint in an amount to be determined at trial;

E. An award of an amount to be determined at trial for any other compensatory damages that will fairly represent the injuries that Plaintiffs and members of the class suffered as proven at trial;

F. An award of an amount to be determined at trial for punitive damages that will fairly punish Defendants and serve as a deterrent to future misconduct that endangers the lives and safety of Ohio motorists and pedestrians. Defendants by withholding knowledge of dangerous conditions knowingly caused physical injuries to Ohio residents and caused Ohio residents economic loss.

TOY-RQ-05E-00008870

G. An award in an amount to be determined at trial for treble damages as provided for by the Ohio Consumer Sales Practices Act and Ohio Deceptive Trade Practices Act;

H. An award in an amount to be determined at trial for all attorneys' fees and costs incurred by Plaintiffs in the prosecution of these claims;

I. Such additional relief, legal or equitable, to which Plaintiffs may be entitled.

Dated: February 5, 2010

STRAUSS & TROY

By: _____

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Thomas P. Glass (0062382)
Joseph J. Braun (0069757)
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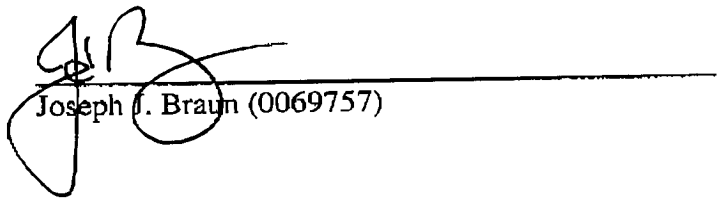
Attorneys for Plaintiffs

TOY-RQ-05E-00008871

JURY DEMAND

Plaintiffs hereby request trial by jury on all claims so triable.



Joseph J. Braun (0069757)

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TOY-RQ-05E-00008872

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

JOEL GRUNKEMEYER
PLAINTIFF

-- vs --

TOYOTA MOTOR SALES USA INC
DEFENDANT

Use below number on
all future pleadings

No. A 1001119
SUMMONS

TOYOTA MOTOR SALES USA INC
% CT CORP SYSTEM S/A
1300 E 9TH ST
CLEVELAND OH 44114

D-1

You are notified
that you have been named Defendant(s) in a complaint filed by

JOEL GRUNKEMEYER
1041 CENTRAL AVE
CINCINNATI OH 45202

Plaintiff(s)

in the Hamilton County, COMMON PLEAS CIVIL Division,
PATRICIA M. CLANCY, 1000 MAIN STREET ROOM 315,
CINCINNATI, OH 45202.
You are hereby summoned and required to serve upon the plaintiff's attorney, or upon the plaintiff, if he/she has no attorney of record, a copy of an answer to the complaint within twenty-eight (28) days after service of this summons on you, exclusive of the day of service. Your answer must be filed with the Court within three (3) days after the service of a copy of the answer on the plaintiff's attorney.

Further, pursuant to Local Rule 10 of Hamilton County, you are also required to file a Notification Form to receive notice of all future hearings.

If you fail to appear and defend, judgement by default will be rendered against you for the relief demanded in the attached complaint.

Name and Address of attorney
RICHARD STUART WAYNE
4TH FLOOR FEDERAL RESERVE BLDG
150 EAST FOURTH STREET
CINCINATI OH
45202-4108

PATRICIA M. CLANCY
Clerk, Court of Common Pleas
Hamilton County, Ohio

By RICK HOFMANN
Deputy

Date: February 5, 2010

D86929230

ELECTRONIC CERTIFIED MAIL SERVICE RETURN
SUMMONS & COMPLAINT
A 1001119 D2
TOYOTA MOTOR CREDIT CORPORATION
FILED: 02/16/2010 8:34:37

UNITED STATES POSTAL SERVICE.

Date Produced: 02/15/2010

HAMILTON COUNTY CLERK OF COURTS

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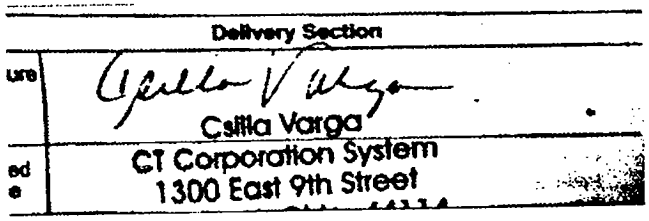

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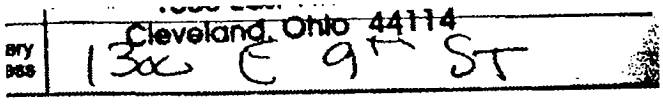

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COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

JOEL GRUNKEMEYER
PLAINTIFF

-- vs --

Use below number on
all future pleadings

No. A 1001119
SUMMONS

TOYOTA MOTOR SALES USA INC
DEFENDANT

TOYOTA MOTOR CREDIT CORPORATION
19001 S WESTERN AVE
TORRANCE CA 90501

D-2

You are notified
that you have been named Defendant(s) in a complaint filed by

JOEL GRUNKEMEYER
1041 CENTRAL AVE
CINCINNATI OH 45202

Plaintiff(s)

in the Hamilton County, COMMON PLEAS CIVIL Division,
PATRICIA M. CLANCY, 1000 MAIN STREET ROOM 315,
CINCINNATI, OH 45202.
You are hereby summoned and required to serve upon the plaintiff's attorney, or upon the plaintiff, if he/she has no attorney of record, a copy of an answer to the complaint within twenty-eight (28) days after service of this summons on you, exclusive of the day of service. Your answer must be filed with the Court within three (3) days after the service of a copy of the answer on the plaintiff's attorney.

Further, pursuant to Local Rule 10 of Hamilton County, you are also required to file a Notification Form to receive notice of all future hearings.

If you fail to appear and defend, judgement by default will be rendered against you for the relief demanded in the attached complaint.

Name and Address of attorney
RICHARD STUART WAYNE
4TH FLOOR FEDERAL RESERVE BLDG
150 EAST FOURTH STREET
CINCINATI OH
45202-4108

PATRICIA M. CLANCY
Clerk, Court of Common Pleas
Hamilton County, Ohio

By RICK HOFMANN
Deputy

Date: February 5, 2010

D86929241

ELECTRONIC CERTIFIED MAIL SERVICE RETURN
SUMMONS & COMPLAINT
A 1001119 D2
TOYOTA MOTOR CREDIT CORPORATION
FILED: 02/16/2010 8:34:35

UNITED STATES POSTAL SERVICE

Date Produced: 02/15/2010

HAMILTON COUNTY CLERK OF COURTS

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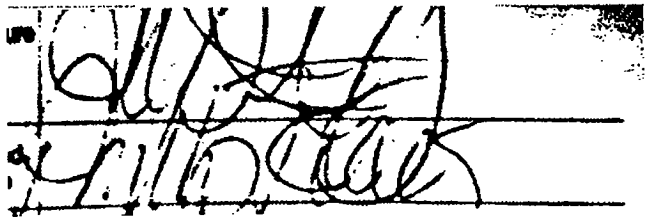

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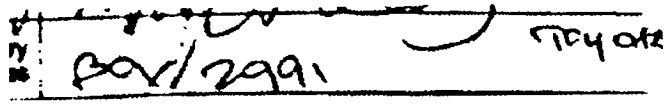

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Sincerely,

United States Postal Service

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Customer Reference Number: 7765370SEQ1

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

JOEL GRUNKEMEYER
PLAINTIFF

-- vs --

TOYOTA MOTOR SALES USA INC
DEFENDANT

Use below number on
all future pleadings

No. A 1001119
SUMMONS

TOYOTA MOTOR CREDIT CORPORATION
% CT CORP SYSTEM S/A D-2
1300 E 9TH ST
CLEVELAND OH 44114

You are notified
that you have been named Defendant(s) in a complaint filed by

JOEL GRUNKEMEYER
1041 CENTRAL AVE
CINCINNATI OH 45202

Plaintiff(s)

in the Hamilton County, COMMON PLEAS CIVIL Division,
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If you fail to appear and defend, judgement by default will be rendered against you for the relief demanded in the attached complaint.

Name and Address of attorney
RICHARD STUART WAYNE
4TH FLOOR FEDERAL RESERVE BLDG
150 EAST FOURTH STREET
CINCINATI OH
45202-4108

PATRICIA M. CLANCY
Clerk, Court of Common Pleas
Hamilton County, Ohio

By RICK HOFMANN
Deputy

Date: February 5, 2010

D86929251

ELECTRONIC CERTIFIED MAIL SERVICE RETURN
SUMMONS & COMPLAINT
A 1001119 D1
TOYOTA MOTOR SALES USA INC
FILED: 02/16/2010 8:34:33

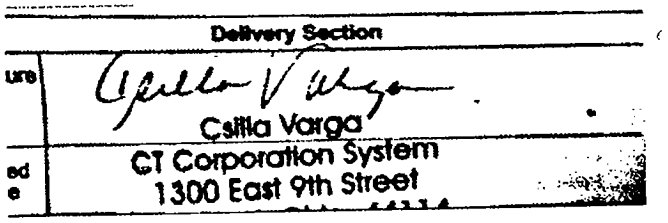
UNITED STATES POSTAL SERVICE.

Date Produced: 02/15/2010

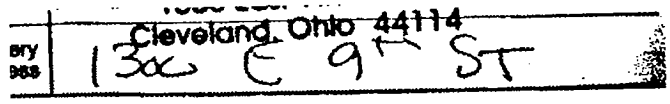
HAMILTON COUNTY CLERK OF COURTS

The following is the delivery information for Certified Mail™ item number 7194 5168 6310 0491 3031. Our records indicate that this item was delivered on 02/09/2010 at 02:26 p.m. in CLEVELAND, OH, 44114. The scanned image of the recipient information is provided below.

Signature of Recipient:



Address of Recipient:



Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local post office or Postal Service representitive.

Sincerely,

United States Postal Service

The customer reference number shown below is not validated or endorsed by the United States Postal Service. It is solely for customer use.

Customer Reference Number: 7765368SEQ1

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

JOEL GRUNKEMEYER
PLAINTIFF

-- vs --

TOYOTA MOTOR SALES USA INC
DEFENDANT

Use below number on
all future pleadings

No. A 1001119
SUMMONS

TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA INC
258 ATLANTIC AVE
ERLANGER KY 41018

D-3

You are notified
that you have been named Defendant(s) in a complaint filed by

JOEL GRUNKEMEYER
1041 CENTRAL AVE
CINCINNATI OH 45202

Plaintiff(s)

in the Hamilton County, COMMON PLEAS CIVIL Division,
PATRICIA M. CLANCY, 1000 MAIN STREET ROOM 315,
CINCINNATI, OH 45202.
You are hereby summoned and required to serve upon the plaintiff's attorney, or upon the plaintiff, if he/she has no attorney of record, a copy of an answer to the complaint within twenty-eight (28) days after service of this summons on you, exclusive of the day of service. Your answer must be filed with the Court within three (3) days after the service of a copy of the answer on the plaintiff's attorney.

Further, pursuant to Local Rule 10 of Hamilton County, you are also required to file a Notification Form to receive notice of all future hearings.

If you fail to appear and defend, judgement by default will be rendered against you for the relief demanded in the attached complaint.

Name and Address of attorney
RICHARD STUART WAYNE
4TH FLOOR FEDERAL RESERVE BLDG
150 EAST FOURTH STREET
CINCINATI OH
45202-4108

PATRICIA M. CLANCY
Clerk, Court of Common Pleas
Hamilton County, Ohio

By RICK HOFMANN
Deputy

Date: February 5, 2010

D86929261

ELECTRONIC CERTIFIED MAIL SERVICE RETURN
SUMMONS & COMPLAINT
A 1001119 D3
TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMI
FILED: 02/16/2010 8:34:39

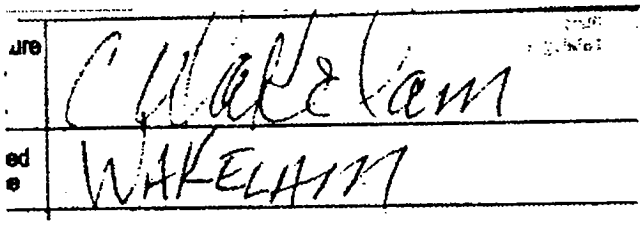
UNITED STATES POSTAL SERVICE.

Date Produced: 02/15/2010

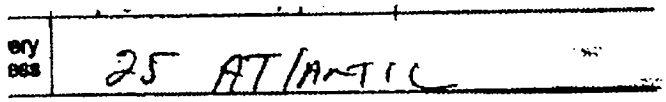
HAMILTON COUNTY CLERK OF COURTS

The following is the delivery information for Certified Mail™ item number 7194 5168 6310 0491 3062. Our records indicate that this item was delivered on 02/11/2010 at 11:01 a.m. in ERLANGER, KY, 41018. The scanned image of the recipient information is provided below.

Signature of Recipient:



Address of Recipient:



Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local post office or Postal Service representitive.

Sincerely,

United States Postal Service

The customer reference number shown below is not validated or endorsed by the United States Postal Service. It is solely for customer use.

Customer Reference Number: 7765375SEQ1

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

JOEL GRUNKEMEYER
PLAINTIFF

-- vs --

TOYOTA MOTOR SALES USA INC
DEFENDANT

Use below number on
all future pleadings

No. A 1001119
SUMMONS

TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA INC
% CT CORP SYSTEM S/A D-3
4169 WESTPORT RD
LOUISVILLE KY 40207

You are notified
that you have been named Defendant(s) in a complaint filed by

JOEL GRUNKEMEYER
1041 CENTRAL AVE
CINCINNATI OH 45202

Plaintiff(s)

in the Hamilton County, COMMON PLEAS CIVIL Division,
PATRICIA M. CLANCY, 1000 MAIN STREET ROOM 315,
CINCINNATI, OH 45202.
You are hereby summoned and required to serve upon the plaintiff's attorney, or upon the plaintiff, if he/she has no attorney of record, a copy of an answer to the complaint within twenty-eight (28) days after service of this summons on you, exclusive of the day of service. Your answer must be filed with the Court within three (3) days after the service of a copy of the answer on the plaintiff's attorney.

Further, pursuant to Local Rule 10 of Hamilton County, you are also required to file a Notification Form to receive notice of all future hearings.

If you fail to appear and defend, judgement by default will be rendered against you for the relief demanded in the attached complaint.

Name and Address of attorney
RICHARD STUART WAYNE
4TH FLOOR FEDERAL RESERVE BLDG
150 EAST FOURTH STREET
CINCINNATI OH
45202-4108

PATRICIA M. CLANCY
Clerk, Court of Common Pleas
Hamilton County, Ohio

By RICK HOFMANN
Deputy

Date: February 5, 2010

D86929273

ELECTRONIC CERTIFIED MAIL SERVICE RETURN
SUMMONS & COMPLAINT
A 1001119 D3
TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMI
FILED: 02/16/2010 8:34:41

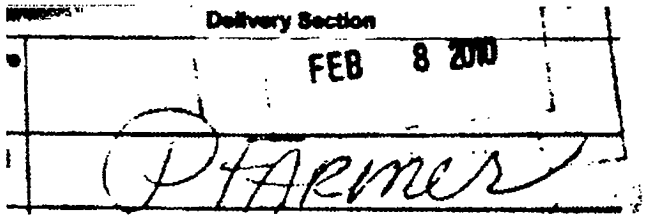
UNITED STATES POSTAL SERVICE.

Date Produced: 02/15/2010

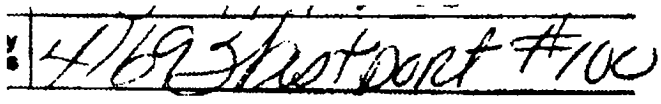
HAMILTON COUNTY CLERK OF COURTS

The following is the delivery information for Certified Mail™ item number 7194 5168 6310 0491 3079. Our records indicate that this item was delivered on 02/08/2010 at 10:12 a.m. in LOUISVILLE, KY, 40207. The scanned image of the recipient information is provided below.

Signature of Recipient:



Address of Recipient:



Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local post office or Postal Service representitive.

Sincerely,

United States Postal Service

The customer reference number shown below is not validated or endorsed by the United States Postal Service. It is solely for customer use.

Customer Reference Number: 7765380SEQ1

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

JOEL GRUNKEMEYER
PLAINTIFF

-- vs --

Use below number on
all future pleadings

No. A 1001119
SUMMONS

TOYOTA MOTOR SALES USA INC
DEFENDANT

JOSEPH TOYOTA OF CINCINNATI
9101 COLERAIN AVE
CINCINNATI OH 45251

D-4

You are notified
that you have been named Defendant(s) in a complaint filed by

JOEL GRUNKEMEYER
1041 CENTRAL AVE
CINCINNATI OH 45202

Plaintiff(s)

in the Hamilton County, COMMON PLEAS CIVIL Division,
PATRICIA M. CLANCY, 1000 MAIN STREET ROOM 315,
CINCINNATI, OH 45202.
You are hereby summoned and required to serve upon the plaintiff's attorney, or upon the plaintiff, if he/she has no attorney of record, a copy of an answer to the complaint within twenty-eight (28) days after service of this summons on you, exclusive of the day of service. Your answer must be filed with the Court within three (3) days after the service of a copy of the answer on the plaintiff's attorney.

Further, pursuant to Local Rule 10 of Hamilton County, you are also required to file a Notification Form to receive notice of all future hearings.

If you fail to appear and defend, judgement by default will be rendered against you for the relief demanded in the attached complaint.

Name and Address of attorney
RICHARD STUART WAYNE
4TH FLOOR FEDERAL RESERVE BLDG
150 EAST FOURTH STREET
CINCINNATI OH
45202-4108

PATRICIA M. CLANCY
Clerk, Court of Common Pleas
Hamilton County, Ohio

By RICK HOFMANN
Deputy

Date: February 5, 2010

D86929282

ELECTRONIC CERTIFIED MAIL SERVICE RETURN
SUMMONS & COMPLAINT
A 1001119 D4
JOSEPH TOYOTA OF CINCINNATI
FILED: 02/16/2010 8:34:42

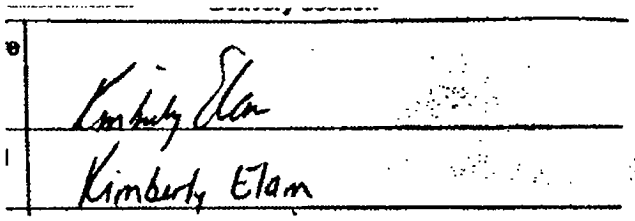
UNITED STATES POSTAL SERVICE

Date Produced: 02/15/2010

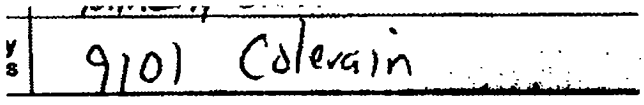
HAMILTON COUNTY CLERK OF COURTS

The following is the delivery information for Certified Mail™ item number 7194 5168 6310 0491 3086. Our records indicate that this item was delivered on 02/08/2010 at 01:13 p.m. in CINCINNATI, OH, 45251. The scanned image of the recipient information is provided below.

Signature of Recipient:



Address of Recipient:



Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local post office or Postal Service representitive.

Sincerely,

United States Postal Service

The customer reference number shown below is not validated or endorsed by the United States Postal Service. It is solely for customer use.

Customer Reference Number: 7765382SEQ1

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

JOEL GRUNKEMEYER
PLAINTIFF

-- vs --

TOYOTA MOTOR SALES USA INC
DEFENDANT

Use below number on
all future pleadings

No. A 1001119
SUMMONS

JOSEPH TOYOTA OF CINCINNATI
% JOSEPH T OF C CO S/A D-4
250 E 5TH ST STE 285
CINCINNATI OH 45202

You are notified
that you have been named Defendant(s) in a complaint filed by

JOEL GRUNKEMEYER
1041 CENTRAL AVE
CINCINNATI OH 45202

Plaintiff(s)

in the Hamilton County, COMMON PLEAS CIVIL Division,
PATRICIA M. CLANCY, 1000 MAIN STREET ROOM 315,
CINCINNATI, OH 45202.
You are hereby summoned and required to serve upon the plaintiff's attorney, or upon the plaintiff, if he/she has no attorney of record, a copy of an answer to the complaint within twenty-eight (28) days after service of this summons on you, exclusive of the day of service. Your answer must be filed with the Court within three (3) days after the service of a copy of the answer on the plaintiff's attorney.

Further, pursuant to Local Rule 10 of Hamilton County, you are also required to file a Notification Form to receive notice of all future hearings.

If you fail to appear and defend, judgement by default will be rendered against you for the relief demanded in the attached complaint.

Name and Address of attorney
RICHARD STUART WAYNE
4TH FLOOR FEDERAL RESERVE BLDG
150 EAST FOURTH STREET
CINCINATI OH
45202-4108

PATRICIA M. CLANCY
Clerk, Court of Common Pleas
Hamilton County, Ohio

By RICK HOFMANN
Deputy

Date: February 5, 2010

D86929292

ELECTRONIC CERTIFIED MAIL SERVICE RETURN
SUMMONS & COMPLAINT
A 1001119 D4
JOSEPH TOYOTA OF CINCINNATI
FILED: 02/16/2010 8:34:44

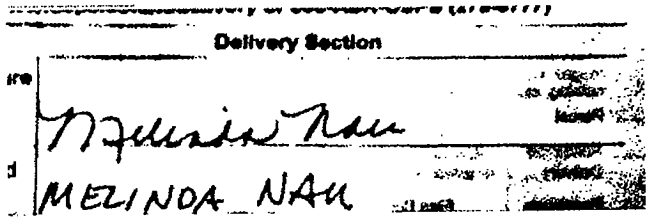
UNITED STATES POSTAL SERVICE.

Date Produced: 02/15/2010

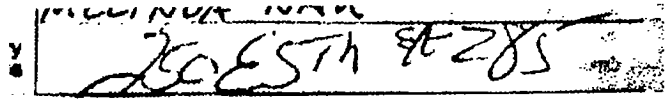
HAMILTON COUNTY CLERK OF COURTS

The following is the delivery information for Certified Mail™ item number 7194 5168 6310 0491 3093. Our records indicate that this item was delivered on 02/08/2010 at 12:32 p.m. in CINCINNATI, OH, 45202. The scanned image of the recipient information is provided below.

Signature of Recipient:



Address of Recipient:



Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local post office or Postal Service representitive.

Sincerely,

United States Postal Service

The customer reference number shown below is not validated or endorsed by the United States Postal Service. It is solely for customer use.

Customer Reference Number: 7765387SEQ1

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

JOEL GRUNKEMEYER
PLAINTIFF

-- vs --

TOYOTA MOTOR SALES USA INC
DEFENDANT

Use below number on
all future pleadings

No. A 1001119
SUMMONS

KINGS TOYOTA INC
9500 KINGS AUTOMALL DR
CINCINNATI OH 45249

D-5

You are notified
that you have been named Defendant(s) in a complaint filed by

JOEL GRUNKEMEYER
1041 CENTRAL AVE
CINCINNATI OH 45202

Plaintiff(s)

in the Hamilton County, COMMON PLEAS CIVIL Division,
PATRICIA M. CLANCY, 1000 MAIN STREET ROOM 315,
CINCINNATI, OH 45202.
You are hereby summoned and required to serve upon the plaintiff's attorney, or upon the plaintiff, if he/she has no attorney of record, a copy of an answer to the complaint within twenty-eight (28) days after service of this summons on you, exclusive of the day of service. Your answer must be filed with the Court within three (3) days after the service of a copy of the answer on the plaintiff's attorney.

Further, pursuant to Local Rule 10 of Hamilton County, you are also required to file a Notification Form to receive notice of all future hearings.

If you fail to appear and defend, judgement by default will be rendered against you for the relief demanded in the attached complaint.

Name and Address of attorney
RICHARD STUART WAYNE
4TH FLOOR FEDERAL RESERVE BLDG
150 EAST FOURTH STREET
CINCINATI OH
45202-4108

PATRICIA M. CLANCY
Clerk, Court of Common Pleas
Hamilton County, Ohio

By RICK HOFMANN
Deputy

Date: February 5, 2010

D86929305

ELECTRONIC CERTIFIED MAIL SERVICE RETURN
SUMMONS & COMPLAINT
A 1001119 D5
KINGS TOYOTA INC
FILED: 02/08/2010 14:02:48

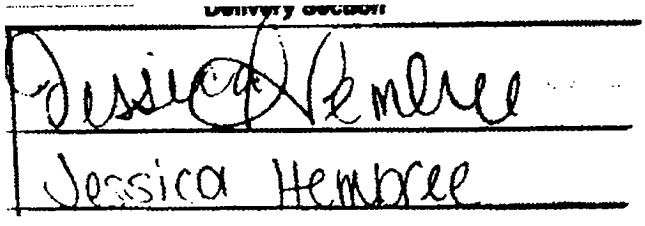
UNITED STATES POSTAL SERVICE.

Date Produced: 02/08/2010

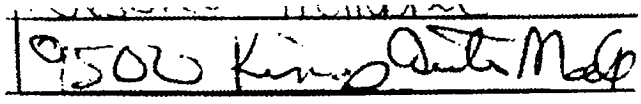
HAMILTON COUNTY CLERK OF COURTS

The following is the delivery information for Certified Mail™ item number 7194 5168 6310 0491 3109. Our records indicate that this item was delivered on 02/06/2010 at 12:59 p.m. in CINCINNATI, OH, 45249. The scanned image of the recipient information is provided below.

Signature of Recipient:



Address of Recipient:



Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local post office or Postal Service representitive.

Sincerely,

United States Postal Service

The customer reference number shown below is not validated or endorsed by the United States Postal Service. It is solely for customer use.

Customer Reference Number: 7765392SEQ1

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

JOEL GRUNKEMEYER
PLAINTIFF

Use below number on
all future pleadings

-- vs --

No. A 1001119
SUMMONS

TOYOTA MOTOR SALES USA INC
DEFENDANT

KINGS TOYOTA INC
% ROBERT C REICHERT S/A D-5
9500 KINGS AUTOMALL DR
CINCINNATI OH 45249

You are notified
that you have been named Defendant(s) in a complaint filed by

JOEL GRUNKEMEYER
1041 CENTRAL AVE
CINCINNATI OH 45202

Plaintiff(s)

in the Hamilton County, COMMON PLEAS CIVIL Division,
PATRICIA M. CLANCY, 1000 MAIN STREET ROOM 315,
CINCINNATI, OH 45202.
You are hereby summoned and required to serve upon the plaintiff's attorney, or upon the plaintiff, if he/she has no attorney of record, a copy of an answer to the complaint within twenty-eight (28) days after service of this summons on you, exclusive of the day of service. Your answer must be filed with the Court within three (3) days after the service of a copy of the answer on the plaintiff's attorney.

Further, pursuant to Local Rule 10 of Hamilton County, you are also required to file a Notification Form to receive notice of all future hearings.

If you fail to appear and defend, judgement by default will be rendered against you for the relief demanded in the attached complaint.

Name and Address of attorney
RICHARD STUART WAYNE
4TH FLOOR FEDERAL RESERVE BLDG
150 EAST FOURTH STREET
CINCINATI OH
45202-4108

PATRICIA M. CLANCY
Clerk, Court of Common Pleas
Hamilton County, Ohio

By RICK HOFMANN
Deputy

Date: February 5, 2010

D86929313

ELECTRONIC CERTIFIED MAIL SERVICE RETURN
SUMMONS & COMPLAINT
A 1001119 D5
KINGS TOYOTA INC
FILED: 02/08/2010 14:02:48

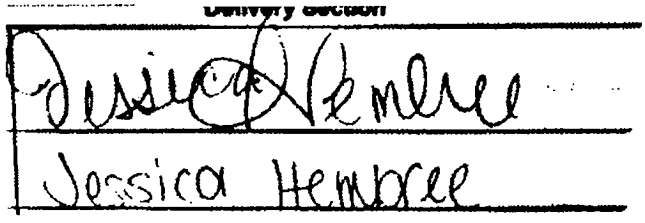
UNITED STATES POSTAL SERVICE

Date Produced: 02/08/2010

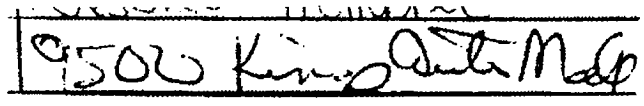
HAMILTON COUNTY CLERK OF COURTS

The following is the delivery information for Certified Mail™ item number 7194 5168 6310 0491 3116. Our records indicate that this item was delivered on 02/06/2010 at 12:59 p.m. in CINCINNATI, OH, 45249. The scanned image of the recipient information is provided below.

Signature of Recipient:



Address of Recipient:



Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local post office or Postal Service representitive.

Sincerely,

United States Postal Service

The customer reference number shown below is not validated or endorsed by the United States Postal Service. It is solely for customer use.

Customer Reference Number: 7765396SEQ1

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

JOEL GRUNKEMEYER
PLAINTIFF

-- vs --

Use below number on
all future pleadings

No. A 1001119
SUMMONS

TOYOTA MOTOR SALES USA INC
DEFENDANT

TOYOTA MOTOR SALES USA INC
19001 S WESTERN AVE
TORRANCE CA 90501

D-1

You are notified
that you have been named Defendant(s) in a complaint filed by

JOEL GRUNKEMEYER
1041 CENTRAL AVE
CINCINNATI OH 45202

Plaintiff(s)

in the Hamilton County, COMMON PLEAS CIVIL Division,
PATRICIA M. CLANCY, 1000 MAIN STREET ROOM 315,
CINCINNATI, OH 45202.
You are hereby summoned and required to serve upon the plaintiff's attorney, or upon the plaintiff, if he/she has no attorney of record, a copy of an answer to the complaint within twenty-eight (28) days after service of this summons on you, exclusive of the day of service. Your answer must be filed with the Court within three (3) days after the service of a copy of the answer on the plaintiff's attorney.

Further, pursuant to Local Rule 10 of Hamilton County, you are also required to file a Notification Form to receive notice of all future hearings.

If you fail to appear and defend, judgement by default will be rendered against you for the relief demanded in the attached complaint.

Name and Address of attorney
RICHARD STUART WAYNE
4TH FLOOR FEDERAL RESERVE BLDG
150 EAST FOURTH STREET
CINCINATI OH
45202-4108

PATRICIA M. CLANCY
Clerk, Court of Common Pleas
Hamilton County, Ohio

By RICK HOFMANN
Deputy

Date: February 5, 2010

D86929223

ELECTRONIC CERTIFIED MAIL SERVICE RETURN
SUMMONS & COMPLAINT
A 1001119 D1
TOYOTA MOTOR SALES USA INC
FILED: 02/16/2010 8:34:31

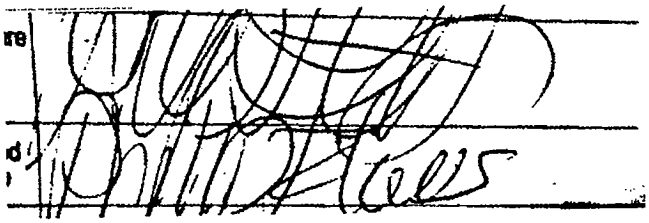
UNITED STATES POSTAL SERVICE.

Date Produced: 02/15/2010

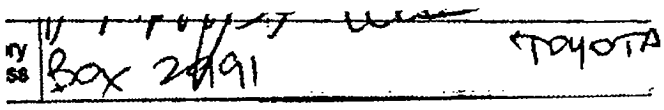
HAMILTON COUNTY CLERK OF COURTS

The following is the delivery information for Certified Mail™ item number 7194 5168 6310 0491 3024. Our records indicate that this item was delivered on 02/09/2010 at 06:42 a.m. in TORRANCE, CA, 90509. The scanned image of the recipient information is provided below.

Signature of Recipient:



Address of Recipient:



Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local post office or Postal Service representitive.

Sincerely,

United States Postal Service

The customer reference number shown below is not validated or endorsed by the United States Postal Service. It is solely for customer use.

Customer Reference Number: 7765366SEQ1

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

JOEL GRUNKEMEYER
PLAINTIFF

-- vs --

TOYOTA MOTOR SALES USA INC
DEFENDANT

Use below number on
all future pleadings

No. A 1001119
SUMMONS

TOYOTA MOTOR SALES USA INC
% CT CORP SYSTEM S/A
1300 E 9TH ST
CLEVELAND OH 44114

D-1

You are notified
that you have been named Defendant(s) in a complaint filed by

JOEL GRUNKEMEYER
1041 CENTRAL AVE
CINCINNATI OH 45202

Plaintiff(s)

in the Hamilton County, COMMON PLEAS CIVIL Division,
PATRICIA M. CLANCY, 1000 MAIN STREET ROOM 315,
CINCINNATI, OH 45202.
You are hereby summoned and required to serve upon the plaintiff's attorney, or upon the plaintiff, if he/she has no attorney of record, a copy of an answer to the complaint within twenty-eight (28) days after service of this summons on you, exclusive of the day of service. Your answer must be filed with the Court within three (3) days after the service of a copy of the answer on the plaintiff's attorney.

Further, pursuant to Local Rule 10 of Hamilton County, you are also required to file a Notification Form to receive notice of all future hearings.

If you fail to appear and defend, judgement by default will be rendered against you for the relief demanded in the attached complaint.

Name and Address of attorney
RICHARD STUART WAYNE
4TH FLOOR FEDERAL RESERVE BLDG
150 EAST FOURTH STREET
CINCINATI OH
45202-4108

PATRICIA M. CLANCY
Clerk, Court of Common Pleas
Hamilton County, Ohio

By RICK HOFMANN
Deputy

Date: February 5, 2010

D86929230

ELECTRONIC CERTIFIED MAIL SERVICE RETURN
SUMMONS & COMPLAINT
A 1001119 D1
TOYOTA MOTOR SALES USA INC
FILED: 02/16/2010 8:34:33

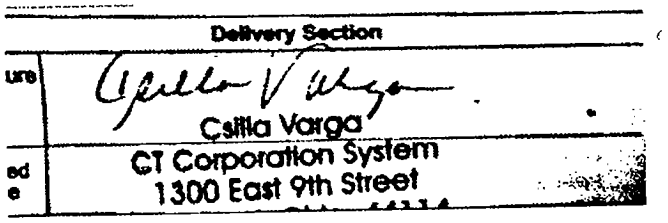
UNITED STATES POSTAL SERVICE.

Date Produced: 02/15/2010

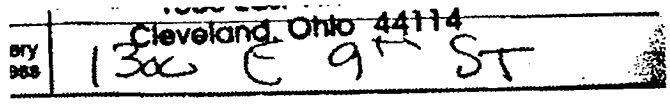
HAMILTON COUNTY CLERK OF COURTS

The following is the delivery information for Certified Mail™ item number 7194 5168 6310 0491 3031. Our records indicate that this item was delivered on 02/09/2010 at 02:26 p.m. in CLEVELAND, OH, 44114. The scanned image of the recipient information is provided below.

Signature of Recipient:



Address of Recipient:



Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local post office or Postal Service representitive.

Sincerely,

United States Postal Service

The customer reference number shown below is not validated or endorsed by the United States Postal Service. It is solely for customer use.

Customer Reference Number: 7765368SEQ1

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

JOEL GRUNKEMEYER
PLAINTIFF

-- vs --

Use below number on
all future pleadings

No. A 1001119
SUMMONS

TOYOTA MOTOR SALES USA INC
DEFENDANT

TOYOTA MOTOR CREDIT CORPORATION
19001 S WESTERN AVE
TORRANCE CA 90501

D-2

You are notified
that you have been named Defendant(s) in a complaint filed by

JOEL GRUNKEMEYER
1041 CENTRAL AVE
CINCINNATI OH 45202

Plaintiff(s)

in the Hamilton County, COMMON PLEAS CIVIL Division,
PATRICIA M. CLANCY, 1000 MAIN STREET ROOM 315,
CINCINNATI, OH 45202.
You are hereby summoned and required to serve upon the plaintiff's attorney, or upon the plaintiff, if he/she has no attorney of record, a copy of an answer to the complaint within twenty-eight (28) days after service of this summons on you, exclusive of the day of service. Your answer must be filed with the Court within three (3) days after the service of a copy of the answer on the plaintiff's attorney.

Further, pursuant to Local Rule 10 of Hamilton County, you are also required to file a Notification Form to receive notice of all future hearings.

If you fail to appear and defend, judgement by default will be rendered against you for the relief demanded in the attached complaint.

Name and Address of attorney
RICHARD STUART WAYNE
4TH FLOOR FEDERAL RESERVE BLDG
150 EAST FOURTH STREET
CINCINATI OH
45202-4108

PATRICIA M. CLANCY
Clerk, Court of Common Pleas
Hamilton County, Ohio

By RICK HOFMANN
Deputy

Date: February 5, 2010

D86929241

ELECTRONIC CERTIFIED MAIL SERVICE RETURN
SUMMONS & COMPLAINT
A 1001119 D2
TOYOTA MOTOR CREDIT CORPORATION
FILED: 02/16/2010 8:34:35

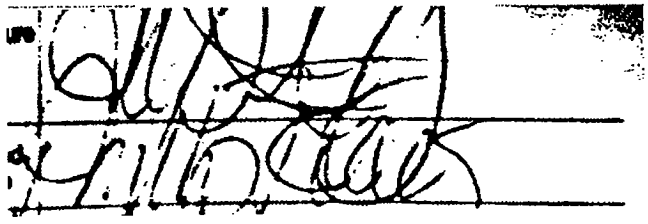
UNITED STATES POSTAL SERVICE

Date Produced: 02/15/2010

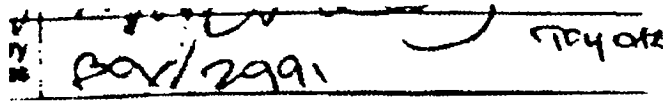
HAMILTON COUNTY CLERK OF COURTS

The following is the delivery information for Certified Mail™ item number 7194 5168 6310 0491 3048. Our records indicate that this item was delivered on 02/10/2010 at 06:49 a.m. in TORRANCE, CA, 90509. The scanned image of the recipient information is provided below.

Signature of Recipient:



Address of Recipient:



Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local post office or Postal Service representitive.

Sincerely,

United States Postal Service

The customer reference number shown below is not validated or endorsed by the United States Postal Service. It is solely for customer use.

Customer Reference Number: 7765370SEQ1

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

JOEL GRUNKEMEYER
PLAINTIFF

-- vs --

TOYOTA MOTOR SALES USA INC
DEFENDANT

Use below number on
all future pleadings

No. A 1001119
SUMMONS

TOYOTA MOTOR CREDIT CORPORATION
% CT CORP SYSTEM S/A D-2
1300 E 9TH ST
CLEVELAND OH 44114

You are notified
that you have been named Defendant(s) in a complaint filed by

JOEL GRUNKEMEYER
1041 CENTRAL AVE
CINCINNATI OH 45202

Plaintiff(s)

in the Hamilton County, COMMON PLEAS CIVIL Division,
PATRICIA M. CLANCY, 1000 MAIN STREET ROOM 315,
CINCINNATI, OH 45202.
You are hereby summoned and required to serve upon the plaintiff's attorney, or upon the plaintiff, if he/she has no attorney of record, a copy of an answer to the complaint within twenty-eight (28) days after service of this summons on you, exclusive of the day of service. Your answer must be filed with the Court within three (3) days after the service of a copy of the answer on the plaintiff's attorney.

Further, pursuant to Local Rule 10 of Hamilton County, you are also required to file a Notification Form to receive notice of all future hearings.

If you fail to appear and defend, judgement by default will be rendered against you for the relief demanded in the attached complaint.

Name and Address of attorney
RICHARD STUART WAYNE
4TH FLOOR FEDERAL RESERVE BLDG
150 EAST FOURTH STREET
CINCINATI OH
45202-4108

PATRICIA M. CLANCY
Clerk, Court of Common Pleas
Hamilton County, Ohio

By RICK HOFMANN
Deputy

Date: February 5, 2010

D86929251

ELECTRONIC CERTIFIED MAIL SERVICE RETURN
SUMMONS & COMPLAINT
A 1001119 D2
TOYOTA MOTOR CREDIT CORPORATION
FILED: 02/16/2010 8:34:37

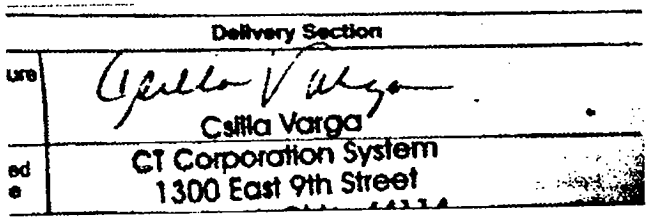
UNITED STATES POSTAL SERVICE.

Date Produced: 02/15/2010

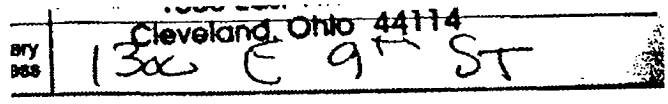
HAMILTON COUNTY CLERK OF COURTS

The following is the delivery information for Certified Mail™ item number 7194 5168 6310 0491 3055. Our records indicate that this item was delivered on 02/09/2010 at 02:26 p.m. in CLEVELAND, OH, 44114. The scanned image of the recipient information is provided below.

Signature of Recipient:



Address of Recipient:



Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local post office or Postal Service representitive.

Sincerely,

United States Postal Service

The customer reference number shown below is not validated or endorsed by the United States Postal Service. It is solely for customer use.

Customer Reference Number: 7765372SEQ1

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

JOEL GRUNKEMEYER
PLAINTIFF

-- vs --

Use below number on
all future pleadings

No. A 1001119
SUMMONS

TOYOTA MOTOR SALES USA INC
DEFENDANT

TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA INC
258 ATLANTIC AVE
ERLANGER KY 41018

D-3

You are notified
that you have been named Defendant(s) in a complaint filed by

JOEL GRUNKEMEYER
1041 CENTRAL AVE
CINCINNATI OH 45202

Plaintiff(s)

in the Hamilton County, COMMON PLEAS CIVIL Division,
PATRICIA M. CLANCY, 1000 MAIN STREET ROOM 315,
CINCINNATI, OH 45202.
You are hereby summoned and required to serve upon the plaintiff's attorney, or upon the plaintiff, if he/she has no attorney of record, a copy of an answer to the complaint within twenty-eight (28) days after service of this summons on you, exclusive of the day of service. Your answer must be filed with the Court within three (3) days after the service of a copy of the answer on the plaintiff's attorney.

Further, pursuant to Local Rule 10 of Hamilton County, you are also required to file a Notification Form to receive notice of all future hearings.

If you fail to appear and defend, judgement by default will be rendered against you for the relief demanded in the attached complaint.

Name and Address of attorney
RICHARD STUART WAYNE
4TH FLOOR FEDERAL RESERVE BLDG
150 EAST FOURTH STREET
CINCINATI OH
45202-4108

PATRICIA M. CLANCY
Clerk, Court of Common Pleas
Hamilton County, Ohio

By RICK HOFMANN
Deputy

Date: February 5, 2010

D86929261

ELECTRONIC CERTIFIED MAIL SERVICE RETURN
SUMMONS & COMPLAINT
A 1001119 D3
TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMI
FILED: 02/16/2010 8:34:39

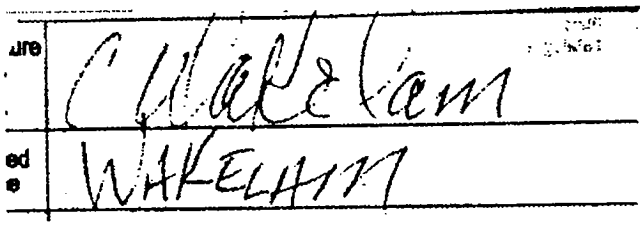
UNITED STATES POSTAL SERVICE.

Date Produced: 02/15/2010

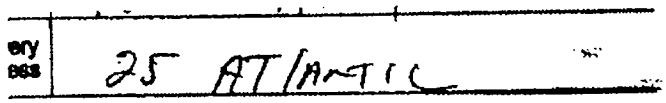
HAMILTON COUNTY CLERK OF COURTS

The following is the delivery information for Certified Mail™ item number 7194 5168 6310 0491 3062. Our records indicate that this item was delivered on 02/11/2010 at 11:01 a.m. in ERLANGER, KY, 41018. The scanned image of the recipient information is provided below.

Signature of Recipient:



Address of Recipient:



Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local post office or Postal Service representitive.

Sincerely,

United States Postal Service

The customer reference number shown below is not validated or endorsed by the United States Postal Service. It is solely for customer use.

Customer Reference Number: 7765375SEQ1

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

JOEL GRUNKEMEYER
PLAINTIFF

-- vs --

TOYOTA MOTOR SALES USA INC
DEFENDANT

Use below number on
all future pleadings

No. A 1001119
SUMMONS

TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA INC
% CT CORP SYSTEM S/A D-3
4169 WESTPORT RD
LOUISVILLE KY 40207

You are notified
that you have been named Defendant(s) in a complaint filed by

JOEL GRUNKEMEYER
1041 CENTRAL AVE
CINCINNATI OH 45202

Plaintiff(s)

in the Hamilton County, COMMON PLEAS CIVIL Division,
PATRICIA M. CLANCY, 1000 MAIN STREET ROOM 315,
CINCINNATI, OH 45202.
You are hereby summoned and required to serve upon the plaintiff's attorney, or upon the plaintiff, if he/she has no attorney of record, a copy of an answer to the complaint within twenty-eight (28) days after service of this summons on you, exclusive of the day of service. Your answer must be filed with the Court within three (3) days after the service of a copy of the answer on the plaintiff's attorney.

Further, pursuant to Local Rule 10 of Hamilton County, you are also required to file a Notification Form to receive notice of all future hearings.

If you fail to appear and defend, judgement by default will be rendered against you for the relief demanded in the attached complaint.

Name and Address of attorney
RICHARD STUART WAYNE
4TH FLOOR FEDERAL RESERVE BLDG
150 EAST FOURTH STREET
CINCINNATI OH
45202-4108

PATRICIA M. CLANCY
Clerk, Court of Common Pleas
Hamilton County, Ohio

By RICK HOFMANN
Deputy

Date: February 5, 2010

D86929273

ELECTRONIC CERTIFIED MAIL SERVICE RETURN
SUMMONS & COMPLAINT
A 1001119 D3
TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMI
FILED: 02/16/2010 8:34:41

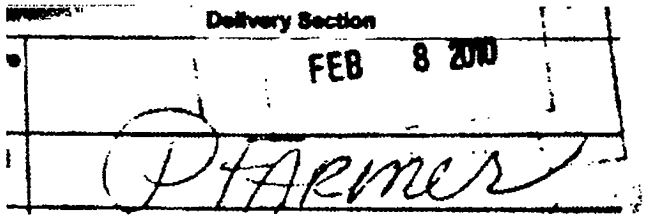
UNITED STATES POSTAL SERVICE.

Date Produced: 02/15/2010

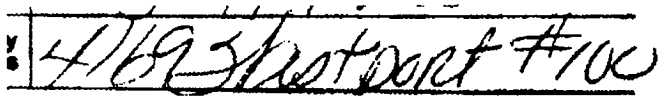
HAMILTON COUNTY CLERK OF COURTS

The following is the delivery information for Certified Mail™ item number 7194 5168 6310 0491 3079. Our records indicate that this item was delivered on 02/08/2010 at 10:12 a.m. in LOUISVILLE, KY, 40207. The scanned image of the recipient information is provided below.

Signature of Recipient:



Address of Recipient:



Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local post office or Postal Service representitive.

Sincerely,

United States Postal Service

The customer reference number shown below is not validated or endorsed by the United States Postal Service. It is solely for customer use.

Customer Reference Number: 7765380SEQ1

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

JOEL GRUNKEMEYER
PLAINTIFF

-- vs --

Use below number on
all future pleadings

No. A 1001119
SUMMONS

TOYOTA MOTOR SALES USA INC
DEFENDANT

JOSEPH TOYOTA OF CINCINNATI
9101 COLERAIN AVE
CINCINNATI OH 45251

D-4

You are notified
that you have been named Defendant(s) in a complaint filed by

JOEL GRUNKEMEYER
1041 CENTRAL AVE
CINCINNATI OH 45202

Plaintiff(s)

in the Hamilton County, COMMON PLEAS CIVIL Division,
PATRICIA M. CLANCY, 1000 MAIN STREET ROOM 315,
CINCINNATI, OH 45202.
You are hereby summoned and required to serve upon the plaintiff's attorney, or upon the plaintiff, if he/she has no attorney of record, a copy of an answer to the complaint within twenty-eight (28) days after service of this summons on you, exclusive of the day of service. Your answer must be filed with the Court within three (3) days after the service of a copy of the answer on the plaintiff's attorney.

Further, pursuant to Local Rule 10 of Hamilton County, you are also required to file a Notification Form to receive notice of all future hearings.

If you fail to appear and defend, judgement by default will be rendered against you for the relief demanded in the attached complaint.

Name and Address of attorney
RICHARD STUART WAYNE
4TH FLOOR FEDERAL RESERVE BLDG
150 EAST FOURTH STREET
CINCINNATI OH
45202-4108

PATRICIA M. CLANCY
Clerk, Court of Common Pleas
Hamilton County, Ohio

By RICK HOFMANN
Deputy

Date: February 5, 2010

D86929282

ELECTRONIC CERTIFIED MAIL SERVICE RETURN
SUMMONS & COMPLAINT
A 1001119 D4
JOSEPH TOYOTA OF CINCINNATI
FILED: 02/16/2010 8:34:42

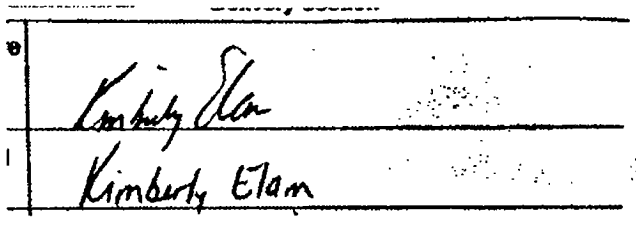
UNITED STATES POSTAL SERVICE

Date Produced: 02/15/2010

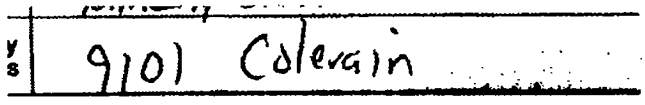
HAMILTON COUNTY CLERK OF COURTS

The following is the delivery information for Certified Mail™ item number 7194 5168 6310 0491 3086. Our records indicate that this item was delivered on 02/08/2010 at 01:13 p.m. in CINCINNATI, OH, 45251. The scanned image of the recipient information is provided below.

Signature of Recipient:



Address of Recipient:



Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local post office or Postal Service representitive.

Sincerely,

United States Postal Service

The customer reference number shown below is not validated or endorsed by the United States Postal Service. It is solely for customer use.

Customer Reference Number: 7765382SEQ1

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

JOEL GRUNKEMEYER
PLAINTIFF

Use below number on
all future pleadings

-- vs --

No. A 1001119
SUMMONS

TOYOTA MOTOR SALES USA INC
DEFENDANT

JOSEPH TOYOTA OF CINCINNATI
% JOSEPH T OF C CO S/A D-4
250 E 5TH ST STE 285
CINCINNATI OH 45202

You are notified
that you have been named Defendant(s) in a complaint filed by

JOEL GRUNKEMEYER
1041 CENTRAL AVE
CINCINNATI OH 45202

Plaintiff(s)

in the Hamilton County, COMMON PLEAS CIVIL Division,
PATRICIA M. CLANCY, 1000 MAIN STREET ROOM 315,
CINCINNATI, OH 45202.
You are hereby summoned and required to serve upon the plaintiff's attorney, or upon the plaintiff, if he/she has no attorney of record, a copy of an answer to the complaint within twenty-eight (28) days after service of this summons on you, exclusive of the day of service. Your answer must be filed with the Court within three (3) days after the service of a copy of the answer on the plaintiff's attorney.

Further, pursuant to Local Rule 10 of Hamilton County, you are also required to file a Notification Form to receive notice of all future hearings.

If you fail to appear and defend, judgement by default will be rendered against you for the relief demanded in the attached complaint.

Name and Address of attorney
RICHARD STUART WAYNE
4TH FLOOR FEDERAL RESERVE BLDG
150 EAST FOURTH STREET
CINCINATI OH
45202-4108

PATRICIA M. CLANCY
Clerk, Court of Common Pleas
Hamilton County, Ohio

By RICK HOFMANN
Deputy

Date: February 5, 2010

D86929292

ELECTRONIC CERTIFIED MAIL SERVICE RETURN
SUMMONS & COMPLAINT
A 1001119 D4
JOSEPH TOYOTA OF CINCINNATI
FILED: 02/16/2010 8:34:44

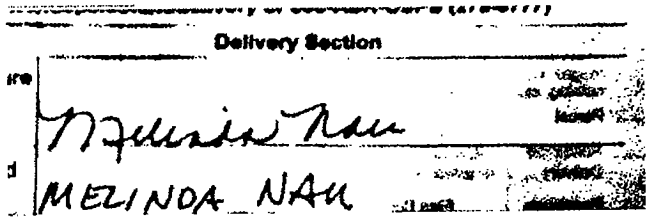
UNITED STATES POSTAL SERVICE.

Date Produced: 02/15/2010

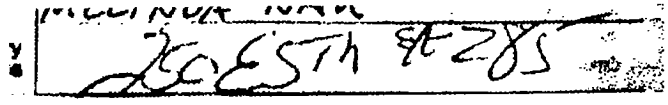
HAMILTON COUNTY CLERK OF COURTS

The following is the delivery information for Certified Mail™ item number 7194 5168 6310 0491 3093. Our records indicate that this item was delivered on 02/08/2010 at 12:32 p.m. in CINCINNATI, OH, 45202. The scanned image of the recipient information is provided below.

Signature of Recipient:



Address of Recipient:



Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local post office or Postal Service representitive.

Sincerely,

United States Postal Service

The customer reference number shown below is not validated or endorsed by the United States Postal Service. It is solely for customer use.

Customer Reference Number: 7765387SEQ1

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

JOEL GRUNKEMEYER
PLAINTIFF

-- vs --

TOYOTA MOTOR SALES USA INC
DEFENDANT

Use below number on
all future pleadings

No. A 1001119
SUMMONS

KINGS TOYOTA INC
9500 KINGS AUTOMALL DR
CINCINNATI OH 45249

D-5

You are notified
that you have been named Defendant(s) in a complaint filed by

JOEL GRUNKEMEYER
1041 CENTRAL AVE
CINCINNATI OH 45202

Plaintiff(s)

in the Hamilton County, COMMON PLEAS CIVIL Division,
PATRICIA M. CLANCY, 1000 MAIN STREET ROOM 315,
CINCINNATI, OH 45202.
You are hereby summoned and required to serve upon the plaintiff's attorney, or upon the plaintiff, if he/she has no attorney of record, a copy of an answer to the complaint within twenty-eight (28) days after service of this summons on you, exclusive of the day of service. Your answer must be filed with the Court within three (3) days after the service of a copy of the answer on the plaintiff's attorney.

Further, pursuant to Local Rule 10 of Hamilton County, you are also required to file a Notification Form to receive notice of all future hearings.

If you fail to appear and defend, judgement by default will be rendered against you for the relief demanded in the attached complaint.

Name and Address of attorney
RICHARD STUART WAYNE
4TH FLOOR FEDERAL RESERVE BLDG
150 EAST FOURTH STREET
CINCINATI OH
45202-4108

PATRICIA M. CLANCY
Clerk, Court of Common Pleas
Hamilton County, Ohio

By RICK HOFMANN
Deputy

Date: February 5, 2010

D86929305

ELECTRONIC CERTIFIED MAIL SERVICE RETURN
SUMMONS & COMPLAINT
A 1001119 D5
KINGS TOYOTA INC
FILED: 02/08/2010 14:02:48

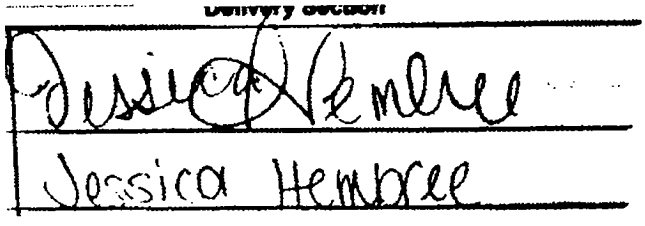
UNITED STATES POSTAL SERVICE

Date Produced: 02/08/2010

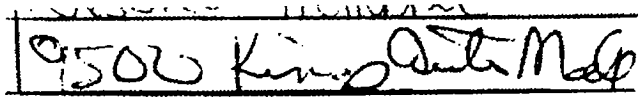
HAMILTON COUNTY CLERK OF COURTS

The following is the delivery information for Certified Mail™ item number 7194 5168 6310 0491 3109. Our records indicate that this item was delivered on 02/06/2010 at 12:59 p.m. in CINCINNATI, OH, 45249. The scanned image of the recipient information is provided below.

Signature of Recipient:



Address of Recipient:



Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local post office or Postal Service representitive.

Sincerely,

United States Postal Service

The customer reference number shown below is not validated or endorsed by the United States Postal Service. It is solely for customer use.

Customer Reference Number: 7765392SEQ1

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

JOEL GRUNKEMEYER
PLAINTIFF

-- vs --

TOYOTA MOTOR SALES USA INC
DEFENDANT

Use below number on
all future pleadings

No. A 1001119
SUMMONS

KINGS TOYOTA INC
% ROBERT C REICHERT S/A
9500 KINGS AUTOMALL DR
CINCINNATI OH 45249

D-5

You are notified
that you have been named Defendant(s) in a complaint filed by

JOEL GRUNKEMEYER
1041 CENTRAL AVE
CINCINNATI OH 45202

Plaintiff(s)

in the Hamilton County, COMMON PLEAS CIVIL Division,
PATRICIA M. CLANCY, 1000 MAIN STREET ROOM 315,
CINCINNATI, OH 45202.
You are hereby summoned and required to serve upon the plaintiff's attorney, or upon the plaintiff, if he/she has no attorney of record, a copy of an answer to the complaint within twenty-eight (28) days after service of this summons on you, exclusive of the day of service. Your answer must be filed with the Court within three (3) days after the service of a copy of the answer on the plaintiff's attorney.

Further, pursuant to Local Rule 10 of Hamilton County, you are also required to file a Notification Form to receive notice of all future hearings.

If you fail to appear and defend, judgement by default will be rendered against you for the relief demanded in the attached complaint.

Name and Address of attorney
RICHARD STUART WAYNE
4TH FLOOR FEDERAL RESERVE BLDG
150 EAST FOURTH STREET
CINCINATI OH
45202-4108

PATRICIA M. CLANCY
Clerk, Court of Common Pleas
Hamilton County, Ohio

By RICK HOFMANN
Deputy

Date: February 5, 2010

D86929313

ELECTRONIC CERTIFIED MAIL SERVICE RETURN
SUMMONS & COMPLAINT
A 1001119 D5
KINGS TOYOTA INC
FILED: 02/08/2010 14:02:48

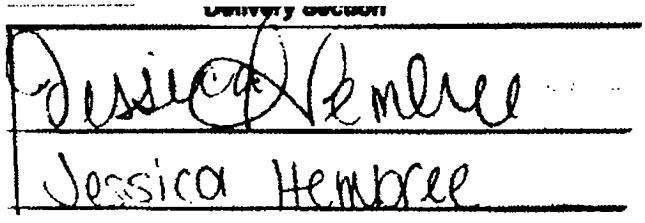
UNITED STATES POSTAL SERVICE.

Date Produced: 02/08/2010

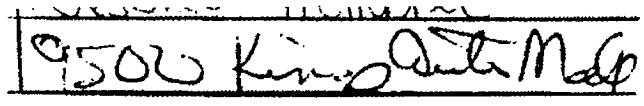
HAMILTON COUNTY CLERK OF COURTS

The following is the delivery information for Certified Mail™ item number 7194 5168 6310 0491 3116. Our records indicate that this item was delivered on 02/06/2010 at 12:59 p.m. in CINCINNATI, OH, 45249. The scanned image of the recipient information is provided below.

Signature of Recipient:



Address of Recipient:



Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local post office or Postal Service representitive.

Sincerely,

United States Postal Service

The customer reference number shown below is not validated or endorsed by the United States Postal Service. It is solely for customer use.

Customer Reference Number: 7765396SEQ1

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

JOEL GRUNKEMEYER
PLAINTIFF

-- vs --

TOYOTA MOTOR SALES USA INC
DEFENDANT

Use below number on
all future pleadings

No. A 1001119
SUMMONS

TOYOTA MOTOR SALES USA INC
19001 S WESTERN AVE
TORRANCE CA 90501

D-1

You are notified
that you have been named Defendant(s) in a complaint filed by

JOEL GRUNKEMEYER
1041 CENTRAL AVE
CINCINNATI OH 45202

Plaintiff(s)

in the Hamilton County, COMMON PLEAS CIVIL Division,
PATRICIA M. CLANCY, 1000 MAIN STREET ROOM 315,
CINCINNATI, OH 45202.
You are hereby summoned and required to serve upon the plaintiff's attorney, or upon the plaintiff, if he/she has no attorney of record, a copy of an answer to the complaint within twenty-eight (28) days after service of this summons on you, exclusive of the day of service. Your answer must be filed with the Court within three (3) days after the service of a copy of the answer on the plaintiff's attorney.

Further, pursuant to Local Rule 10 of Hamilton County, you are also required to file a Notification Form to receive notice of all future hearings.

If you fail to appear and defend, judgement by default will be rendered against you for the relief demanded in the attached complaint.

Name and Address of attorney
RICHARD STUART WAYNE
4TH FLOOR FEDERAL RESERVE BLDG
150 EAST FOURTH STREET
CINCINATI OH
45202-4108

PATRICIA M. CLANCY
Clerk, Court of Common Pleas
Hamilton County, Ohio

By RICK HOFMANN
Deputy

Date: February 5, 2010

D86929223

ELECTRONIC CERTIFIED MAIL SERVICE RETURN
SUMMONS & COMPLAINT
A 1001119 D1
TOYOTA MOTOR SALES USA INC
FILED: 02/16/2010 8:34:31

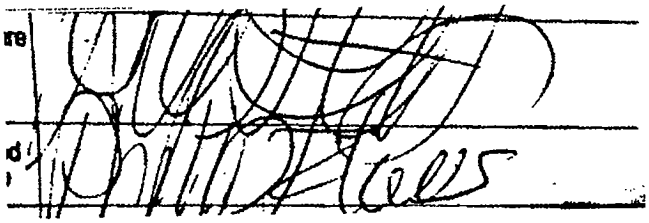
UNITED STATES POSTAL SERVICE.

Date Produced: 02/15/2010

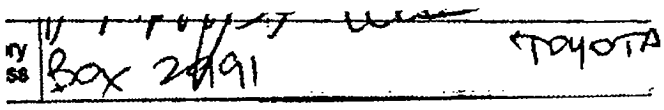
HAMILTON COUNTY CLERK OF COURTS

The following is the delivery information for Certified Mail™ item number 7194 5168 6310 0491 3024. Our records indicate that this item was delivered on 02/09/2010 at 06:42 a.m. in TORRANCE, CA, 90509. The scanned image of the recipient information is provided below.

Signature of Recipient:



Address of Recipient:



Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local post office or Postal Service representitive.

Sincerely,

United States Postal Service

The customer reference number shown below is not validated or endorsed by the United States Postal Service. It is solely for customer use.

Customer Reference Number: 7765366SEQ1

Notices

1:10-cv-00128-MRB Grunkemeyer et al v. Toyota Motor Sales USA, Inc. et al
JURY

U.S. District Court

Southern District of Ohio

Notice of Electronic Filing

The following transaction was entered by Harrison, Gregory on 2/25/2010 at 0:33 AM EST and filed on 2/25/2010

Case Name: Grunkemeyer et al v. Toyota Motor Sales USA, Inc. et al
Case Number: 1:10-cv-00128-MRB
Filer: Joseph T of C,. Co. d/b/a Joseph Toyota of Cincinnati
Document Number: 3

Docket Text:
NOTICE by Defendant Joseph T of C,. Co. d/b/a Joseph Toyota of Cincinnati re [1] Notice of Removal (Attorney), Notice of Removal (Attorney) *Consent to Removal* (Harrison, Gregory)

1:10-cv-00128-MRB Notice has been electronically mailed to:

Gregory Alan Harrison greg.harrison@dinslaw.com

1:10-cv-00128-MRB Notice has been delivered by other means to:

Joel Grunkemeyer

John Sukola

Sharon Wilson

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

Document description: Main Document
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1040326259 [Date=2/25/2010] [FileNumber=2608470-0
] [0d659871d5182367819e9b6e20f552c2e77a09351aee0f7e23001a9c59bf5b6f5c7
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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION (CINCINNATI)

JOEL GRUNKEMEYER, SHARON WILSON, and JOHN SUKOLA, **Plaintiffs,** v. TOYOTA MOTOR SALES USA, INC., TOYOTA MOTOR CREDIT CORPORATION, TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC., JOSEPH TOYOTA OF CINCINNATI, and KINGS TOYOTA, **Defendants.**	Civil Action No. 10-128 JUDGE MICHAEL R. BARRETT **DEFENDANT JOSEPH T OF C, CO. d/b/a JOSEPH TOYOTA OF CINCINNATI'S CONSENT TO REMOVAL TO THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO, WESTERN DIVISION**

Defendant, Joseph T of C, Co. d/b/a Joseph Toyota of Cincinnati ("Joseph Toyota"), by counsel, hereby consents to the removal of *Joel Grunkemeyer, et al. v. Toyota Motor Sales, U.S.A., Inc.*, Case No. A1001119, from the Hamilton County Court of Common Pleas, to the United States District Court for the Southern District of Ohio, Western Division (Cincinnati). This Consent to Removal is timely filed pursuant to 28 U.S.C. §§ 1441 and 1446. In consenting to removal, Joseph Toyota does not waive, and fully reserves, any rights or defenses to which it is otherwise entitled, including, but not limited to, those defenses set forth in Fed. R. Civ. P. 12(b). The Court has jurisdiction over this action pursuant to 28 U.S.C. §§§ 1332, 1441, and 1453.

Respectfully submitted,

/s/ ***Gregory A. Harrison***

Gregory A. Harrison, Esq.
Trial Attorney for Defendants
DINSMORE & SHOHL, LLP
1900 Chemed Center
255 E. Fifth Street
Cincinnati, Ohio 45202
Phone: (513) 977-8200
Fax: (513) 977-8141
greg.harrison@dinslaw.com

Attorney for Defendants Toyota Motor Sales, U.S.A., Inc., Toyota Motor Credit Corporation, Toyota Motor Engineering & Manufacturing North America, Inc., Joseph T of C, Co. d/b/a Joseph Toyota of Cincinnati, and Kings Toyota, Inc.

Of counsel:

Jeffrey P. Hinebaugh, Esq.
M. Gabrielle Hils, Esq.
Andrew R. Kwiatkowski, Esq.
Sarah V. Lewis, Esq.
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gabrielle.hils@dinslaw.com
andrew.kwiatkowski@dinslaw.com
sarah.lewis@dinslaw.com

Lisa Gilford, Esq.
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lisa.gilford@alston.com

TOY-RQ-05E-00008915

Cari Dawson, Esq.
Kyle G.A. Wallace, Esq.
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One Atlantic Center
1201 W. Peachtree Street
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C. Glen Morris, Esq.
ALSTON & BIRD LLP
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2200 Ross Avenue
Dallas, Texas 75201
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Fax: (214) 922-3855
glenn.morris@alston.com

CERTIFICATE OF SERVICE

I hereby certify that one copy of the foregoing Consent to Removal was served via e-mail on the 25th day of February, 2010, upon the following counsel at the e-mail addresses listed below:

Richard S. Wayne [rswayne@strausstroy.com]
Thomas P. Glass [tpglass@strausstroy.com]
Joseph J. Braun [jjbraun@strausstroy.com]
STRAUSS & TROY
The Federal Reserve Building
150 East Fourth Street
Cincinnati, OH 45202

Counsel for Plaintiffs

John H. Stachler [johns@mfhslaw.com]
MARTIN, FOLINO, HARMON & STACHLER, LPA
P.O. Box 10068
214 West Monument Avenue
Dayton OH 45402-4139

Counsel for Plaintiffs

and that a copy also will be mailed via ordinary mail postage prepaid on the 25th day of February, 2010 upon the same counsel.

/s/Gregory A. Harrison

TOY-RQ-05E-00008916

Notices

1:10-cv-00128-MRB Grunkemeyer et al v. Toyota Motor Sales USA, Inc. et al
JURY

U.S. District Court

Southern District of Ohio

Notice of Electronic Filing

The following transaction was entered by Harrison, Gregory on 2/25/2010 at 0:35 AM EST and filed on 2/25/2010
Case Name: Grunkemeyer et al v. Toyota Motor Sales USA, Inc. et al
Case Number: 1:10-cv-00128-MRB
Filer: Kings Toyota, Inc.
Document Number: 4

Docket Text:
NOTICE by Defendant Kings Toyota, Inc. re [1] Notice of Removal (Attorney), Notice of Removal (Attorney) *Consent to Removal* (Harrison, Gregory)

1:10-cv-00128-MRB Notice has been electronically mailed to:

Gregory Alan Harrison greg.harrison@dinslaw.com

1:10-cv-00128-MRB Notice has been delivered by other means to:

Joel Grunkemeyer

John Sukola

Sharon Wilson

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

Document description: Main Document
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1040326259 [Date=2/25/2010] [FileNumber=2608473-0
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TOY-RQ-05E-00008917

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION (CINCINNATI)

JOEL GRUNKEMEYER, SHARON WILSON, and JOHN SUKOLA, **Plaintiffs,** v. TOYOTA MOTOR SALES USA, INC., TOYOTA MOTOR CREDIT CORPORATION, TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC., JOSEPH TOYOTA OF CINCINNATI, and KINGS TOYOTA, INC., **Defendants.**	Civil Action No. 10-128 JUDGE MICHAEL R. BARRETT **DEFENDANT KINGS TOYOTA, INC.'S CONSENT TO REMOVAL TO THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO, WESTERN DIVISION**

Defendant, Kings Toyota, Inc., ("Kings Toyota") by counsel, hereby consents to the removal of *Joel Grunkemeyer, et al. v. Toyota Motor Sales, U.S.A., Inc.*, Case No. A1001119, from the Hamilton County Court of Common Pleas, to the United States District Court for the Southern District of Ohio, Western Division (Cincinnati). This Consent to Removal is timely filed pursuant to 28 U.S.C. §§ 1441 and 1446. In consenting to removal, Kings Toyota does not waive, and fully reserves, any rights or defenses to which it is otherwise entitled, including, but not limited to, those defenses set forth in Fed. R. Civ. P. 12(b). The Court has jurisdiction over this action pursuant to 28 U.S.C. §§§1332, 1441, and 1453.

Respectfully submitted,

/s/ ***Gregory A. Harrison***
Gregory A. Harrison, Esq.
Trial Attorney for Defendants
DINSMORE & SHOHL, LLP
1900 Chemed Center
255 E. Fifth Street
Cincinnati, Ohio 45202
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Fax: (513) 977-8141
greg.harrison@dinslaw.com

Attorney for Defendants Toyota Motor Sales, U.S.A., Inc., Toyota Motor Credit Corporation, Toyota Motor Engineering & Manufacturing North America, Inc., Joseph T of C, Co. d/b/a Joseph Toyota of Cincinnati, and Kings Toyota, Inc.

Of counsel:

Jeffrey P. Hinebaugh, Esq.
M. Gabrielle Hils, Esq.
Andrew R. Kwiatkowski, Esq.
Sarah V. Lewis, Esq.
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1900 Chemed Center
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andrew.kwiatkowski@dinslaw.com
sarah.lewis@dinslaw.com

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lisa.gilford@alston.com

TOY-RQ-05E-00008919

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kyle.wallace@alston.com
cari.dawson@alston.com

C. Glen Morris, Esq.
ALSTON & BIRD LLP
Chase Tower, Suite 3601
2200 Ross Avenue
Dallas, Texas 75201
Phone: (214) 922-3415
Fax: (214) 922-3855
glenn.morris@alston.com

CERTIFICATE OF SERVICE

I hereby certify that one copy of the foregoing Consent to Removal was served via e-mail on the 25th day of February, 2010, upon the following counsel at the e-mail addresses listed below:

Richard S. Wayne [rswayne@strausstroy.com]
Thomas P. Glass [tpglass@strausstroy.com]
Joseph J. Braun [jjbraun@strausstroy.com]
STRAUSS & TROY
The Federal Reserve Building
150 East Fourth Street
Cincinnati, OH 45202

Counsel for Plaintiffs

John H. Stachler [johns@mfhslaw.com]
MARTIN, FOLINO, HARMON & STACHLER, LPA
P.O. Box 10068
214 West Monument Avenue
Dayton OH 45402-4139

Counsel for Plaintiffs

and that a copy also will be mailed via ordinary mail postage prepaid on the 25th day of February, 2010 upon the same counsel.

/s/Gregory A. Harrison

1743634_1
30213-288

TOY-RQ-05E-00008920

Other Answers

1:10-cv-00128-MRB Grunkemeyer et al v. Toyota Motor Sales USA, Inc. et al
JURY

U.S. District Court

Southern District of Ohio

Notice of Electronic Filing

The following transaction was entered by Harrison, Gregory on 2/25/2010 at 0:26 AM EST and filed on 2/25/2010

Case Name: Grunkemeyer et al v. Toyota Motor Sales USA, Inc. et al
Case Number: 1:10-cv-00128-MRB
Filer: Toyota Motor Credit Corporation
Toyota Motor Engineering & Manufacturing North America, Inc.
Toyota Motor Sales USA, Inc.
Document Number: 2

Docket Text:
AFFIDAVIT in Support re [1] Notice of Removal (Attorney), Notice of Removal (Attorney) *(Declaration of George Morino)* by Defendants Toyota Motor Credit Corporation, Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Sales USA, Inc.. (Harrison, Gregory)

1:10-cv-00128-MRB Notice has been electronically mailed to:

Gregory Alan Harrison greg.harrison@dinslaw.com

1:10-cv-00128-MRB Notice has been delivered by other means to:

Joel Grunkemeyer

John Sukola

Sharon Wilson

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

Document description: Main Document
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1040326259 [Date=2/25/2010] [FileNumber=2608467-0
] [96b334026a15219bc1dd5bb12f9dfcf3702d72d0ccc6805aa496f0f5555e012a3b4
91723508b131ce7168a54c7afd09f78d83124f5a155a232ca657729148cb4]]

TOY-RQ-05E-00008921

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION (CINCINNATI)

JOEL GRUNKEMEYER, et al.,	:	CIVIL ACTION NO. 10-128
Plaintiffs,	:	JUDGE _____
v.	:	
TOYOTA MOTOR SALES USA, INC., et al.,	:	DECLARATION OF GEORGE T. MORINO IN SUPPORT OF NOTICE OF REMOVAL
Defendants.	:	

DECLARATION OF GEORGE T. MORINO

George T. Morino, an employee of Toyota Motor Sales, U.S.A., Inc. states:

1. I am over eighteen years of age. I have personal knowledge of the following facts, and I am competent to make this Declaration.

2. I am the National Quality Compliance Manager of Toyota Motor Sales, U.S.A., Inc. (the "Company"). I have been employed by the Company since 1990.

3. In my role as National Quality Compliance Manager, I have personal knowledge of and/or access to the information the Company supplies to the National Highway Safety Transportation Administration ("NHTSA") with respect to product recalls involving Toyota automobiles, as well as the information provided to Toyota customers and authorized Toyota dealerships regarding product recalls.

4. On January 21, 2010, in cooperation with the NHTSA, the Company announced the voluntary recall of the following vehicles: certain 2009-2010 RAV 4, certain 2009-2010 Corolla, 2009-2010 Matrix, 2005-2010 Avalon, certain 2007-2010 Camry, certain 2010 Highlander, 2007-

2010 Tundra, and 2008-2010 Sequoia ("January Recall").

5. To the best of my understanding, the January Recall was announced in order to address isolated reports of sticking accelerator pedal mechanisms in certain vehicles.

6. In connection with the January Recall, the Company compiled information in order to notify owners of recalled automobiles that their vehicles were the subject of the January Recall.

7. The total number of vehicles in the United States subject to the January Recall is approximately 2,300,000. The January Recall letters are being sent to owners in stages based upon model type. The mailing of the first January Recall letters commenced on February 5, 2010, and it is anticipated that the last letters will be sent no later than March 11, 2010.

8. With respect to the State of Ohio, the total number of January Recall notices that will be sent to Ohio residents is approximately 52,159.

9. The first January recall notices were sent to Ohio residents on February 5, 2010. As of February 22, 2010, approximately 5,000 January Recall notices had been sent Ohio residents.

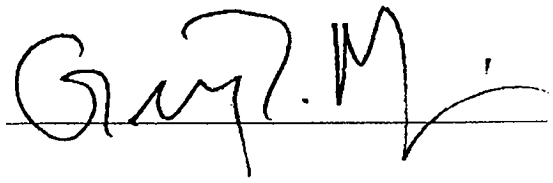
10. In conjunction with the January Recall, the Company has developed a program to repair and remedy the potential sticking accelerator pedal mechanisms issue.

11. The Company has agreed to reimburse authorized dealerships seven tenths of one hour of labor for the repair. The average hourly rate for this repair in Ohio is $80.05 per hour.

12. In the past, under certain circumstances, the Company has reimbursed its independent dealerships $35.00 a day for the use of a loaner vehicle by a customer during a repair.

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 on this 24th day of February, 2010.



COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

JOEL GRUNKEMEYER
1041 Central Avenue
Cincinnati, OH 45202

and

SHARON WILSON
9105 Tag Drive
Cincinnati, OH 45231

and

JOHN SUKOLA
4939 Hathaway Road
Cincinnati, OH 45036

Plaintiffs,

v.

TOYOTA MOTOR SALES USA, INC.
19001 South Western Ave.
Torrance, CA 90501

and

TOYOTA MOTOR CREDIT CORPORATION
19001 South Western Ave.
Torrance, CA 90501

and

TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC.
25 Atlantic Ave.
Erlanger, KY 41018

and

JOSEPH TOYOTA OF CINCINNATI
9101 Colerain Ave.
Cincinnati, OH 45251

and

KINGS TOYOTA
9500 Kings Automall Dr.
Cincinnati, OH 45249

Defendants.

Civil Action No. A1001119

JUDGE ROBERT P. RUEHLMAN

NOTICE OF NOTICE OF REMOVAL BY DEFENDANTS TOYOTA MOTOR SALES, U.S.A., INC., TOYOTA MOTOR CREDIT CORPORATION AND TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC.

Pursuant to 28 U.S.C. §§1332, 1441, 1446 and 1453, Defendants Toyota Motor Sales, U.S.A., Inc., Toyota Motor Credit Corporation and Toyota Motor Engineering & Manufacturing North America, Inc. ("Toyota Defendants") hereby give notice that they have filed a Notice of Removal with the Clerk of the United States District Court for the Southern District of Ohio, Western Division (Cincinnati). A true and correct copy of the Notice of Removal is attached hereto as Exhibit A. This Notice is being filed with the Clerk of Courts for Hamilton County, Ohio.

Respectfully submitted,

/s/Gregory A. Harrison
Gregory A. Harrison (0029814)
Trial Attorney for Defendants
DINSMORE & SHOHL, LLP
1900 Chemed Center
255 E. Fifth Street
Cincinnati, Ohio 45202
Phone: (513) 977-8200
Fax: (513) 977-8141
greg.harrison@dinslaw.com

Attorneys for Defendants Toyota Motor Sales, U.S.A., Inc., Toyota Motor Credit Corporation and Toyota Motor Engineering & Manufacturing North America, Inc.

TOY-RQ-05E-00008925

Of counsel:

Jeffrey P. Hinebaugh (0059888)
M. Gabrielle Hils (0012693)
Andrew R. Kwiatkowski (0075413)
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kyle.wallace@alston.com
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C. Glen Morris
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Dallas, Texas 75201
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Fax: 214-922-3855
glenn.morris@alston.com

TOY-RQ-05E-00008926

CERTIFICATE OF SERVICE

I hereby certify that one copy of the foregoing Notice of Notice of Removal was served via e-mail on the 25th day of February, 2010, upon the following counsel at the e-mail addresses listed below:

Richard S. Wayne [rswayne@strausstroy.com]
Thomas P. Glass [tpglass@strausstroy.com]
Joseph J. Braun [jjbraun@strausstroy.com]
STRAUSS & TROY
The Federal Reserve Building
150 East Fourth Street
Cincinnati, OH 45202

Counsel for Plaintiffs

John H. Stachler [johns@mfhslaw.com]
MARTIN, FOLINO, HARMON & STACHLER, LPA
P.O. Box 10068
214 West Monument Avenue
Dayton OH 45402-4139

Counsel for Plaintiffs

and that a copy also will be mailed via ordinary mail postage prepaid on the 25th day of February, 2010 upon the same counsel.

/s/Gregory A. Harrison

1739316_1
30213-288

TOY-RQ-05E-00008927

Complaints and Other Initiating Documents

1:10-cv-00128 Grunkemeyer et al v. Toyota Motor Sales USA, Inc. et al

U.S. District Court

Southern District of Ohio

Notice of Electronic Filing

The following transaction was entered by Harrison, Gregory on 2/25/2010 at 0:22 AM EST and filed on 2/25/2010

Case Name: Grunkemeyer et al v. Toyota Motor Sales USA, Inc. et al
Case Number: 1:10-cv-00128-MRB
Filer: Toyota Motor Credit Corporation
Toyota Motor Engineering & Manufacturing North America, Inc.
Toyota Motor Sales USA, Inc.
Document Number: 1
Judge(s) Assigned: Michael R. Barrett (presiding)

Docket Text:
NOTICE OF REMOVAL from Hamilton County Court of Common Pleas, case number A1001119 (Filing fee $ 350 paid - receipt number: 0648-2511589), filed by Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Sales USA, Inc., Toyota Motor Credit Corporation. (Attachments: # (1) Exhibit 1 State Court Pleadings, # (2) Civil Cover Sheet) (Harrison, Gregory)

1:10-cv-00128-MRB Notice has been electronically mailed to:

Gregory Alan Harrison greg.harrison@dinslaw.com

1:10-cv-00128-MRB Notice has been delivered by other means to:

Joel Grunkemeyer

John Sukola

Sharon Wilson

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

Document description: Main Document
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1040326259 [Date=2/25/2010] [FileNumber=2608464-0] [1e85265faf3e89ec2e9bc6d07b65ffd0bb23d808d7e60e57868375126a56fba308f f34733dfe8dcbe2ea04ed73c3f8200fb931189d2d466237740a8a552ec066]]
Document description: Exhibit 1 State Court Pleadings
Original filename:n/a
Electronic document Stamp:
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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION (CINCINNATI)

JOEL GRUNKEMEYER
1041 Central Avenue
Cincinnati, OH 45202

and

SHARON WILSON
9105 Tag Drive
Cincinnati, OH 45231

and

JOHN SUKOLA
4939 Hathaway Road
Cincinnati, OH 45036

Plaintiffs,

v.

TOYOTA MOTOR SALES USA, INC.
19001 South Western Ave.
Torrance, CA 90501

and

TOYOTA MOTOR CREDIT CORPORATION
19001 South Western Ave.
Torrance, CA 90501

and

TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC.
25 Atlantic Ave.
Erlanger, KY 41018

and

JOSEPH TOYOTA OF CINCINNATI
9101 Colerain Ave.
Cincinnati, OH 45251

and

KINGS TOYOTA
9500 Kings Automall Dr.
Cincinnati, OH 45249

Defendants.

Civil Action No. 10-128

JUDGE _____

NOTICE OF REMOVAL BY DEFENDANTS TOYOTA MOTOR SALES, U.S.A., INC., TOYOTA MOTOR CREDIT CORPORATION AND TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC.

Defendants Toyota Motor Sales, U.S.A., Inc., Toyota Motor Credit Corporation and Toyota Motor Engineering & Manufacturing North America, Inc. ("Toyota Defendants") hereby jointly petition this Court for removal of this action from the Common Pleas Court of Hamilton County, Ohio to the United States District Court for the Southern District of Ohio pursuant to 28 U.S.C. §§ 1331, 1332, 1441, 1446 and 1453, and in support thereof state the following:

I. BACKGROUND

1. On or about February 5, 2010, Plaintiffs Joel Grunkemeyer, Sharon Wilson and John Sukola commenced this putative class action by filing their Class Action Complaint ("Complaint") in the Common Pleas Court of Hamilton County, Ohio, Case No. A 1001119. Plaintiffs demanded a jury trial.

2. Plaintiffs allege in their Complaint that they are bringing "this action on behalf of a class consisting of all residents of the State of Ohio who entered into agreements to purchase vehicles manufactured by Toyota and that are subject to the 2010 recalls concerning defective accelerators, acceleration system components, or vehicle parts affecting the performance of that system, including, but not limited to electronic throttle control system parts, ETCS-Intelligent System parts, accelerator pedals and floor mats." (Complaint ¶¶ 19, 22).

3. This action is just one of several recent putative class actions filed against some or all of the Toyota Defendants based on allegations regarding the 2010 recall of certain models of Toyota automobiles due to alleged accelerator defects.

4. As of the date of the filing of this notice of removal, there are more than seventy (70) class actions pending against some or all of the Toyota Defendants in various federal district courts bringing claims relating to these same allegations,

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including the United States District Court for the Southern District of Ohio, Western Division (Dayton), *Shumaker, et al. v. Toyota Motor Engineering & Manufacturing North America, Inc., et al.*, Case No. 3:10-cv-00061-WHR.

5. On February 1, 2010, a petition was filed with the Judicial Panel on Multidistrict Litigation seeking pretrial coordination of all pending federal cases before one United States District Court judge. *See MDL 2151: In Re: Toyota Motor Corp. Defective Gas Pedal Products Liability Litigation.* If the Judicial Panel decides to create multidistrict litigation proceedings for these cases, Defendants will seek to transfer this case to those proceedings.

6. Service of the Summons and the Complaint was made on Toyota Motor Sales, U.S.A., Inc. ("TMS") via certified mail on February 9, 2010. (Ex. 1, Hamilton Co. Court Docket).

7. Service of the Summons and the Complaint was made on Toyota Motor Credit Corporation ("TMCC") via certified mail on February 9, 2010. *Id.*

8. Service of the Summons and the Complaint was made on Toyota Motor Engineering & Manufacturing North America, Inc. ("TEMA") via certified mail on February 8, 2010. *Id.*

9. Service of the Summons and the Complaint was made on Joseph T of C, Co. d/b/a Joseph Toyota of Cincinnati via certified mail on February 8, 2010. *Id.*

10. Service of the Summons and the Complaint was made on Kings Toyota, Inc. (improperly named in the Complaint as "Kings Toyota") via certified mail on February 6, 2010. *Id.*

11. Accordingly, this Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446(b).

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12. Pursuant to 28 U.S.C. § 1446(a), copies of all process, pleadings and orders served upon Defendants in Case No. A 1001119 are attached as Exhibit 1. Exhibit 1 also includes the state court docket and the contents of the state court case file.

13. No further proceedings have occurred in this action.

II. REMOVAL IS PROPER BECAUSE THIS COURT HAS SUBJECT MATTER JURISDICTION PURSUANT TO 28 U.S.C. §§ 1332(d), 1441 AND 1453

14. This Court has original subject matter jurisdiction over this action pursuant to the Class Action Fairness Act of 2005 ("CAFA") as codified at 28 U.S.C. § 1332(d).

15. CAFA provides that a federal district court shall have original jurisdiction of any civil class action in which: (A) there are 100 or more members in the plaintiffs' proposed class; (B) any member of the proposed class is a citizen of a state different from any defendant; and (C) the amount placed in controversy by the claims of the class members exceeds the sum or value of $5,000,000 in the aggregate (exclusive of interest and costs). 28 U.S.C. § 1332(d). As demonstrated herein, all of these criteria are met.

A. CLASS ACTION CONSISTING OF 100 OR MORE MEMBERS

16. CAFA defines the term "class action" as "any civil action filed under rule 23 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial procedure authorizing an action be brought by 1 or more representative persons as a class action." 28 U.S.C. § 1332(d)(1)(B). This action has been filed as a state court class action pursuant to Ohio Civil Rule 23 which is similar to Federal Civil Rule 23.

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(Complaint ¶¶ 21, 28-30). Plaintiffs' case falls within the definition of class action as contained in CAFA.

17. Plaintiffs allege that the number of putative class members "may consist of several thousand Ohio residents." (Complaint ¶ 24).

18. Filed with this Petition is the declaration of George T. Morino, National Quality Compliance Manager for Toyota Motor Sales, U.S.A., Inc. His declaration establishes that based upon records maintained by Toyota Motor Sales, U.S.A., Inc., approximately 52,159 recall notices will be sent to Ohio residents for Toyota motor vehicles that are the subject of the voluntary recall initiated by TMS in cooperation with the National Highway Safety Transportation Administration ("NHSTA") on January 21, 2010, to address isolated reports of sticking accelerator pedal mechanisms. (Morino Dec.¶ 8).

19. Therefore, CAFA's requirement of a minimum putative class size of 100 or more persons is satisfied.

B. DIVERSITY OF CITIZENSHIP UNDER CAFA

20. Defendant TMS is and was at the time this suit was commenced a corporation organized and existing under the laws of the state of California with its principal place of business in California. Defendant TMS is not now, and was not at the time the Complaint was filed, a citizen of the State of Ohio within the meaning of the Acts of Congress relating to the removal of cases.

21. Defendant TMCC is and was at the time this suit was commenced a corporation organized and existing under the laws of the state of California with its principal place of business in California. Defendant TMCC is not now, and was not at

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the time the Complaint was filed, a citizen of the State of Ohio within the meaning of the Acts of Congress relating to the removal of cases.

22. Defendant TEMA is and was at the time this suit was commenced a corporation organized and existing under the laws of the state of Kentucky with its principal place of business in Kentucky. Defendant TEMA is not now, and was not at the time the Complaint was filed, a citizen of the State of Ohio within the meaning of the Acts of Congress relating to the removal of cases.

23. Defendant Joseph T of C, Co. d/b/a Joseph Toyota of Cincinnati is and was at the time this suit was commenced a corporation existing and organized under the laws of the state of Ohio with its principal place of business in Ohio.

24. Defendant Kings Toyota, Inc. is and was at the time this suit was commenced a corporation existing and organized under the laws of the state of Ohio with its principal place of business in Ohio.

25. Defendants are informed and believe that the named Plaintiffs are and were at the time this suit was commenced, citizens and residents of the State of Ohio. (Complaint p. 1 and ¶¶ 12-14).

26. The diversity of citizenship between Plaintiffs and the Toyota Defendants satisfies the minimal diversity requirements of CAFA as set forth in 28 U.S.C. § 1332(d)(2), which provides that the Court shall have jurisdiction if any member of a class of plaintiffs is a citizen of a State different from any defendant.

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C. AMOUNT IN CONTROVERSY UNDER CAFA [1]

27. CAFA provides that a federal district court shall have original jurisdiction over a putative class action where the claims of the individual class members, when aggregated, exceed the sum of $5,000,000, exclusive of interest and costs. 28 U.S.C. § 1332(d)(6).

28. Other litigants recently have sued one of some of these Defendant asserting that their putative class action claims exceed the sum of $5,000,000 under CAFA.[2]

29. The legislative history makes it clear that § 1332(d)(6) is to be interpreted expansively. The Senate Committee states: ". . .if a federal court is uncertain about whether 'all matters in controversy' in a purported class action 'do not in the aggregate exceed the sum or value of $5,000,000, the court should err in favor of exercising jurisdiction over the case. By the same token, the Committee intends that a matter be subject to federal court jurisdiction under this provision if the value of the matter in

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[1] Though the Toyota Defendants dispute that Plaintiffs are entitled to bring this action, vehemently deny liability, and contend that Plaintiffs can recover nothing under the claims in the Complaint and the Amended Complaint, for purposes of removal only, Plaintiffs' allegations and the relief sought by Plaintiffs are to be considered in determining the value of the claims as pled and the amount in controversy.

[2] *See, e.g.*, Complaint (¶ 6) in *Troy Menssen v. Toyota Motor Sales, U.S.A., Inc., et al.*, N.D. Ohio, Case No. 1:10-cv-00260 ("This Court also has jurisdiction pursuant to 28 U.S.C. 1332 in that the amount in controversy exceeds the sum or value of $5 million exclusive of interest and costs, and members of the putative Class of Plaintiffs defined herein are citizens of different states than one or more of the Defendants." *see also* Complaint (¶ 2) *Daniel Lee v. Toyota Motor North America, Inc., et al.*, N.D. Ohio, Case No. 3:10-cv-00280, ("The court has jurisdiction pursuant to 28 U.S.C. 1332(d) because the matter in controversy exceeds the sum or value of $5,000,000 exclusive of interests and costs and is a class action in which the members of the class are citizens of a different state than the defendants."); *see also* Complaint (¶ 4) in *Rebecca S. Shumaker v. Toyota Motor Sales, U.S.A., Inc., et al.*, S.D. Ohio, Case No. 3:10-cv-00061 ("This Court also has jurisdiction pursuant to 28 U.S.C. § 1332(d) which, under the provisions of the Class Action Fairness Act (CFA), explicitly provides for original jurisdiction in the Federal Courts of any class action where the amount in controversy exceeds the sum or value in the aggregate of $5,000,000, exclusive of interest and costs." There are dozens of other similar cases recently filed in federal district courts across the country based on CAFA diversity jurisdiction that are currently pending against Toyota.

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litigation exceeds $5,000,000 either from the viewpoint of the plaintiff or the viewpoint of the defendant, and regardless of the type of relief sought (e.g., damages, injunctive relief, or declaratory relief)." 109th Congress, 1st Session, Senate Rep. 109-14, at p. 43 (February 28, 2005).

30. Plaintiffs' Complaint contains the following causes of action: (I) Violation of the Ohio Consumer Sales Practices Act; (II) Violation of the Ohio Deceptive Trade Practices Act; (III) Breach of Contract; (IV) Fraudulent Concealment; (V) Fraud; (VI) Breach of Express Warranties; (VII) Breach of Implied Warranty of Merchantability; (VIII) Breach of Implied Warranty of Fitness for a Particular Purpose; (IX) Negligence; (X) Strict Product Liability; and (XII) (sic) Punitive Damages. (Complaint, *passim*).

31. Although Plaintiffs' Complaint does not specifically set forth the amount in controversy, Plaintiffs assert that as a result of their reliance on Toyota's alleged fraudulent concealment of defects in the automobiles at issue, "Plaintiffs and Class members have been injured in an amount including, but not limited to the loss of value of the use of the vehicles they bought, the fear and other emotional trauma as a result of being forced to drive vehicles that Toyota has admitted are unsafe due to Toyota's refusal to provide replacement vehicles, and injuries and deaths resulting from accidents caused by sudden acceleration." (Complaint ¶ 51).

32. Plaintiffs also assert that they have been "defrauded into leasing or purchasing vehicles that had undisclosed defects." (Complaint ¶ 58).

33. They also claim that they have been subjected to the "very real fear of a horrendous accident if their vehicle were to reach uncontrollable speeds. . . ." (Complaint ¶ 63).

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34. Further, Plaintiffs allege they have incurred "the financial loss of owning or leasing vehicles that are unsafe as well as being subjected to the potential risk of injury." (Complaint ¶ 80).

35. Plaintiffs also claim that they have "received vehicles that were worth far less than what they paid to lease or purchase the vehicles." (Complaint ¶ 63).

36. Plaintiffs "seek damages and other relief, including but not limited to reimbursement of costs, litigation expenses, interest to the extent legally applicable, **punitive damages, attorneys' fees, injunctive relief**, and any other relief to which they may be entitled in law and/or equity." (Complaint ¶ 23) (emphasis added).

37. Plaintiffs specifically pray for "[a]n Order of an amount to be determined at trial awarding damages **and requiring Defendants to provide, or reimburse Plaintiffs for the cost of obtaining, non-defective, replacement vehicles to all members of the Class until the vehicles owned by Class members have been repaired or replaced** with vehicles that do not have defects in the accelerator or any other system." (Complaint, Prayer for Relief, subparagraph B. at p. 21) (emphasis added).

38. Plaintiffs also seek "[a]n Order of an amount to be determined at trial awarding damages and requiring Defendants to **reform their purchase and finance contracts with class members and cease collecting car payments** from all Class members who purchased Toyota vehicles with defects alleged in this Complaint in an amount to be determined at trial." (Complaint, Prayer for Relief, subparagraph D. at p. 21) (emphasis added).

39. In addition, Plaintiffs ask for "[a]n award of an amount to be determined at trial for **treble damages as provided for by the Ohio Consumer Sales**

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Practices Act and Ohio Deceptive Trade Practices Act." (Complaint, Prayer for Relief, subparagraph G. at p. 22) (emphasis added).

40. Plaintiffs further pray for "[a]n award of an amount to be determined at trial for any **other compensatory damages** that will fairly represent the injuries that Plaintiffs and members of the class suffered as proven at trial." (Complaint, Prayer for Relief, subparagraph E. at p. 21) (emphasis added).

41. Plaintiffs also ask for "[a]n award of an amount to be determined at trial for all **attorneys' fees** and costs incurred by Plaintiffs in the prosecution of these claims." (Complaint, Prayer for Relief, subparagraph H. at p. 22) (emphasis added).

42. Plaintiffs also seek "[a]n award of an amount to be determined at trial for **punitive damages**. . . . " (Complaint, Prayer for Relief, subparagraph F. at p. 21) (emphasis added).

43. It is well settled law that "[i]n calculating the amount in controversy, the court may consider compensatory damages, punitive damages, statutorily authorized attorneys fees, and economic value of the rights the plaintiff seeks to protect through injunctive relief." *Curry v. Applebee's Int'l, Inc.*, 2009 U.S. Dist. Lexis 114143, at *14-15 (S.D. Ohio 2009), *citing Williamson v. Aetna Life Ins. Co.*, 481 F.3d 369, 376 (6th Cir. 2007) ("As a general rule, attorneys' fees are excludable in determining the amount in controversy for purposes of diversity, unless the fees are provided for by contract or where a statute mandates or expressly allows the payment of such fees."); *Smith v. Nationwide Property and Cas. Ins. Co.*, 505 F.3d 401, 407 (6th Cir. 2007) (value of injunctive relief based on economic value of rights the plaintiff seeks to protect); *Buckeye Recyclers v. Chep USA*, 228 F. Supp. 2d 818, 822 (S.D. Ohio 2002) (injunctive relief); *Brown v. Jackson Hewitt, Inc.*, No. 1:06-cv-2632, 2007 U.S. Dist. LEXIS 13328

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at *3 (N.D. Ohio Feb. 27, 2007), *citing Hayes v. Equitable Energy Resources Co.*, 266 F.3d 560, 572 (6th Cir. 2001) (punitive damages); *Clark v. Nat'l Travelers Life Ins. Co.*, 518 F.2d 1167, 1168 (6th Cir. 1975) (attorneys' fees); *Pennsylvania R. Co. v. Girard*, 210 F.2d 437, 439 (6th Cir. 1954) (injunctive relief).

44. Plaintiffs offer no explanation as to how they intend to calculate the damages they seek, and while Defendants dispute that Plaintiffs are entitled to any of the damages sought in their Complaint, for purposes of determining the aggregate amount placed in controversy under CAFA, Defendants provide the court with the following facts.

45. The total number of notices that will be sent to Ohio residents in connection with the January 21, 2010 recall referenced in the Amended Complaint ("January Recall") is approximately 52,159. (Morino Dec. ¶ 8).

46. In connection with the January Recall, the Company has developed a program to repair and remedy the potential sticking accelerator pedal mechanisms issue. The Company has agreed to reimburse authorized dealerships seven tenths of one hour of labor for the repair. The average hourly rate for this repair in the state of Ohio is $80.05 per hour. (Morino Dec. ¶ 11).

47. Multiplying the labor cost of seven tenths of one hour times the average hourly rate in Ohio of $80.05 per hour means the labor cost per vehicle equals $56.04. If that amount is taken times the total number of recall notices sent for the state of Ohio the total amount of the labor repair cost is $2,922,990.36.

48. Plaintiffs also seek the cost of a loaner car for the period of time during which their cars are awaiting repairs. In the past, under certain circumstances, the

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Company has reimbursed its independent dealerships $35.00 a day for the use of a loaner vehicle by a customer during a repair. (Morino Dec. ¶ 12).

49. Plaintiffs' filed suit on February 5, 2010. As of February 22, 2010, approximately 5,000 January Recall notices had been sent to Ohio residents. (Morino Dec. ¶ 9. That means approximately 47,159 recall notices have not yet been sent to Ohio residents. The total number of days from the date of the filing of the plaintiffs' initial Complaint to February 22, 2010, is 17 days. For at least 17 days, 47,159 vehicles have not undergone repairs pursuant to the January Recall program. Multiplying the 17 days times 47,159 recall notices times $35.00 per day equals $28,059,605 as the amount placed in controversy by the loaner car relief sought in the Amended Complaint. Even if the cost of a rental car were just $6.35 per day, that would exceed the $5,000,000 aggregate amount in controversy necessary for purposes of determining jurisdiction under CAFA.

50. Plaintiffs also seek to reform their lease and purchase contracts so as to cease making payments for their vehicles. In that regard, they have sought a preliminary injunction from the state court granting that relief.

51. For plaintiff Wilson, her monthly payment is $575.21 for term of 60 months beginning on February 14, 2010. (*See* Declaration of Bill Reber, General Manager of Joseph Toyota of Cincinnati) . If she were to cease making all payments starting with her March 2010 payment, the 59 monthly payments she would not be making would equal $33,937.39. If this amount is typical of all class members, the amount placed in controversy on the contract reformation claim alone is $33,937.39 times 52,159 which equals $1,770,140,325.

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52. But Plaintiffs' prayer for relief does not stop there. Plaintiffs also assert causes of action under both the Ohio Consumer Sales Practices Act ("OCSPA"), R.C. § 1345.01, *et seq.*, and the Ohio Deceptive Trade Practices Act ("ODTPA"), R.C. § 4165.01, *et seq.*, both of which provide for injunctive relief and the statutory award of attorneys' fees. R.C. §§ 1345.09; 4165.03. Since these statutes authorize awards for attorneys' fees, Plaintiffs' claim for attorneys' fees also may be considered for purposes of calculating the $5,000,000 amount placed in controversy under CAFA.

53. As a reference point for awards of attorneys' fees in class actions, the Federal Judicial Center conducted a study in 1994-95 entitled "Empirical Study of Class Actions in Four Federal District Courts." The study found that the median rates for attorneys' fees ranged from 27% to 30% of the recovery for all class actions resolved or settled over a four year period in the four selected district courts. FJC-R-96-2.

54. In addition to attorneys fees, Plaintiffs seek counseling for emotional distress, punitive damages, disgorgement, and the loss in value of their vehicles due to the recall. When all of these claims for relief are viewed in the context of the number of recall notices to be issued to Ohio residents, the amount placed in controversy by plaintiffs' claims clearly is in excess of $5,000,000.

55. Plaintiffs also have asked for treble damages under the OCSPA and the ODTPA. When a plaintiff seeks treble damages, the Court also may consider treble damages in determining the amount in controversy. *Cancino v. Yamaha Motor Corp.*, 494 F. Supp. 2d 664 (S.D. Ohio 2005).

56. Defendants contend that the named Plaintiffs and the putative class are not entitled to any relief, however, given the size of the proposed class and the breadth

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of the relief sought, the amount placed in controversy by this litigation far exceeds the $5,000,000 requirement for CAFA jurisdiction.

D. NO CAFA EXCEPTIONS APPLY

57. Although CAFA has additional provisions under which the District Court may or shall decline jurisdiction, no statutory exception to CAFA Jurisdiction applies in this case. [3] 28 U.S.C. § 1332(d)(3) and (4).

58. Section 1332(d)(3), (the "interest of justice" exception) does not apply because, among other reasons, the primary defendants, TMS, TMCC and TEMA are not citizens of the state where this action was originally filed.

59. Section 1332(d)(4)(A), (the "local controversy exception"), does not apply because, among other reasons, neither Joseph Toyota of Cincinnati nor Kings Toyota, Inc., — the only two named defendants alleged to be Ohio residents, — is a defendant from whom significant relief is sought or whose conduct forms a significant basis for the claims asserted by the class, and because during the three year period preceding the filing of this class action complaint other class actions have been filed against one or some of the Toyota Defendants asserting same or similar allegations on behalf of other persons.[4]

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[3] Plaintiffs bear the burden of proving that an exception to CAFA jurisdiction applies. *See Kendrick v. Std. Fire Ins. Co.*, 2007 U.S. Dist. LEXIS 28461 at *4, (E.D. Ky. 2007).

[4] In the legislative history for this section of CAFA, the Committee stated its intent that cases such as the one at issue should be removable. Specifically, the Committee provided the following example of a case that would be exempted from the provisions of § 1332(d)(4):

> A class action is brought in Florida against an out-of-state automobile manufacturer and a few in-state dealers, alleging that a certain vehicle model is unsafe because of an allegedly defective transmission. The vehicle model was sold in all fifty states but the class action is only brought on behalf of Floridians. This case would not fall within the Local Controversy Exception for two reasons. First, the automobile dealers are not defendants whose alleged conduct forms a significant basis of the claims or from whom significant relief is sought by the class. Even if the plaintiffs are truly seeking relief from the dealers, that relief is just small change compared to what they are seeking from the manufacturer.

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60. Section 1332(d)(4)(B) (the "home state exception") does not apply because, among other reasons, the primary defendants, TMS, TMCC and TEMA are not citizens of the state where this action was originally filed.

61. This action is not one described in 28 U.S.C. § 1332 or § 1453 as being non-removable.[5]

> Moreover, the main allegation is that the vehicles were defective. In product liability cases, the conduct of a retailer such as an automobile dealer does not form a significant basis for the claims of the class members. Second, the case falls outside the Local Controversy Exception because the "principal injuries resulting from the alleged conduct,"— i.e., selling a vehicle with a defective transmission — were incurred in all fifty states. The fact that the suit was brought as a single-state class action does not mean that the principal injuries were local. In other words, this provision looks at where the principal injuries were suffered by everyone who was affected by the alleged conduct—not just where the proposed class members were injured. Thus, any defendant could remove this case to federal court.

[5] In addition to jurisdiction based upon CAFA, this court also has diversity jurisdiction based upon 28 U.S.C. §§ 1332(a) and 1441 because there is complete diversity of citizenship among all properly joined parties, and the amount in controversy exceeds $75,000 exclusive of interest and costs. The non-diverse defendants, Joseph Toyota of Cincinnati and Kings Toyota, Inc., have been fraudulently joined in order to defeat diversity jurisdiction. Accordingly, their citizenship should be ignored for purposes of determining diversity. *Rose v. Giamatti*, 721 F.Supp. 906, 917 (S.D. Ohio 1989). Their joinder is fraudulent because there exists no reasonable basis in fact or in law supporting a claim against them. Specifically, there is no reasonable basis for predicting that the state law might impose liability on the facts involved." *Alexander v. Elec. Data Sys. Corp.*, 13 F.3d 940, 949 (6th Cir. 1994) (internal citations omitted). *See also Ludwig v. Learjet*, Inc., 830 F.Supp. 995 (E.D. Mich. 1993).

In addition, pursuant to 28 U.S.C. § 1331, this court also has jurisdiction based on Plaintiffs' claims under the Magnuson-Moss Warranty Act ("MMWA"), because such claims arise under the "Constitution, laws, or treaties of the United States." MMWA, 15 U.S.C. § 2310(d), provides that "a consumer who is damaged by the failure of a supplier, warrantor, or service contractor to comply with any obligation under this, or under a written warranty, implied warranty, or service contract, may bring suit for damages and other legal and equitable relief...(B) in an appropriate district court of the United States, subject to paragraph (3) of this subsection." 15 U.S.C. § 2310 (d). Section (3) provides:

> No claim shall be cognizable in a suit brought under paragraph (1)(B) of this subsection --
>
> (A) if the amount in controversy of any individual claim is less than the sum or value of $25;
>
> (B) if the amount in controversy is less than the sum or value of $50,000 (exclusive of interests and costs) computed on the basis of all claims to be determined in this suit; or
>
> (C) if the action is brought as a class action, and the number of named plaintiffs is less than one hundred.

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III. VENUE

62. Venue of this removal action is proper under 28 U.S.C. § 1441(a) because this Court is the United States District Court for the district and division corresponding to the place where the state court action was pending.

63. This action is not an action described in 28 U.S.C. § 1445.

64. All Defendants have consented in writing to the filing of this Removal.

65. Pursuant to 28 U.S.C. § 1446(d), a true and accurate copy of this Notice of Removal and exhibits is being served on counsel for the Plaintiffs and is being filed with the clerk of the courts for the Common Pleas Court of Hamilton County, Ohio.

WHEREFORE, Defendants respectfully remove this action from the Court of Common Pleas of Hamilton County, Ohio to the United States District Court for the Southern District of Ohio as provided by law.

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15 U.S.C. § 2310 (d). The Plaintiffs' claims meet the amount in controversy requirements set forth in the statute.

Plaintiffs' Complaint specifically alleges that Defendants breached written and implied warranties owed to Plaintiffs. While the MMWA is not explicitly referenced in the Complaint, the allegations give rise to a claim under the MMWA. This Court should exercise jurisdiction over the pendent state law claims because: (1) the federal MMWA claim is sufficient to confer subject matter jurisdiction on the court; (2) the state and federal claims derive from a common nucleus of operative fact; and (3) Plaintiffs' claims are such that they would ordinarily be expected to be tried all in one judicial proceeding. *See Aschinger v. Columbus Showcase Co.*, 934 F.2d 1402, 1412 (6th Cir. 1991). Therefore, removal of the entire action is appropriate pursuant to 28 U.S.C. § 1441.

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Respectfully submitted,

/s/Gregory A. Harrison

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Fax: 214-922-3855
glenn.morris@alston.com

CERTIFICATE OF SERVICE

I hereby certify that one copy of the foregoing Notice of Removal was served via e-mail on the 25th day of February, 2010, upon the following counsel at the e-mail addresses listed below:

Richard S. Wayne [rswayne@strausstroy.com]
Thomas P. Glass [tpglass@strausstroy.com]
Joseph J. Braun [jjbraun@strausstroy.com]
STRAUSS & TROY
The Federal Reserve Building
150 East Fourth Street
Cincinnati, OH 45202

Counsel for Plaintiffs

John H. Stachler [johns@mfhslaw.com]
MARTIN, FOLINO, HARMON & STACHLER, LPA
P.O. Box 10068
214 West Monument Avenue
Dayton OH 45402-4139

Counsel for Plaintiffs

and that a copy also will be mailed via ordinary mail postage prepaid on the 25th day of February, 2010 upon the same counsel.

/s/Gregory A. Harrison

TOY-RQ-05E-00008947

EXHIBIT 1

Patricia M. Clancy Clerk of Courts

Hamilton County Courthouse
1000 Main Street
Cincinnati, OH 45202

Case Summary

Case Number:	A 1001119
Case Caption:	JOEL GRUNKEMEYER vs. TOYOTA MOTOR SALES USA INC
Judge:	ROBERT P RUEHLMAN
Filed Date:	2/5/2010
Case Type:	H825 - CONSUMER SALES ACT & JURY DEMAND- OC
Total Deposits:	$ 665.00 Credit
Total Costs:	$ 360.00

Case Options

Case History
Case Schedules
Case Documents
Document Request Forr
Party/Attorney Informatic
Certified Mail Service
New Case Search
New Name Search
Add Case to My Portfolic

Case History

Printer Friendly Versi

Doc	Image#	Date	Description	Amount
		2/16/2010	ELECTRONIC POSTAL RECEIPT RETURNED, COPY OF SUMMONS & COMPLAINT DELIVERED TO JOSEPH TOYOTA OF CINCINNATI ON 02/08/10, FILED. [CERTIFIED MAIL NBR.: 7194 5168 6310 0491 3093]	
		2/16/2010	ELECTRONIC POSTAL RECEIPT RETURNED, COPY OF SUMMONS & COMPLAINT DELIVERED TO JOSEPH TOYOTA OF CINCINNATI ON 02/08/10, FILED. [CERTIFIED MAIL NBR.: 7194 5168 6310 0491 3086]	
		2/16/2010	ELECTRONIC POSTAL RECEIPT RETURNED, COPY OF SUMMONS & COMPLAINT DELIVERED TO TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA INC ON 02/08/10, FILED. [CERTIFIED MAIL NBR.: 7194 5168 6310 0491 3079]	
		2/16/2010	ELECTRONIC POSTAL RECEIPT RETURNED, COPY OF SUMMONS & COMPLAINT DELIVERED TO TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA INC ON 02/11/10, FILED. [CERTIFIED MAIL NBR.: 7194 5168 6310 0491 3062]	
		2/16/2010	ELECTRONIC POSTAL RECEIPT RETURNED, COPY OF SUMMONS & COMPLAINT DELIVERED TO TOYOTA MOTOR CREDIT CORPORATION ON 02/09/10, FILED. [CERTIFIED MAIL NBR.: 7194 5168 6310 0491 3055]	
		2/16/2010	ELECTRONIC POSTAL RECEIPT RETURNED, COPY OF SUMMONS & COMPLAINT DELIVERED TO TOYOTA MOTOR CREDIT CORPORATION ON 02/10/10, FILED. [CERTIFIED MAIL NBR.: 7194 5168 6310 0491 3048]	
		2/16/2010	ELECTRONIC POSTAL RECEIPT RETURNED, COPY OF SUMMONS & COMPLAINT DELIVERED TO TOYOTA MOTOR SALES USA INC ON 02/09/10, FILED. [CERTIFIED MAIL NBR.: 7194 5168 6310 0491 3031]	
		2/16/2010	ELECTRONIC POSTAL RECEIPT RETURNED, COPY OF SUMMONS & COMPLAINT DELIVERED TO TOYOTA MOTOR SALES USA INC ON 02/09/10, FILED. [CERTIFIED MAIL NBR.: 7194 5168 6310 0491 3024]	
		2/10/2010	JUDGE ASSIGNED CASE ASSIGNED TO RUEHLMAN/ROBERT/P PRIMARY	
		2/8/2010	ELECTRONIC POSTAL RECEIPT RETURNED, COPY OF SUMMONS & COMPLAINT DELIVERED TO KINGS TOYOTA INC ON 02/06/10, FILED. [CERTIFIED MAIL NBR.: 7194 5168 6310 0491 3116]	
		2/8/2010	ELECTRONIC POSTAL RECEIPT RETURNED, COPY OF SUMMONS & COMPLAINT DELIVERED TO KINGS TOYOTA INC ON 02/06/10, FILED. [CERTIFIED MAIL NBR.: 7194 5168 6310 0491 3109]	
		2/5/2010	SUMMONS ISSUED BY CERTIFIED MAIL TO TOYOTA MOTOR SALES USA INC	

	2/5/2010	SUMMONS ISSUED BY CERTIFIED MAIL TO KINGS TOYOTA INC	
	2/5/2010	SUMMONS ISSUED BY CERTIFIED MAIL TO KINGS TOYOTA INC	
	2/5/2010	SUMMONS ISSUED BY CERTIFIED MAIL TO JOSEPH TOYOTA OF CINCINNATI	
	2/5/2010	SUMMONS ISSUED BY CERTIFIED MAIL TO JOSEPH TOYOTA OF CINCINNATI	
	2/5/2010	SUMMONS ISSUED BY CERTIFIED MAIL TO TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA INC	
	2/5/2010	SUMMONS ISSUED BY CERTIFIED MAIL TO TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA INC	
	2/5/2010	SUMMONS ISSUED BY CERTIFIED MAIL TO TOYOTA MOTOR CREDIT CORPORATION	
	2/5/2010	SUMMONS ISSUED BY CERTIFIED MAIL TO TOYOTA MOTOR CREDIT CORPORATION	
	2/5/2010	SUMMONS ISSUED BY CERTIFIED MAIL TO TOYOTA MOTOR SALES USA INC	
	2/5/2010	CERTIFIED MAIL SERVICE ISSUED TO KINGS TOYOTA INC [CERTIFIED MAIL NBR.: 7194 5168 6310 0491 3116]	
	2/5/2010	CERTIFIED MAIL SERVICE ISSUED TO JOSEPH TOYOTA OF CINCINNATI [CERTIFIED MAIL NBR.: 7194 5168 6310 0491 3086]	
	2/5/2010	CERTIFIED MAIL SERVICE ISSUED TO KINGS TOYOTA INC [CERTIFIED MAIL NBR.: 7194 5168 6310 0491 3109]	
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	2/5/2010	CERTIFIED MAIL SERVICE ISSUED TO TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA INC [CERTIFIED MAIL NBR.: 7194 5168 6310 0491 3062]	
	2/5/2010	CERTIFIED MAIL SERVICE ISSUED TO TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA INC [CERTIFIED MAIL NBR.: 7194 5168 6310 0491 3079]	
	2/5/2010	CERTIFIED MAIL SERVICE ISSUED TO TOYOTA MOTOR CREDIT CORPORATION [CERTIFIED MAIL NBR.: 7194 5168 6310 0491 3055]	
	2/5/2010	CERTIFIED MAIL SERVICE ISSUED TO TOYOTA MOTOR SALES USA INC [CERTIFIED MAIL NBR.: 7194 5168 6310 0491 3031]	
	2/5/2010	CERTIFIED MAIL SERVICE ISSUED TO TOYOTA MOTOR CREDIT CORPORATION [CERTIFIED MAIL NBR.: 7194 5168 6310 0491 3048]	
	2/5/2010	CERTIFIED MAIL SERVICE ISSUED TO TOYOTA MOTOR SALES USA INC [CERTIFIED MAIL NBR.: 7194 5168 6310 0491 3024]	
	2/5/2010	COMPLAINT & JURY DEMAND FILED	
	2/5/2010	CASE DEPOSIT & JURY DEMAND BY RICHARD STUART WAYNE	665.00-
	2/5/2010	CLASSIFICATION FORM FILED.	

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COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

CLASSIFICATION FORM

WWW.COURTCLERK.ORG

PATRICIA M. CLANCY
CLERK OF COURTS

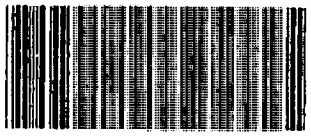
CASE NUMBER: A1001119 PLAINTIFF: Joel Grunkemeyer, et al.

PURSUANT TO SUPERINTENDENCE RULE 4, THIS CASE WAS ORIGINALLY FILED AND DISMISSED

UNDER CASE NUMBER: _____ BY JUDGE _____

PLEASE INDICATE CLASSIFICATION INTO WHICH THIS CASE FALLS:

- ☐ OTHER TORT – C360
  - ☐ Personal Injury – C310
  - ☐ Wrongful Death – C320
  - ☐ Vehicle Accident – C370
- ☐ PROFESSIONAL TORT – A300
  - ☐ Personal Injury – A310
  - ☐ Wrongful Death – A320
  - ☐ Legal Malpractice – A330
  - ☐ Medical Malpractice – A3
- ☐ PRODUCT LIABILITY – B350
  - ☐ Personal Injury – B310
  - ☐ Wrongful Death – B320
- WORKER'S COMPENSATION
  - ☐ Non-Compliant Employer – D410
  - ☐ Appeal – D420
- FORECLOSURE
  - ☐ Foreclosure – E510
  - ☐ Foreclosure-Taxes – E520
  - ☐ Foreclosure-Mechanics Lien – E530
- ☐ ADMINISTRATIVE APPEALS – F600
  - ☐ Appeal Civil Service – F610
  - ☐ Appeal Motor Vehicle – F620
  - ☐ Appeal Unemployment – F630
  - ☐ Appeal Liquor – F640
  - ☐ Appeal Taxes – F650
  - ☐ Appeal Zoning – F660



D86927110 CLF

- ☑ OTHER CIVIL – H700-34
  - ☐ Appropriation – H710
  - ☐ Accounting – H720
  - ☐ Beyond Jurisdiction – H730
  - ☐ Breach of Contract – H740
  - ☐ Cancel Land Contract – H750
  - ☐ Change of Venue – H760
  - ☐ Class Action – H770
  - ☐ Convey Declared Void – H780
  - ☐ Declaratory Judgment – H790
  - ☐ Discharge Mechanics Lien – H800
  - ☐ Dissolve Partnership – H810
  - ☑ CONSUMER SALES ACT (1345 ORC) – H820
  - ☐ Check here if relief includes declaratory judgment, injunction or class action recovery – H825
  - ☐ Habeas Corpus – H830
  - ☐ Injunction – H840
  - ☐ Mandamus – H850
  - ☐ On Account – H860
  - ☐ Partition – H870
  - ☐ Quiet Title – H880
  - ☐ Replevin – H890
  - ☐ Sale of Real Estate – H900
  - ☐ Specific Performance – H910
  - ☐ Restraining Order – H920
  - ☐ Testimony – H930-21
  - ☐ Environmental – H940
  - ☐ Cognovit – H950
  - ☐ Menacing by Stalking – H960
  - ☐ Repo Title – Transfer of Title Only – H970
  - ☐ Repo Title – With Money Claim – H980
  - ☐ Injunction Sexual Predator – H990
  - ☐ SB 10 – Termination – H690
  - ☐ SB 10 – Reclassification – H697

2010 FEB -5 P 12:

PATRICIA M. CLANCY
CLERK OF COURTS
HAMILTON COUNTY, OH

Related Case NO. A1000992

DATE: 2/5/10 ATTORNEY (PRINT): Richard S. Wayne

OHIO SUPREME COURT NUMBER: 0022390

Revised 01/05/09

Gregory Hartmann, Clerk of Courts
Court of Common Pleas, Hamilton County, Ohio
www.courtclerk.org

NOTIFICATION FORM

CASE INFORMATION

Date: 2/5/10

Case No.: A1001119

Caption: Grunkemeyer, et al. vs. Toyota Motor Sales USA, et al.

****

ATTORNEY INFORMATION

Attorney Name: Joseph J. Braun

Attorney Information: Strauss & Troy
Firm
150 E. Fourth Street
Street Number
Cincinnati, OH 45202-4018
City, State, Zip
513-621-2120
Phone Number
513-629-9426
Fax Number
jjbraun@strausstroy.com
E-mail Address

FILED
2010 FEB -5 P 12: 35
PATRICIA M. CLANCY
CLERK OF COURTS
HAMILTON COUNTY, OH

Ohio Attorney Supreme Court No.: 0069757

( ) Address Change Only

( ) Request Case Notification / Not a Party Defendant

****

COURT PARTY INFORMATION

Name of Client: Joel Grunkemeyer (x) Plaintiff ( ) Defendant

Name of Client: Sharon Wilson (x) Plaintiff ( ) Defendant

Name of Client: John Sukola (x) Plaintiff ( ) Defendant

Name of Client: _____ ( ) Plaintiff ( ) Defendant

Name of Client: _____ ( ) Plaintiff ( ) Defendant

Substituted for: _____ (if applicable)

Rev. 09/06/07

Gregory Hartmann, Clerk of Courts
Court of Common Pleas, Hamilton County, Ohio
www.courtclerk.org

FILED
FEB - 5 2010
PATRICIA M. CLANCY
CLERK OF COURTS

NOTIFICATION FORM

CASE INFORMATION

Date: 2/5/10

Case No.: A1001119

Caption: Grunkemeyer, et al. vs. Toyota Motor Sales USA, et al.

****

ATTORNEY INFORMATION

Attorney Name: Richard S. Wayne

Attorney Information: Strauss & Troy
Firm
150 E. Fourth Street
Street Number
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513-621-2120
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FILED
2010 FEB -5 P 12:35
PATRICIA M. CLANCY
CLERK OF COURTS
HAMILTON COUNTY, OH

Ohio Attorney Supreme Court No.: 0022390

( ) Address Change Only

( ) Request Case Notification / Not a Party Defendant

****

COURT PARTY INFORMATION

Name of Client: Joel Grunkemeyer (x) Plaintiff ( ) Defendant

Name of Client: Sharon Wilson (x) Plaintiff ( ) Defendant

Name of Client: John Sukola (x) Plaintiff ( ) Defendant

Name of Client: _____ ( ) Plaintiff ( ) Defendant

Name of Client: _____ ( ) Plaintiff ( ) Defendant

Substituted for: _____ (if applicable)

Rev. 09/06/07

Other Answers

1:10-cv-00128-MRB Grunkemeyer et al v. Toyota Motor Sales USA, Inc. et al
JURY

U.S. District Court

Southern District of Ohio

Notice of Electronic Filing

The following transaction was entered by Harrison, Gregory on 2/25/2010 at 0:36 AM EST and filed on 2/25/2010

Case Name: Grunkemeyer et al v. Toyota Motor Sales USA, Inc. et al
Case Number: 1:10-cv-00128-MRB
Filer: Toyota Motor Credit Corporation
Toyota Motor Engineering & Manufacturing North America, Inc.
Toyota Motor Sales USA, Inc.
Document Number: 5

Docket Text:
AFFIDAVIT in Support re [1] Notice of Removal (Attorney), Notice of Removal (Attorney) *(Declaration of Bill Reber)* by Defendants Toyota Motor Credit Corporation, Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Sales USA, Inc.. (Harrison, Gregory)

1:10-cv-00128-MRB Notice has been electronically mailed to:

Gregory Alan Harrison greg.harrison@dinslaw.com

1:10-cv-00128-MRB Notice has been delivered by other means to:

Joel Grunkemeyer

John Sukola

Sharon Wilson

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

Document description: Main Document
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1040326259 [Date=2/25/2010] [FileNumber=2608476-0
] [8f862fb86f7e0731a65967cd17dc150764e893f83a6b080afb67be4c015860cbe96
2b44e97132e631a26726a1d596091951d3e23c26cecf6ef0cd4748865f16c]]

TOY-RQ-05E-00008954

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION (CINCINNATI)

JOEL GRUNKEMEYER, et al.,	:	CIVIL ACTION NO. 10-128
	:	
Plaintiffs,	:	JUDGE _____
	:	
v.	:	
	:	**DECLARATION OF**
TOYOTA MOTOR SALES U.S.A., INC., et al.	:	**BILL REBER**
	:	**IN SUPPORT OF**
	:	**DEFENDANTS'**
Defendants.	:	**NOTICE OF REMOVAL**

DECLARATION OF BILL REBER

Bill Reber, an employee of Joseph T of C, Co. d/b/a Joseph Toyota of Cincinnati ("Joseph Toyota") states:

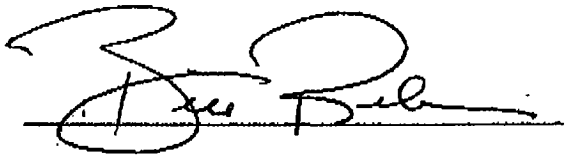
1. I am over eighteen years of age. I have personal knowledge of the following facts, and I am competent to make this Declaration.

2. I am the General Manager at Joseph Toyota and I am personally familiar with the sales file of Sharon Wilson, and I have under my control all records relating thereto.

3. Attached collectively hereto as Exhibit A'are true and accurate copies of Sharon Wilson's Sales Contract and Financing Agreement, which is kept in Joseph Toyota's Sales File in the ordinary course of its business, for the 2010 Toyota Avalon (VIN 4T1BK3DB2AU360649) purchased by Sharon Wilson from Joseph Toyota on January 1, 2010.

I declare under penalty of perjury under the laws of the State of Ohio and the United States of America, that the foregoing is true and correct.

Executed on this 24 day of February, 2010.



Toyota of Cincinnati INC.

9101 Colerain Ave. • CINCINNATI, OH. 45251
Ph: 385-1800

CONTROL # 205987

PURCHASER'S NAME SHARON R WILSON (PRINT OR TYPE)

DATE JAN 01 2010

PLEASE ENTER MY ORDER FOR ONE XX NEW ☐ USED ☐ DEMO AS FOLLOWS:

YEAR	MAKE	MODEL OR SERIES	BODY TYPE	COLOR	TRIM
2010	TOYOTA	AVALON	4 DR XL SEDAN	BLIZZARD PEARL	

V.I.N.	STOCK NO.	TO BE DELIVERED ON OR ABOUT
4T1BK3DB2AU360649	61058	

CASH PRICE OF VEHICLE	27800.00
CHECK CODE 6	
MODEL # 3534A	
E-MAIL ADDRESS SRWilson@Strausstroy.com	
F&I DELIVERY PERSON Art	
LENDER TFS	
SALES CODE (CIRCLE ONE) 01 OR 05	
96/125000 ESC	2025.00
PROCESSING FEE	250.00
TOTAL	30075.00
TAX	1954.88
REGISTRATION	25.00
TOTAL CASH DELIVERED PRICE	32054.88

I/we hereby acknowledge that the balance owed on my/our trade-in vehicle exceeds its actual cash value. I/we further acknowledge that the price relationship between the purchased vehicle and the trade-in has been negotiated in good faith with full disclosure in order to transfer this "negative equity" to the balance financed on the purchased vehicle. The cash price has been increased by $ in order to accomplish this transfer of "negative equity".

Purchaser _____ Purchaser _____

THE MILEAGE ON THE ODOMETER IS 4[illegible] AND IS/IS NOT ACCURATE.

DOCUMENTARY CHARGE AND FEES: LICENSE NONE LIC. TRANSFER NONE TITLE 20.00 5.00

THE MILEAGE ON THE ODOMETER OF THE TRADE-IN IS _____.

SETTLEMENT

CASH DEPOSIT SUBMITTED WITH ORDER $ NONE	CASH ON DELIVERY NONE	TOTAL CASH NONE
ALLOWANCE FOR TRADE-IN AS APPRAISED		NONE
LESS BALANCE OWING TO –		NONE
DESCRIPTION OF TRADE-IN		NET EQUITY NONE
YEAR / MAKE / MODEL / TYPE		TOTAL CREDITS NONE
V.I.N. / LICENSE NO. / TITLE NO.		UNPAID CASH BALANCE DUE ON DELIVERY 32054.88

ALL WARRANTIES, IF ANY, BY A MANUFACTURER OR SUPPLIER OTHER THAN DEALER ARE THEIRS, NOT DEALER'S, AND ONLY SUCH MANUFACTURER OR OTHER SUPPLIER SHALL BE LIABLE FOR PERFORMANCE UNDER SUCH WARRANTIES. UNLESS DEALER FURNISHES BUYER WITH A SEPARATE WRITTEN WARRANTY OR SERVICE CONTRACT MADE BY DEALER ON ITS OWN BEHALF, DEALER HEREBY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE: (A) ON ALL GOODS AND SERVICES SOLD BY DEALER, AND (B) ON ALL USED VEHICLES WHICH ARE HEREBY SOLD "AS IS—NOT EXPRESSLY WARRANTED OR GUARANTEED".

IF THIS AGREEMENT IS FOR A USED VEHICLE, THE INFORMATION YOU SEE ON THE (FEDERAL TRADE COMMISSION) WINDOW FORM IS PART OF THIS AGREEMENT. INFORMATION ON THE WINDOW FORM OVERRIDES ANY CONTRARY PROVISIONS IN THE CONTRACT OF SALE.

The front and back of this Order comprise the entire agreement affecting this purchase and no other agreement or understanding of any nature concerning same has been made or entered into, or will be recognized. I hereby certify that no credit has been extended to me for the purchase of this motor vehicle except as appears in writing on the face of this agreement. I have read the matter printed on the back hereof and agree to it as a part of this order the same as if it were printed above my signature. I certify that I am of legal age, and hereby acknowledge receipt of a copy of this order.

MARK E. OLIVER
SALESMAN

THIS ORDER IS NOT VALID UNLESS SIGNED AND ACCEPTED BY DEALER OR HIS AUTHORIZED REPRESENTATIVE

APPROVED: _____
DEALER OR AUTHORIZED REPRESENTATIVE

SIGNED: _____ PURCHASER

STREET ADDRESS 9105 TAG

CITY & STATE CINCINNATI OH ZIP 45231

BUS. PHONE (513)621-8900 RES. PHONE (513)522-5719

PROMISSORY NOTE AND SECURITY AGREEMENT

TOYOTA FINANCIAL SERVICES

Dealer Number: 34089 Account Number:

Borrower (and Co-Borrower) – Name(s) and Residence Address(es) (Include County and Zip Code)	Creditor (Toyota Motor Credit Corporation) – Name and Business Address
SHARON R WILSON 9105 TAG CINCINNATI OH 45231 CO: HAMILTON	TOYOTA MOTOR CREDIT CORPORATION 300 E BUSINESS WAY STE 350 CINCINNATI OH 45241

Meaning of Words. In this contract, the words "you," "your" and "yours" refer to the Borrower and Co-Borrower, if any. The word "Creditor" refers to Toyota Motor Credit Corporation ("TMCC") and subsequent assignee. The word "contract" refers to this Promissory Note and Security Agreement.

Who is Bound. By signing this contract, you choose to borrow the Amount Financed under the terms on the front and back of this contract and you are individually liable to the Creditor for any amount due.

Description of Vehicle.

New/Used	Year	Make	Model	Body Type	Vehicle Identification No.	Odometer Miles	Primary Purpose
NEW	2010	TOYOTA	AVALON	4 DR XL SEDAN	4T1BK3DB2AU360649	4	☒ Personal, Family or Household ☐ Business or Commercial ☐ Agricultural

FEDERAL TRUTH-IN-LENDING DISCLOSURES

ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate.	FINANCE CHARGE The dollar amount the credit will cost you.	Amount Financed The amount of credit provided to you or on your behalf.	Total of Payments The amount you will have paid after you have made all payments as scheduled.
2.90 %	$ 2457.72 e	$ 32054.88	$ 34512.60 e

Your Payment Schedule Will Be:

Number of Payments:	Amount of Each Payment:	When Payments Are Due:
60 regular payments of	575.21	Monthly, beginning 02/14/2010
One final payment of	N/A	

Prepayment. If you pay off all your debt early, you will not have to pay a penalty.

Security. You are giving a security interest in the vehicle described above.

Other Terms. Please read this contract, including the reverse side, for additional information about security interests, nonpayment, default, any required repayment in full before the scheduled date, and prepayment and penalties.

e means an estimate.

ITEMIZATION OF THE AMOUNT FINANCED

1	Cash Price (including any accessories, services, and taxes) Paid to Dealer on Your Behalf.		$ 27800.00 (1)
2	Amount Paid on Your Account		$ N/A (2)
3	Amounts Paid to Others on Your Behalf (dealer may retain, or receive a portion of these amounts):		
	A Taxes Paid to Government Agencies	$ 1954.88	
	B Government License and/or Registration Fees	$ N/A	
	C Government Certificate of Title Fees	$ 20.00	
	D Cost of Optional Mechanical Breakdown Protection Paid to: TOYOTA EXTRA CARE – Covering Certain Mechanical Repairs	$ 2025.00	
	E Cost of Required Physical Damage Insurance Paid to the Insurance Company Named Below – Covering Damage to the Vehicle	$ N/A	
	F Cost of Optional Credit Insurance Paid to the Insurance Company or Companies Named Below Life $ N/A Disability, Accident and Health $ N/A	$ N/A	
	G Lien Filing Fee	$ 5.00	
	H Other Amounts (Identify who will receive payment and describe purpose)		
	To: N/A For: N/A	$ N/A	
	To: N/A For: N/A	$ N/A	
	To: TOYOTA OF CINCINNATI INC. For: DOC FEE	$ 250.00	
	To: N/A For: N/A	$ N/A	
	To: N/A For: N/A	$ N/A	
	To: N/A For: N/A	$ N/A	
	Total Amount Paid to Others on Your Behalf		$ 4254.88 (3)
4	Amount Financed — (1+2+3)		$ 32054.88 (4)

buy it through the Creditor and are accepted by the insurance company, the policies or certificates issued by the insurance company will describe the terms and conditions. The cost of this insurance is shown in 3E of the Itemization above.

Insurance Company N/A Term: N/A months

☐ $ N/A Deductible Collision and either:

☐ $ N/A Deductible Comprehensive including Fire, Theft and Combined Additional Coverage

Optional, if desired – ☐ Towing and Labor Costs ☐ Rental Reimbursement ☐ CB Radio Equipment ☐ Fire, Theft, and Combined Additional Coverage

THE INSURANCE, IF ANY, REFERRED TO IN THIS CONTRACT DOES NOT INCLUDE LIABILITY INSURANCE COVERAGE FOR BODILY INJURY AND PROPERTY DAMAGE CAUSED TO OTHERS.

Optional Credit Insurance. Credit life insurance and credit disability insurance are not required to obtain credit and will not be provided unless you sign and agree to pay the additional cost, which is shown below and in 3F of the Itemization above. If you want this optional insurance, check the insurance coverage(s) desired and sign below.

Check the optional insurance coverage(s) desired:

☐ Credit Life, Borrower Coverage $ N/A

☐ Credit Life, Borrower and Co-Borrower Coverage $ N/A

☐ Credit Disability, Single Coverage (Borrower Only) $ N/A

If you elect optional credit insurance coverage and are accepted by the insurance company, the terms and conditions will be as described in the policies or certificates issued by the insurance company. The original amount of the decreasing term credit life insurance will not exceed $ N/A. Credit disability insurance payments will equal the monthly payment amount but will not be more than $ N/A, Insurance Company N/A

Credit life and credit disability insurance are based upon the payment schedule and term shown above. If you make late payments, credit life insurance will not pay all you owe on the contract and credit disability, accident and health insurance will not pay all of your payments.

Optional Credit Insurance Cancellation Right. You have the right for twenty five days from the date of this contract to cancel all credit life and credit disability, accident and health insurance obtained at your request in connection with this contract. If you cancel the insurance, you will receive a full refund of the insurance premium. To cancel, you must give written notice to the Creditor and return all credit insurance policies or certificates, or notices of proposed credit insurance to the Creditor within the twenty-five days.

Borrower Signature Date Co-Borrower Signature Date

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

omise to Pay. You promise to pay to the Creditor the Amount Financed shown above plus interest figured on a daily basis on the unpaid balance as set forth in this contract and in the uth-in-Lending disclosure above and all other amounts due under this contract.

ou authorize the Creditor to disburse funds as specified in the Itemization of Amount Financed above.

ou signed this contract and received a completely filled-in copy on JANUARY 1st, Year 2010.

[signature] 01/01/2010 N/A

gnature of Borrower Date Signature of Co-Borrower Date

IMPORTANT: READ THE ADDITIONAL TERMS ON REVERSE SIDE BEFORE SIGNING ABOVE.

IO (For use in the State of Ohio)

DISTRIBUTION: WHITE – TMCC COPY; CANARY – DEALER COPY; PINK – 2 BORROWER'S COPIES

3103OH 03/09

Complaints and Other Initiating Documents

1:10-cv-00128 Grunkemeyer et al v. Toyota Motor Sales USA, Inc. et al

U.S. District Court

Southern District of Ohio

Notice of Electronic Filing

The following transaction was entered by Harrison, Gregory on 2/25/2010 at 0:22 AM EST and filed on 2/25/2010

Case Name: Grunkemeyer et al v. Toyota Motor Sales USA, Inc. et al
Case Number: 1:10-cv-00128-MRB
Filer: Toyota Motor Credit Corporation
Toyota Motor Engineering & Manufacturing North America, Inc.
Toyota Motor Sales USA, Inc.
Document Number: 1
Judge(s) Assigned: Michael R. Barrett (presiding)

Docket Text:
NOTICE OF REMOVAL from Hamilton County Court of Common Pleas, case number A1001119 (Filing fee $ 350 paid - receipt number: 0648-2511589), filed by Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Sales USA, Inc., Toyota Motor Credit Corporation. (Attachments: # (1) Exhibit 1 State Court Pleadings, # (2) Civil Cover Sheet) (Harrison, Gregory)

1:10-cv-00128-MRB Notice has been electronically mailed to:

Gregory Alan Harrison greg.harrison@dinslaw.com

1:10-cv-00128-MRB Notice has been delivered by other means to:

Joel Grunkemeyer

John Sukola

Sharon Wilson

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

Document description: Main Document
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1040326259 [Date=2/25/2010] [FileNumber=2608464-0] [1e85265faf3e89ec2e9bc6d07b65ffd0bb23d808d7e60e57868375126a56fba308f f34733dfe8dcbe2ea04ed73c3f8200fb931189d2d466237740a8a552ec066]]
Document description: Exhibit 1 State Court Pleadings
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1040326259 [Date=2/25/2010] [FileNumber=2608464-1] [5a0e5308c69ef21d4abcc8863ebd004b8800d62ae27c8c300d856ae1a5822f2cdbb a5729854f25aea77a8e08498b211c26a2df6f366d2429c9cc67b2e1c66d64]]

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Document description: Civil Cover Sheet
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1040326259 [Date=2/25/2010] [FileNumber=2608464-2
] [245d5b9175c82afb1ff13910dc6eadba6735f278eb9549db06a244b321a70707fb1
73515442c891118d1c5bd80d406ecf2eb5b59916dcca1d32e49848ec1347a]]

TOY-RQ-05E-00008960

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION (CINCINNATI)

JOEL GRUNKEMEYER
1041 Central Avenue
Cincinnati, OH 45202

and

SHARON WILSON
9105 Tag Drive
Cincinnati, OH 45231

and

JOHN SUKOLA
4939 Hathaway Road
Cincinnati, OH 45036

Plaintiffs,

v.

TOYOTA MOTOR SALES USA, INC.
19001 South Western Ave.
Torrance, CA 90501

and

TOYOTA MOTOR CREDIT CORPORATION
19001 South Western Ave.
Torrance, CA 90501

and

TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC.
25 Atlantic Ave.
Erlanger, KY 41018

and

JOSEPH TOYOTA OF CINCINNATI
9101 Colerain Ave.
Cincinnati, OH 45251

and

KINGS TOYOTA
9500 Kings Automall Dr.
Cincinnati, OH 45249

Defendants.

Civil Action No. 10-128

JUDGE _____

NOTICE OF REMOVAL BY DEFENDANTS TOYOTA MOTOR SALES, U.S.A., INC., TOYOTA MOTOR CREDIT CORPORATION AND TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC.

Defendants Toyota Motor Sales, U.S.A., Inc., Toyota Motor Credit Corporation and Toyota Motor Engineering & Manufacturing North America, Inc. ("Toyota Defendants") hereby jointly petition this Court for removal of this action from the Common Pleas Court of Hamilton County, Ohio to the United States District Court for the Southern District of Ohio pursuant to 28 U.S.C. §§ 1331, 1332, 1441, 1446 and 1453, and in support thereof state the following:

I. BACKGROUND

1. On or about February 5, 2010, Plaintiffs Joel Grunkemeyer, Sharon Wilson and John Sukola commenced this putative class action by filing their Class Action Complaint ("Complaint") in the Common Pleas Court of Hamilton County, Ohio, Case No. A 1001119. Plaintiffs demanded a jury trial.

2. Plaintiffs allege in their Complaint that they are bringing "this action on behalf of a class consisting of all residents of the State of Ohio who entered into agreements to purchase vehicles manufactured by Toyota and that are subject to the 2010 recalls concerning defective accelerators, acceleration system components, or vehicle parts affecting the performance of that system, including, but not limited to electronic throttle control system parts, ETCS-Intelligent System parts, accelerator pedals and floor mats." (Complaint ¶¶ 19, 22).

3. This action is just one of several recent putative class actions filed against some or all of the Toyota Defendants based on allegations regarding the 2010 recall of certain models of Toyota automobiles due to alleged accelerator defects.

4. As of the date of the filing of this notice of removal, there are more than seventy (70) class actions pending against some or all of the Toyota Defendants in various federal district courts bringing claims relating to these same allegations,

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including the United States District Court for the Southern District of Ohio, Western Division (Dayton), *Shumaker, et al. v. Toyota Motor Engineering & Manufacturing North America, Inc., et al.*, Case No. 3:10-cv-00061-WHR.

5. On February 1, 2010, a petition was filed with the Judicial Panel on Multidistrict Litigation seeking pretrial coordination of all pending federal cases before one United States District Court judge. *See MDL 2151: In Re: Toyota Motor Corp. Defective Gas Pedal Products Liability Litigation.* If the Judicial Panel decides to create multidistrict litigation proceedings for these cases, Defendants will seek to transfer this case to those proceedings.

6. Service of the Summons and the Complaint was made on Toyota Motor Sales, U.S.A., Inc. ("TMS") via certified mail on February 9, 2010. (Ex. 1, Hamilton Co. Court Docket).

7. Service of the Summons and the Complaint was made on Toyota Motor Credit Corporation ("TMCC") via certified mail on February 9, 2010. *Id.*

8. Service of the Summons and the Complaint was made on Toyota Motor Engineering & Manufacturing North America, Inc. ("TEMA") via certified mail on February 8, 2010. *Id.*

9. Service of the Summons and the Complaint was made on Joseph T of C, Co. d/b/a Joseph Toyota of Cincinnati via certified mail on February 8, 2010. *Id.*

10. Service of the Summons and the Complaint was made on Kings Toyota, Inc. (improperly named in the Complaint as "Kings Toyota") via certified mail on February 6, 2010. *Id.*

11. Accordingly, this Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446(b).

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12. Pursuant to 28 U.S.C. § 1446(a), copies of all process, pleadings and orders served upon Defendants in Case No. A 1001119 are attached as Exhibit 1. Exhibit 1 also includes the state court docket and the contents of the state court case file.

13. No further proceedings have occurred in this action.

II. REMOVAL IS PROPER BECAUSE THIS COURT HAS SUBJECT MATTER JURISDICTION PURSUANT TO 28 U.S.C. §§ 1332(d), 1441 AND 1453

14. This Court has original subject matter jurisdiction over this action pursuant to the Class Action Fairness Act of 2005 ("CAFA") as codified at 28 U.S.C. § 1332(d).

15. CAFA provides that a federal district court shall have original jurisdiction of any civil class action in which: (A) there are 100 or more members in the plaintiffs' proposed class; (B) any member of the proposed class is a citizen of a state different from any defendant; and (C) the amount placed in controversy by the claims of the class members exceeds the sum or value of $5,000,000 in the aggregate (exclusive of interest and costs). 28 U.S.C. § 1332(d). As demonstrated herein, all of these criteria are met.

A. CLASS ACTION CONSISTING OF 100 OR MORE MEMBERS

16. CAFA defines the term "class action" as "any civil action filed under rule 23 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial procedure authorizing an action be brought by 1 or more representative persons as a class action." 28 U.S.C. § 1332(d)(1)(B). This action has been filed as a state court class action pursuant to Ohio Civil Rule 23 which is similar to Federal Civil Rule 23.

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(Complaint ¶¶ 21, 28-30). Plaintiffs' case falls within the definition of class action as contained in CAFA.

17. Plaintiffs allege that the number of putative class members "may consist of several thousand Ohio residents." (Complaint ¶ 24).

18. Filed with this Petition is the declaration of George T. Morino, National Quality Compliance Manager for Toyota Motor Sales, U.S.A., Inc. His declaration establishes that based upon records maintained by Toyota Motor Sales, U.S.A., Inc., approximately 52,159 recall notices will be sent to Ohio residents for Toyota motor vehicles that are the subject of the voluntary recall initiated by TMS in cooperation with the National Highway Safety Transportation Administration ("NHSTA") on January 21, 2010, to address isolated reports of sticking accelerator pedal mechanisms. (Morino Dec.¶ 8).

19. Therefore, CAFA's requirement of a minimum putative class size of 100 or more persons is satisfied.

B. DIVERSITY OF CITIZENSHIP UNDER CAFA

20. Defendant TMS is and was at the time this suit was commenced a corporation organized and existing under the laws of the state of California with its principal place of business in California. Defendant TMS is not now, and was not at the time the Complaint was filed, a citizen of the State of Ohio within the meaning of the Acts of Congress relating to the removal of cases.

21. Defendant TMCC is and was at the time this suit was commenced a corporation organized and existing under the laws of the state of California with its principal place of business in California. Defendant TMCC is not now, and was not at

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the time the Complaint was filed, a citizen of the State of Ohio within the meaning of the Acts of Congress relating to the removal of cases.

22. Defendant TEMA is and was at the time this suit was commenced a corporation organized and existing under the laws of the state of Kentucky with its principal place of business in Kentucky. Defendant TEMA is not now, and was not at the time the Complaint was filed, a citizen of the State of Ohio within the meaning of the Acts of Congress relating to the removal of cases.

23. Defendant Joseph T of C, Co. d/b/a Joseph Toyota of Cincinnati is and was at the time this suit was commenced a corporation existing and organized under the laws of the state of Ohio with its principal place of business in Ohio.

24. Defendant Kings Toyota, Inc. is and was at the time this suit was commenced a corporation existing and organized under the laws of the state of Ohio with its principal place of business in Ohio.

25. Defendants are informed and believe that the named Plaintiffs are and were at the time this suit was commenced, citizens and residents of the State of Ohio. (Complaint p. 1 and ¶¶ 12-14).

26. The diversity of citizenship between Plaintiffs and the Toyota Defendants satisfies the minimal diversity requirements of CAFA as set forth in 28 U.S.C. § 1332(d)(2), which provides that the Court shall have jurisdiction if any member of a class of plaintiffs is a citizen of a State different from any defendant.

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C. AMOUNT IN CONTROVERSY UNDER CAFA [1]

27. CAFA provides that a federal district court shall have original jurisdiction over a putative class action where the claims of the individual class members, when aggregated, exceed the sum of $5,000,000, exclusive of interest and costs. 28 U.S.C. § 1332(d)(6).

28. Other litigants recently have sued one of some of these Defendant asserting that their putative class action claims exceed the sum of $5,000,000 under CAFA.[2]

29. The legislative history makes it clear that § 1332(d)(6) is to be interpreted expansively. The Senate Committee states: ". . .if a federal court is uncertain about whether 'all matters in controversy' in a purported class action 'do not in the aggregate exceed the sum or value of $5,000,000, the court should err in favor of exercising jurisdiction over the case. By the same token, the Committee intends that a matter be subject to federal court jurisdiction under this provision if the value of the matter in

---

[1] Though the Toyota Defendants dispute that Plaintiffs are entitled to bring this action, vehemently deny liability, and contend that Plaintiffs can recover nothing under the claims in the Complaint and the Amended Complaint, for purposes of removal only, Plaintiffs' allegations and the relief sought by Plaintiffs are to be considered in determining the value of the claims as pled and the amount in controversy.

[2] *See, e.g.*, Complaint (¶ 6) in *Troy Menssen v. Toyota Motor Sales, U.S.A., Inc., et al.*, N.D. Ohio, Case No. 1:10-cv-00260 ("This Court also has jurisdiction pursuant to 28 U.S.C. 1332 in that the amount in controversy exceeds the sum or value of $5 million exclusive of interest and costs, and members of the putative Class of Plaintiffs defined herein are citizens of different states than one or more of the Defendants." *see also* Complaint (¶ 2) *Daniel Lee v. Toyota Motor North America, Inc., et al.*, N.D. Ohio, Case No. 3:10-cv-00280, ("The court has jurisdiction pursuant to 28 U.S.C. 1332(d) because the matter in controversy exceeds the sum or value of $5,000,000 exclusive of interests and costs and is a class action in which the members of the class are citizens of a different state than the defendants."); *see also* Complaint (¶ 4) in *Rebecca S. Shumaker v. Toyota Motor Sales, U.S.A., Inc., et al.*, S.D. Ohio, Case No. 3:10-cv-00061 ("This Court also has jurisdiction pursuant to 28 U.S.C. § 1332(d) which, under the provisions of the Class Action Fairness Act (CFA), explicitly provides for original jurisdiction in the Federal Courts of any class action where the amount in controversy exceeds the sum or value in the aggregate of $5,000,000, exclusive of interest and costs." There are dozens of other similar cases recently filed in federal district courts across the country based on CAFA diversity jurisdiction that are currently pending against Toyota.

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litigation exceeds $5,000,000 either from the viewpoint of the plaintiff or the viewpoint of the defendant, and regardless of the type of relief sought (e.g., damages, injunctive relief, or declaratory relief)." 109th Congress, 1st Session, Senate Rep. 109-14, at p. 43 (February 28, 2005).

30. Plaintiffs' Complaint contains the following causes of action: (I) Violation of the Ohio Consumer Sales Practices Act; (II) Violation of the Ohio Deceptive Trade Practices Act; (III) Breach of Contract; (IV) Fraudulent Concealment; (V) Fraud; (VI) Breach of Express Warranties; (VII) Breach of Implied Warranty of Merchantability; (VIII) Breach of Implied Warranty of Fitness for a Particular Purpose; (IX) Negligence; (X) Strict Product Liability; and (XII) (sic) Punitive Damages. (Complaint, *passim*).

31. Although Plaintiffs' Complaint does not specifically set forth the amount in controversy, Plaintiffs assert that as a result of their reliance on Toyota's alleged fraudulent concealment of defects in the automobiles at issue, "Plaintiffs and Class members have been injured in an amount including, but not limited to the loss of value of the use of the vehicles they bought, the fear and other emotional trauma as a result of being forced to drive vehicles that Toyota has admitted are unsafe due to Toyota's refusal to provide replacement vehicles, and injuries and deaths resulting from accidents caused by sudden acceleration." (Complaint ¶ 51).

32. Plaintiffs also assert that they have been "defrauded into leasing or purchasing vehicles that had undisclosed defects." (Complaint ¶ 58).

33. They also claim that they have been subjected to the "very real fear of a horrendous accident if their vehicle were to reach uncontrollable speeds. . . ." (Complaint ¶ 63).

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34. Further, Plaintiffs allege they have incurred "the financial loss of owning or leasing vehicles that are unsafe as well as being subjected to the potential risk of injury." (Complaint ¶ 80).

35. Plaintiffs also claim that they have "received vehicles that were worth far less than what they paid to lease or purchase the vehicles." (Complaint ¶ 63).

36. Plaintiffs "seek damages and other relief, including but not limited to reimbursement of costs, litigation expenses, interest to the extent legally applicable, **punitive damages, attorneys' fees, injunctive relief**, and any other relief to which they may be entitled in law and/or equity." (Complaint ¶ 23) (emphasis added).

37. Plaintiffs specifically pray for "[a]n Order of an amount to be determined at trial awarding damages **and requiring Defendants to provide, or reimburse Plaintiffs for the cost of obtaining, non-defective, replacement vehicles to all members of the Class until the vehicles owned by Class members have been repaired or replaced** with vehicles that do not have defects in the accelerator or any other system." (Complaint, Prayer for Relief, subparagraph B. at p. 21) (emphasis added).

38. Plaintiffs also seek "[a]n Order of an amount to be determined at trial awarding damages and requiring Defendants to **reform their purchase and finance contracts with class members and cease collecting car payments** from all Class members who purchased Toyota vehicles with defects alleged in this Complaint in an amount to be determined at trial." (Complaint, Prayer for Relief, subparagraph D. at p. 21) (emphasis added).

39. In addition, Plaintiffs ask for "[a]n award of an amount to be determined at trial for **treble damages as provided for by the Ohio Consumer Sales**

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Practices Act and Ohio Deceptive Trade Practices Act." (Complaint, Prayer for Relief, subparagraph G. at p. 22) (emphasis added).

40. Plaintiffs further pray for "[a]n award of an amount to be determined at trial for any **other compensatory damages** that will fairly represent the injuries that Plaintiffs and members of the class suffered as proven at trial." (Complaint, Prayer for Relief, subparagraph E. at p. 21) (emphasis added).

41. Plaintiffs also ask for "[a]n award of an amount to be determined at trial for all **attorneys' fees** and costs incurred by Plaintiffs in the prosecution of these claims." (Complaint, Prayer for Relief, subparagraph H. at p. 22) (emphasis added).

42. Plaintiffs also seek "[a]n award of an amount to be determined at trial for **punitive damages**. . . . " (Complaint, Prayer for Relief, subparagraph F. at p. 21) (emphasis added).

43. It is well settled law that "[i]n calculating the amount in controversy, the court may consider compensatory damages, punitive damages, statutorily authorized attorneys fees, and economic value of the rights the plaintiff seeks to protect through injunctive relief." *Curry v. Applebee's Int'l, Inc.*, 2009 U.S. Dist. Lexis 114143, at *14-15 (S.D. Ohio 2009), *citing Williamson v. Aetna Life Ins. Co.*, 481 F.3d 369, 376 (6th Cir. 2007) ("As a general rule, attorneys' fees are excludable in determining the amount in controversy for purposes of diversity, unless the fees are provided for by contract or where a statute mandates or expressly allows the payment of such fees."); *Smith v. Nationwide Property and Cas. Ins. Co.*, 505 F.3d 401, 407 (6th Cir. 2007) (value of injunctive relief based on economic value of rights the plaintiff seeks to protect); *Buckeye Recyclers v. Chep USA*, 228 F. Supp. 2d 818, 822 (S.D. Ohio 2002) (injunctive relief); *Brown v. Jackson Hewitt, Inc.*, No. 1:06-cv-2632, 2007 U.S. Dist. LEXIS 13328

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at *3 (N.D. Ohio Feb. 27, 2007), *citing Hayes v. Equitable Energy Resources Co.*, 266 F.3d 560, 572 (6th Cir. 2001) (punitive damages); *Clark v. Nat'l Travelers Life Ins. Co.*, 518 F.2d 1167, 1168 (6th Cir. 1975) (attorneys' fees); *Pennsylvania R. Co. v. Girard*, 210 F.2d 437, 439 (6th Cir. 1954) (injunctive relief).

44. Plaintiffs offer no explanation as to how they intend to calculate the damages they seek, and while Defendants dispute that Plaintiffs are entitled to any of the damages sought in their Complaint, for purposes of determining the aggregate amount placed in controversy under CAFA, Defendants provide the court with the following facts.

45. The total number of notices that will be sent to Ohio residents in connection with the January 21, 2010 recall referenced in the Amended Complaint ("January Recall") is approximately 52,159. (Morino Dec. ¶ 8).

46. In connection with the January Recall, the Company has developed a program to repair and remedy the potential sticking accelerator pedal mechanisms issue. The Company has agreed to reimburse authorized dealerships seven tenths of one hour of labor for the repair. The average hourly rate for this repair in the state of Ohio is $80.05 per hour. (Morino Dec. ¶ 11).

47. Multiplying the labor cost of seven tenths of one hour times the average hourly rate in Ohio of $80.05 per hour means the labor cost per vehicle equals $56.04. If that amount is taken times the total number of recall notices sent for the state of Ohio the total amount of the labor repair cost is $2,922,990.36.

48. Plaintiffs also seek the cost of a loaner car for the period of time during which their cars are awaiting repairs. In the past, under certain circumstances, the

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Company has reimbursed its independent dealerships $35.00 a day for the use of a loaner vehicle by a customer during a repair. (Morino Dec. ¶ 12).

49. Plaintiffs' filed suit on February 5, 2010. As of February 22, 2010, approximately 5,000 January Recall notices had been sent to Ohio residents. (Morino Dec. ¶ 9. That means approximately 47,159 recall notices have not yet been sent to Ohio residents. The total number of days from the date of the filing of the plaintiffs' initial Complaint to February 22, 2010, is 17 days. For at least 17 days, 47,159 vehicles have not undergone repairs pursuant to the January Recall program. Multiplying the 17 days times 47,159 recall notices times $35.00 per day equals $28,059,605 as the amount placed in controversy by the loaner car relief sought in the Amended Complaint. Even if the cost of a rental car were just $6.35 per day, that would exceed the $5,000,000 aggregate amount in controversy necessary for purposes of determining jurisdiction under CAFA.

50. Plaintiffs also seek to reform their lease and purchase contracts so as to cease making payments for their vehicles. In that regard, they have sought a preliminary injunction from the state court granting that relief.

51. For plaintiff Wilson, her monthly payment is $575.21 for term of 60 months beginning on February 14, 2010. (*See* Declaration of Bill Reber, General Manager of Joseph Toyota of Cincinnati) . If she were to cease making all payments starting with her March 2010 payment, the 59 monthly payments she would not be making would equal $33,937.39. If this amount is typical of all class members, the amount placed in controversy on the contract reformation claim alone is $33,937.39 times 52,159 which equals $1,770,140,325.

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52. But Plaintiffs' prayer for relief does not stop there. Plaintiffs also assert causes of action under both the Ohio Consumer Sales Practices Act ("OCSPA"), R.C. § 1345.01, *et seq.*, and the Ohio Deceptive Trade Practices Act ("ODTPA"), R.C. § 4165.01, *et seq.*, both of which provide for injunctive relief and the statutory award of attorneys' fees. R.C. §§ 1345.09; 4165.03. Since these statutes authorize awards for attorneys' fees, Plaintiffs' claim for attorneys' fees also may be considered for purposes of calculating the $5,000,000 amount placed in controversy under CAFA.

53. As a reference point for awards of attorneys' fees in class actions, the Federal Judicial Center conducted a study in 1994-95 entitled "Empirical Study of Class Actions in Four Federal District Courts." The study found that the median rates for attorneys' fees ranged from 27% to 30% of the recovery for all class actions resolved or settled over a four year period in the four selected district courts. FJC-R-96-2.

54. In addition to attorneys fees, Plaintiffs seek counseling for emotional distress, punitive damages, disgorgement, and the loss in value of their vehicles due to the recall. When all of these claims for relief are viewed in the context of the number of recall notices to be issued to Ohio residents, the amount placed in controversy by plaintiffs' claims clearly is in excess of $5,000,000.

55. Plaintiffs also have asked for treble damages under the OCSPA and the ODTPA. When a plaintiff seeks treble damages, the Court also may consider treble damages in determining the amount in controversy. *Cancino v. Yamaha Motor Corp.*, 494 F. Supp. 2d 664 (S.D. Ohio 2005).

56. Defendants contend that the named Plaintiffs and the putative class are not entitled to any relief, however, given the size of the proposed class and the breadth

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of the relief sought, the amount placed in controversy by this litigation far exceeds the $5,000,000 requirement for CAFA jurisdiction.

D. NO CAFA EXCEPTIONS APPLY

57. Although CAFA has additional provisions under which the District Court may or shall decline jurisdiction, no statutory exception to CAFA Jurisdiction applies in this case. [3] 28 U.S.C. § 1332(d)(3) and (4).

58. Section 1332(d)(3), (the "interest of justice" exception) does not apply because, among other reasons, the primary defendants, TMS, TMCC and TEMA are not citizens of the state where this action was originally filed.

59. Section 1332(d)(4)(A), (the "local controversy exception"), does not apply because, among other reasons, neither Joseph Toyota of Cincinnati nor Kings Toyota, Inc., — the only two named defendants alleged to be Ohio residents, — is a defendant from whom significant relief is sought or whose conduct forms a significant basis for the claims asserted by the class, and because during the three year period preceding the filing of this class action complaint other class actions have been filed against one or some of the Toyota Defendants asserting same or similar allegations on behalf of other persons.[4]

---

[3] Plaintiffs bear the burden of proving that an exception to CAFA jurisdiction applies. *See Kendrick v. Std. Fire Ins. Co.*, 2007 U.S. Dist. LEXIS 28461 at *4, (E.D. Ky. 2007).

[4] In the legislative history for this section of CAFA, the Committee stated its intent that cases such as the one at issue should be removable. Specifically, the Committee provided the following example of a case that would be exempted from the provisions of § 1332(d)(4):

> A class action is brought in Florida against an out-of-state automobile manufacturer and a few in-state dealers, alleging that a certain vehicle model is unsafe because of an allegedly defective transmission. The vehicle model was sold in all fifty states but the class action is only brought on behalf of Floridians. This case would not fall within the Local Controversy Exception for two reasons. First, the automobile dealers are not defendants whose alleged conduct forms a significant basis of the claims or from whom significant relief is sought by the class. Even if the plaintiffs are truly seeking relief from the dealers, that relief is just small change compared to what they are seeking from the manufacturer.

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60. Section 1332(d)(4)(B) (the "home state exception") does not apply because, among other reasons, the primary defendants, TMS, TMCC and TEMA are not citizens of the state where this action was originally filed.

61. This action is not one described in 28 U.S.C. § 1332 or § 1453 as being non-removable.[5]

> Moreover, the main allegation is that the vehicles were defective. In product liability cases, the conduct of a retailer such as an automobile dealer does not form a significant basis for the claims of the class members. Second, the case falls outside the Local Controversy Exception because the "principal injuries resulting from the alleged conduct,"— i.e., selling a vehicle with a defective transmission — were incurred in all fifty states. The fact that the suit was brought as a single-state class action does not mean that the principal injuries were local. In other words, this provision looks at where the principal injuries were suffered by everyone who was affected by the alleged conduct—not just where the proposed class members were injured. Thus, any defendant could remove this case to federal court.

[5] In addition to jurisdiction based upon CAFA, this court also has diversity jurisdiction based upon 28 U.S.C. §§ 1332(a) and 1441 because there is complete diversity of citizenship among all properly joined parties, and the amount in controversy exceeds $75,000 exclusive of interest and costs. The non-diverse defendants, Joseph Toyota of Cincinnati and Kings Toyota, Inc., have been fraudulently joined in order to defeat diversity jurisdiction. Accordingly, their citizenship should be ignored for purposes of determining diversity. *Rose v. Giamatti*, 721 F.Supp. 906, 917 (S.D. Ohio 1989). Their joinder is fraudulent because there exists no reasonable basis in fact or in law supporting a claim against them. Specifically, there is no reasonable basis for predicting that the state law might impose liability on the facts involved." *Alexander v. Elec. Data Sys. Corp.*, 13 F.3d 940, 949 (6th Cir. 1994) (internal citations omitted). *See also Ludwig v. Learjet*, Inc., 830 F.Supp. 995 (E.D. Mich. 1993).

In addition, pursuant to 28 U.S.C. § 1331, this court also has jurisdiction based on Plaintiffs' claims under the Magnuson-Moss Warranty Act ("MMWA"), because such claims arise under the "Constitution, laws, or treaties of the United States." MMWA, 15 U.S.C. § 2310(d), provides that "a consumer who is damaged by the failure of a supplier, warrantor, or service contractor to comply with any obligation under this, or under a written warranty, implied warranty, or service contract, may bring suit for damages and other legal and equitable relief...(B) in an appropriate district court of the United States, subject to paragraph (3) of this subsection." 15 U.S.C. § 2310 (d). Section (3) provides:

> No claim shall be cognizable in a suit brought under paragraph (1)(B) of this subsection --
>
> (A) if the amount in controversy of any individual claim is less than the sum or value of $25;
>
> (B) if the amount in controversy is less than the sum or value of $50,000 (exclusive of interests and costs) computed on the basis of all claims to be determined in this suit; or
>
> (C) if the action is brought as a class action, and the number of named plaintiffs is less than one hundred.

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III. VENUE

62. Venue of this removal action is proper under 28 U.S.C. § 1441(a) because this Court is the United States District Court for the district and division corresponding to the place where the state court action was pending.

63. This action is not an action described in 28 U.S.C. § 1445.

64. All Defendants have consented in writing to the filing of this Removal.

65. Pursuant to 28 U.S.C. § 1446(d), a true and accurate copy of this Notice of Removal and exhibits is being served on counsel for the Plaintiffs and is being filed with the clerk of the courts for the Common Pleas Court of Hamilton County, Ohio.

WHEREFORE, Defendants respectfully remove this action from the Court of Common Pleas of Hamilton County, Ohio to the United States District Court for the Southern District of Ohio as provided by law.

---

15 U.S.C. § 2310 (d). The Plaintiffs' claims meet the amount in controversy requirements set forth in the statute.

Plaintiffs' Complaint specifically alleges that Defendants breached written and implied warranties owed to Plaintiffs. While the MMWA is not explicitly referenced in the Complaint, the allegations give rise to a claim under the MMWA. This Court should exercise jurisdiction over the pendent state law claims because: (1) the federal MMWA claim is sufficient to confer subject matter jurisdiction on the court; (2) the state and federal claims derive from a common nucleus of operative fact; and (3) Plaintiffs' claims are such that they would ordinarily be expected to be tried all in one judicial proceeding. *See Aschinger v. Columbus Showcase Co.*, 934 F.2d 1402, 1412 (6th Cir. 1991). Therefore, removal of the entire action is appropriate pursuant to 28 U.S.C. § 1441.

TOY-RQ-05E-00008976

Respectfully submitted,

/s/Gregory A. Harrison

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TOY-RQ-05E-00008977

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CERTIFICATE OF SERVICE

I hereby certify that one copy of the foregoing Notice of Removal was served via e-mail on the 25th day of February, 2010, upon the following counsel at the e-mail addresses listed below:

Richard S. Wayne [rswayne@strausstroy.com]
Thomas P. Glass [tpglass@strausstroy.com]
Joseph J. Braun [jjbraun@strausstroy.com]
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P.O. Box 10068
214 West Monument Avenue
Dayton OH 45402-4139

Counsel for Plaintiffs

and that a copy also will be mailed via ordinary mail postage prepaid on the 25th day of February, 2010 upon the same counsel.

/s/Gregory A. Harrison

TOY-RQ-05E-00008978

EXHIBIT 1

Patricia M. Clancy Clerk of Courts

Hamilton County Courthouse
1000 Main Street
Cincinnati, OH 45202

Case Summary

Case Number:	A 1001119
Case Caption:	JOEL GRUNKEMEYER vs. TOYOTA MOTOR SALES USA INC
Judge:	ROBERT P RUEHLMAN
Filed Date:	2/5/2010
Case Type:	H825 - CONSUMER SALES ACT & JURY DEMAND- OC
Total Deposits:	$ 665.00 Credit
Total Costs:	$ 360.00

Case Options

Case History
Case Schedules
Case Documents
Document Request Forr
Party/Attorney Informatic
Certified Mail Service
New Case Search
New Name Search
Add Case to My Portfolic

Case History

Printer Friendly Versi

Doc	Image#	Date	Description	Amount
		2/16/2010	ELECTRONIC POSTAL RECEIPT RETURNED, COPY OF SUMMONS & COMPLAINT DELIVERED TO JOSEPH TOYOTA OF CINCINNATI ON 02/08/10, FILED. [CERTIFIED MAIL NBR.: 7194 5168 6310 0491 3093]	
		2/16/2010	ELECTRONIC POSTAL RECEIPT RETURNED, COPY OF SUMMONS & COMPLAINT DELIVERED TO JOSEPH TOYOTA OF CINCINNATI ON 02/08/10, FILED. [CERTIFIED MAIL NBR.: 7194 5168 6310 0491 3086]	
		2/16/2010	ELECTRONIC POSTAL RECEIPT RETURNED, COPY OF SUMMONS & COMPLAINT DELIVERED TO TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA INC ON 02/08/10, FILED. [CERTIFIED MAIL NBR.: 7194 5168 6310 0491 3079]	
		2/16/2010	ELECTRONIC POSTAL RECEIPT RETURNED, COPY OF SUMMONS & COMPLAINT DELIVERED TO TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA INC ON 02/11/10, FILED. [CERTIFIED MAIL NBR.: 7194 5168 6310 0491 3062]	
		2/16/2010	ELECTRONIC POSTAL RECEIPT RETURNED, COPY OF SUMMONS & COMPLAINT DELIVERED TO TOYOTA MOTOR CREDIT CORPORATION ON 02/09/10, FILED. [CERTIFIED MAIL NBR.: 7194 5168 6310 0491 3055]	
		2/16/2010	ELECTRONIC POSTAL RECEIPT RETURNED, COPY OF SUMMONS & COMPLAINT DELIVERED TO TOYOTA MOTOR CREDIT CORPORATION ON 02/10/10, FILED. [CERTIFIED MAIL NBR.: 7194 5168 6310 0491 3048]	
		2/16/2010	ELECTRONIC POSTAL RECEIPT RETURNED, COPY OF SUMMONS & COMPLAINT DELIVERED TO TOYOTA MOTOR SALES USA INC ON 02/09/10, FILED. [CERTIFIED MAIL NBR.: 7194 5168 6310 0491 3031]	
		2/16/2010	ELECTRONIC POSTAL RECEIPT RETURNED, COPY OF SUMMONS & COMPLAINT DELIVERED TO TOYOTA MOTOR SALES USA INC ON 02/09/10, FILED. [CERTIFIED MAIL NBR.: 7194 5168 6310 0491 3024]	
		2/10/2010	JUDGE ASSIGNED CASE ASSIGNED TO RUEHLMAN/ROBERT/P PRIMARY	
		2/8/2010	ELECTRONIC POSTAL RECEIPT RETURNED, COPY OF SUMMONS & COMPLAINT DELIVERED TO KINGS TOYOTA INC ON 02/06/10, FILED. [CERTIFIED MAIL NBR.: 7194 5168 6310 0491 3116]	
		2/8/2010	ELECTRONIC POSTAL RECEIPT RETURNED, COPY OF SUMMONS & COMPLAINT DELIVERED TO KINGS TOYOTA INC ON 02/06/10, FILED. [CERTIFIED MAIL NBR.: 7194 5168 6310 0491 3109]	
		2/5/2010	SUMMONS ISSUED BY CERTIFIED MAIL TO TOYOTA MOTOR SALES USA INC	

	2/5/2010	SUMMONS ISSUED BY CERTIFIED MAIL TO KINGS TOYOTA INC	
	2/5/2010	SUMMONS ISSUED BY CERTIFIED MAIL TO KINGS TOYOTA INC	
	2/5/2010	SUMMONS ISSUED BY CERTIFIED MAIL TO JOSEPH TOYOTA OF CINCINNATI	
	2/5/2010	SUMMONS ISSUED BY CERTIFIED MAIL TO JOSEPH TOYOTA OF CINCINNATI	
	2/5/2010	SUMMONS ISSUED BY CERTIFIED MAIL TO TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA INC	
	2/5/2010	SUMMONS ISSUED BY CERTIFIED MAIL TO TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA INC	
	2/5/2010	SUMMONS ISSUED BY CERTIFIED MAIL TO TOYOTA MOTOR CREDIT CORPORATION	
	2/5/2010	SUMMONS ISSUED BY CERTIFIED MAIL TO TOYOTA MOTOR CREDIT CORPORATION	
	2/5/2010	SUMMONS ISSUED BY CERTIFIED MAIL TO TOYOTA MOTOR SALES USA INC	
	2/5/2010	CERTIFIED MAIL SERVICE ISSUED TO KINGS TOYOTA INC [CERTIFIED MAIL NBR.: 7194 5168 6310 0491 3116]	
	2/5/2010	CERTIFIED MAIL SERVICE ISSUED TO JOSEPH TOYOTA OF CINCINNATI [CERTIFIED MAIL NBR.: 7194 5168 6310 0491 3086]	
	2/5/2010	CERTIFIED MAIL SERVICE ISSUED TO KINGS TOYOTA INC [CERTIFIED MAIL NBR.: 7194 5168 6310 0491 3109]	
	2/5/2010	CERTIFIED MAIL SERVICE ISSUED TO JOSEPH TOYOTA OF CINCINNATI [CERTIFIED MAIL NBR.: 7194 5168 6310 0491 3093]	
	2/5/2010	CERTIFIED MAIL SERVICE ISSUED TO TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA INC [CERTIFIED MAIL NBR.: 7194 5168 6310 0491 3062]	
	2/5/2010	CERTIFIED MAIL SERVICE ISSUED TO TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA INC [CERTIFIED MAIL NBR.: 7194 5168 6310 0491 3079]	
	2/5/2010	CERTIFIED MAIL SERVICE ISSUED TO TOYOTA MOTOR CREDIT CORPORATION [CERTIFIED MAIL NBR.: 7194 5168 6310 0491 3055]	
	2/5/2010	CERTIFIED MAIL SERVICE ISSUED TO TOYOTA MOTOR SALES USA INC [CERTIFIED MAIL NBR.: 7194 5168 6310 0491 3031]	
	2/5/2010	CERTIFIED MAIL SERVICE ISSUED TO TOYOTA MOTOR CREDIT CORPORATION [CERTIFIED MAIL NBR.: 7194 5168 6310 0491 3048]	
	2/5/2010	CERTIFIED MAIL SERVICE ISSUED TO TOYOTA MOTOR SALES USA INC [CERTIFIED MAIL NBR.: 7194 5168 6310 0491 3024]	
	2/5/2010	COMPLAINT & JURY DEMAND FILED	
	2/5/2010	CASE DEPOSIT & JURY DEMAND BY RICHARD STUART WAYNE	665.00-
	2/5/2010	CLASSIFICATION FORM FILED.	

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COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

CLASSIFICATION FORM

WWW.COURTCLERK.ORG

PATRICIA M. CLANCY
CLERK OF COURTS

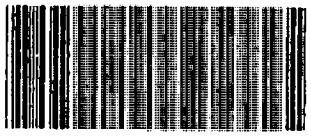
CASE NUMBER: A1001119 PLAINTIFF: Joel Grunkemeyer, et al.

PURSUANT TO SUPERINTENDENCE RULE 4, THIS CASE WAS ORIGINALLY FILED AND DISMISSED

UNDER CASE NUMBER: _____ BY JUDGE _____

PLEASE INDICATE CLASSIFICATION INTO WHICH THIS CASE FALLS:

- ☐ OTHER TORT – C360
  - ☐ Personal Injury – C310
  - ☐ Wrongful Death – C320
  - ☐ Vehicle Accident – C370
- ☐ PROFESSIONAL TORT – A300
  - ☐ Personal Injury – A310
  - ☐ Wrongful Death – A320
  - ☐ Legal Malpractice – A330
  - ☐ Medical Malpractice – A3
- ☐ PRODUCT LIABILITY – B350
  - ☐ Personal Injury – B310
  - ☐ Wrongful Death – B320
- WORKER'S COMPENSATION
  - ☐ Non-Compliant Employer – D410
  - ☐ Appeal – D420
- FORECLOSURE
  - ☐ Foreclosure – E510
  - ☐ Foreclosure-Taxes – E520
  - ☐ Foreclosure-Mechanics Lien – E530
- ☐ ADMINISTRATIVE APPEALS – F600
  - ☐ Appeal Civil Service – F610
  - ☐ Appeal Motor Vehicle – F620
  - ☐ Appeal Unemployment – F630
  - ☐ Appeal Liquor – F640
  - ☐ Appeal Taxes – F650
  - ☐ Appeal Zoning – F660



D86927110 CLF

- ☑ OTHER CIVIL – H700-34
  - ☐ Appropriation – H710
  - ☐ Accounting – H720
  - ☐ Beyond Jurisdiction – H730
  - ☐ Breach of Contract – H740
  - ☐ Cancel Land Contract – H750
  - ☐ Change of Venue – H760
  - ☐ Class Action – H770
  - ☐ Convey Declared Void – H780
  - ☐ Declaratory Judgment – H790
  - ☐ Discharge Mechanics Lien – H800
  - ☐ Dissolve Partnership – H810
  - ☑ CONSUMER SALES ACT (1345 ORC) – H820
  - ☐ Check here if relief includes declaratory judgment, injunction or class action recovery – H825
  - ☐ Habeas Corpus – H830
  - ☐ Injunction – H840
  - ☐ Mandamus – H850
  - ☐ On Account – H860
  - ☐ Partition – H870
  - ☐ Quiet Title – H880
  - ☐ Replevin – H890
  - ☐ Sale of Real Estate – H900
  - ☐ Specific Performance – H910
  - ☐ Restraining Order – H920
  - ☐ Testimony – H930-21
  - ☐ Environmental – H940
  - ☐ Cognovit – H950
  - ☐ Menacing by Stalking – H960
  - ☐ Repo Title – Transfer of Title Only – H970
  - ☐ Repo Title – With Money Claim – H980
  - ☐ Injunction Sexual Predator – H990
  - ☐ SB 10 – Termination – H690
  - ☐ SB 10 – Reclassification – H697

2010 FEB -5 P 12:

PATRICIA M. CLANCY
CLERK OF COURTS
HAMILTON COUNTY, OH

Related Case NO. A1000992

DATE: 2/5/10 ATTORNEY (PRINT): Richard S. Wayne

OHIO SUPREME COURT NUMBER: 0022390

Revised 01/05/09

Gregory Hartmann, Clerk of Courts
Court of Common Pleas, Hamilton County, Ohio
www.courtclerk.org

NOTIFICATION FORM

CASE INFORMATION

Date: 2/5/10

Case No.: A1001119

Caption: Grunkemeyer, et al. vs. Toyota Motor Sales USA, et al.

****

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E-mail Address

FILED
2010 FEB -5 P 12: 35
PATRICIA M. CLANCY
CLERK OF COURTS
HAMILTON COUNTY, OH

Ohio Attorney Supreme Court No.: 0069757

( ) Address Change Only

( ) Request Case Notification / Not a Party Defendant

****

COURT PARTY INFORMATION

Name of Client: Joel Grunkemeyer (x) Plaintiff ( ) Defendant

Name of Client: Sharon Wilson (x) Plaintiff ( ) Defendant

Name of Client: John Sukola (x) Plaintiff ( ) Defendant

Name of Client: _____ ( ) Plaintiff ( ) Defendant

Name of Client: _____ ( ) Plaintiff ( ) Defendant

Substituted for: _____ (if applicable)

Rev. 09/06/07

Gregory Hartmann, Clerk of Courts
Court of Common Pleas, Hamilton County, Ohio
www.courtclerk.org

FILED
FEB - 5 2010
PATRICIA M. CLANCY
CLERK OF COURTS

NOTIFICATION FORM

CASE INFORMATION

Date: 2/5/10

Case No.: A1001119

Caption: Grunkemeyer, et al. vs. Toyota Motor Sales USA, et al.

****

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FILED
2010 FEB -5 P 12:35
PATRICIA M. CLANCY
CLERK OF COURTS
HAMILTON COUNTY, OH

Ohio Attorney Supreme Court No.: 0022390

( ) Address Change Only

( ) Request Case Notification / Not a Party Defendant

****

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Name of Client: Joel Grunkemeyer (x) Plaintiff ( ) Defendant

Name of Client: Sharon Wilson (x) Plaintiff ( ) Defendant

Name of Client: John Sukola (x) Plaintiff ( ) Defendant

Name of Client: _____ ( ) Plaintiff ( ) Defendant

Name of Client: _____ ( ) Plaintiff ( ) Defendant

Substituted for: _____ (if applicable)

Rev. 09/06/07

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION (CINCINNATI)

JOEL GRUNKEMEYER,
SHARON WILSON,
and
JOHN SUKOLA,
Plaintiffs,

v.

TOYOTA MOTOR SALES USA, INC.,
TOYOTA MOTOR CREDIT CORPORATION,
TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC.,
JOSEPH TOYOTA OF CINCINNATI,
and
KINGS TOYOTA,
Defendants.

Civil Action No. 10-128

JUDGE MICHAEL R. BARRETT

DEFENDANT JOSEPH T OF C, CO. d/b/a JOSEPH TOYOTA OF CINCINNATI'S CONSENT TO REMOVAL TO THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO, WESTERN DIVISION

Defendant, Joseph T of C, Co. d/b/a Joseph Toyota of Cincinnati ("Joseph Toyota"), by counsel, hereby consents to the removal of *Joel Grunkemeyer, et al. v. Toyota Motor Sales, U.S.A., Inc.*, Case No. A1001119, from the Hamilton County Court of Common Pleas, to the United States District Court for the Southern District of Ohio, Western Division (Cincinnati). This Consent to Removal is timely filed pursuant to 28 U.S.C. §§ 1441 and 1446. In consenting to removal, Joseph Toyota does not waive, and fully reserves, any rights or defenses to which it is otherwise entitled, including, but not limited to, those defenses set forth in Fed. R. Civ. P. 12(b). The Court has jurisdiction over this action pursuant to 28 U.S.C. §§§ 1332, 1441, and 1453.

Respectfully submitted,

/s/ Gregory A. Harrison
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greg.harrison@dinslaw.com

Attorney for Defendants Toyota Motor Sales, U.S.A., Inc., Toyota Motor Credit Corporation, Toyota Motor Engineering & Manufacturing North America, Inc., Joseph T of C, Co. d/b/a Joseph Toyota of Cincinnati, and Kings Toyota, Inc.

Of counsel:

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andrew.kwiatkowski@dinslaw.com
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glenn.morris@alston.com

CERTIFICATE OF SERVICE

I hereby certify that one copy of the foregoing Consent to Removal was served via e-mail on the 25th day of February, 2010, upon the following counsel at the e-mail addresses listed below:

Richard S. Wayne [rswayne@strausstroy.com]
Thomas P. Glass [tpglass@strausstroy.com]
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Dayton OH 45402-4139

Counsel for Plaintiffs

and that a copy also will be mailed via ordinary mail postage prepaid on the 25th day of February, 2010 upon the same counsel.

/s/Gregory A. Harrison

TOY-RQ-05E-00008987

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION (CINCINNATI)

JOEL GRUNKEMEYER,
SHARON WILSON,
and
JOHN SUKOLA,
Plaintiffs,

v.

TOYOTA MOTOR SALES USA, INC.,
TOYOTA MOTOR CREDIT CORPORATION,
TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC.,
JOSEPH TOYOTA OF CINCINNATI,
and
KINGS TOYOTA, INC.,
Defendants.

Civil Action No. 10-128

JUDGE MICHAEL R. BARRETT

DEFENDANT KINGS TOYOTA, INC.'S CONSENT TO REMOVAL TO THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO, WESTERN DIVISION

Defendant, Kings Toyota, Inc., ("Kings Toyota") by counsel, hereby consents to the removal of *Joel Grunkemeyer, et al. v. Toyota Motor Sales, U.S.A., Inc.*, Case No. A1001119, from the Hamilton County Court of Common Pleas, to the United States District Court for the Southern District of Ohio, Western Division (Cincinnati). This Consent to Removal is timely filed pursuant to 28 U.S.C. §§ 1441 and 1446. In consenting to removal, Kings Toyota does not waive, and fully reserves, any rights or defenses to which it is otherwise entitled, including, but not limited to, those defenses set forth in Fed. R. Civ. P. 12(b). The Court has jurisdiction over this action pursuant to 28 U.S.C. §§§1332, 1441, and 1453.

Respectfully submitted,

/s/ ***Gregory A. Harrison***
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Trial Attorney for Defendants
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Attorney for Defendants Toyota Motor Sales, U.S.A., Inc., Toyota Motor Credit Corporation, Toyota Motor Engineering & Manufacturing North America, Inc., Joseph T of C, Co. d/b/a Joseph Toyota of Cincinnati, and Kings Toyota, Inc.

Of counsel:

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Andrew R. Kwiatkowski, Esq.
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TOY-RQ-05E-00008989

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Thomas P. Glass [tpglass@strausstroy.com]
Joseph J. Braun [jjbraun@strausstroy.com]
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Counsel for Plaintiffs

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P.O. Box 10068
214 West Monument Avenue
Dayton OH 45402-4139

Counsel for Plaintiffs

and that a copy also will be mailed via ordinary mail postage prepaid on the 25th day of February, 2010 upon the same counsel.

/s/Gregory A. Harrison

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30213-288

TOY-RQ-05E-00008990

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The 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, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Joel Grunkemeyer, Sharon Wilson, and John Sukola

(b) County of Residence of First Listed Plaintiff Hamilton County
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Richard C. Wayne, Strauss & Troy, 150 E. 4th St., Cincinnati, OH 45202, 513-621-2120 and John H. Stachler, Martin, Folino, Harmo

DEFENDANTS

Toyota Motor Sales, U.S.A., Inc., Toyota Motor Credit Corporation, Toyota Motor Engineering & Manufacturing Nort

County of Residence of First Listed Defendant Los Angeles County
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

Gregory A. Harrison, Dinsmore & Shohl LLP, 255 E. 5th St., Ste. 1900, Cincinnati, OH 45202; 513-977-8200

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 – CAFA (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
(For Diversity Cases Only)

	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. NATURE OF SUIT (Place an "X" in One Box Only)

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 Loans (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 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury

PERSONAL INJURY
- ☐ 362 Personal Injury - Med. Malpractice
- ☐ 365 Personal Injury - Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 444 Welfare
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/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

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 463 Habeas Corpus - Alien Detainee
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

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

OTHER STATUTES
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 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 Acts
- ☐ 892 Economic Stabilization Act
- ☐ 893 Environmental Matters
- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Information Act
- ☐ 900Appeal of Fee Determination Under Equal Access to Justice
- ☐ 950 Constitutionality of State Statutes

V. 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 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (**Do not cite jurisdictional statutes unless diversity**):
28 U.S.C. Sec. 1331, 1332, 1441, and 1453

Brief description of cause:
Toyota Recall Litigation

VII. REQUESTED IN COMPLAINT:

☑ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☑ Yes ☐ No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE Walter H. Rice DOCKET NUMBER 3:10-cv-00061

DATE
02/24/2010

SIGNATURE OF ATTORNEY OF RECORD
/s/ Gregory A. Harrison

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

SUPPLEMENTAL CIVIL COVER SHEET
FOR CASES REMOVED FROM STATE COURT

This form must be attached to the Civil Cover Sheet at the time the case is filed in the United States District Court

State Court County: Hamilton

Case number and caption:

A10001119	Joel Grunkemeyer, et al	vs	Toyota Motor Sales, US
Case Number	Plainfiff(s)		Defendant(s)

Jury Demand Made in State Court: ☒ Yes ☐ No

If "Yes," by which party and on what Date:

Plaintiffs	February 5, 2010
Party	Date

Were there parties not served prior to removal?	☐ Yes	☒ No
Were there parties dismissed/terminated prior to removal?	☐ Yes	☒ No
Were there answers filed in State Court?	☐ Yes	☒ No
Is there a pending TRO in State Court?	☐ Yes	☒ No

If you have answered "yes" to any of the above please list parties not served, the parties dismissed/terminated and the parties that filed their answers on the reverse of this page.

On the reverse of this page please list all Plaintiff(s), Defendant(s), Intervenor(s), Counterclaimant(s), Crossclaimant(s) and Third Party Claimant(s) still remaining in the case and indicate their party type. Please list the attorney(s) of record for each party named and include their bar number, firm name, correct mailing address and phone number, including area code.

Are copies of all state case pleadings attached to your removal? ☒ Yes ☐ No

If your answer is "No", when will they be filed:

List the parties that are removing the case:

Toyota Motor Sales USA, Inc.

Toyota Motor Credit Corporation

Toyota Motor Engineering & Manufacturing North America, Inc.

Parties Not Served	Parties Dismissed	Answers Filed
I.E. Defendant John Doe	*I.E. Defendant John Doe*	*I.E. Defendant John Doe*
None	None	None

Party and Type	Attorney(s)
I.E. Plaintiff John Doe PLAINTIFFS Joel Grunkemeyer Sharon Wilson John Sukola DEFENDANTS Toyota Motor Sales, U.S.A., Inc. Toyota Motor Credit Corporation Toyota Motor Engineering & Manufacturing North America, Inc. Joseph Toyota of Cincinnati Kings Toyota	*I.E. Attorney(s) Name* *Firm* *Address* *City, State, Zip* *Telephone and Fax Number* *Supreme Court Number* Richard S. Wayne, Esq. (0022390) Thomas P. Glass, Esq. (0062382) Joseph J. Braun, Esq. (0069757) Strauss & Troy The Federal Reserve building 150 East Fourth Street Cincinnati, OH 45202 Phone: 513-621-2120 Fax: 513-241-8259 Attorney for Plaintiffs John H. Stachler, Esq. (0064130) Martin, Folino, Harmon & Stachler, LPA PO Box 10068 214 West Monument Avenue Dayton, OH 45402-4139 Phone: 937-461-5980 Fax: 937-461-4139, Attorney for Plaintiffs

USE A SEPARATE SHEET OF PAPER IF NECESSARY

TOY-RQ-05E-00008993

Party and Type	Attorney(s)
DEFENDANTS TOYOTA MOTOR SALES USA, INC., TOYOTA MOTOR CREDIT CORPORATION, TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC., JOSEPH TOYOTA OF CINCINNATI, and KINGS TOYOTA, INC.,	Gregory A. Harrison, Esq. (0029814) Trial Attorney for Defendants **DINSMORE & SHOHL, LLP** 1900 Chemed Center 255 E. Fifth Street Cincinnati, Ohio 45202 Phone:(513) 977-8200 Fax: (513) 977-8141 **Attorney for Defendants**

TOY-RQ-05E-00008994

Other Answers

1:10-cv-00128-MRB Grunkemeyer et al v. Toyota Motor Sales USA, Inc. et al
JURY

U.S. District Court

Southern District of Ohio

Notice of Electronic Filing

The following transaction was entered by Harrison, Gregory on 2/25/2010 at 0:36 AM EST and filed on 2/25/2010

Case Name: Grunkemeyer et al v. Toyota Motor Sales USA, Inc. et al
Case Number: 1:10-cv-00128-MRB
Filer: Toyota Motor Credit Corporation
Toyota Motor Engineering & Manufacturing North America, Inc.
Toyota Motor Sales USA, Inc.
Document Number: 5

Docket Text:
AFFIDAVIT in Support re [1] Notice of Removal (Attorney), Notice of Removal (Attorney) *(Declaration of Bill Reber)* by Defendants Toyota Motor Credit Corporation, Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Sales USA, Inc.. (Harrison, Gregory)

1:10-cv-00128-MRB Notice has been electronically mailed to:

Gregory Alan Harrison greg.harrison@dinslaw.com

1:10-cv-00128-MRB Notice has been delivered by other means to:

Joel Grunkemeyer

John Sukola

Sharon Wilson

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

Document description: Main Document
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1040326259 [Date=2/25/2010] [FileNumber=2608476-0
] [8f862fb86f7e0731a65967cd17dc150764e893f83a6b080afb67be4c015860cbe96
2b44e97132e631a26726a1d596091951d3e23c26cecf6ef0cd4748865f16c]]

TOY-RQ-05E-00008995

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION (CINCINNATI)

JOEL GRUNKEMEYER, et al.,	:	CIVIL ACTION NO. 10-128
	:	
Plaintiffs,	:	JUDGE _____
	:	
v.	:	
	:	**DECLARATION OF**
TOYOTA MOTOR SALES U.S.A., INC., et al.	:	**BILL REBER**
	:	**IN SUPPORT OF**
	:	**DEFENDANTS'**
Defendants.	:	**NOTICE OF REMOVAL**

DECLARATION OF BILL REBER

Bill Reber, an employee of Joseph T of C, Co. d/b/a Joseph Toyota of Cincinnati ("Joseph Toyota") states:

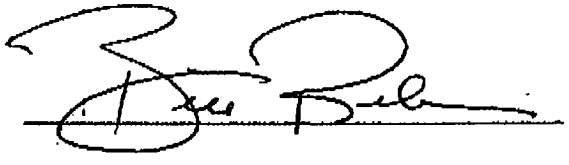
1. I am over eighteen years of age. I have personal knowledge of the following facts, and I am competent to make this Declaration.

2. I am the General Manager at Joseph Toyota and I am personally familiar with the sales file of Sharon Wilson, and I have under my control all records relating thereto.

3. Attached collectively hereto as Exhibit A'are true and accurate copies of Sharon Wilson's Sales Contract and Financing Agreement, which is kept in Joseph Toyota's Sales File in the ordinary course of its business, for the 2010 Toyota Avalon (VIN 4T1BK3DB2AU360649) purchased by Sharon Wilson from Joseph Toyota on January 1, 2010.

I declare under penalty of perjury under the laws of the State of Ohio and the United States of America, that the foregoing is true and correct.

Executed on this 24 day of February, 2010.



Toyota of Cincinnati INC.

9101 Colerain Ave. • CINCINNATI, OH. 45251
Ph: 385-1800

CONTROL # 205987

PURCHASER'S NAME SHARON R WILSON (PRINT OR TYPE)

DATE JAN 01 2010

PLEASE ENTER MY ORDER FOR ONE XX NEW ☐ USED ☐ DEMO AS FOLLOWS:

YEAR	MAKE	MODEL OR SERIES	BODY TYPE	COLOR	TRIM
2010	TOYOTA	AVALON	4 DR XL SEDAN	BLIZZARD PEARL	

V.I.N.	STOCK NO.	TO BE DELIVERED ON OR ABOUT
4T1BK3DB2AU360649	61058	

CASH PRICE OF VEHICLE	27800.00
CHECK CODE 6	
MODEL # 3534A	
E-MAIL ADDRESS SRWilson@Strausstroy.com	
F&I DELIVERY PERSON Art	
LENDER TFS	
SALES CODE (CIRCLE ONE) 01 OR 05	
96/125000 ESC	2025.00
PROCESSING FEE	250.00
TOTAL	30075.00
TAX	1954.88
REGISTRATION	25.00
TOTAL CASH DELIVERED PRICE	32054.88

I/we hereby acknowledge that the balance owed on my/our trade-in vehicle exceeds its actual cash value. I/we further acknowledge that the price relationship between the purchased vehicle and the trade-in has been negotiated in good faith with full disclosure in order to transfer this "negative equity" to the balance financed on the purchased vehicle. The cash price has been increased by $ in order to accomplish this transfer of "negative equity".

Purchaser _____ Purchaser _____

THE MILEAGE ON THE ODOMETER IS 4[illegible] AND IS IS NOT ACCURATE.

DOCUMENTARY CHARGE AND FEES: LICENSE NONE LIC. TRANSFER NONE TITLE 20.00 5.00

THE MILEAGE ON THE ODOMETER OF THE TRADE-IN IS _____.

SETTLEMENT

CASH DEPOSIT SUBMITTED WITH ORDER $ NONE	CASH ON DELIVERY NONE	TOTAL CASH NONE
ALLOWANCE FOR TRADE-IN AS APPRAISED		NONE
LESS BALANCE OWING TO –		NONE
DESCRIPTION OF TRADE-IN		NET EQUITY NONE
YEAR / MAKE / MODEL / TYPE		TOTAL CREDITS NONE
V.I.N. / LICENSE NO. / TITLE NO.		UNPAID CASH BALANCE DUE ON DELIVERY 32054.88

ALL WARRANTIES, IF ANY, BY A MANUFACTURER OR SUPPLIER OTHER THAN DEALER ARE THEIRS, NOT DEALER'S, AND ONLY SUCH MANUFACTURER OR OTHER SUPPLIER SHALL BE LIABLE FOR PERFORMANCE UNDER SUCH WARRANTIES. UNLESS DEALER FURNISHES BUYER WITH A SEPARATE WRITTEN WARRANTY OR SERVICE CONTRACT MADE BY DEALER ON ITS OWN BEHALF, DEALER HEREBY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE: (A) ON ALL GOODS AND SERVICES SOLD BY DEALER, AND (B) ON ALL USED VEHICLES WHICH ARE HEREBY SOLD "AS IS–NOT EXPRESSLY WARRANTED OR GUARANTEED".

IF THIS AGREEMENT IS FOR A USED VEHICLE, THE INFORMATION YOU SEE ON THE (FEDERAL TRADE COMMISSION) WINDOW FORM IS PART OF THIS AGREEMENT. INFORMATION ON THE WINDOW FORM OVERRIDES ANY CONTRARY PROVISIONS IN THE CONTRACT OF SALE.

The front and back of this Order comprise the entire agreement affecting this purchase and no other agreement or understanding of any nature concerning same has been made or entered into, or will be recognized. I hereby certify that no credit has been extended to me for the purchase of this motor vehicle except as appears in writing on the face of this agreement. I have read the matter printed on the back hereof and agree to it as a part of this order the same as if it were printed above my signature. I certify that I am of legal age, and hereby acknowledge receipt of a copy of this order.

MARK E. OLIVER
SALESMAN

THIS ORDER IS NOT VALID UNLESS SIGNED AND ACCEPTED BY DEALER OR HIS AUTHORIZED REPRESENTATIVE

APPROVED: _____
DEALER OR AUTHORIZED REPRESENTATIVE

SIGNED: _____ PURCHASER

STREET ADDRESS 9105 TAG

CITY & STATE CINCINNATI OH ZIP 45231

BUS. PHONE (513)621-8900 RES. PHONE (513)522-5719

PROMISSORY NOTE AND SECURITY AGREEMENT

TOYOTA FINANCIAL SERVICES

Dealer Number: 34089 Account Number:

Borrower (and Co-Borrower) – Name(s) and Residence Address(es) (Include County and Zip Code)	Creditor (Toyota Motor Credit Corporation) – Name and Business Address
SHARON R WILSON 9105 TAG CINCINNATI OH 45231 CO: HAMILTON	TOYOTA MOTOR CREDIT CORPORATION 300 E BUSINESS WAY STE 350 CINCINNATI OH 45241

Meaning of Words. In this contract, the words "you," "your" and "yours" refer to the Borrower and Co-Borrower, if any. The word "Creditor" refers to Toyota Motor Credit Corporation ("TMCC") and subsequent assignee. The word "contract" refers to this Promissory Note and Security Agreement.

Who is Bound. By signing this contract, you choose to borrow the Amount Financed under the terms on the front and back of this contract and you are individually liable to the Creditor for any amount due.

Description of Vehicle.

New/Used	Year	Make	Model	Body Type	Vehicle Identification No.	Odometer Miles	Primary Purpose
NEW	2010	TOYOTA	AVALON	4 DR XL SEDAN	4T1BK3DB2AU360649	4	☒ Personal, Family or Household ☐ Business or Commercial ☐ Agricultural

FEDERAL TRUTH-IN-LENDING DISCLOSURES

ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate.	FINANCE CHARGE The dollar amount the credit will cost you.	Amount Financed The amount of credit provided to you or on your behalf.	Total of Payments The amount you will have paid after you have made all payments as scheduled.
2.90 %	$ 2457.72 e	$ 32054.88	$ 34512.60 e

Your Payment Schedule Will Be:

Number of Payments:	Amount of Each Payment:	When Payments Are Due:
60 regular payments of	575.21	Monthly, beginning 02/14/2010
One final payment of	N/A	

Prepayment. If you pay off all your debt early, you will not have to pay a penalty.

Security. You are giving a security interest in the vehicle described above.

Other Terms. Please read this contract, including the reverse side, for additional information about security interests, nonpayment, default, any required repayment in full before the scheduled date, and prepayment and penalties.

e means an estimate.

ITEMIZATION OF THE AMOUNT FINANCED

1	Cash Price (including any accessories, services, and taxes) Paid to Dealer on Your Behalf		$ 27800.00 (1)
2	Amount Paid on Your Account		$ N/A (2)
3	Amounts Paid to Others on Your Behalf (dealer may retain, or receive a portion of these amounts):		
	A Taxes Paid to Government Agencies	$ 1954.88	
	B Government License and/or Registration Fees	$ N/A	
	C Government Certificate of Title Fees	$ 20.00	
	D Cost of Optional Mechanical Breakdown Protection Paid to: TOYOTA EXTRA CARE – Covering Certain Mechanical Repairs	$ 2025.00	
	E Cost of Required Physical Damage Insurance Paid to the Insurance Company Named Below – Covering Damage to the Vehicle	$ N/A	
	F Cost of Optional Credit Insurance Paid to the Insurance Company or Companies Named Below Life $ N/A Disability, Accident and Health $ N/A	$ N/A	
	G Lien Filing Fee	$ 5.00	
	H Other Amounts (Identify who will receive payment and describe purpose)		
	To: N/A For: N/A	$ N/A	
	To: N/A For: N/A	$ N/A	
	To: TOYOTA OF CINCINNATI INC. For: DOC FEE	$ 250.00	
	To: N/A For: N/A	$ N/A	
	To: N/A For: N/A	$ N/A	
	To: N/A For: N/A	$ N/A	
	Total Amount Paid to Others on Your Behalf		$ 4254.88 (3)
4	Amount Financed — (1+2+3)		$ 32054.88 (4)

buy it through the Creditor and are accepted by the insurance company, the policies or certificates issued by the insurance company will describe the terms and conditions. The cost of this insurance is shown in 3E of the Itemization above.

☐ $ N/A Deductible Collision and either:

Insurance Company N/A Term: N/A months ☐ $ N/A Deductible Comprehensive including Fire, Theft and Combined Additional Coverage

Optional, if desired – ☐ Towing and Labor Costs ☐ Rental Reimbursement ☐ CB Radio Equipment ☐ Fire, Theft, and Combined Additional Coverage

THE INSURANCE, IF ANY, REFERRED TO IN THIS CONTRACT DOES NOT INCLUDE LIABILITY INSURANCE COVERAGE FOR BODILY INJURY AND PROPERTY DAMAGE CAUSED TO OTHERS.

Optional Credit Insurance. Credit life insurance and credit disability insurance are not required to obtain credit and will not be provided unless you sign and agree to pay the additional cost, which is shown below and in 3F of the Itemization above. If you want this optional insurance, check the insurance coverage(s) desired and sign below.

Check the optional insurance coverage(s) desired: ☐ Credit Life, Borrower Coverage $ N/A

☐ Credit Life, Borrower and Co-Borrower Coverage $ N/A

☐ Credit Disability, Single Coverage (Borrower Only) $ N/A

If you elect optional credit insurance coverage and are accepted by the insurance company, the terms and conditions will be as described in the policies or certificates issued by the insurance company. The original amount of the decreasing term credit life insurance will not exceed $ N/A. Credit disability insurance payments will equal the monthly payment amount but will not be more than $ N/A, Insurance Company N/A

Credit life and credit disability insurance are based upon the payment schedule and term shown above. If you make late payments, credit life insurance will not pay all you owe on the contract and credit disability, accident and health insurance will not pay all of your payments.

Optional Credit Insurance Cancellation Right. You have the right for twenty five days from the date of this contract to cancel all credit life and credit disability, accident and health insurance obtained at your request in connection with this contract. If you cancel the insurance, you will receive a full refund of the insurance premium. To cancel, you must give written notice to the Creditor and return all credit insurance policies or certificates, or notices of proposed credit insurance to the Creditor within the twenty-five days.

Borrower Signature Date Co-Borrower Signature Date

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

omise to Pay. You promise to pay to the Creditor the Amount Financed shown above plus interest figured on a daily basis on the unpaid balance as set forth in this contract and in the uth-in-Lending disclosure above and all other amounts due under this contract.

ou authorize the Creditor to disburse funds as specified in the Itemization of Amount Financed above.

ou signed this contract and received a completely filled-in copy on JANUARY 1st, Year 2010.

Signature of Borrower 01/01/2010 Date N/A Signature of Co-Borrower Date

IMPORTANT: READ THE ADDITIONAL TERMS ON REVERSE SIDE BEFORE SIGNING ABOVE.

IO (For use in the State of Ohio)

DISTRIBUTION: WHITE – TMCC COPY; CANARY – DEALER COPY; PINK – 2 BORROWER'S COPIES

3103OH 03/09

Other Answers

1:10-cv-00128-MRB Grunkemeyer et al v. Toyota Motor Sales USA, Inc. et al
JURY

U.S. District Court

Southern District of Ohio

Notice of Electronic Filing

The following transaction was entered by Harrison, Gregory on 2/25/2010 at 0:26 AM EST and filed on 2/25/2010

Case Name: Grunkemeyer et al v. Toyota Motor Sales USA, Inc. et al
Case Number: 1:10-cv-00128-MRB
Filer: Toyota Motor Credit Corporation
Toyota Motor Engineering & Manufacturing North America, Inc.
Toyota Motor Sales USA, Inc.
Document Number: 2

Docket Text:
AFFIDAVIT in Support re [1] Notice of Removal (Attorney), Notice of Removal (Attorney) *(Declaration of George Morino)* by Defendants Toyota Motor Credit Corporation, Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Sales USA, Inc.. (Harrison, Gregory)

1:10-cv-00128-MRB Notice has been electronically mailed to:

Gregory Alan Harrison greg.harrison@dinslaw.com

1:10-cv-00128-MRB Notice has been delivered by other means to:

Joel Grunkemeyer

John Sukola

Sharon Wilson

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

Document description: Main Document
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1040326259 [Date=2/25/2010] [FileNumber=2608467-0
] [96b334026a15219bc1dd5bb12f9dfcf3702d72d0ccc6805aa496f0f5555e012a3b4
91723508b131ce7168a54c7afd09f78d83124f5a155a232ca657729148cb4]]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION (CINCINNATI)

JOEL GRUNKEMEYER, et al.,	:	CIVIL ACTION NO. 10-128
Plaintiffs,	:	JUDGE _____
v.	:	
TOYOTA MOTOR SALES USA, INC., et al.,	:	DECLARATION OF GEORGE T. MORINO IN SUPPORT OF NOTICE OF REMOVAL
Defendants.	:	

DECLARATION OF GEORGE T. MORINO

George T. Morino, an employee of Toyota Motor Sales, U.S.A., Inc. states:

1. I am over eighteen years of age. I have personal knowledge of the following facts, and I am competent to make this Declaration.

2. I am the National Quality Compliance Manager of Toyota Motor Sales, U.S.A., Inc. (the "Company"). I have been employed by the Company since 1990.

3. In my role as National Quality Compliance Manager, I have personal knowledge of and/or access to the information the Company supplies to the National Highway Safety Transportation Administration ("NHTSA") with respect to product recalls involving Toyota automobiles, as well as the information provided to Toyota customers and authorized Toyota dealerships regarding product recalls.

4. On January 21, 2010, in cooperation with the NHTSA, the Company announced the voluntary recall of the following vehicles: certain 2009-2010 RAV 4, certain 2009-2010 Corolla, 2009-2010 Matrix, 2005-2010 Avalon, certain 2007-2010 Camry, certain 2010 Highlander, 2007-

2010 Tundra, and 2008-2010 Sequoia ("January Recall").

5. To the best of my understanding, the January Recall was announced in order to address isolated reports of sticking accelerator pedal mechanisms in certain vehicles.

6. In connection with the January Recall, the Company compiled information in order to notify owners of recalled automobiles that their vehicles were the subject of the January Recall.

7. The total number of vehicles in the United States subject to the January Recall is approximately 2,300,000. The January Recall letters are being sent to owners in stages based upon model type. The mailing of the first January Recall letters commenced on February 5, 2010, and it is anticipated that the last letters will be sent no later than March 11, 2010.

8. With respect to the State of Ohio, the total number of January Recall notices that will be sent to Ohio residents is approximately 52,159.

9. The first January recall notices were sent to Ohio residents on February 5, 2010. As of February 22, 2010, approximately 5,000 January Recall notices had been sent Ohio residents.

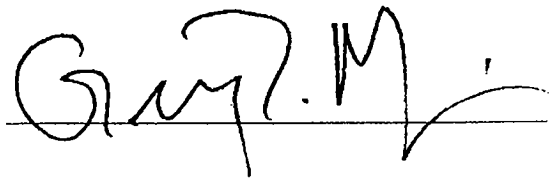
10. In conjunction with the January Recall, the Company has developed a program to repair and remedy the potential sticking accelerator pedal mechanisms issue.

11. The Company has agreed to reimburse authorized dealerships seven tenths of one hour of labor for the repair. The average hourly rate for this repair in Ohio is $80.05 per hour.

12. In the past, under certain circumstances, the Company has reimbursed its independent dealerships $35.00 a day for the use of a loaner vehicle by a customer during a repair.

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 on this 24th day of February, 2010.



IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION (CINCINNATI)

JOEL GRUNKEMEYER, et al.,	:	CIVIL ACTION NO. 1:10-cv-00128-MRB
Plaintiffs,	:	JUDGE MICHAEL R. BARRETT
v.	:	
TOYOTA MOTOR SALES U.S.A., INC., et al.,	:	
Defendants.	:	

STIPULATION FOR EXTENSION OF TIME
TO RESPOND TO PLAINTIFFS' COMPLAINT

Pursuant to Southern District of Ohio Local Rule 6.1(a), Plaintiffs Joel Grunkemeyer, Sharon Wilson and John Sukola ("Plaintiffs") and Defendants Toyota Motor Sales U.S.A., Inc., Toyota Motor Credit Corporation, Toyota Motor Engineering & Manufacturing North America, Inc., Joseph Toyota of Cincinnati and Kings Toyota, Inc. ("Defendants"), agree and stipulate that Defendants shall have an additional seven days, up to and including, March 11, 2010, within which to answer, plead or otherwise move in response to Plaintiffs' Complaint.

No prior extensions have been sought or granted.

STIPULATED AND AGREED TO:

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Attorney for Defendants

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing pleading was filed with the Court's ECF System this 1st day of March, 2010.

/s/ Gregory A. Harrison

1744765

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION (CINCINNATI)

JOEL GRUNKEMEYER, et al.,	:	
	:	Civil Action No. 1:10-cv-00128-MRB
Plaintiffs,	:	
	:	JUDGE MICHAEL R. BARRETT
v.	:	
TOYOTA MOTOR SALES, U.S.A., INC., et al.	:	
Defendants.	:	

DEFENDANTS' MOTION
TO STAY PROCEEDINGS PENDING ACTION BY
THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION
AND
MEMORANDUM IN SUPPORT

Defendants respectfully move to stay this matter in its entirety pending a ruling by the Judicial Panel on Multidistrict Litigation ("JPML") concerning the transfer of this action for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407. This action is one of more than ninety (90) similar actions, the vast majority of which are duplicative and/or overlapping putative class actions pending in various federal courts around the country. At least two motions and numerous responses seeking consolidation of these actions have been filed with the JPML. *See In re Toyota Motor Corp. Unintended Acceleration Prods. Liab. Litig.*, MDL Docket No. 2151.

The JPML has scheduled a hearing on consolidation of these actions for March 25, 2010. Because consolidation into Multidistrict Litigation proceedings appears highly likely, Defendants move to stay this action in its entirety pending a ruling by the

JPML concerning the transfer of this action for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407. As discussed in the attached Brief in Support, a stay will promote the efficient resolution of this litigation, preserve judicial resources, and limit the potential for inconsistent decisions.

Dated March 2nd, 2010.

Respectfully submitted,

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TOY-RQ-05E-00009006

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MEMORANDUM IN SUPPORT

INTRODUCTION

Defendants move to stay this case pending a ruling by the Judicial Panel on Multidistrict Litigation ("JPML") concerning the transfer of this action for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407. The JPML's ruling will, in all likelihood, result in the transfer of this action to a consolidated Multidistrict Litigation ("MDL") proceeding. This action is one of more than ninety (90) similar actions, the vast majority of which are duplicative and/or overlapping putative class actions pending in various federal courts around the country.[1] The actions, including this case, are premised upon the same basic set of alleged facts and assert similar claims against the defendants. Plaintiffs in these cases claim to be owners or lessees of Toyota automobiles and make claims relating to potential unintended acceleration and the voluntary safety recalls.[2]

To date, at least two motions for coordinated treatment of these cases and numerous responses have been filed with the JPML. *See In re Toyota Motor Corp. Unintended Acceleration Prods. Liab. Litig.*, MDL Docket No. 2151. Toyota filed its

---

[1] To date, actions have been filed in federal and state courts in at least the following states: California, Florida, Louisiana, Texas, South Carolina, Kentucky, Colorado, New Jersey, Puerto Rico, Indiana, Missouri, Ohio, Michigan, Kansas, Pennsylvania, New York, Oklahoma, Alabama, Mississippi, Illinois, West Virginia, Arkansas, Massachusetts, Connecticut, Wyoming, Montana, Alaska, Georgia, New Mexico, and Maryland.

[2] Defendants acknowledges that there are some differences in the theories of liability and claims regarding the alleged defect(s) in the various actions. Although the theories of these lawsuits may differ, all relate to the issue of unintended acceleration. Moreover, the transferee court is vested with discretion to consolidate some complaints, but not others, and to permit multiple consolidated complaints for differing types of claims or plaintiffs. Accordingly, the MDL proceeding can accommodate the various complaints and will eliminate duplicative discovery, avoid inconsistent pretrial rulings, and conserve the resources of the parties, their counsel, and the judiciary.

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response with the JPML on February 26, 2010 and joined in the requests for consolidated treatment. *See* Toyota Defendants' Response in Support of Transfer of Actions to the Central District of California for Coordinated Pretrial Proceedings Pursuant to 28 U.S.C. § 1407, attached hereto as Exhibit A. Toyota requested transfer to the Central District of California because Toyota's U.S. headquarters is in the Central District of California, the most cases had been filed in that district at the time the Response was filed, and the first-filed class action was filed in that district. The JPML has set a hearing to consider consolidation of these cases for March 25, 2010, Exhibit B (Notice to All Involved Counsel), and the matter has been selected for oral argument. See Exhibit C (Notice of Hearing Session).

The need for coordination of these actions is compelling: the various proposed classes, as well as the individual actions, are overlapping and involve potentially millions of vehicle owners; the complaints contain similar allegations arising from the same recalls; similar pretrial matters will be presented in each case; and numerous groups of plaintiffs' counsel have requested consolidation. Given the strong likelihood that these cases will be transferred into a MDL, the need for a stay of this action to promote the purposes of coordinated MDL treatment is equally compelling. Any action by this Court prior to such transfer would be wasteful of the Court's valuable judicial resources and would create the possibility of inconsistencies in the adjudication of dozens of overlapping class actions. Defendants therefore, request that this Court stay all proceedings in the present case until the JPML has ruled on the transfer of this case for consolidated or coordinated pretrial proceedings. Indeed, Courts have already entered orders staying at least eight (8) related actions pursuant to a similar request by Toyota, *see* Exhibit D, and consent motions to stay are currently being presented to

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several additional federal courts. Defendants respectfully suggest that the same rationale applies here.

ARGUMENT AND AUTHORITY

The principal purposes of multidistrict coordination are to further judicial economy, minimize duplicative discovery activity, and eliminate the potential for conflicting pretrial rulings. *See, e.g., In re N.Y. City Mun. Sec. Litig.*, 572 F.2d 49, 51-52 (2d Cir. 1978). These objectives obviously would not be served, notwithstanding a motion for multidistrict coordination of these cases, if courts allowed the matters to proceed, inviting precisely the sorts of waste and inconsistencies that the multidistrict litigation process is designed to prevent. Not surprisingly, "[a] majority of courts have concluded that it is often appropriate to stay preliminary pretrial proceedings while a motion to transfer and consolidate is pending with the MDL Panel because of the judicial resources that are conserved."[3] *Rivers v. Walt Disney Co.*, 980 F. Supp. 1358, 1362 (C.D. Cal. 1997); *see also Schering Corp. v. Caraco Pharm. Labs., Ltd.*, No. 06-14386, 2007 WL 1648908, *2-3 (E.D.Mich. Jun. 6, 2007) (staying litigation pending a JPML ruling); *Beal v. Merck & Co., Inc.*, No. 05-1344, 2005 WL 3279285, *1-2 (W.D.Tenn. Dec. 1, 2005) (same); *Gordillo v. Bank of Am., N.A.*, No. 1:09-cv-01954, 2010 WL 148699, at *2 (E.D. Cal. Jan. 14, 2010) (staying litigation pending a JPML ruling); *Dittman v. DJO, LLC*, No. 08-cv-02791, 2010 WL 174555, at *1 (D. Colo. Jan. 13, 2010) (same); *Lerch v. Davol Inc.*, No. 5:09-cv-130, 2009 WL 5217063, at *1 (W.D.N.C. Dec. 30, 2009) (same); *Jackson v. Merck & Co.*, No. 06-1004, 2006 WL

[3] A district court's authority to stay proceedings is well-established. It is "incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936).

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448695, at *1 (W.D. Tenn. Feb. 19, 2006) (same); *Bledsoe v. Pharm.*, No. 4:05CV02330, 2006 WL 335450, at *1 (E.D. Mo. Feb. 13, 2006) (same); *Hertz Corp. v. The Gator Corp.*, 250 F. Supp. 2d 421, 427-29 (D.N.J. 2003) (same); *Weinke v. Microsoft Corp.*, 84 F. Supp. 2d 989 (E.D. Wis. 2000) (same); *Falgoust v. Microsoft Corp.*, No. 00-0779, 2000 WL 462919 (E.D. La. Apr. 19, 2000) (same); *Aetna U.S. Healthcare, Inc. v. Hoechst Akiengesellschaft*, 48 F. Supp. 2d 37, 43 (D.D.C. 1999) (same); *Tench v. Jackson Nat'l Life Ins. Co.*, No. 99-C-5182, 1999 WL 1044923 (N.D. Ill. Nov. 12, 1999) (same); *Good v. Prudential Ins. Co. of Am.*, 5 F. Supp. 2d 804, 809 (N.D. Cal. 1998) (same); *Boudreaux v. Metro. Life Ins. Co.*, No. 95-138, 1995 WL 83788 (E.D. La. Feb. 24, 1995) (same); *Arthur-Magna, Inc. v. Del-Val Fin. Corp.*, No. 2:90cv04378, 1991 WL 13725, at *1 (D.N.J. Feb. 1, 1991) (granting stay because it fosters the purpose of the multidistrict litigation statute to coordinate related litigation).

Where a motion for transfer or notice of tag-along actions has been filed with the JPML, district courts have typically reviewed three factors to decide whether to stay pending proceedings until the JPML can rule. These factors are: (1) potential prejudice to the non-moving party if the stay is granted; (2) hardship to the moving party if the stay is not granted; and (3) the economical use of judicial resources. *See Schering Corp.*, 2007 WL 1648908 at *2-3; *Beal,* 2005 WL 3279285 at *1-2; *Jackson*, 2006 WL 448695, at *1; *Bledsoe*, 2006 WL 335450, at *1; *The Gator Corp.*, 250 F. Supp. 2d. at 426, 428; *Nekritz v. Canary Capital Partners, LLC*, No. 2:03-cv-05081, 2004 WL 1462035, at *1 (D.N.J. Oct. 27, 2003); *Bd. of Trustees of Teachers' Ret. Sys. of State of Ill. v. WorldCom, Inc.*, 244 F. Supp. 2d 900 (N.D. Ill. 2002); *U.S. Bank, N.A. v. Royal Indem. Co.*, No. 3:02-CV-0853-P, 2002 WL 31114069, at *2 (N.D. Tex. Sept. 23, 2002); *Falgoust*, 2000 WL 462919, at *2; *Rivers*, 980 F. Supp. at 1360; *Boudreaux*, 1995 WL

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83788, at *1. Even where a non-moving party claims that a stay will cause delay and prejudice, "there are considerations of judicial economy and hardship to defendants that are compelling enough to warrant such a delay." *Arthur-Magna, Inc.*, 1991 WL 13725, at *1. *See also Krieger v. Merck & Co.*, 2005 WL 2921640, at *2 (W.D.N.Y. Nov. 4, 2005) (noting that "the risk of hardship to [the defendant] of engaging in duplicative motion practice and discovery proceedings outweighs any prejudice that could potentially inure to [the plaintiff]").

In the present case, all three considerations weigh heavily in favor of granting Defendants' motion for a stay. First, a finite, temporary stay of action in this case will not result in harm to Plaintiffs. This lawsuit is in its infancy, and any delay in the preliminary proceedings would be brief. For example, following its last hearing on January 27, 2010, the JPML decided all nine requests for consolidation within sixteen days of the hearing (and decided seven of them within nine days). Accordingly, a finite stay of this action pending the JPML's decision will be brief and will not prejudice Plaintiffs in any respect. Indeed, when a stay is only in effect until the JPML issues a decision on transfer, courts have recognized that "there will be no extended delay in the commencement of discovery" and "[t]he plaintiffs will not be substantially prejudiced." *Am. Seafood, Inc. v. Magnolia Processing, Inc.*, Nos. 2:92-cv-01086 and 2:92-cv-01030, 1992 WL 102762, at *1 (E.D. Pa. May 7, 1992). *See also Bledsoe*, 2006 WL 335450, at *1 (commenting that "any delay [pending JPML action] is likely to be relatively short"); *Falgoust*, 2000 WL 462919, at *2 (noting that a plaintiff is not typically prejudiced by a "slight delay pending the JPML decision").

With respect to the second factor, even if Plaintiffs could somehow demonstrate prejudice to their case due to the minimal delay, the very real hardship on Defendants in

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the absence of a stay substantially outweighs any alleged prejudice to Plaintiffs. If no stays issue, Toyota will be forced to continue litigating these suits in dozens of separate courts throughout the country, thereby imposing an enormous burden in terms of both time and resources on Toyota. Such effort would be particularly wasteful in a situation such as this one in which eventual consolidated treatment is almost certain. Even if waste of resources were no issue, by simultaneously litigating these cases, Toyota is subject to possibly conflicting substantive rulings on multiple aspects of these cases, including motions to dismiss. In addition, any discovery in which Plaintiffs would engage pending transfer will be duplicative of the discovery engaged in by the plaintiffs in all other cases pending against Toyota. Accordingly, district courts have recognized that the risks and hardships now looming over Toyota are sufficient to warrant issuance of a stay. *See Jackson*, 2006 WL 448695, at *1; *The Gator Corp.*, 250 F. Supp. 2d at 428; *Nekritz*, 2004 WL 1462035, at *4; *U.S. Bank*, 2002 WL 31114069, at *2; *Falgoust*, 2000 WL 462919, at *1.

Third, this Court's interest in judicial economy, not to mention that of the transferee court, militates in favor of a stay. If no stay issues before the JPML rules on coordination of these cases, this Court risks burdening its docket with a case that will require time, energy, and attention, but which ultimately may not remain with this Court's caseload. *See U.S. Bank*, 2002 WL 31114069, at *2 ("If the MDL Motion is granted, all of the Court's time, energy, and acquired knowledge regarding this action and its pretrial procedures will be wasted."). With respect to the impact of this Court's actions on the transferee court, any efforts by this Court at case management will very likely have to be repeated by the judge to whom the multidistrict litigation is assigned. Not surprisingly, courts have often recognized that these concerns of judicial economy

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weigh in favor of a stay when a motion for transfer is pending before the JPML. *See Jackson*, 2006 WL 448695, at *1; *Bledsoe*, 2006 WL 335450, at *1; *The Gator Corp.*, 250 F. Supp. 2d at 428; *Arthur-Magna, Inc.*, 1991 WL 13725, at *1.

CONCLUSION

The issuance of a stay of proceedings in this Court pending the JPML's ruling on petitions for coordinated treatment will operate to the benefit of all – the plaintiffs, the defendants, and the respective courts in the more than seventy-five federal actions. Given the likelihood of the transfer of these cases for multidistrict coordination, the lack of prejudice to Plaintiffs, the great risk of harm to Defendants, and the demands of judicial economy, Defendants respectfully urge this Court to stay all proceedings in this matter until the JPML rules on the transfer of this case for consolidated or coordinated pretrial proceedings pursuant 28 U.S.C. § 1407. For the convenience of the Court, a proposed Order is attached hereto.

Dated March 2nd, 2010.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of March, 2010, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following counsel of record:

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EXHIBIT A

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JUDICIAL PANEL ON
MULTIDISTRICT
LITIGATION

BEFORE THE JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION

IN RE: TOYOTA MOTOR CORP.	:	
DEFECTIVE GAS PEDAL PRODUCTS	:	MDL No. 2151
LIABILITY LITIGATION	:	

TOYOTA DEFENDANTS' RESPONSE IN SUPPORT OF TRANSFER OF ACTIONS TO THE CENTRAL DISTRICT OF CALIFORNIA FOR COORDINATED PRETRIAL PROCEEDINGS PURSUANT TO 28 U.S.C. § 1407

Pursuant to Rule 7.2(c) of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation ("JPML"), Defendants Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Inc., Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Manufacturing, California, Inc., Toyota Motor Manufacturing, Indiana, Inc., Toyota Motor Manufacturing, Kentucky, Inc., Toyota Motor Manufacturing, Texas, Inc., Toyota Motor Manufacturing, West Virginia, Inc., Toyota de Puerto Rico Corporation, and New United Motor Manufacturing, Inc. (collectively "Toyota" or the "Toyota Defendants") hereby submit their response to the pending Motions to Transfer and Consolidate Pretrial Proceedings Pursuant to 28 U.S.C. § 1407.[1] Toyota agrees that transfer and consolidation of these cases is appropriate

[1] According to the JPML Docket, as of February 23, 2010, two motions for transfer and eight responses have been filed. On February 4, 2010, Plaintiff Heather A. Lane (*Lane v. Toyota Motor Sales, USA, Inc.*, No. 2:09-cv-09158, C.D. Cal.), filed her Motion for Transfer to the Central District of California. On February 5, 2010, Plaintiffs Daniel

under Section 1407 and respectfully requests that the JPML transfer all cases identified by Toyota on Schedule A (attached hereto as Exhibit 1)[2] to the Central District of California before the Honorable Judge Matz. The Central District of California is the most appropriate transferee court for a number of reasons: (i) the primary defendant in this litigation is headquartered there; (ii) the largest number of cases has been filed in that district; (iii) numerous individual plaintiffs have requested transfer to the Central District of California in separate filings with this Panel; (iv) the first-filed case, *Choi*, was filed in that district, and substantive motion practice is already underway in *Choi*; (v) the judge assigned to *Choi*, Judge Matz, has prior MDL experience, and eleven cases already have been assigned to Judge Matz as related actions; and (vi) the Central

---

Weimer, Jr., Colby Wenck, and Ann Cavalier (*Weimer v. Toyota North America, Inc.*, No. 10-219, E.D. La.) filed a "motion" for transfer to the Eastern District of Louisiana, which, pursuant to Panel Rule 7.2(h), is deemed a response to the Lane motion. Plaintiff Jonathan Gellman (*Gellman v. Toyota Motor Sales, USA, Inc.*, No. 1:2010-cv-20006, S.D. Fla.) filed a response on February 18, 2019 seeking transfer to the Southern District of Florida. Plaintiffs Eric Kmetz and Joseph Morris (*Kmetz v. Toyota Motor Sales, USA, Inc.*, No. *Toyota Motor Corp.*, No. 2:09-cv-08478, C.D. Cal.) and Joseph Hauter and Frank Palomares (*Hauter v. Toyota Motor Sales, USA, Inc.*, No. 2:10-cv-00105, C.D. Cal.) filed their response on February 19, 2010 seeking transfer to the Central District of California. Plaintiff Troy Menssen (*Menssen v. Toyota Motor Sales, U.S.A., Inc.*, No. 1:10-cv-00260, N.D. Ohio) filed a response on February 19, 2010 seeking consolidation, but did not specify a proposed transferee district. Plaintiff Al Viviano (*Viviano v. Toyota Motor Engineering & Manufacturing North America, Inc.*, No. 2:10-cv-00024, E.D. Ky.) filed a response on February 22, 2010 seeking transfer to the Eastern District of Kentucky. Plaintiffs Zahira Crespo-Bithorn and Milagros Rodriguez Cruz (*Crespo-Bithornv. Toyota Motor North America, Inc.*, No. 3:10-cv-01083, D.P.R.) also filed a response on February 22, 2010 seeking transfer to the District of Puerto Rico. On February 23, 2010, Plaintiff Fred Sander (*Sander v. Toyota Motor Sales, U.S.A., Inc.*, No. 1:10-cv-01111, S.D.N.Y.) filed a response requesting transfer to the Southern District of New York; Plaintiff Christine Mitchell (*Mitchell v. Toyota Motor North America, Inc.*, No. 3:10-cv-000104, S.D. Miss.) filed a response requesting transfer to the Southern District of Mississippi; Plaintiff Robyn Horn (*Horn v. Toyota Motor Sales U.S.A., Inc.*, No 4:10-cv-00090, E.D. Ark.) and Plaintiff Ani Garzaryan (*Garzaryan v. Toyota Motor Sales, U.S.A., Inc.*, No. 2:10-cv-00849, C.D. Cal.) both filed responses seeking transfer, but did not specify a transferee court; and Plaintiffs Michael Graves and Jeff Mullins (*Graves v. Toyota Motor Manufacturing, West Virginia, Inc.*, No. 2:09-cv-01247, S.D.W. Va.) filed a response seeking transfer to the Southern District of West Virginia.

In addition to these motions and responses, two motions have been filed and withdrawn. On February 19, 2010, Plaintiff Maureen Colaberdino (*Colaberdino v. Toyota Motor North America, Inc.*, No. 3:10-cv-00672, D.N.J.) filed a response seeking transfer to the District of New Jersey that was later withdrawn. Plaintiffs Seong Bae Choi, Chris Chan Park, Sandra Reech, Donald Pritchett, Un Jin Choi, and Mary Ann Parker (*Choi v. Toyota Motor Corp.*, No. 2:09-08143, C.D. Cal.) have filed a motion for transfer to the Central District of California that was later withdrawn.

Toyota has also received a service copy of a "motion" that does not appear on the JPML CM-MDL Docket. Specifically, it appears that Plaintiff Dale Roberts (*Roberts v. Toyota Motor Corp.*, No. 7:10-cv-00281, D.S.C.) will seek to have these cases transferred to the District of South Carolina.

Toyota's Response addresses all of these pending transfer requests.

[2] Schedule A includes (1) actions previously identified in the pending transfer motions and (2) additional actions not already before the Panel and for which Toyota has filed a Notice of Related Actions contemporaneously herewith.

District of California is significantly better suited geographically for cases anticipated to involve witnesses and evidence from Japan, the location of Toyota's parent corporation.

I. Background[3]

On September 29, 2009, Toyota issued a safety advisory related to the risk of floor mat entrapment of accelerator pedals in certain Toyota models. Toyota determined that an unsecured or incompatible driver's floor mat has the potential to interfere with, or entrap, the accelerator pedal, which may make the vehicle difficult to control or stop. Shortly after issuing the safety advisory, Toyota instituted a voluntary recall of all affected Toyota vehicles (the "Floor Mat Recall"). In January 2010, as part of Toyota's ongoing investigation into possible causes of unintended acceleration, Toyota determined that there is a possibility that certain accelerator pedal mechanisms may mechanically stick in a partially depressed position or return slowly to the idle position, and issued a second voluntary recall related to accelerator pedals (the "Pedal Recall").

Numerous cases stemming from these voluntary recalls have been filed against Toyota. Although the specific theories advanced in these lawsuits may differ, all of the cases relate to the issue of unintended acceleration and are appropriate for consolidation. For example, some actions assert that unintended acceleration is caused by alleged defects in Toyota's floor mats or accelerator pedals, while others claim that unintended acceleration is caused by an alleged defect in Toyota's electronic throttle control systems ("ETCS-i"),[4] and many cases assert all three

[3] J.P.M.L. Rule 7.1(b) requires responses to averments in motions to be made in numbered paragraphs that correspond to the number of paragraphs of the motion to which the responsive paragraph is directed. Plaintiff Lane, however, did not, as required by J.P.M.L. Rule 7.1(a), make averments in numbered paragraphs in her motion or accompanying brief. Therefore, Toyota is unable to comply with J.P.M.L. Rule 7.1(b).

[4] In vehicles with ETCS-i, electrical sensors detect the position of the accelerator pedal and relay this information to a central computer that regulates the engine's functions (the "Engine Control Module" or "ECM"). The ECM uses this information to determine how much to open the throttle, which, in turn, causes the vehicle to accelerate. Some plaintiffs have alleged that electro-magnetic radiation can interfere with ETCS-i causing the vehicle to suddenly

theories.[5] Through February 23, 2010,[6] Toyota had been served with thirty-nine federal lawsuits related to the issue of unintended acceleration. Thirty-eight of these have been brought as class actions; one of these cases was brought by a plaintiff suing in his individual capacity. In addition, Toyota is aware of thirty-eight related federal lawsuits that have been filed but not yet served, as well as at least forty-two similar state court cases, many of which Toyota expects will be removed to federal court (all suits referred to collectively as the "Unintended Acceleration Cases"). Toyota seeks consolidation of all seventy-seven Federal Unintended Acceleration Cases of which Toyota is currently aware and which are listed on the attached Schedule A.[7]

II. Consolidation and Coordination of Pretrial Proceedings Is Proper.

Pursuant to 28 U.S.C. § 1407, the transfer of actions to a single jurisdiction for coordinated or consolidated pretrial proceedings is proper when the civil actions pending in various districts involve one or more common questions of fact, and transfer and consolidation "will be for the convenience of parties and witnesses and will promote the just and efficient conduct of such actions." 28 U.S.C. § 1407(a). These statutory requirements are met in this case.

Although there are certain legal and factual differences among the cases that have been filed, all of these cases relate to the issue of unintended acceleration. Accordingly, despite

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accelerate even when the accelerator pedal is not depressed. Toyota denies that its ETCS-i is defective or that it could cause vehicles to accelerate unintentionally.

[5] *Compare Gellman v. Toyota Motor Sales U.S.A., Inc.*, No. 1:10-cv-20006 (alleging defective floor mats) *with Weimer v. Toyota North America, Inc.*, No. 2:10-cv-00219 (alleging defective pedal) *with Choi v. Toyota Motor Corp.*, No. 2:09-08143 (alleging defective ETCS-i) *with Hauter v. Toyota Motor Sales, USA, Inc.*, No. 2:10-cv-00105 (combination defect theory).

[6] Throughout this Response, references to the number of cases filed or served reflect those that Toyota is aware of through February 23, 2010. The number of cases filed and served, however, changes on a daily basis.

[7] The JPML has held that it has authority to transfer and consolidate cases that have not yet been served on defendants. *In re Multidistrict Private Civil Treble Damage Litigation Involving Library Editions of Children's Books*, 299 F. Supp 1139, 1142 (J.P.M.L. 1969) ("Restricting transfers to those cases in which all defendants have been served would frustrate the salutory purposes of 1407 without meaningfully advancing any other interest.").

certain differences among these cases, there are common questions of fact[8] relevant to all of the Unintended Acceleration Cases, including the alleged defects in Toyota vehicles subject to the recent recalls and Toyota's handling of the Floor Mat and Pedal Recalls. Consolidation will therefore "eliminate duplicative discovery, avoid inconsistent pretrial rulings, and conserve the resources of the parties, their counsel, and the judiciary." *In re Vioxx Prods. Liab. Litig.*, 360 F. Supp. 2d 1352, 1354 (J.P.M.L. 2005).

Moreover, the vast majority (72 out of 77) of the Unintended Acceleration Cases filed in federal courts are class actions. This Panel has long recognized that overlapping and parallel class actions asserting similar claims for recovery are particularly well-suited for consolidation. *See, e.g., In re Chrysler Corp. Vehicle Prods. Liab. Litig.*, MDL No. 1239, 1998 LEXIS 15675, at *2 (J.P.M.L. Oct. 2, 1998) (ordering transfer where "the actions in this litigation involve common questions of fact concerning allegations by overlapping classes of defects in the paint of certain Chrysler vehicles that result in chipping, peeling and discoloration of the paint finish."); *In re Sugar Indus. Antitrust Litig.*, 395 F. Supp. 1271, 1273 (J.P.M.L. 1975) ("[T]ransfer of actions under § 1407 is appropriate, if not necessary, where the possibility of inconsistent class determinations exists."); *In re Hawaiian Hotel Room Rate Antitrust Litig.*, 438 F. Supp. 935, 936 (J.P.M.L. 1977) ("Section 1407 centralization is especially important to ensure consistent treatment of the class action issues."); *In re Plumbing Fixture Cases*, 298 F. Supp. 484, 493

[8] For example, while some plaintiffs claim to have experienced an episode of unintended acceleration, many of the plaintiffs do not claim to have experienced any manifestation of the alleged defect. The cases also differ in the type of damages sought: some plaintiffs seek damages for personal injury, but many allege only economic harm. Moreover, the governing law and underlying legal theories of these cases differ to varying degrees as well. Accordingly, while these cases are undoubtedly appropriate for coordinated treatment to promote the efficient resolution of this litigation and to minimize the potential for inconsistent rulings, Toyota disputes any contention that these cases are maintainable as class actions under Fed. R. Civ. P. 23, and nothing in this motion should be interpreted as an indication to the contrary or as an admission on Toyota's part that commonality or any criteria under Rule 23 has been satisfied.

(J.P.M.L. 1968) (holding that transfer was necessary to avoid "pretrial chaos in conflicting class action determinations.").

III. The Central District of California is the Most Appropriate Venue for the Transfer of These Actions.

In deciding the appropriate transferee court, this Panel has often considered (i) where the majority of cases are pending; (ii) where the first-filed and most advanced cases are pending; (iii) where a defendant's headquarters is located; (iv) where relevant documents and witnesses are located; (iv) whether the transferee district is easily accessible to parties and witnesses; and (v) whether the transferee court has the capacity to devote sufficient resources to complex consolidated proceedings. All of these factors decidedly favor the Central District of California.

A. More Cases Have Been Filed in the Central District of California Than In Any Other District, and The California Actions Are Further Advanced Than Cases In Other Districts.

This Panel has repeatedly found that the most appropriate transferee court is the district in which the greatest number of actions is pending. *See, e.g., In re WellPoint, Inc., Out-of-Network UCR Rates Litig.*, 652 F. Supp. 2d 1375, 1376 (J.P.M.L. 2009) (transferring to district where three actions already pending); *In re Conseco Life Ins. Co. Cost of Ins. Litig.*, 323 F. Supp. 2d 1381, 1383 (J.P.M.L. 2004) (noting that "a plurality of the actions is pending in the Central District of California"); *In re Phonometrics, Inc.*, 1996 LEXIS 21909 (J.P.M.L. Dec. 11, 1996) (transferring to district where majority of actions were pending); *In re Dow Chemical Co. Sarabond Prods. Liab. Litig.*, 650 F. Supp. 187, 189 (J.P.M.L. 1986) (transferring to district where six of fourteen actions already pending). Here, more than a third of the cases in which Toyota has been served are pending in the Central District of California (14 out of 39). Additionally, looking at the total number of cases filed (including those in which Toyota has yet to be served), nearly one third of the currently pending actions were filed in the Central District

of California (21 out of 77). The rest of the fifty-six cases, by contrast, are fairly evenly distributed across thirty-six other districts, with no other district presiding over more than four related actions. Accordingly, Section 1407's convenience requirement would be well served by transferring these cases to the district where the greatest number of parties is found. *See In re Napster, Inc.*, 2000 LEXIS 15493 (J.P.M.L. Oct. 11, 1996) (transferring to the district with majority of the parties).

Not only are significantly more actions pending in the Central District of California than in any other district, but the California cases were the also the first to be filed. As a result, litigation in several of the California cases has progressed much further than in the other actions. For example, Toyota has already submitted Motions to Dismiss in *Choi v. Toyota Motor Corp.*, No. 2:09-cv-08143, *Baldiserri v. Toyota Motor Sales, USA, Inc.*, 2:09-cv-09386, *Kmetz v. Toyota Motor Sales, USA, Inc.*, 2:09-cv-08478, and *Lane v. Toyota Motor Sales, USA, Inc.*, 2:09-cv-09158. Moreover, in *Choi*, the first-filed case, plaintiffs have already submitted briefing in support of their motion for preliminary injunction and class certification. In addition to briefing, a number of hearings have been scheduled in the California cases. Judge Matz is scheduled to hear oral argument on Toyota's Motion to Dismiss in the *Kmetz* case on March 15, 2010, and will hear oral argument on the pending class certification motion and motion to dismiss in the *Choi* action on March 22, 2010. Judge Feess is scheduled to hear oral argument on Toyota's Motion to Dismiss in the *Baldiserri* case on March 8, 2010, and Judge Feess will hear oral argument on Toyota's Motion to Dismiss in the *Lane* case on March 29, 2010.

Because the judges presiding over cases in the Central District of California have had the benefit of reviewing the parties' briefs, they are already familiar with both the basic facts of these cases and the legal issues that will be raised during the consolidated pretrial proceedings.

These judges' familiarity with these cases makes the Central District a particularly appropriate transferee district. *See In re Land Rover LR3 Tire Wear Prods. Liab. Litig.*, 598 F. Supp. 2d 1384, 1386 (J.P.M.L. 2009) ("The Central District of California is an appropriate transferee forum because the first-filed and most procedurally advanced actions are pending there."); *In re Pet Food Prods. Liab. Litig.*, 499 F. Supp. 2d 1346, 1347 (J.P.M.L. 2007) (ordering transfer to a particular venue where "[p]retrial proceedings are advancing well there and about one-third of all pending actions are already in this district."); *In re Mirapex Prods. Liab. Litig.*, 493 F. Supp. 2d 1376 (J.P.M.L. 2007) (transferring cases to the district where litigation had become the most advanced and the judge had the opportunity to become familiar with the litigation).

B. More Relevant Documents and Witnesses Will Likely Be Located in the Central District of California Than in Any Other Proposed Transferee District.

The presence of a defendant's corporate headquarters or other principal place of business in a forum militates strongly in favor of transfer to that forum because it "implies that relevant witnesses and documents are likely to be found there." *In re UICI "Association-Group" Ins. Litig.*, 305 F. Supp. 1360, 1362 (J.P.M.L. 2004); *see also In re Aftermarket Automotive Lighting Prods. Antitrust Litig.*, 598 F. Supp. 2d 1366, 1368 (J.P.M.L. 2009) (transferring to the Central District of California where "several defendants are headquartered within the Central District of California and accordingly pertinent documents and witnesses are likely located there"); *In re DirectTV, Inc. Early Cancellation Fee Marketing and Sales Pracs. Litig.*, 655 F. Supp. 2d 1369, 1370-71 (J.P.M.L. 2009) ("DirecTV, Inc., is headquartered in that district and, therefore, relevant documents and witnesses are likely located there."); *In re European Rail Pass Antitrust Litig.*, MDL No. 1386, 2001 WL 587855 (J.P.M.L. 2001); *In re Baldwin-United Corp. Litig.*, 581 F. Supp. 739, 741 (J.P.M.L. 1984); *In re California Armored Car Antitrust Litig.*, 476 F. Supp. 452,

454 (J.P.M.L. 1979) ('[S]ince Armored Transport's principal place of business is located in the Central District of California, it is likely that other relevant documents as well as key witnesses will also be located in that district.").[9]

Toyota Motor Sales, USA, Inc. ("TMS"), the primary defendant in these cases, is a California corporation with its headquarters located in the Central District of California. TMS serves as Toyota's U.S. sales and marketing headquarters. TMS is also the U.S. entity with primary responsibility for implementing recalls and communicating with customers and dealers concerning recall campaigns.[10] The Corporate Accessory Department of TMS was also a central player in the purchase and procurement of the all weather floor mats that are the subject of the Floor Mat Recall and worked closely with Toyota Motor Corporation on the redesign of the floor mats. Accordingly, TMS is likely to be in possession of a significant number of relevant documents, including but not limited to advertising and marketing materials, warranty data, owner's manuals, service manuals, technical service bulletins, and field contact reports, as well as information on customer complaints and lawsuits, and guidelines, correspondence, drawings and approvals for the all weather floor mats at issue. In addition to documents, individuals with relevant information regarding engineering, manufacturing, and design issues as well as the safety recalls and remedies are also located at TMS. Indeed, it appears that TMS was named as a defendant in 75 out of 77 of the Federal Unintended Acceleration Cases precisely because relevant witnesses and documents are likely to be located there. In addition to TMS's location in California, defendants Toyota Motor Manufacturing, California, Inc. and New United Motor Manufacturing, Inc. are also both located in California. The location of Toyota's U.S.

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[9] *See also In re Upjohn Co. Antibiotic Cleocin Prods. Liab. Litig.*, 450 F. Supp. 1168, 1170-71 (J.P.M.L. 1978); *In re Penn Cent. Sec. Litig.*, 322 F. Supp. 1021, 1023 & n.4 (J.P.M.L. 1971).

[10] With respect to recalls, Toyota Motor North America, Inc., which has headquarters in New York and Washington, D.C., acts as the liaison for the Toyota entities with the federal government.

headquarters and the anticipated evidence located in the Central District of California are additional factors strongly favoring transfer to that district. *In re Air Crash off Long Island, New York on July 17, 1996*, 965 F. Supp. 5 (S.D.N.Y. 1997); *In re Caesar's Palace Secs. Litig.*, 385 F. Supp. 1256, 1258 (J.P.M.L. 1974).

C. The Central District of California Is A Convenient Location For the Parties and Witnesses.

This Panel has repeatedly recognized the benefits of transferring cases to districts in large metropolitan areas. *See, e.g., In re Trasylol Prods. Liab. Litig.*, 545 F. Supp. 2d 1357, 1358 (J.P.M.L. 2008) (transferring to a district that "offers an accessible metropolitan location"). "[A] litigation of this scope will benefit from centralization in a major metropolitan center that is well served by major airlines, provides ample hotel and office accommodations, and offers a well-developed support system for legal services." *In re Worldcom, Inc. Sec. & ERISA Litig.*, 226 F. Supp. 2d 1352, 1355 (J.P.M.L. 2002). Los Angeles is such a city and is easily accessible to parties and witnesses nationwide.

Moreover, although there are a number of major U.S. cities that can be easily and quickly reached by air travel from anywhere within the United States, Los Angeles has the added benefit of facilitating transportation to and from Japan. In the Unintended Acceleration Cases, one of the other defendants is Toyota Motor Corporation ("TMC"), the ultimate parent company of all of the other named Toyota Defendants. TMC is the entity primarily responsible for the development and design of many of the vehicles at issue in the Unintended Acceleration Cases. In addition, TMC conducts much of Toyota's pre-production development testing and compliance testing for the vehicles involved in the recalls at issue. TMC is also responsible for making recall decisions. As a result, it is likely that relevant design, engineering and testing documents will be located in Japan. Additionally, business persons and engineers from TMC

will likely be witnesses in these cases and will need to travel back and forth to the United States throughout these consolidated pretrial proceedings. TMC employees are accustomed to traveling to Los Angeles because Toyota Motor Sales, USA, Inc. is headquartered there. Furthermore, there are significantly more direct flights between Japan and Los Angeles than between Japan and any of the other proposed transferee districts, and the flights between Japan and Los Angeles are also less expensive. Thus, although it may be equally burdensome for parties in Los Angeles to travel to Miami (or New Orleans or Lexington) as it is for parties in those districts to travel to Los Angles, the frequency and convenience of flights between Los Angeles and Japan weigh heavily in favor of transfer to the Central District of California.

D. The Central District of California Can Efficiently Handle Large Consolidated Proceedings.

In addition to being a convenient transferee district for parties and witnesses and being the district most familiar with the pending cases, the Central District of California also has the capacity to accommodate these proceedings. *See In re Columbia Univ. Patent Litig.*, 313 F. Supp. 2d 1383, 1385 (J.P.M.L. 2004) (deciding to "assign the litigation to a district i) in which half of the actions are pending; and ii) that is presently equipped with the resources likely required by the complex docket."). With a median time from filing to disposition of only 6.9 months, transferring these cases to the Central District of California will ensure that the consolidated pretrial proceedings are resolved in a timely and expeditious manner. *See* http://www.uscourts.gov/judbus2008/appendices/C05Sep08.pdf, attached as Exhibit 2.

E. Judge Matz Is Eminently Qualified to Preside Over These Actions.

The experience and knowledge of a particular judge is one of the factors that may be considered in determining the appropriate transferee forum. *See, e.g., In re Factor VIII or IX Concentrate Blood Prod. Liab. Litig.*, 853 F. Supp. 454, 455 (J.P.M.L. 1993); *In re Silicone Gel*

Breast Implants Prods. Liab. Litig., 793 F. Supp. 1098, 1101 (J.P.M.L. 1992); *In re Data Gen. Corp. Antitrust Litig.*, 470 F. Supp. 855, 859 (J.P.M.L. 1979); *In re Hawaiian Hotel Room Rate Antitrust Litig.*, 438 F. Supp. 935, 936 (J.P.M.L. 1977); *In re Sugar Indus. Antitrust Litig.*, 437 F. Supp. 1204, 1208 (J.P.M.L. 1975); *In re Ampicillin Antitrust Litig.*, 315 F. Supp. 317, 319 (J.P.M.L. 1970). Judge Matz, who is currently presiding over eleven of the Unintended Acceleration Cases, including the first filed action, is eminently qualified to preside over this litigation.

Judge Matz has served the Central District of California as a federal judge for over twelve years. During that time, he has presided over some of the Central District of California's most influential and publicized cases[11] and has handled numerous cases involving complex legal and factual issues,[12] including complex product liability actions. *See, e.g., In re Silicon Gel Breast Implants Products Liability Litigation*, 318 F. Supp. 2d 879 (C.D. Cal. 2004). Moreover, Judge Matz has successfully presided over consolidated litigation pursuant to a Transfer Order of this Panel in *In re Conseco Life Ins. Co. Cost of Ins. Litig.*, 323 F. Supp. 2d 1381, 1383 (J.P.M.L. 2004). Accordingly, Judge Matz has demonstrated the "time and experience to steer this complex litigation on a prudent course." *In re Vioxx Prods. Liab. Litig.*, 360 F. Supp. 2d 1352, 1354 (J.P.M.L. 2005); *see also In re Trasylol Prods. Liab. Litig.*, 545 F. Supp. 2d 1357, 1358 (J.P.M.L. 2008) (transferring to a district "where a constituent action is pending" and "assigning this litigation to a jurist who has the experience to steer this litigation on a prudent course."); *In*

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[11] *See, e.g., Bryant v. Oxxford Exp. Inc.*, 181 F. Supp. 2d 1045 (C.D. Cal. 2000) (enjoining a licensee from pursuing claim in New Jersey against NBA basketball star Kobe Bryant based on the first-to-file rule), *Burkow v. City of Los Angeles*, 119 F. Supp. 2d 1076 (C.D. 2000) (enjoining on First Amendment grounds enforcement of a city ordinance making it criminal to display for sale signs), and *Coalition of Clergy v. Bush*, 189 F. Supp. 2d 1036 (C.D. Cal. 2002), *aff'd in part and rev'd in part*, 310 F.3d 1153 (9th Cir. 2002) (dismissing lawsuit brought on behalf of detainees held in Guantanamo Bay due to lack of standing).

[12] *See, e.g., Directors Guild of America v. Harmony Pictures, Inc.*, 32 F. Supp. 2d 1184 (C.D. Cal. 1998) (holding in case of first impression that creditor's endorsement and cashing of check effectuates an accord and satisfaction that discharges debtor from further liability); and *Castaic Lake Water Agency v. Whittake Corp.*, 272 F. Supp. 2d 1053 (C.D. Cal. 2003) (holding that passive migration of a contaminant constitutes a release under CERCLA).

re Commerical Money Ctr., Inc. Equip. Lease Litig., 229 F. Supp. 2d 1379, 1380 (J.P.M.L. 2002) (transferring to an "available transferee judge with prior, successful experience in the management of Section 1407 litigation").

In addition to Judge Matz's experience handling complex cases, Judge Matz is perhaps the judge most familiar with these cases. As an initial matter, eleven of the cases filed in the Central District have already been consolidated before Judge Matz and Toyota anticipates that the rest of the California cases will likewise be transferred to Judge Matz. Accordingly, Judge Matz is currently presiding over more Unintended Acceleration Cases than any other judge in the Central District of California or elsewhere. In addition to the number of Unintended Acceleration Cases already before Judge Matz, two of the most procedurally advanced cases are assigned to him: *Choi v. Toyota Motor Corp.*, No. 2:09-cv-08143, and *Kmetz v. Toyota Motor Sales, USA, Inc.*, 2:09-cv-08478. Toyota has filed motions to dismiss in both *Choi* and *Kmetz*. Additionally, plaintiffs in the *Choi* case have also filed motions and accompanying briefs for preliminary injunctive relief and for class certification. As noted above, Judge Matz will hear oral argument on all of these pending motions in March. The fact that Judge Matz has had the opportunity to familiarize himself with the factual and legal issues of these cases makes him an ideal transferee judge. *See In re Land Rover LR3 Tire Wear Prods. Liab. Litig.*, 598 F. Supp. 2d 1384, 1386 (J.P.M.L. 2009) ("[S]ubstantial benefits arise by assigning the litigation to [a judge] who has gained familiarity with this litigation by presiding over some of the actions."); *In re Mirapex Prods. Liab. Litig.*, 493 F. Supp. 2d 1376 (J.P.M.L. 2007) (transferring to the judge that had the opportunity to become familiar with the litigation). Moreover, Judge Matz is not currently handling any MDL actions. *See In re WellPoint, Inc., Out-of-Network UCR Rates*

Litig., 652 F. Supp. 2d 1375, 1376 (J.P.M.L. 2009) (transferring cases to "an experienced MDL transferee judge who does not currently have an MDL assignment.").

IV. The Central District of California Is a More Appropriate Venue Than the Other Requested Transferee Courts.

Eleven individual plaintiffs in three separate filings have requested transfer to the Central District of California.[13] Other plaintiffs, however, have requested transfer to the Eastern District of Louisiana, the Southern District of Florida, the Eastern District of Kentucky, and the Southern District of West Virginia.[14] The Central District of California is a better venue for these cases for several reasons.

First, as discussed above, there are significantly more Unintended Acceleration Cases pending in the Central District of California and those cases are procedurally further along. Of the twenty-one cases that have been filed in the Central District of California, Toyota has been served in fourteen cases and has filed dispositive motions in four of them. By contrast, in the Eastern District of Louisiana, three cases have been filed and served (all by the same law firms and all containing nearly identical allegations),[15] but Toyota's responses to those complaints are not yet due. Toyota is aware of three cases that have been filed in the Southern District of

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[13] *See supra* at note 2.

[14] As discussed in note 2 *supra*, Plaintiff Colaberdino filed a motion seeking transfer to the District of New Jersey, but that motion has since been withdrawn. Additionally, Plaintiff Sander filed a response seeking transfer to the Southern District of New York, Plaintiff Mitchell filed a response seeking transfer to Southern District of Mississippi, Plaintiff Bilthorn filed a response seeking transfer to the District of Puerto Rico, and Plaintiff Roberts seeks transfer to the district of South Carolina. Transfer to the Central District of California, however, would be more appropriate than any of these. The Southern District of New York, Southern District of Mississippi, District of Puerto Rico, and District of South Carolina do not have any of the qualities that the Panel typically considers in making a venue decision. Indeed, there are very few cases pending in these jurisdictions (one in the Southern District of Mississippi, one in the District of Puerto Rico, two in the District of South Carolina, and three in the Southern District of New York), and all of the cases pending in these districts are in their infancy (Toyota has only been served in one of these six cases). Additionally, it is highly unlikely that any significant quantity of documents or witnesses would be located in any of these four jurisdictions. Moreover, South Carolina has no connection with the Toyota Defendants' headquarters or operations, and the lack of direct flights between Los Angeles and Spartanburg will be burdensome for many plaintiffs and defendants in this case, particularly witnesses traveling from Japan. These responses appear merely to be attempts by Plaintiffs' counsel to secure transfer to a district that will be convenient for them at the expense of the multitude of other parties involved in these cases.

[15] *Weimer v. Toyota North America, Inc.*, No. 2:10-cv-00219; *Maillho v. Toyota North America, Inc.*, No. 2:10-cv-00279, and *Brock v. Toyota North America, Inc.*, No. 2:10-cv-00281.

Florida.[16] Only one of those complaints, however, has been served on Toyota,[17] and Toyota's response to that complaint is not yet due. In the Eastern District of Kentucky, Toyota is aware of four cases that have been filed. One of these cases has yet to be served on Toyota.[18] Toyota was not served with the other three eastern District of Kentucky cases until this week.[19] Finally, Toyota is aware of only one case pending in the Southern District of West Virginia, but it is not as far along as some of the California cases.[20] As a result, the judges assigned to Unintended Acceleration Cases in the Central District of California have more familiarity with these cases than the judges proposed by Plaintiffs Weimer, Gellman, Viviano, or Graves.

Second, the Central District of California has a much stronger connection to the underlying cases than any of the other proposed transferee districts. Toyota Motor Sales, USA, Inc. ("TMS"), Toyota Motor Manufacturing, California, Inc., and New United Motor Manufacturing, Inc., all defendants in these cases, are all headquartered in California. With respect to the other proposed transferee districts, Toyota Motor Engineering & Manufacturing North America, Inc. ("TEMA") and Toyota Motor Manufacturing, Kentucky, Inc. ("TMMK") are both Kentucky corporations, but TEMA is named as a defendant in just over half of the actions that have been filed, and TMMK has only been named in seven of the currently pending seventy-seven lawsuits. Similarly, Toyota Manufacturing, West Virginia, Inc. ("TMMWV"), which is headquartered in West Virginia, has only been named as a defendant in a single case brought by the plaintiffs seeking transfer to West Virginia. By contrast, TMS has been named in

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[16] *Gellman v. Toyota Motor Sales U.S.A., Inc.*, No. 1:10-cv-20006, *Heilbrunn v. Toyota Motor Corporation*, No. 9:10-cv-80208, and *Rivas-Vigil v. Toyota Motor North America, Inc.*, No. 0:10-cv-60183.
[17] *Gellman v. Toyota Motor Sales U.S.A., Inc.*, No. 1:10-cv-20006.
[18] *Viviano v. Toyota Motor Engineering and Manufacturing North America, Inc.*, No. 2:10-cv-00024.
[19] *Poynter v. Toyota Motor North America Inc.*, No. 2:10-cv-00021; *Miller v. Toyota Motor Sales U.S.A., Inc.*, No. 2:10-cv-00031; and *Leaverton v. Toyota Motor Engineering and Manufacturing North America, Inc.*, No. 2:10-cv-00032.
[20] *Graves v. Toyota Motor Manufacturing, West Virginia, Inc.*, No. 2:09-cv-01247.

75 out of 77 cases and TMC (the Japanese parent company of all of the Toyota Defendants) has been named in 48 out of 77 cases.

In addition, despite the fact that certain Toyota manufacturing facilities (and therefore certain manufacturing subsidiaries) are located in Kentucky and West Virginia, a majority of the relevant documents and witnesses are likely to be located outside of those states. The Unintended Acceleration Cases generally involve allegations of design defects. Both TMMK and TMMWV, however, are primarily involved with manufacturing (as opposed to design) and will likely have fewer documents relating design and/or testing. In addition, TMMWV manufactures components not directly relevant to these lawsuits. Likewise, many of TEMA's relevant documents are likely to be located outside of Kentucky.

As explained above, TMC is the Toyota entity primarily responsible for the design and testing of many of the vehicles involved in this litigation. Though TEMA has design responsibilities for certain Toyota models, it does not have responsibility for many of the vehicles that are subject to the recalls. And with respect to those models for which TEMA has design responsibility, most of TEMA's design documents are likely to be located outside of Kentucky because TEMA's research and development operations are located outside of Kentucky. Moreover, there is an additional nexus to California, in that TEMA maintains a quality control group in its Los Angeles, California office, where other potentially relevant documents are located. By contrast, TEMA's Erlanger, Kentucky office is primarily responsible for procurement, quality control, and administrative issues. Therefore, although some documents or witnesses may be located in Kentucky, a substantial portion of TEMA's relevant documents, particularly those relating to design and testing, are likely to be found in TEMA offices outside of Kentucky. Accordingly, Toyota anticipates that a significant quantity of the

relevant documents in these cases will be located in Los Angeles, with a considerable number of documents and witnesses also potentially located in Japan. In short, the Central District of California is the district with the most significant connection to this litigation in terms of the location of potential evidence.

The Central District of California is also significantly more convenient than the Eastern District of Kentucky or the Southern District of West Virginia for parties and witnesses, particularly Defendant TMC which is located in Japan. This is particularly true for the Southern District of West Virginia, because there are no direct flights from Charleston, West Virginia to California. Given the number of California-based plaintiffs and defendants, as well TMC's location in Japan, the lack of direct flights between Los Angeles and these districts will be inconvenient for many of the parties involved.

Finally, there are significantly more active judges in the Central District of California than in any of the other proposed transferee districts, which will assist in ensuring that the judge assigned to these cases is able to devote sufficient time to case management. The Central District of California has twenty-five active judges, and only eleven currently pending Section 1407 proceedings. The Eastern District of Louisiana, by contrast, has only twelve active judges, but six pending MDL actions. Although the Southern District of Florida has seventeen active judges, it also has ten pending MDLs. Accordingly, the Central District of California is a more appropriate venue. *See In re Teflon Prods. Liab. Litig.*, 416 F. Supp. 2d 1364 (J.P.M.L. 2006) (taking into consideration other MDL dockets already pending in that jurisdiction); *In re Serzone Prods. Liab. Litig.*, 217 F. Supp. 2d 1372, 1374 (J.P.M.L. 2002) (transferring to a district "that is not currently overtaxed with other multidistrict dockets"); *In re Bayol Prods. Liab. Litig.*, 180 F. Supp. 2d 1378 (J.P.M.L. 2001) (same). Additionally, although there are fewer MDL actions

currently pending in the Eastern District of Kentucky or the Southern District of West Virginia, that is not necessarily an indication that this litigation would move more quickly in those districts than in the Central District of California. In fact, the median time from filing to disposition in the Central District of California is only 6.9 months compared to 9.4 months in the Eastern District of Kentucky and 9.2 months in the Southern District of West Virginia. Thus, there is no basis to conclude that an experienced judge in the Central District of California cannot oversee this litigation in an effective and efficient manner.

V. Conclusion

Pursuant to Section 1407, centralization of the Unintended Acceleration Cases is appropriate because these cases raise similar factual and legal issues, and because consolidation will result in convenience to the parties and increased judicial efficiency and avoid duplicative discovery and inconsistent pretrial rulings.

The Toyota Defendants join in the request that this Panel transfer these cases to the Central District of California for coordinated pretrial proceedings before the Honorable Judge Matz. On balance, the Central District of California will be the most convenient for all parties and is well equipped to handle litigation of this magnitude. Moreover, the Central District of California is the district where many of the defendants are headquartered and where a significant number of documents and witnesses will likely be located. Furthermore, because significantly more Unintended Acceleration Cases have been filed in the Central District of California than in any other district and because these cases have progressed further than the cases in the other proposed transferee districts, the judges in the Central District of California, and in particular Judge Matz, have had the greatest opportunity to familiarize themselves with these cases.

Respectfully submitted, this 26th day of February.

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EXHIBIT 1

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

IN RE: TOYOTA MOTOR CORP. DEFECTIVE GAS PEDAL PRODUCTS LIABILITY LITIGATION
MDL DOCKET NO. 2151

SCHEDULE A: All Unintended Acceleration Cases[1]

No.	Full Case Name	Civ. Action No.	District	Division	Judge
1.	Joseph Hauter and Frank Palomares, on behalf of themselves and all others similarly situated, v. Toyota Motor Sales, U.S.A., Inc., Toyota Motor Corporation, and Doe Defendants 1-10	8:10-cv-00105	C.D. Cal.	Western (Los Angeles)	Matz
2.	T. Leigh Beard, Catherine Nguyen, and Valina Salvador, in their individual capacities, and on behalf of all others similarly situated, v. Toyota Motor Corporation and Toyota Motor Sales, U.S.A., Inc.	8:10-cv-00183	C.D. Cal.	Southern (Santa Anna)	Selna
3.	Adilia Aviles on behalf of herself and all others similarly situated, v. Toyota Motor Corporation and Toyota Motor Sales U.S.A., Inc.	2:10-cv-00706	C.D. Cal.	Western (Los Angeles)	Matz
4.	Roz Schwartz on behalf of herself and all others similarly situated, v. Toyota Motor Sales, U.S.A., Inc., Toyota Motor Corp., and Doe Defendants 1-10	2:10-cv-00710	C.D. Cal.	Western (Los Angeles)	Matz

[1] The Toyota Defendants have not been served in many of the cases identified in this Schedule A. Toyota's identification of these cases for purposes of transfer and consolidation pursuant to 28 U.S.C. § 1407 does not constitute an appearance by Toyota or imply that Toyota has waived service in any of these constituent cases.

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SCHEDULE A: All Unintended Acceleration Cases

No.	Full Case Name	Civ. Action No.	District	Division	Judge
5.	Matthew Marr, Luis Fernandez, Sylvia Fernandez, individually and on behalf of all others similarly situated v. Toyota Motor Sales, U.S.A., Inc., and Toyota Motor Corp.	2:10-cv-00799	C.D. Cal.	Western (Los Angeles)	Matz
6.	Ani Gazaryan, an individual; Svetlana Abajyan, an individual; Elza Dzhivalegy, and individual; Tamara Harutyunyan, an individual; Nerses Mazmanyan, an individual; Hrayr Okkasian an individual, Christine Aznavour, an individual; Akop Galadzhyan; and individual; Plaintiffs, on Behalf of Themselves and All Others Similarly Situated as Well as on Behalf of the General Public and Acting in the Public Interest, v. Toyota Motor sales U.S.A., Inc., a California corporation; Toyota Motor Engineering & Manufacturing North America, Inc. a foreign corporation; and Does 1-10: Inclusive.	2:10-cv-00849	C.D. Cal.	Western (Los Angeles)	Matz
7.	Peter Wisner v. Toyota Motor Corporation and Toyota Motor Sales, U.S.A., Inc.	2:10-cv-00942	C.D. Cal.	Western (Los Angeles)	Otero
8.	Elaine Byrnes, individually and on behalf of all others similarly situated v. Toyota Motor North America Inc. a California corporation; Toyota Motor Engineering & Manufacturing North America, Inc. a Kentucky corporation; Toyota Motor Sales, U.S.A., Inc., a California corporation; Toyota Motor Corporation, a Japanese corporation	2:10-cv-00947	C.D. Cal.	Western (Los Angeles)	Matz

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SCHEDULE A: All Unintended Acceleration Cases

No.	Full Case Name	Civ. Action No.	District	Division	Judge
9.	Lacey Laudicina and Kevin Funez, individually and on behalf of all other similarly situated, v. Toyota Motor Corporation and Toyota Motor Sales, U.S.A., Inc.	2:10-cv-01030	C.D. Cal.	Western (Los Angeles)	Marshall
10.	Rhonda Talbot, on behalf of herself and all other similarly situated v. Toyota Motor North America, Inc., Toyota Motor Engineering & manufacturing North America, Inc., and Toyota Motor Sales, U.S.A., Inc.	2:10-cv-01039	C.D. Cal.	Western (Los Angeles)	Matz
11.	Jacquelyn Donoghue, individually and on behalf of the Estate of John Donoghue, deceased, v. Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Manufacturing California, Inc., Toyota Motor Sales, U.S.A., Inc., Toyota Motor Corporation, CTS Corporation, and Does 1 through 10	2:10-cv-01057	C.D. Cal.	Western (Los Angeles)	Otero
12.	Max L. Lieberman, and Phyllis C. Lieberman, individually and on behalf of all others similarly situated, v. Toyota Motor Corporation and Toyota Motor Sales, U.S.A., Inc.	2:10-cv-01073	C.D. Cal.	Western (Los Angeles)	Klausner

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SCHEDULE A: All Unintended Acceleration Cases

No.	Full Case Name	Civ. Action No.	District	Division	Judge
13.	Teresa B. Myers, individually and on behalf of the Estate of Steffan David Myers, deceased, and William C. Myers, v. Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Manufacturing, California, Inc., Toyota Motor Sales, U.S.A. Inc., Toyota Motor Corporation, CTS Corporation, and Does 1 through 10 inclusive	2:10-cv-01078	C.D. Cal.	Western (Los Angeles)	Matz
14.	Karen Bush Gertz v. Toyota Motor Corporation and Toyota Motor Sales, U.S.A., Inc.	2:10-cv-01089	C.D. Cal.	Southern (Santa Anna)	Gee
15.	Kerri Madden, on behalf of herself and all others similarly situated, v. Toyota Motor Sales, U.S.A., Inc., Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Manufacturing, California, Inc., Toyota Motor Corporation, and Does 1 through 10	2:10-cv-01094	C.D. Cal.	Western (Los Angeles)	Feess
16.	Katy Boyask, on behalf of herself and all others similarly situated, v. Toyota Motor Sales, U.S.A., Inc., Toyota Motor Corp., and Doe Defendants 1-10	2:10-cv-01153	C.D. Cal.	Western (Los Angeles)	Wu
17.	Stuart Grant, an individual, v. Toyota Motor Sales, U.S.A., Inc., a CA Corp.; and Does One through Twenty	2:10-cv-01234	C.D. Cal.	Western (Los Angeles)	Matz

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SCHEDULE A: All Unintended Acceleration Cases

No.	Full Case Name	Civ. Action No.	District	Division	Judge
18.	Seong Bae Choi, Chris Chan Park, Sandra Reech, Donald Pritchett, Un Jin Choi, and Mary Ann Parker, as individuals, and on behalf of themselves and all others similarly situated, v. Toyota Motor Corp., Toyota Motor Sales, U.S.A., Inc., and Does 1 through 10	2:09-cv-08143	C.D. Cal.	Western (Los Angeles)	Matz
19.	Eric Kmetz, and Joe Morris, on behalf of themselves and all others similarly situated, v. Toyota Motor Sales, U.S.A., Inc., Toyota Motor Corporation, and Doe Defendants 1-10	2:09-cv-08478	C.D. Cal.	Western (Los Angeles)	Matz
20.	Heather A. Lane, individually and on behalf of all others similarly situated, v. Toyota Motor Sales, U.S.A., Inc. a California corporation	2:09-cv-09158	C.D. Cal.	Western (Los Angeles)	Feess
21.	Dale Baldisseri, on behalf of himself and all others similarly situated, v. Toyota Motor Sales, U.S.A., Inc., Toyota Motor North America, Inc., Toyota Motor Manufacturing, California, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., and Does 1 through 20	2:09-cv-09386	C.D. Cal.	Western (Los Angeles)	Feess

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SCHEDULE A: All Unintended Acceleration Cases

No.	Full Case Name	Civ. Action No.	District	Division	Judge
22.	Ryan Scharrel, Susan Kruschke, and Enrique Moreno, v. Toyota Motor North America, Inc, a California corporation, Toyota Motor Engineering & Manufacturing North America, Inc., a Kentucky corporation, and Toyota Motor Sales, U.S.A., Inc., a California corporation	1:10-cv-00227	D. Colo.	Denver	Brimmer
23.	Nimishabahen Patel, individually, and on behalf of all persons similarly situated, v. Toyota Motor North America, Inc., a foreign corporation, Toyota Motor Sales, U.S.A., Inc., a foreign corporation, and General Motors LLC, a foreign corporation.	3:10-cv-00210	D. Conn.	New Haven	Underhill
24.	S. Firgon, on behalf of himself and all others similarly situated, v. Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Inc., Toyota Motor Engineering & Manufacturing North America, Inc., and Toyota Motor North America, Inc.	2:10-cv-02075	D. Kan.	Kansas City	Murguia
25.	Darshak Shah, v. Toyota Motor North America, Inc., a CA Corp.; Toyota Motor Sales, U.S.A., Inc., a CA Corp.; and General Motors, LLC	1:10-cv-10263	D. Mass.	Boston	Tauro
26.	Don Gureski and Carol Gureski, v. Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., and Toyota Motor Sales, U.S.A., Inc.	1:10-cv-00031	D. Wyo.	Casper	Johnson

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SCHEDULE A: All Unintended Acceleration Cases

No.	Full Case Name	Civ. Action No.	District	Division	Judge
27.	Margaret Gonzalez, on her own behalf and on behalf of all others similarly situated v. Toyota Motor Sales, U.S.A., Inc.; Toyota Motor North America, Inc.; and Toyota Motor Engineering & Manufacturing North America, Inc.	3:10-cv-00595	D.N.J.	Trenton	Cooper
28.	Maureen Colaberdino, on behalf of herself and all others similarly situated, v. Toyota Motor North America, Inc., Toyota Motor Sales, U.S.A., Inc., and Toyota Motor Corporation	3:10-cv-00672	D.N.J.	Trenton	Cooper
29.	Cheryl Abken and Sandra Valdez, individually and on behalf of all persons similarly situated, v. Toyota motor North America, Inc., Toyota Motor Sales, U.S.A., Inc., and General Motors LLC	3:10-cv-00763	D.N.J.	Trenton	Cooper
30.	Francine Goukas, on behalf of herself and all others similarly situated, v. Toyota Motor Corporation, Toyota Motor Engineering & Manufacturing, North America, Inc., and Toyota Motor Sales, U.S.A., Inc.	3:10-cv-00778	D.N.J.	Trenton	Cooper

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SCHEDULE A: All Unintended Acceleration Cases

No.	Full Case Name	Civ. Action No.	District	Division	Judge
31.	Zahira Crespo-Bithorn and Milagros Rodriguez Cruz et al., on behalf of themselves and all others similarly situated v. Toyota Motor North America, Inc.; Toyota Motor Engineering & Manufacturing North America, Inc.; Toyota Motor Sales, U.S.A., Inc. and Toyota De Puerto Rico, Corp	3:10-cv-01083	D.P.R.	San Juan	Besosa
32.	Linda Alford Wooten, v. Toyota Motor North America Inc., a California corporation; Toyota Motor Engineering & Manufacturing North America, Inc., a Kentucky corporation; Toyota Motor Manufacturing Kentucky, Inc., a Kentucky corporation; Toyota Motor Sales U.S.A., Inc., a California corporation; Toyota Motor Corporation, a Japanese corporation; and Denso Manufacturing Tennessee, Inc., a Tennessee corporation	3:10-cv-00229	D.S.C.	Columbia	Perry, Jr.
33.	Dale Roberts, on behalf of himself and all others similarly situated, v. Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Inc., and does 1 through 10.	7:10-cv-00281	D.S.C.	Spartanburg	Harwell
34.	Robyn Horn, class representative, on behalf of herself and all others similarly situated, v. Toyota Motor Sales U.S.A., Inc., a California corporation, Toyota Motor Engineering & Manufacturing, North America, Inc., a foreign corporation, Toyota Motor Corporation, a foreign corporation, and Does 1-10.	4:10-cv-00090	E.D. Ark.	Little Rock	Holmes

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SCHEDULE A: All Unintended Acceleration Cases

No.	Full Case Name	Civ. Action No.	District	Division	Judge
35.	Julie Rainwater, individually and on behalf of all others similarly situated, v. Toyota Motor Sales, U.S.A., Inc.	4:10-cv-00116	E.D. Ark.	Western	Wilson
36.	Al and Jo Anna Viviano, Paul Turner, Kyle Briggs, Shalini Ignatenkov, Charles and Karen Gibbens, Lori S. and Thomas A. Trahan, Erica Thomas, Holly Boyd, Connie and Thomas Kamphaus, Brena and Lee Shonfield, and Alan L. Weller, v. Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Manufacturing Kentucky, Inc., Toyota Motor Sales, U.S.A., Inc., and Toyota Lease Trust.	2:10-cv-00024	E.D. Ky	Northern (Covington)	Bertlesman
37.	Debra and Ron Poynter, Tina and Fran Preedom, Krystal Eggerding, Angela Boles, Laurie Chambers, Amy Smith Roth, and Lucero and Mark Davidson, v. Toyota Motor North America Inc., a California corporation; Toyota Motor Sales U.S.A., Inc., a California corporation; Toyota Motor Corporation, a Japanese corporation; Toyota Motor Engineering & Manufacturing North America, Inc., a Kentucky corporation; and Toyota Motor Manufacturing Kentucky, Inc., a Kentucky corporation.	2:10-cv-00021	E.D. Ky.	Northern (Covington)	Bertelsman

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SCHEDULE A: All Unintended Acceleration Cases

No.	Full Case Name	Civ. Action No.	District	Division	Judge
38.	Michael & Cathy Miller, Steve Clemons, Sonya Gray, Wayne & Betty Tomlin, Patrick Kwiatkowski, Edward & Joan Skillman, and Melissa Arnzen Moeddel, individually and on behalf of others similarly situated, v. Toyota Motor Sales, U.S.A., Inc., Toyota Motor Corporation, Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Manufacturing, Kentucky, Inc., and Toyota Motor Manufacturing, Northern Kentucky, Inc.	2:10-cv-00031	E.D. Ky.	Northern (Covington)	Bertelsman
39.	Christopher L. Leaverton, individually and on behalf of all others similarly situated, v. Toyota Motor Engineering & Manufacturing North America, Inc. and Toyota Motor Sales, U.S.A., Inc.	2:10-cv-00032	E.D. Ky.	Northern (Covington)	Bertelsman
40.	Daniel Weimer, Jr., Colby Wenck, and Ann Cavalier, all individually and on behalf of all other similarly situated Plaintiffs v. Toyota Motor North America, Inc.; Toyota Motor Engineering & Manufacturing North America, Inc.; and Toyota Motor Sales, U.S.A., Inc.	2:10-cv-00219	E.D. La.	New Orleans	Lemelle
41.	Amanda R. Maillho, v. Toyota Motor North America, Inc.; Toyota Motor Engineering & Manufacturing North America, Inc.; and Toyota Motor Sales, U.S.A., Inc.	2:10-cv-00279	E.D. La.	New Orleans	Lemmon

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SCHEDULE A: All Unintended Acceleration Cases

No.	Full Case Name	Civ. Action No.	District	Division	Judge
42.	Gary T. Brock v. Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., and Toyota Motor Sales, U.S.A., Inc.	2:10-cv-00281	E.D. La.	New Orleans	Lemelle
43.	Deborah Baumkel, on behalf of herself and all others situated, v. Toyota Motor North America, Inc., a foreign corporation and Toyota Motor Sales, U.S.A., Inc., a foreign corporation.	2:10-cv-10525	E.D. Mich.	Detroit	Edmunds
44.	Diane Gumble, on behalf of herself and all others similarly situated, v. Toyota Motor Corporation, Toyota Motor Engineering & Manufacturing North America, Inc. and Toyota Motor Sales U.S.A., Inc.	5:10-cv-00521	E.D. Pa.	Allentown	Golden
45.	Frederick Greisiger, individually and on behalf of all persons similarly situated, v. Toyota Motor North America, Inc., a foreign corporation, Toyota Motor Sales, U.S.A., Inc., a foreign corporation, and General Motors, LLC, a foreign corporation.	5:10-cv-00554	E.D. Pa.	Allentown	Slomsky
46.	William Fitts and Phyllis Fitts, individually; Billy C. Fitts and Freida Fitts individually v. Toyota Motor Corporation	2:10-cv-00052	E.D. Tex.	Marshall	Ward

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SCHEDULE A: All Unintended Acceleration Cases

No.	Full Case Name	Civ. Action No.	District	Division	Judge
47.	Frank Whiddon, as an individual and on behalf of all others similarly situated, v. Toyota Motor Corporation, a foreign corporation, and Toyota Motor Sales, USA, Inc., a California corporation	1:10-cv-00080	E.D. Tex.	Beaumont	Clark
48.	Kevin P. Fogarty, Barbara Jackson, and Alex Farrugia, individually and on behalf of all others similarly situated v. Toyota Motor North America, Inc. a California corporation; Toyota Motor Engineering & Manufacturing North America, Inc., a Kentucky corporation, Toyota Motor Sales U.S.A., Inc., a California corporation, and Toyota Motor Corporation, a Japanese corporation	1:10-cv-00542	E.D.N.Y	Brooklyn	Gleeson
49.	Peter Phaneuf, on his own behalf and on behalf of all others similarly situated, v. Toyota Motor Sales, U.S.A., Inc.; Toyota Motor North America, Inc.; and Toyota Motor Engineering & Manufacturing North America, Inc.	2:10-cv-00487	E.D.N.Y.	Central Islip	Bianco
50.	John Harding, individually and on behalf of all others similarly situated, v. Toyota Motor Corporation, a foreign corporation, and Toyota Motor Sales, U.S.A., Inc., a California corporation.	2:10-cv-00100	M.D. Ala.	Montgomery	Fuller
51.	Michelle Lynch on behalf of herself and all others similarly situated, v. Toyota Motor Corporation and Toyota Motor Sales U.S.A., Inc.	8:10-cv-00326	M.D. Fla.	Tampa	Merryday

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SCHEDULE A: All Unintended Acceleration Cases

No.	Full Case Name	Civ. Action No.	District	Division	Judge
52.	Renita Cipriani, as an individual and on behalf of all others similarly situated, v. Toyota Motor Corporation, a Japanese Corp.; and Toyota Motor Sales, U.S.A., Inc., a CA Corp.	8:10-cv-00427	M.D. Fla.	Tampa	Bucklew
53.	Viviane Stoller, individually and on behalf of a class of similarly situated citizens in Georgia, v. Toyota Motor Corp. and Toyota Motor Sales, USA, Inc.	4:10-cv-00024	M.D. Ga.	Columbus	Land
54.	Roshawn Donahue, individually and on behalf of all other similarly situated Plaintiffs, v. Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing, North America, Inc., and Toyota Motor Sales, U.S.A., Inc.	3:10-cv-00108	M.D. La.	Baton Rouge	Parker
55.	Justin Johnson, on behalf of himself and all others similarly situated, v. Toyota Motor Corporation and Toyota Motor Sales U.S.A., Inc.	5:10-cv-00026	N.D. Fla.	Panama City	Smoak
56.	Jim Heidenreich, individually, and on behalf of all persons similarly situated, v. Toyota Motor North America, Inc., a foreign corporation, and Toyota Motor Sales, U.S.A., Inc., a foreign corporation	4:10-cv-00035	N.D. Fla.	Tallahassee	Hinkle

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SCHEDULE A: All Unintended Acceleration Cases

No.	Full Case Name	Civ. Action No.	District	Division	Judge
57.	Christina Ochs, on behalf of herself and all others similarly situated, v. Toyota Motor Corporation, and Toyota Motor Sales, U.S.A., Inc.	1:10-cv-00918	N.D. Ill.	Chicago	Coar
58.	Belva Simmons, as an individual and on behalf of all others similarly situated, v. Toyota Motor Corporation, a foreign corporation, Toyota Motor Sales, USA, Inc., a California corporation, and Toyota North America, Inc., a California corporation.	3:10-cv-00009	N.D. Miss.	Western	Mills
59.	Troy Menssen, on behalf of himself and all other similarly situated individuals v. Toyota Motor Sales, U.S.A., Inc., Toyota Motor Engineering & Manufacturing North America, Inc., and Toyota Motor Corporation	1:10-cv-00260	N.D. Ohio	Cleveland	Oliver
60.	Daniel D. Lee, individually and on behalf of others similarly situated v. Toyota Motor North America, Inc., a California corporation; Toyota Motor Engineering & Manufacturing North America, Inc., a Kentucky corporation; Toyota Motor Manufacturing Kentucky, Inc., a Kentucky corporation; Toyota Motor Sales U.S.A., Inc., a California corporation; New United Motor Manufacturing, Inc., a California Joint Venture, and Toyota Motor Corporation, a Japanese corporation.	3:10-cv-00280	N.D. Ohio	Toledo	Carr

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SCHEDULE A: All Unintended Acceleration Cases

No.	Full Case Name	Civ. Action No.	District	Division	Judge
61.	Roxanne Early and Edward Ransom, individually and as legal heirs to the estate of Sharon Ransom, deceased, v. Toyota Motor Corporation, Toyota Motor Engineering & Manufacturing North America, Inc., and Toyota Motor Manufacturing, Kentucky, Inc.	3:10-cv-00332	N.D. Tex	Dallas	Lindsay
62.	James R. Haustein, v. Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Inc., and Toyota Motor Engineering & Manufacturing, North America, Inc.	5:10-cv-00178	N.D.N.Y.	Syracuse	McCurn
63.	Humberto Rivas-Vigil, individually and on behalf of all others similarly situated, v. Toyota Motor North America, Inc.; Toyota Motor Engineering & Manufacturing North America, Inc.; and Toyota Motor Sales, U.S.A., Inc.	0:10-cv-01183	S.D. Fla.	Fort Lauderdale	Cohn
64.	Jonathan Gellman, an individual, on behalf of himself and all others similarly situated, v. Toyota Motor Sales, USA, Inc., a California corporation	1:10-cv-20006	S.D. Fla.	Miami	Cooke
65.	Arlene S. Heilbrunn, as an individual and on behalf of all others similarly situated, v. Toyota Motor Corporation, a foreign corporation, and Toyota Motor Sales, USA, Inc., a California corporation	9:10-cv-80208	S.D. Fla.	Miami	Zloch

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SCHEDULE A: All Unintended Acceleration Cases

No.	Full Case Name	Civ. Action No.	District	Division	Judge
66.	Judith M. Enderle, on behalf of herself all others similarly situated v. Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., and Toyota Motor Sales, U.S.A., Inc.	1:10-cv-00142	S.D. Ind.	Indianapolis	Barker
67.	Christine Mitchell, v. Toyota Motor North America, Inc.; Toyota Motor Engineering & Manufacturing, North America, Inc.; and Toyota Motor Sales, U.S.A., Inc.	3:10-cv-00104	S.D. Miss.	Jackson	Wingate
68.	Rebecca S. Shumaker v. Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Sales, U.S.A., Inc., and Toyota Motor Corporation	3:10-cv-00061	S.D. Ohio	Western (Dayton)	Rice
69.	Sylvia Pena and Albert A. Pena, III, as individuals and on behalf of themselves and all others similarly situated, v. Toyota Motor Corporation and Toyota Motor Sales, U.S.A., Inc.	2:10-cv-00037	S.D. Tex.	Corpus Christi	Rainey
70.	Thomas Davis, on behalf of himself and all other similarly situated individuals, v. Toyota Motor Sales, U.S.A., Inc., and Toyota Motor Corporation	1:10-cv-00900	S.D.N.Y.	Foley Square	Buchwald

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SCHEDULE A: All Unintended Acceleration Cases

No.	Full Case Name	Civ. Action No.	District	Division	Judge
71.	Barbara Iglesias, Individually and On Behalf Of All Others Similarly Situated, v. Toyota Motor Corporation, a Japanese Corp.; Toyota Motor Sales, U.S.A., Inc., a CA Corp.; Toyota Motor North America, Inc., a CA Corp.; Toyota Motor Engineering & Manufacturing, N.A., Inc., a Kentucky Corp.; Lexus; Toyota Motor Manufacturing, Indiana, Inc.; Toyota Motor Manufacturing, Texas, Inc.; Toyota Motor Manufacturing, Kentucky, Inc.; New United Motor Manufacturing, Inc., Subaru of Indiana Automotive, Inc.; CTS Corporation and Doe Defendants 1 through 10	1:10-cv-1014	S.D.N.Y.	Foley Square	Castel
72.	Fred Sander v. Toyota Motor Sales, U.S.A., Inc., Toyota North America Inc., and Toyota Engineering & Manufacturing North America, Inc.	1:10-cv-01111	S.D.N.Y.	Foley Square	Hellerstein
73.	Michael Graves and Michael C. Graves, and Jeff Mullins, individually, and on behalf of all others similarly situated, v. Toyota Motor Manufacturing, West Virginia, Inc., a West Virginia Corporation; Toyota Motor North America, Inc., a California corporation; Toyota Motor Engineering & Manufacturing North America, Inc., a Kentucky corporation; Toyota Motor Sales U.S.A., Inc., a California corporation; and Toyota Motor Corporation, a Japanese corporation.	2:09-cv-01247	S.D.W. Va.	Charleston	Goodwin

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SCHEDULE A: All Unintended Acceleration Cases

No.	Full Case Name	Civ. Action No.	District	Division	Judge
74.	Mark Adkinson, individually and on behalf of all others similarly situated, v. Toyota Motor Sales, U.S.A., Inc.	6:10-cv-06013	W.D. Ark.	Hot Springs	Dawson
75.	David Hulsen, Patrick Mann, and Tyson Markham, on behalf of themselves and all others similarly situated v. Toyota Motor Corporation and Toyota Motor Sales, U.S.A., Inc.	4:10-cv-00103	W.D. Mo.	Kansas City	Sachs
76.	Jerry Baker Auto Sales, LLC, individually and on behalf of others similarly situated, v. Toyota Motor Sales, U.S.A., Inc., Toyota Motor Engineering & Manufacturing North America, Inc., and Toyota Motor Corporation	2:10-cv-04025	W.D. Mo.	Central	Laughrey
77.	Carol D. Sill, individually, and on behalf of all others similarly situated, v. Toyota Motor Sales U.S.A., Inc., Toyota Motor North America, Inc., Toyota Motor Manufacturing, Inc., and Toyota Motor Engineering & Manufacturing North America, Inc.	5:10-cv-00117	W.D. Okla.	Oklahoma City	Russell

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EXHIBIT 2

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 September 30, 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	175,091	8.1	43,257	5.0	105,421	7.8	22,017	13.6	4,396	32.9
DC	1,801	8.5	643	6.2	1,090	9.4	43	11.7	25	36.5
1ST	4,809	8.9	1,922	6.5	2,056	8.5	661	16.6	170	25.9
ME	361	7.0	170	4.6	162	8.8	14	12.1	15	16.9
MA	2,424	8.6	1,267	6.6	784	8.3	292	18.4	81	27.1
NH	335	7.9	78	3.0	109	5.0	142	15.4	6	-
RI	405	8.8	148	7.6	181	8.3	63	11.9	13	28.4
PR	1,284	10.5	259	8.6	820	9.2	150	22.8	55	28.2
2ND	19,205	10.3	3,898	6.6	12,106	10.2	2,902	14.2	299	29.5
CT	1,855	10.1	1,166	7.8	574	13.1	66	22.9	49	31.8
NY,N	1,115	13.5	207	4.9	581	15.1	301	16.0	26	29.0
NY,E	5,672	12.6	866	8.7	3,582	13.0	1,126	14.9	98	29.4
NY,S	9,277	8.4	1,502	5.5	6,352	8.0	1,312	12.5	111	27.8
NY,W	1,059	11.9	137	5.1	820	12.1	93	24.4	9	-
VT	227	8.4	20	2.6	197	8.5	4	-	6	-
3RD	16,674	6.6	3,386	4.3	10,027	5.5	2,995	12.3	266	26.6
DE	746	11.2	163	5.4	538	12.2	16	31.1	29	31.5
NJ	5,288	7.6	1,562	5.3	2,179	5.1	1,479	14.9	68	33.7
PA,E	6,872	4.8	574	2.3	4,972	3.4	1,221	9.6	105	17.5
PA,M	1,439	7.6	416	4.4	928	8.3	61	17.5	34	31.2
PA,W	1,936	6.9	531	4.1	1,348	7.9	31	24.0	26	33.9
VI	393	19.5	140	18.2	62	25.7	187	18.7	4	-
4TH	10,852	7.1	2,743	5.8	6,938	7.0	1,005	8.6	166	20.0
MD	2,423	7.0	902	6.9	1,273	6.0	208	12.8	40	23.0
NC,E	828	8.8	337	8.1	469	9.3	13	11.0	9	-
NC,M	597	8.5	309	6.5	255	11.6	30	12.3	3	-
NC,W	841	7.6	230	7.9	523	5.9	80	14.4	8	-
SC	2,146	8.2	316	3.4	1,669	8.4	115	11.1	46	22.0
VA,E	2,199	4.8	279	2.2	1,363	4.3	520	6.5	37	10.1
VA,W	620	8.7	147	5.5	442	9.5	15	11.1	16	20.5
WV,N	430	10.0	188	8.4	225	10.2	15	23.2	2	-
WV,S	768	9.2	35	3.2	719	9.4	9	-	5	-

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TOY-RQ-05E-00009057

Table C-5. (September 30, 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	**25,552**	**9.5**	**4,500**	**6.8**	**15,751**	**7.6**	**3,452**	**15.4**	**1,849**	**166.4**
LA,E	8,715	8.8	74	3.5	6,119	6.0	2,443	14.9	79	18.9
LA,M	2,148	166.4	294	4.9	393	11.9	25	28.2	1,436	166.4
LA,W	1,600	12.0	400	8.0	1,115	12.5	47	21.2	38	22.3
MS,N	968	16.6	217	8.5	338	10.8	385	48.7	28	27.0
MS,S	1,940	10.6	1,260	10.1	600	10.7	47	21.5	33	21.7
TX,N	2,396	7.4	310	6.6	2,022	7.2	3	-	61	24.0
TX,E	1,842	9.2	260	7.1	1,472	9.0	58	18.5	52	21.1
TX,S	3,883	6.2	1,109	3.0	2,335	6.8	371	9.8	68	20.8
TX,W	2,060	8.3	576	6.8	1,357	8.2	73	14.0	54	18.3
6TH	**17,144**	**9.6**	**4,105**	**5.1**	**8,907**	**9.4**	**3,889**	**14.0**	**243**	**25.2**
KY,E	1,349	9.4	177	5.4	1,133	9.5	31	17.3	8	-
KY,W	1,067	9.2	281	7.3	694	9.2	77	19.0	15	25.9
MI,E	4,242	9.7	999	4.5	1,275	5.8	1,910	14.9	58	25.8
MI,W	919	8.4	117	3.0	769	9.3	14	19.8	19	22.3
OH,N	4,089	8.9	884	3.5	2,293	12.1	874	9.5	38	20.7
OH,S	2,570	10.3	946	6.5	975	10.3	616	14.2	33	27.8
TN,E	980	11.6	187	6.3	442	9.9	324	16.2	27	23.6
TN,M	1,087	9.2	216	5.9	838	9.6	10	16.9	23	18.4
TN,W	841	11.8	298	9.2	488	11.9	33	24.4	22	27.4
7TH	**12,012**	**7.3**	**3,587**	**4.6**	**6,498**	**7.3**	**1,708**	**12.0**	**219**	**25.8**
IL,N	6,625	6.2	2,337	4.8	3,574	6.3	601	11.5	113	25.9
IL,C	611	9.3	222	6.8	374	9.7	6	-	9	-
IL,S	672	9.4	147	4.3	483	9.5	27	31.5	15	23.1
IN,N	1,054	11.0	224	4.3	336	8.7	472	14.5	22	30.0
IN,S	1,748	9.2	462	4.6	853	9.6	407	11.6	26	23.7
WI,E	877	6.0	131	3.2	666	8.3	56	15.6	24	31.9
WI,W	425	4.6	64	2.1	212	3.9	139	6.8	10	12.0
8TH	**13,226**	**6.3**	**5,050**	**2.7**	**6,805**	**9.2**	**1,170**	**17.0**	**201**	**21.4**
AR,E	996	10.9	203	9.5	750	10.8	9	-	34	21.5
AR,W	573	10.0	16	2.2	534	10.0	4	-	19	15.2
IA,N	393	8.9	71	8.2	307	8.7	4	-	11	20.7
IA,S	548	10.6	151	7.4	271	9.5	115	15.9	11	26.3
MN	6,688	3.0	3,058	2.4	2,614	7.6	987	17.0	29	19.4
MO,E	1,586	7.6	675	5.8	874	8.3	8	-	29	20.7
MO,W	1,467	8.1	688	6.7	738	8.9	8	-	33	25.7
NE	541	9.1	20	1.7	482	8.7	22	18.9	17	17.7
ND	220	7.5	97	3.7	116	8.8	3	-	4	-
SD	214	12.5	71	10.8	119	11.0	10	21.0	14	31.1

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TOY-RQ-05E-00009058

Table C-5. (September 30, 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	**26,365**	**8.0**	**8,557**	**5.9**	**15,524**	**8.3**	**1,803**	**13.5**	**481**	**23.5**
AK	310	9.9	114	6.4	190	10.7	-	-	6	-
AZ	1,899	9.0	681	7.5	1,163	9.3	15	36.2	40	33.4
CA,N	4,082	7.7	890	4.2	2,054	6.0	1,083	12.4	55	26.2
CA,E	1,920	9.6	678	6.8	1,170	10.7	37	25.9	35	26.3
CA,C	8,889	7.0	3,637	6.0	4,998	7.5	106	18.5	148	21.2
CA,S	1,685	6.2	160	3.2	1,195	5.8	306	10.4	24	28.9
HI	544	11.4	318	9.3	171	12.4	37	21.4	18	26.9
ID	380	11.0	30	4.9	334	11.2	6	-	10	29.6
MT	503	10.6	196	7.1	190	10.0	100	16.4	17	24.5
NV	1,589	9.5	581	7.8	930	9.9	52	13.7	26	29.5
OR	1,708	10.4	491	8.0	1,159	11.2	16	23.9	42	18.6
WA,E	455	8.1	136	4.1	286	8.7	25	17.9	8	-
WA,W	2,338	7.1	616	3.9	1,658	8.1	16	15.8	48	17.4
GUAM	27	17.4	9	-	15	19.2	2	-	1	-
NMI	36	14.0	20	14.2	11	12.9	2	-	3	-
10TH	**7,282**	**8.2**	**1,398**	**4.7**	**4,542**	**8.0**	**1,177**	**11.5**	**165**	**21.3**
CO	2,001	6.9	139	3.0	1,733	6.8	88	15.7	41	25.4
KS	1,096	9.1	364	6.4	610	9.4	100	17.5	22	24.6
NM	971	9.0	195	3.6	351	8.7	399	11.0	26	20.2
OK,N	594	8.9	77	3.1	489	9.6	14	14.9	14	16.4
OK,E	368	8.6	255	9.0	96	6.6	5	-	12	15.3
OK,W	1,089	8.3	287	3.5	358	8.1	422	9.9	22	15.3
UT	934	8.5	56	2.7	822	8.9	38	14.4	18	28.4
WY	229	7.8	25	3.2	83	3.2	111	10.5	10	15.8
11TH	**20,169**	**6.9**	**3,468**	**4.3**	**15,177**	**7.0**	**1,212**	**13.8**	**312**	**19.3**
AL,N	1,979	8.8	491	8.2	1,436	8.7	25	17.6	27	19.5
AL,M	772	8.7	201	7.2	491	8.0	68	17.9	12	19.0
AL,S	616	7.7	124	7.4	460	7.4	17	15.1	15	15.2
FL,N	876	7.7	169	6.4	668	7.9	17	8.0	22	17.6
FL,M	5,781	8.7	365	4.7	5,249	8.8	85	17.0	82	22.4
FL,S	6,142	4.6	1,445	3.7	4,554	4.8	58	14.8	85	14.5
GA,N	2,965	6.7	475	2.5	1,533	5.2	910	12.3	47	24.1
GA,M	631	11.2	136	6.4	474	11.9	9	-	12	25.4
GA,S	407	10.3	62	6.9	312	10.3	23	14.7	10	20.9

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.

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TOY-RQ-05E-00009059

BEFORE THE JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION

IN RE: TOYOTA MOTOR CORP. DEFECTIVE GAS PEDAL PRODUCTS LIABILITY LITIGATION	: : :	MDL No. 2151

CERTIFICATE OF SERVICE

I hereby certify that on February 26, 2010, I caused a true and correct copy of the foregoing TOYOTA DEFENDANTS' RESPONSE IN SUPPORT OF TRANSFER OF ACTIONS TO THE CENTRAL DISTRICT OF CALIFORNIA FOR COORDINATED PRETRIAL PROCEEDINGS PURSUANT TO 28 U.S.C. § 1407 to be served upon all Parties and Counsel identified in the attached service list via U.S. Mail.

This 26th day of February, 2010.

Cari K. Dawson

CARI K. DAWSON

Judicial Panel On Multidistrict Litigation - Panel Service List

Docket: 2151 - IN RE: Toyota Motor Corp. Defective Gas Pedal Products Liability Litigation
Status: Pending On / /
Transferee District:
Judge:
Transferee District Master Docket No.:

Report key: * Signifies that an appearance was made on behalf of the party by the representing attorney.
Specified party was dismissed in some, but not all, of the actions in which it was named as a party.
All counsel and parties no longer active in this litigation have been suppressed.

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TOY-RQ-05E-00009066

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EXHIBIT B

UNITED STATES
JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION

Feb 23, 2010

FILED
CLERK'S OFFICE

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

IN RE: TOYOTA MOTOR CORP. DEFECTIVE GAS PEDAL PRODUCTS LIABILITY LITIGATION

MDL No. 2151

NOTICE TO ALL INVOLVED COUNSEL

(SEE ATTACHED SCHEDULE)

Presently pending in this litigation are two separate motions collectively seeking centralization, pursuant to 28 U.S.C. §1407, of the eleven actions listed on the attached Schedule A in a single federal district for coordinated or consolidated pretrial proceedings. The first motion was filed on February 2, 2010, by plaintiff Heather A. Lane. The second motion was filed on February 5, 2010, by plaintiffs Daniel Weimer, Jr., Colby Wenck and Ann Cavalier.

The two pending motions encompassing the actions listed on Schedule A will be set for the next Panel Hearing Session in late March 2010. **The deadline for filing motions pursuant to Rule 7.2(h) to add actions to this litigation for consideration at the Panel Hearing has now passed.** In the event that the Panel orders centralization of this docket, additional related actions not listed on Schedule A will be treated as potential tag-along actions in accordance with Panel Rules 7.4 and 7.5. Pursuant to Panel Rule 7.1(i), parties are reminded to notify the Panel promptly of any potential tag-along actions. Any party in a potential tag-along action may file an interested party response to the motions in this docket.

The due date for responsive pleadings to the two motions filed in MDL No. 2151 is now February 26, 2010. All previous response due dates with respect to this MDL are hereby extended to February 26, 2010. Any party wishing to file a response to these motions is strongly encouraged to do so in a single brief. If a party has already submitted a response to the earlier filed motion, it may either rest on that response or incorporate that response by reference in responding to the later filed motion.

FOR THE PANEL:

Jeffery N. Lüthi
Clerk of the Panel

IN RE: TOYOTA MOTOR CORP. DEFECTIVE GAS PEDAL PRODUCTS LIABILITY LITIGATION MDL No. 2151

SCHEDULE A

Central District of California

Seong Bae Choi, et al. v. Toyota Motor Corp., et al., C.A. No. 2:09-8143
Eric Kmetz, et al. v. Toyota Motor Sales U.S.A., Inc., et al., C.A. No. 2:09-8478
Heather A. Lane v. Toyota Motor Sales U.S.A., Inc., C.A. No. 2:09-9158
Dale Baldiseeri v. Toyota Motor Sales U.S.A., Inc., et al., C.A. No. 2:09-9386
Joseph Hauter, et al. v. Toyota Motor Sales U.S.A., Inc., et al., C.A. No. 8:10-105

Middle District of Florida

Michelle Lynch v. Toyota Motor Corp., et al., C.A. No. 8:10-326

Southern District of Florida

Jonathan Gellman v. Toyota Motor Sales U.S.A., Inc., C.A. No. 1:10-20006

Eastern District of Louisiana

Daniel Weimer, Jr., et al. v. Toyota Motor North America, Inc., et al., C.A. No. 2:10-219
Amanda R. Maillho v. Toyota Motor North America, Inc., et al., C.A. No. 2:10-279
Gary T. Brock v. Toyota Motor North America, Inc., et al., C.A. No. 2:10-281

Southern District of West Virginia

Michael Graves, et al. v. Toyota Motor Manufacturing, West Virginia, Inc., et al., C.A. No. 2:09-1247

EXHIBIT C

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

CHAIRMAN:
John G. Heyburn II
United States District Court
Western District of Kentucky

MEMBERS:
Robert L. Miller, Jr.
United States District Court
Northern District of Indiana

Kathryn H. Vratil
United States District Court
District of Kansas

David R. Hansen
United States Court of Appeals
Eighth Circuit

W. Royal Furgeson, Jr.
United States District Court
Northern District of Texas

Frank C. Damrell, Jr.
United States District Court
Eastern District of California

David G. Trager
United States District Court
Eastern District of New York

DIRECT REPLY TO:

Jeffery N. Lüthi
Clerk of the Panel
One Columbus Circle, NE
Thurgood Marshall Federal
Judiciary Building
Room G-255, North Lobby
Washington, D.C. 20002

Telephone: [202] 502-2800
Fax: [202] 502-2888
http://www.jpml.uscourts.gov

February 25, 2010

NOTICE OF HEARING SESSION

Dear Counsel:

Pursuant to the order of the Judicial Panel on Multidistrict Litigation filed today, you are hereby notified that a hearing session has been scheduled to consider various matters pursuant to 28 U.S.C. § 1407.

DATE OF HEARING SESSION: March 25, 2010

LOCATION OF HEARING SESSION: Edward J. Schwartz U.S. Courthouse
Ceremonial Courtroom No. 1, 4th Floor
940 Front Street
San Diego, California 92101

TIME OF HEARING SESSION: In those matters designated for oral argument, counsel presenting oral argument must be present at **8:30 a.m.** in order for the Panel to allocate the amount of time for oral argument. Oral argument will commence at **9:30 a.m.**

Please direct your attention to the enclosed Hearing Session Order and Schedule of Matters for Hearing Session for a listing of the matters scheduled for consideration at this hearing session.

- Section A of this Schedule lists the matters designated for oral argument.
- Section B of this Schedule lists the matters that the Panel has determined to consider **without oral argument**, pursuant to Rule 16.1(c), R.P.J.P.M.L., 199 F.R.D. 425, 439 (2001).

For those matters listed on Section A of the Schedule, the enclosed blue "Notice of Presentation or Waiver of Oral Argument" must be returned to this office no later than **March 8, 2010.** Note the procedures governing Panel oral argument which are outlined on the enclosed "Procedures for Oral Argument before the Judicial Panel on Multidistrict Litigation." These procedures are strictly adhered to and your cooperation is appreciated.

Very truly,

Jeffery N. Lüthi
Clerk of the Panel

cc: Clerk, U.S. District Court for the Southern District of California

UNITED STATES
JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION

Feb 25, 2010

FILED
CLERK'S OFFICE

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

HEARING SESSION ORDER

The Panel issues the following orders in connection with its next hearing session,

IT IS ORDERED that on March 25, 2010, the Panel will convene a hearing session in San Diego, California, to consider the matters on the attached Schedule under 28 U.S.C. § 1407.

IT IS FURTHER ORDERED that the Panel may, on its own initiative, consider transfer of any or all of the actions in those matters to any district or districts.

IT IS FURTHER ORDERED that the Panel will hear oral argument on the matters listed on Section A of the attached Schedule, unless the parties waive oral argument or unless the Panel later decides to dispense with oral argument pursuant to Panel Rule 16.1(c), R.P.J.P.M.L., 199 F.R.D. 425, 439 (2001).

IT IS FURTHER ORDERED that the Panel will consider without oral argument the matters listed on Section B of the attached Schedule pursuant to Panel Rule 16.1(c). *Id.* The Panel reserves the prerogative, on any basis including submissions of parties pursuant to Panel Rule 16.1(b), to designate any of those matters for oral argument. *Id.*

IT IS FURTHER ORDERED that the Clerk of the Judicial Panel on Multidistrict Litigation shall direct notice of this hearing session to counsel for all parties involved in the matters on the attached Schedule.

PANEL ON MULTIDISTRICT LITIGATION:

John G. Heyburn II
Chairman

Robert L. Miller, Jr.
David R. Hansen
Frank C. Damrell, Jr.
Kathryn H. Vratil
W. Royal Furgeson, Jr.
David G. Trager

SCHEDULE OF MATTERS FOR HEARING SESSION
March 25, 2010 -- San Diego, California

SECTION A
MATTERS DESIGNATED FOR ORAL ARGUMENT

MDL No. 2138 -- **IN RE: BANK OF AMERICA WAGE AND HOUR EMPLOYMENT PRACTICES LITIGATION**

Motion of defendants Bank of America Corp., and Bank of America, N.A., for centralization of the following actions in the United States District Court for the Central District of California:

Central District of California

Joshua Gold v. Bank of America, N.A., C.A. No. 2:09-8169
John S. Paulino v. Bank of America, N.A., et al., C.A. No. 8:09-1168

Eastern District of California

Andrew Gordillo v. Bank of America, N.A., C.A. No. 1:09-1954

Northern District of California

Jennifer Zhou v. Bank of America, N.A., C.A. No. 3:09-4016
Virginia Kauffman, et al. v. Bank of America, N.A., C.A. No. 3:09-4114

Southern District of California

Juan Franco v. Bank of America, N.A., C.A. No. 3:09-1364

Middle District of Florida

Edward Franco v. Bank of America, N.A., C.A. No. 2:09-274
Vicky Carrero, et al. v. Bank of America, N.A., C.A. No. 6:09-862

MDL No. 2138 (Continued)

District of Kansas

Amanda Brawner, et al. v. Bank of America, N.A., C.A. No. 2:09-2073
Curtis Schreiber v. Bank of America, N.A., C.A. No. 6:09-1336

Southern District of Texas

Sonia Fortner, et al. v. Bank of America, N.A., C.A. No. 4:09-2651

Western District of Washington

Sanaz Masourian, et al. v. Bank of America, N.A., C.A. No. 2:09-1312

MDL No. 2139 -- **IN RE: AMBULATORY PAIN PUMP-CHONDROLYSIS PRODUCTS LIABILITY LITIGATION**

Motion of plaintiffs Shari Martinac, et al.; Brittany Hamilton, et al.; and Wesley Stichweh for centralization of the following actions in the United States District Court for the District of Minnesota:

Northern District of Alabama

Paul W. Westbrook v. DJO, Inc., et al., C.A. No. 5:08-263

District of Arizona

Jessica N. Lopez v. I-Flow, Inc., et al., C.A. No. 2:08-1063
Cole D. Chapman v. DJO, LLC, et al., C.A. No. 2:08-1064
Andrew Gilmore, et al. v. DJO, Inc., et al., C.A. No. 2:08-1252
Matthew B. Goldstein v. I-Flow, Inc., et al., C.A. No. 2:08-1859
Julie A. Eggler v. I-Flow, Inc., et al., C.A. No. 2:09-40
Dianne L. Engle v. Stryker Corp., et al., C.A. No. 2:09-41
Anthony B. Hannigan v. I-Flow, Inc., et al., C.A. No. 2:09-42
Linda Relkin, et al. v. I-Flow, Inc., et al., C.A. No. 2:09-44
Duane Hjelt v. I-Flow, Inc., et al., C.A. No. 2:09-64

MDL No. 2139 (Continued)

District of Arizona (Continued)

Laura E. Ashworth, et al. v. I-Flow Corp., et al., C.A. No. 2:09-721
Sheri L. Patrick, et al. v. I-Flow Corp., et al., C.A. No. 2:09-723
Kevin Hines, et al. v. I-Flow Corp., et al., C.A. No. 2:09-2189
Tyler Benson v. Stryker Corp., C.A. No. 4:08-351
Erin Whitney Grandy Moore v. Breg, Inc., C.A. No. 4:09-27
Ray Wilson v. Stryker Corp., et al., C.A. No. 4:09-539

Central District of California

Kent J. Klawer v. SMI Liquidating, Inc., et al., C.A. No. 2:08-4991

Eastern District of California

Adam Phillippi, et al. v. AstraZeneca Pharmaceuticals, LP, et al., C.A. No. 2:08-2445
Terri Lynn Todd v. Stryker Corp., et al., C.A. No. 2:09-1509
Julie M. Combs, et al. v. Stryker Corp., et al., C.A. No. 2:09-2018

District of Colorado

Stacey Ann Hansen v. DJO, Inc., et al., C.A. No. 1:08-365
Vinton Theiss, et al. v. I-Flow, Inc., et al., C.A. No. 1:08-2606
Cressa Sullivan v. I-Flow Corp., et al., C.A. No. 1:08-2648
Christina Pavelko v. Breg, Inc., C.A. No. 1:09-1461
Kevin Hoy v. I-Flow Corp., et al., C.A. No. 1:09-2580

Middle District of Florida

Davis A. Prickett v. Stryker Corp., et al., C.A. No. 8:09-992

Northern District of Florida

Suzette Martin, et al. v. I-Flow Corp., C.A. No. 3:08-127

MDL No. 2139 (Continued)

Southern District of Indiana

Joseph D. Essex, et al. v. I-Flow Corp., C.A. No. 1:09-1380

Eastern District of Kentucky

Joshua P. Boling v. I-Flow Corp., et al., C.A. No. 2:09-94

Western District of Kentucky

Kris Prather v. Stryker Corp., et al., C.A. No. 3:09-573

District of Minnesota

Shari Martinac, et al. v. I-Flow Corp., et al., C.A. No. 0:08-5035
Jaimee Fougner v. I-Flow Corp., et al., C.A. No. 0:08-5157
Katie Todd, et al. v. I-Flow Corp., et al., C.A. No. 0:08-6178
Nicole Stapleton Foley, et al. v. I-Flow Corp., et al., C.A. No. 0:08-6197
Kathy Ivey, et al. v. McKinley Medical, LLC, et al., C.A. No. 0:08-6407
April M. Murrell, et al. v. Zimmer, Inc., et al., C.A. No. 0:09-757
Jeanie A. Hendricks, et al. v. DJO, LLC, et al., C.A. No. 0:09-931
Anita McGinness, et al. v. DJO, LLC, et al., C.A. No. 0:09-1174
Robert L. Huggins, et al. v. Stryker Sales Corp., et al., C.A. No. 0:09-1250
Mary J. Block v. McKinley Medical, LLC, et al., C.A. No. 0:09-1332
Daniel Krizan v. DJO, LLC, et al., C.A. No. 0:09-1341
Craig R. Anderson v. DJO, LLC, et al., C.A. No. 0:09-1673
Wesley Crawford v. DJO, LLC, et al., C.A. No. 0:09-1674
Joel V. Haymes v. DJO, LLC, et al., C.A. No. 0:09-1675
Henry Wheeler v. Breg, Inc., et al., C.A. No. 0:09-1692
Sylvester Ishmael v. DJO, LLC, et al., C.A. No. 0:09-1693
Joshua H. Voller v. I-Flow Corp., et al., C.A. No. 0:09-1906
James Forslund v. Stryker Corp., et al., C.A. No. 0:09-2134
Tara R. Davis v. I-Flow Corp., et al., C.A. No. 0:09-2504
Marilyn D. Reynolds v. DJO, LLC, et al., C.A. No. 0:09-2706
Gina K. Bass v. DJO, LLC, et al., C.A. No. 0:09-2707
Jennifer E. Prettyman v. Stryker Sales Corp., et al., C.A. No. 0:09-2794

MDL No. 2139 (Continued)

District of Minnesota (Continued)

Michael B. Bonander v. Breg, Inc., et al., C.A. No. 0:09-2795
Thomas H. Stiltner v. Stryker Corp., et al., C.A. No. 0:09-2796
Randall D. Collins v. I-Flow Corp., et al., C.A. No. 0:09-2816
Carlos R. Flores-Espinoza v. Breg, Inc., et al., C.A. No. 0:09-2817
Christi L. Fielding v. Stryker Sales Corp., et al., C.A. No. 0:09-2865
Susan A. Newman v. Stryker Sales Corp., et al., C.A. No. 0:09-2866
Katherine M. Baker v. DJO, LLC, et al., C.A. No. 0:09-2898
Jeffrey L. Quibell v. Stryker Sales Corp., et al., C.A. No. 0:09-2899
Wesley A. Kay v. I-Flow Corp., et al., C.A. No. 0:09-3012
Adam J. Cramlet v. I-Flow Corp., et al., C.A. No. 0:09-3169

Southern District of Mississippi

Darryl Campbell v. I-Flow Corp., C.A. No. 1:08-168

District of New Jersey

Mark Yodice v. Stryker Corp., et al., C.A. No. 3:09-3896

District of New Mexico

Sherrie Bailey v. I-Flow Corp., et al., C.A. No. 1:09-531

District of Nevada

Rebecca Graham, et al. v. I-Flow Corp., et al., C.A. No. 2:09-531
Jack Frobes, et al. v. Stryker Corp., et al., C.A. No. 3:09-554

Eastern District of North Carolina

Sarah E. Atwell v. DJO, Inc., et al., C.A. No. 5:08-346
Corissa R. Allison, et al. v. DJO, Inc., et al., C.A. No. 5:08-549

MDL No. 2139 (Continued)

Northern District of Ohio

Deborah L. Mayle, et al. v. Stryker Corp., et al., C.A. No. 5:09-1991
Allen Crisp v. Stryker Corp., et al., C.A. No. 5:09-2212

Southern District of Ohio

Rachel Krumpelbeck v. Breg, Inc., et al., C.A. No. 1:09-91
Amy West, et al. v. I-Flow Corp., C.A. No. 1:09-98
Willie Miller v. Stryker Corp., et al., C.A. No. 1:09-588
Brittany Hamilton, et al. v. Breg, Inc., et al., C.A. No. 2:09-146
Kaid C. Musgrave, et al. v. Breg, Inc., et al., C.A. No. 2:09-1029
Wesley Stichweh v. Stryker Corp., et al., C.A. No. 3:08-370

Western District of Oklahoma

Joe C. Smock v. I-Flow Corp., C.A. No. 5:08-1077

District of Oregon

Christina McClellan v. I-Flow Corp., et al., C.A. No. 6:07-1309
Gregory Turner, et al. v. Stryker Corp., et al., C.A. No. 6:07-1310
Gordon J. Addis v. McKinley Medical, LLC, et al., C.A. No. 6:07-1318
Caleb Huggins, et al. v. Stryker Corp., et al., C.A. No. 6:07-1671
Danny E. Arvidson, et al. v. DJO, LLC, et al., C.A. No. 6:08-478
John Eric Butler v. Stryker Corp., et al., C.A. No. 6:08-588
Joann Stoeher v. I-Flow Corp., C.A. No. 6:08-1012
Donna Snodgrass, et al. v. I-Flow Corp., et al., C.A. No. 6:08-1387
Eric J. Schoenborn, et al. v. Stryker Corp., et al., C.A. No. 6:08-1419
Elizabeth D. Cronin v. I-Flow Corp., C.A. No. 6:09-146
Ivy Lee Y. Natividad, et al. v. Stryker Corp., et al., C.A. No. 6:09-378

Eastern District of Pennsylvania

Derek Giangiulio v. I-Flow Corp., C.A. No. 2:08-2878
Glen Gore, et al. v. Stryker Corp., et al., C.A. No. 2:09-2987

MDL No. 2139 (Continued)

Eastern District of Pennsylvania (Continued)

Richard Davis v. Stryker Corp., et al., C.A. No. 2:09-2990
Allison Foret v. Stryker Corp., et al., C.A. No. 2:09-2991
Nathan Geesey v. Stryker Corp., et al., C.A. No. 5:09-2988

Western District of Pennsylvania

Donna J. Lawton, et al. v. Advanced Infusion, Inc., et al., C.A. No. 2:09-1197

District of South Dakota

Marcus J. Suhn v. Breg, Inc., et al., C.A. No. 4:08-4190
Kelly J. Koch v. Breg, Inc., et al., C.A. No. 4:08-4193

Eastern District of Tennessee

Terry A. Hill v. Stryker Corp., et al., C.A. No. 3:08-295
Randi C. Brostean v. Stryker Corp., et al., C.A. No. 3:08-406

Middle District of Tennessee

Andrew Scott Rodriguez v. Stryker Corp., et al., C.A. No. 2:08-124

Western District of Tennessee

Kimberly Dawn Evans, et al. v. DJO, LLC, et al., C.A. No. 2:09-2515

District of Utah

Erika Creech, et al. v. Stryker Corp., et al., C.A. No. 1:07-22
Amanda Bennett v. Stryker Corp., et al., C.A. No. 2:08-937
Ryan Goodrich, et al. v. I-Flow Corp., et al., C.A. No. 2:09-269

MDL No. 2140 -- **IN RE: INTELIUS, INC., POST-TRANSACTION MARKETING AND SALES PRACTICES LITIGATION**

Motion of defendants Intelius, Inc., and Intelius Sales Co., LLC, for centralization of the following actions in the United States District Court for the Western District of Washington:

Central District of California

Denise Baxter v. Intelius, Inc., et al., C.A. No. 8:09-1031

Western District of Washington

Bruce Keithly, et al. v. Intelius, Inc., et al., C.A. No. 2:09-1485

MDL No. 2141 -- **IN RE: VERIZON WIRELESS DATA CHARGES LITIGATION**

Motion of plaintiffs Derick Brian Moore, et al., for centralization of the following actions in the United States District Court for the District of New Jersey:

Northern District of Georgia

Jessica Slater v. Cellco Partnership, C.A. No. 1:09-3392

District of New Jersey

Derick Brian Moore, et al. v. Cellco Partnership, C.A. No. 3:09-4592
Donna Heaton v. Cello Partnership, C.A. No. 3:09-6270

MDL No. 2142 -- **IN RE: BLAIR CORP. CHENILLE ROBE PRODUCTS LIABILITY LITIGATION**

Motion of defendants Blair, LLC, and Orchard Brands Corp. for centralization of the following actions in the United States District Court for the Middle District of Alabama:

Middle District of Alabama

Harold A. Ledbetter, etc. v. Blair Corp., et al., C.A. No. 3:09-843

MDL No. 2142 (Continued)

Southern District of California

Michelle Putini, et al. v. Blair Corp., et al., C.A. No. 3:09-2729

District of Connecticut

Sharon Davis, etc. v. Blair Corp., et al., C.A. No. 3:09-1702

Southern District of Illinois

Agnes Wise v. Blair, LLC, et al., C.A. No. 3:09-871

MDL No. 2143 -- **IN RE: OPTICAL DISK DRIVE PRODUCTS ANTITRUST LITIGATION**

Motion of plaintiffs CMP Consulting Services, Inc., and KI, Inc., for centralization of the following actions in the United States District Court for the Northern District of California:

Central District of California

Diana Saed v. Sony Optiarc America, Inc., et al., C.A. No. 2:09-8289

Northern District of California

CMP Consulting Services, Inc., et al. v. Sony Corp., et al., C.A. No. 3:09-5114
Univisions-Crimson Holding, Inc. v. Sony Corp., et al., C.A. No. 3:09-5186
KI, Inc. v. Sony Corp., et al., C.A. No. 3:09-5197
Amber Nikkel v. Sony Corp., et al., C.A. No. 5:09-5135

MDL No. 2144 -- **IN RE: AIR CRASH OVER THE MID-ATLANTIC ON JUNE 1, 2009**

Motion of defendants Airbus S.A.S.; Honeywell International, Inc.; Rockwell Collins, Inc.; Thales Avionics, S.A.; Thales U.S.A., Inc.; Motorola, Inc.; Intel Corp.; Hamilton Sundstrand Corp.; General Electric Co.; GE Aviation Systems, LLC; Rosemount Aerospace Inc.; E.I. du Pont de Nemours & Co.; and Raychem Corp. for centralization of the following actions in the United States District Court for the Southern District of Texas:

Northern District of California

Margita Gergelova, et al. v. Airbus S.A.S., et al., C.A. No. 3:09-5020

Northern District of Illinois

Rosilene Hemme, et al. v. Airbus S.A.S, et al., C.A. No. 1:09-7239

Southern District of Texas

Hampton Harris, et al. v. Societe Air France, et al., C.A. No. 4:09-3155

MDL No. 2145 -- **IN RE: MEDICAL CAPITAL BROKER-DEALER SECURITIES LITIGATION**

Motion of plaintiffs Jana McCoy, et al., for centralization of the following actions in the United States District Court for the Central District of California:

Central District of California

Don Ribacchi, et al. v. Capital Financial Services, Inc., et al., C.A. No. 2:09-8482
Jana McCoy, et al. v. Cullum & Burks Securities, Inc., et al., C.A. No. 8:09-1084
Alvin Sabroff, et al. v. Securities America, Inc., et al., C.A. No. 8:09-1295
James K. Merrill, et al. v. National Securities Corp., et al., C.A. No. 8:09-1340

District of Nebraska

Ilene Grossbard, et al. v. Securities America Financial Corp., et al., C.A. No. 8:09-350

MDL No. 2147 -- **IN RE: AT&T MOBILITY WIRELESS DATA SERVICES SALES TAX LITIGATION**

Motion of defendant AT&T Mobility, LLC, for centralization of the following actions in a single United States district court:

Northern District of Alabama

Stephanie Diethelm v. AT&T Mobility, LLC, C.A. No. 2:09-2546

Eastern District of Arkansas

Dorothy Taylor v. American Telephone & Telegraph Co., et al., C.A. No. 4:09-938

District of Colorado

William A. Wieland v. AT&T Mobility, LLC, C.A. No. 1:09-2991

District of Delaware

Kathy J. Cooper v. AT&T Mobility, LLC, C.A. No. 1:09-992

Southern District of Florida

Adrienne D. Munson v. AT&T Mobility, LLC, C.A. No. 9:09-82439

Northern District of Georgia

Robert Wilhite v. AT&T Mobility Corp., C.A. No. 1:10-5

Southern District of Iowa

Penny Annette Wood v. AT&T Mobility, LLC, C.A. No. 4:09-577

Southern District of Illinois

Christopher R. Havron v. AT&T, Inc., et al., C.A. No. 3:09-1040

MDL No. 2147 (Continued)

Northern District of Indiana

Martin Hoke v. AT&T Mobility, LLC, C.A. No. 2:10-6

District of Kansas

Christopher Hendrix v. AT&T Mobility, LLC, C.A. No. 2:09-2658

Eastern District of Kentucky

Heather Rahn v. AT&T Mobility, LLC, C.A. No. 2:09-218

Western District of Louisiana

Heather Mazeitis v. AT&T Mobility, LLC, C.A. No. 6:09-2179

District of Massachusetts

Lesley Rock v. AT&T Mobility, LLC, C.A. No. 1:10-10069

Eastern District of Michigan

Karen Wiand v. AT&T Mobility, LLC, C.A. No. 2:10-10045
Kathy Johnson v. AT&T Mobility, LLC, C.A. No. 2:10-10064

Southern District of Mississippi

Michael Bosarge, et al. v. AT&T Mobility, LLC, C.A. No. 3:10-5

Western District of Missouri

Sarah Pauley v. AT&T, Inc., et al., C.A. No. 2:09-4248

District of Nebraska

Matthew Cranford v. AT&T, Inc., et al., C.A. No. 4:09-3243

MDL No. 2147 (Continued)

District of New Jersey

Ronald Bendian v. AT&T, Inc., et al., C.A. No. 2:09-6100

Southern District of New York

Jonathan Macy v. AT&T, Inc., et al., C.A. No. 1:10-79

Eastern District of North Carolina

Adrienne M. Fox v. AT&T Mobility, LLC, C.A. No. 5:10-26

Southern District of Ohio

John W. Wallace, et al. v. AT&T Mobility, LLC, C.A. No. 1:09-928

Western District of Oklahoma

Jane F. Edmonds, et al. v. AT&T Mobility, LLC, C.A. No. 5:09-1379

Western District of Pennsylvania

Meri Iannetti v. AT&T Mobiiity, LLC, C.A. No. 2:09-1684

District of Rhode Island

James Shirley v. AT&T Mobility, LLC, C.A. No. 1:09-636

District of South Carolina

Eric Bosse v. AT&T, Inc., et al., C.A. No. 2:09-3145

Eastern District of Tennessee

Randall Shuptrine v. AT&T Mobility, LLC, C.A. No. 1:09-326

MDL No. 2147 (Continued)

Southern District of Texas

Stephen T. Johnson v. AT&T Mobility, LLC, C.A. No. 4:09-4104

Western District of Texas

Harvey Corn, et al. v. AT&T Mobility, LLC, C.A. No. 1:10-24

MDL No. 2148 -- **IN RE: PPG INDUSTRIES, INC., WAGE AND HOUR EMPLOYMENT PRACTICES LITIGATION**

Motion of defendants PPG Industries, Inc., and PPG Architectural Finishes, Inc., for centralization of the following actions in the United States District Court for the District of Kansas:

District of Kansas

Stephen J. Duarte v. PPG Industries, Inc., C.A. No. 6:09-1366

Western District of Pennsylvania

Sue Ann Seymour, et al. v. PPG Industries, Inc., C.A. No. 2:09-1707

Eastern District of Tennessee

Karen Stage v. PPG Industries, Inc., et al., C.A. No. 1:10-5

Western District of Washington

Andrew Fiore v. PPG Industries, Inc., C.A. No. 2:10-96

MDL No. 2149 -- **IN RE: PLASTIC INJECTION MOLDING MANUFACTURING PROCESS ('184) PATENT LITIGATION**

Motion of plaintiff Jens Erik Sorensen, etc., for centralization of the following actions in the United States District Court for the Southern District of California or, in the alternative, the United States District Court for the Northern District of California:

Northern District of California

Jens Erik Sorensen, etc. v. Lexar Media, Inc., C.A. No. 5:08-95

Southern District of California

Jens Erik Sorensen, etc. v. Giant International (USA) Ltd., C.A. No. 3:07-2121
Jens Erik Sorensen, etc. v. Esseplast (USA) NC, Inc., C.A. No. 3:07-2277
Jens Erik Sorensen, etc. v. Helen of Troy Texas Corp., et al., C.A. No. 3:07-2278
Jens Erik Sorensen, etc. v. Emerson Electric Co., et al., C.A. No. 3:08-60
Jens Erik Sorensen, etc. v. Ryobi Technologies, Inc., et al., C.A. No. 3:08-70
Jens Erik Sorensen, etc. v. Senco Products, Inc., C.A. No. 3:08-71
Jens Erik Sorensen, etc. v. Informatics, Inc., et al., C.A. No. 3:08-134
Jens Erik Sorensen, etc. v. Motorola, Inc., C.A. No. 3:08-136
Jens Erik Sorensen, etc. v. Alltrade Tools, LLC, C.A. No. 3:08-232
Jens Erik Sorensen, etc. v. Global Machinery Co., et al., C.A. No. 3:08-233
Jens Erik Sorensen, etc. v. Emissive Energy Corp., C.A. No. 3:08-234
Jens Erik Sorensen, etc. v. Metabo Corp., et al., C.A. No. 3:08-304
Jens Erik Sorensen, etc. v. Rally Manufacturing, Inc., C.A. No. 3:08-305
Jens Erick Sorensen, etc. v. Sunbeam Products, Inc., C.A. No. 3:08-306
Jens Erik Sorensen, etc. v. Central Purchasing, LLC, C.A. No. 3:08-309
Jens Erik Sorensen, etc. v. Kyocera International, Inc., et al., C.A. No. 3:08-411
Jens Erik Sorensen, etc. v. DMS Holdings, Inc., C.A. No. 3:08-559
Jens Erik Sorensen, etc. v. Human Touch LLC, et al., C.A. No. 3:08-1080
Jens Erik Sorensen, etc. v. Conair Corp., et al., C.A. No. 3:08-1256
ACCO Brands USA LLC v. Jens Erik Sorensen, C.A. No. 3:08-1670
Jens Erik Sorensen, etc. v. Target Corp., C.A. No. 3:09-56
Jens Erik Sorensen, etc. v. Big Lots Stores, Inc., C.A. No. 3:09-57
Jens Erik Sorensen, etc. v. Spectrum Brands, Inc., C.A. No. 3:09-58
Jens Erik Sorensen, etc. v. Lowe's Companies, Inc., et al., C.A. No. 3:09-59
Jens Erik Sorensen, etc. v. Axonn, LLC, et al., C.A. No. 3:09-60
Jens Erik Sorensen, etc. v. Freshlink Product Development, LLC, et al., C.A. No. 3:09-267

MDL No. 2149 (Continued)

Southern District of California (Continued)

Jens Erik Sorensen, etc. v. Grizzly Industrial, Inc., et al., C.A. No. 3:09-531
Jens Erik Sorensen, etc. v. Fein Power Tools, Inc., et al., C.A. No. 3:09-558
Jens Erik Sorensen, etc. v. Dorman Products, Inc., C.A. No. 3:09-1579
Big Lots Stores, Inc. v. Sorensen Research & Development Trust, C.A. No. 3:09-2702

Eastern District of Pennsylvania

Dorman Products, Inc. v. Sorensen Research & Development Trust,
C.A. No. 2:09-2946

MDL No. 2150 -- **IN RE: TD BANK, N.A., GIFT CARD FEES LITIGATION**

Motion of defendants TD Bank, N.A., and Commerce Bank, N.A., for centralization of the following actions in the United States District Court for the District of New Jersey or, in the alternative, the United States District Court for the Eastern District of Pennsylvania:

District of New Jersey

Bradley Mann, et al. v. TD Bank, N.A., et al., C.A. No. 1:09-1062

Southern District of New York

Sandra Elmoznino v. TD Bank, N.A., et al., C.A. No. 1:09-9778

Eastern District of Pennsylvania

Chawezi Mwantembe, et al. v. TD Bank, N.A., et al., C.A. No. 2:09-135

MDL No. 2151 -- **IN RE: TOYOTA MOTOR CORP. DEFECTIVE GAS PEDAL PRODUCTS LIABILITY LITIGATION**

Motion of plaintiff Heather A. Lane for centralization of certain of the following actions in the United States District Court for the Central District of California and motion of plaintiffs Daniel Weimer, Jr., et al., for centralization of certain of the following actions in the United States District Court for the Eastern District of Louisiana:

Central District of California

Seong Bae Choi, et al. v. Toyota Motor Corp., et al., C.A. No. 2:09-8143
Eric Kmetz, et al. v. Toyota Motor Sales U.S.A., Inc., et al., C.A. No. 2:09-8478
Heather A. Lane v. Toyota Motor Sales U.S.A., Inc., C.A. No. 2:09-9158
Dale Baldiseeri v. Toyota Motor Sales U.S.A., Inc., et al., C.A. No. 2:09-9386
Joseph Hauter, et al. v. Toyota Motor Sales U.S.A., Inc., et al., C.A. No. 8:10-105

Middle District of Florida

Michelle Lynch v. Toyota Motor Corp., et al., C.A. No. 8:10-326

Southern District of Florida

Jonathan Gellman v. Toyota Motor Sales U.S.A., Inc., C.A. No. 1:10-20006

Eastern District of Louisiana

Daniel Weimer, Jr., et al. v. Toyota Motor North America, Inc., et al., C.A. No. 2:10-219
Amanda R. Maillho v. Toyota Motor North America, Inc., et al., C.A. No. 2:10-279
Gary T. Brock v. Toyota Motor North America, Inc., et al., C.A. No. 2:10-281

Southern District of West Virginia

Michael Graves, et al. v. Toyota Motor Manufacturing, West Virginia, Inc., et al., C.A. No. 2:09-1247

SECTION B
MATTERS DESIGNATED FOR CONSIDERATION WITHOUT ORAL ARGUMENT

MDL No. 381 -- **IN RE: "AGENT ORANGE" PRODUCTS LIABILITY LITIGATION**

Motion of defendant Monsanto Co. to transfer the actions listed on Attachment A to the United States District Court for the Eastern District of New York.

MDL No. 875 -- **IN RE: ASBESTOS PRODUCTS LIABILITY LITIGATION (NO. VI)**

Opposition of plaintiff Elizabeth J. Coons, etc., to transfer of the following action to the United States District Court for the Eastern District of Pennsylvania:

Southern District of New York

Elizabeth J. Coons, etc. v. A.O. Water Smith Products, et al., C.A. No. 1:09-7496

MDL No. 1596 -- **IN RE: ZYPREXA PRODUCTS LIABILITY LITIGATION**

Motion of defendant Eli Lilly & Co. to transfer the following action to the United States District Court for the Eastern District of New York:

Southern District of Mississippi

Matthew Pitalo, etc. v. Biloxi Regional Medical Center, et al., C.A. No. 1:09-712

MDL No. 1657 -- **IN RE: VIOXX MARKETING, SALES PRACTICES AND PRODUCTS LIABILITY LITIGATION**

Opposition of plaintiff Commonwealth of Kentucky ex rel. Jack Conway to transfer of the following action to the United States District Court for the Eastern District of Louisiana:

Eastern District of Kentucky

Commonwealth of Kentucky ex rel. Jack Conway v. Merck & Co., Inc., C.A. No. 3:09-54

MDL No. 1699 -- **IN RE: BEXTRA AND CELEBREX MARKETING, SALES PRACTICES AND PRODUCTS LIABILITY LITIGATION**

Opposition of plaintiffs Yaarb Alkhafaji, et al., to transfer of the following action to the United States District Court for the Northern District of California:

District of Minnesota

Yaarb Alkhafaji, et al. v. Pfizer Inc., et al., C.A. No. 0:09-3077

MDL No. 1708 -- **IN RE: GUIDANT CORP. IMPLANTABLE DEFIBRILLATORS PRODUCTS LIABILITY LITIGATION**

Opposition of plaintiffs Mark R. Barlow, et al., to transfer of the following action to the United States District Court for the District of Minnesota:

Southern District of West Virginia

Mark R. Barlow, et al. v. Guidant Corp., et al., C.A. No. 2:09-1161

MDL No. 1769 -- **IN RE: SEROQUEL PRODUCTS LIABILITY LITIGATION**

Motion of defendants AstraZeneca LP and AstraZeneca Pharmaceuticals LP for reconsideration of the Panel's order vacating conditional transfer order of the following actions:

Northern District of California

Lisa Bain, et al. v. AstraZeneca LP, et al., C.A. No. 3:09-4147
Donald Bates, Jr., et al. v. AstraZeneca LP, et al., C.A. No. 3:09-4150
Carolyn Harrison, et al. v. AstraZeneca LP, et al., C.A. No. 3:09-4151
Cynthia Arnold, et al. v. AstraZeneca LP, et al., C.A. No. 3:09-4157
Todd Boggis, et al. v. AstraZeneca LP, et al., C.A. No. 3:09-4159
Paul Trim, et al. v. AstraZeneca LP, et al., C.A. No. 3:09-4160
Mark Coffey, et al. v. AstraZeneca LP, et al., C.A. No. 3:09-4161
Gloria Miller, et al. v. AstraZeneca LP, et al., C.A. No. 3:09-4163
Sharon Diston, et al. v. AstraZeneca LP, et al., C.A. No. 3:09-4165
Lisa Saunders, et al. v. AstraZeneca LP, et al., C.A. No. 4:09-4148
Kimberly Kessler, et al. v. AstraZeneca LP, et al., C.A. No. 4:09-4149
Angel Colon, et al. v. AstraZeneca LP, et al., C.A. No. 4:09-4158
Antonio Burton, et al. v. AstraZeneca LP, et al., C.A. No. 4:09-4162
David Marte, et al. v. AstraZeneca LP, et al., C.A. No. 4:09-4164
Bong Nguygen, et al. v. AstraZeneca LP, et al., C.A. No. 4:09-4166

MDL No. 1928 -- **IN RE: TRASYLOL PRODUCTS LIABILITY LITIGATION**

Opposition of plaintiffs Louis Argento, et al., to transfer of the following action to the United States District Court for the Southern District of Florida:

Eastern District of Missouri

Louis Argento, et al. v. Bayer Corp., et al., C.A. No. 4:09-2020

MDL No. 1953 -- **IN RE: HEPARIN PRODUCTS LIABILITY LITIGATION**

Opposition of defendants Lucille Salter Packard Children's Hospital and Stanford Hospital & Clinics to transfer of the following action to the United States District Court for the Northern District of Ohio:

Northern District of California

Art Gonzales, et al. v. Lucille Packard Children's Hospital, et al., C.A. No. 5:09-5539

MDL No. 1983 -- **IN RE: INDIANAPOLIS LIFE INSURANCE COMPANY I.R.S. § 412(I) AND § 419 PLANS LIFE INSURANCE MARKETING LITIGATION**

Opposition of plaintiffs Khalid Sawaged, et al., to transfer of the following action to the United States District Court for the Northern District of Texas:

District of New Jersey

Khalid Sawaged, et al. v. Indianapolis Life Insurance Co., et al., C.A. No. 2:09-5422

Motion of plaintiffs Indianapolis Life Insurance Co. and Aviva Life & Annuity Co. to transfer the following actions to the United States District Court for the Northern District of Texas:

Western District of Oklahoma

Aviva Life & Annuity Co. v. Republic Bank & Trust, et al., C.A. No. 5:09-1113
Aviva Life & Annuity Co. v. Republic Bank & Trust, et al., C.A. No. 5:09-1235

MDL No. 1988 -- **IN RE: COUNTRYWIDE FINANCIAL CORP. MORTGAGE MARKETING AND SALES PRACTICES LITIGATION**

Opposition of plaintiff Jerome Hart and defendant Countrywide Home Loans, Inc., to transfer of the following action to the United States District Court for the Southern District of California:

District of Massachusetts

Jerome Hart v. Bank of America Home Loans, Inc., C.A. No. 1:09-11096

MDL No. 2009 -- **IN RE: REGIONS MORGAN KEEGAN SECURITIES, DERIVATIVE AND EMPLOYEE RETIREMENT INCOME SECURITY ACT (ERISA) LITIGATION**

Oppositions of plaintiffs J. Richard Freeman, et al.; Edward W. Karrels; and Purdue Avenue Investors LP, et al., to transfer of their respective following actions to the United States District Court for the Western District of Tennessee:

Middle District of Tennessee

J. Richard Freeman, et al. v. Regions Bank, et al., C.A. No. 3:09-1069
Edward W. Karrels v. Morgan Asset Management, Inc., et al., C.A. No. 3:09-1070

Northern District of Texas

Purdue Avenue Investors LP, et al. v. Morgan Keegan & Co., Inc., et al., C.A. No. 3:09-2255

MDL No. 2014 -- **IN RE: BANK OF AMERICA CORP. AUCTION RATE SECURITIES (ARS) MARKETING LITIGATION**

Opposition of plaintiffs American Housing Foundation, et al., to transfer of the following action to the United States District Court for the Northern District of California:

Northern District of Texas

American Housing Foundation, et al. v. Banc of America Securities, LLC, et al., C.A. No. 3:09-2251

MDL No. 2027 -- **IN RE: SATYAM COMPUTER SERVICES, LTD., SECURITIES LITIGATION**

Opposition of plaintiff Aberdeen Claims Administration, Inc., etc., to transfer of the following action to the United States District Court for the Southern District of New York:

Eastern District of Pennsylvania

Aberdeen Claims Administration, Inc., etc. v. Saytam Computer Services, Ltd., et al., C.A. No. 2:09-5453

MDL No. 2047 -- **IN RE: CHINESE-MANUFACTURED DRYWALL PRODUCTS LIABILITY LITIGATION**

Motion of defendant The Mitchell Co., Inc., to transfer the following action to the United States District Court for the Eastern District of Louisiana:

Middle District of Georgia

Owners Insurance Co., et al. v. The Mitchell Co., Inc., et al., C.A. No. 5:09-374

MDL No. 2057 -- **IN RE: KAPLAN HIGHER EDUCATION CORP. QUI TAM LITIGATION**

Motion of relator Charles Jajdelski to transfer the following action to the United States District Court for the Southern District of Florida:

District of Nevada

United States of America ex rel. Charles Jajdelski v. Kaplan, Inc., et al., C.A. No. 2:05-1054

MDL No. 2084 -- **IN RE: ANDROGEL ANTITRUST LITIGATION (NO. II)**

Opposition of plaintiff Jabo's Pharmacy, Inc., to transfer of the following action to the United States District Court for the Northern District of Georgia:

Eastern District of Tennessee

Jabo's Pharmacy, Inc. v. Solvay Pharmaceuticals, Inc., et al., C.A. No. 2:09-277

MDL No. 2088 -- **IN RE: FAIRFIELD GREENWICH GROUP SECURITIES LITIGATION**

Opposition of plaintiffs Jose Antonio Pujals, et al., to transfer of the following action to the United States District Court for the Southern District of New York:

Southern District of Florida

Jose Antonio Pujals, et al. v. Standard Chartered Bank International (Americas) Ltd., et al., C.A. No. 1:09-21611

MDL No. 2099 -- **IN RE: STANFORD ENTITIES SECURITIES LITIGATION**

Opposition of plaintiffs Barry Rupert, et al., to transfer of the following action to the United States District Court for the Northern District of Texas:

Western District of Texas

Barry Rupert, et al. v. Robert S. Winter, et al., C.A. No. 5:09-854

Motion of defendants Certain Underwriters at Lloyd's of London and Arch Specialty Insurance Co. to transfer the following action to the United States District Court for the Northern District of Texas:

Southern District of Texas

Laura Pendergest-Holt, et al. v. Certain Underwriters at Lloyd's of London, et al., C.A. No. 4:09-3712

MDL No. 2100 -- **IN RE: YASMIN AND YAZ (DROSPIRENONE) MARKETING, SALES PRACTICES AND PRODUCTS LIABILITY LITIGATION**

Oppositions of plaintiffs to transfer of their respective following actions to the United States District Court for the Southern District of Illinois:

Central District of California

Rindy Andrews v. Bayer Corp., et al., C.A. No. 2:09-9154
Arlette Atencio v. Bayer Corp., et al., C.A. No. 2:09-9411
Felicia Blakely v. Bayer Corp., et al., C.A. No. 2:09-9420
Jennifer A. Wilkins, et al. v. Bayer Corp., et al., C.A. No. 5:09-2322
Nancy Grove v. Bayer Corp., et al., C.A. No. 8:09-1509
Kelly Stewart v. Bayer Corp., et al., C.A. No. 2:10-177
Kim Rawson v. Bayer Corp., et al., C.A. No. 5:10-46

Northern District of California

Stevie Fanning v. Bayer Corp., et al., C.A. No. 3:09-5374
Karen Knauer, et al. v. Bayer Corp., et al., C.A. No. 3:09-5387
Heather Schroeder, et al. v. Bayer Corp., et al., C.A. No. 3:09-5845
Lekecia C. Milam v. Bayer Corp., et al., C.A. No. 3:09-5902
Jennifer Metzger, et al. v. Bayer Corp., et al., C.A. No. 3:09-5965
Nadine Camara, et al. v. Bayer Corp., et al., C.A. No. 3:09-6084

MDL No. 2121 -- **IN RE: MUSICAL INSTRUMENTS AND EQUIPMENT ANTITRUST LITIGATION**

Opposition of plaintiff Donnie Collins to transfer of the following action to the United States District Court for the Southern District of California:

Eastern District of Tennessee

Donnie Collins v. Guitar Center, Inc., et al., C.A. No. 3:09-531

ATTACHMENT A TO THE MARCH 25, 2010
SCHEDULE OF MATTERS FOR HEARING SESSION, SECTION B

MDL No. 381 -- **IN RE: "AGENT ORANGE" PRODUCTS LIABILITY LITIGATION**

Southern District of New York

Mary B. Spaulding, et al. v. Monsanto Co., et al., C.A. No. 1:09-9470

Southern District of West Virginia

Nancy Agee v. Monsanto Co., et al., C.A. No. 3:09-1336
Robert Alley, etc. v. Monsanto Co., et al., C.A. No. 3:09-1337
Dorothy Bailes, etc. v. Monsanto Co., et al., C.A. No. 3:09-1338
Patricia Crislip, etc. v. Monsanto Co., et al., C.A. No. 3:09-1339
Roy Bailes, etc. v. Monsanto Co., et al., C.A. No. 3:09-1340
Jennifer S. Drout, etc. v. Monsanto Co., et al., C.A. No. 3:09-1341
Norman L. Cook, etc. v. Monsanto Co., et al., C.A. No. 3:09-1342
Sherry L. Bryant, etc. v. Monsanto Co., et al., C.A. No. 3:09-1343
Gary Goble, etc. v. Monsanto Co., et al., C.A. No. 3:09-1344
Ruth Cunningham, etc. v. Monsanto Co., et al., C.A. No. 3:09-1345
Mary Cox v. Monsanto Co., et al., C.A. No. 3:09-1346
Sandra Dorsey v. Monsanto Co., et al., C.A. No. 3:09-1347
Priscilla Brown v. Monsanto Co., et al., C.A. No. 3:09-1348
Larry Curry v. Monsanto Co., et al., C.A. No. 3:09-1349
Tamera Duffield v. Monsanto Co., et al., C.A. No. 3:09-1350
Tasha Carney v. Monsanto Co., et al., C.A. No. 3:09-1351
Richard Cox v. Monsanto Co., et al., C.A. No. 3:09-1353
Lois Bailey v. Monsanto Co., et al., C.A. No. 3:09-1354
Charles Dixon v. Monsanto Co., et al., C.A. No. 3:09-1355
William Clark v. Monsanto Co., et al., C.A. No. 3:09-1356
William Gibson v. Monsanto Co., et al., C.A. No. 3:09-1358
Shirley Bird v. Monsanto Co., et al., C.A. No. 3:09-1359
Ellen Creasy v. Monsanto Co., et al., C.A. No. 3:09-1360
James Cook v. Monsanto Co., et al., C.A. No. 3:09-1361
Margaret Frazier v. Monsanto Co., et al., C.A. No. 3:09-1362
Darlene Dixon v. Monsanto Co., et al., C.A. No. 3:09-1363
Debora Gilmore v. Monsanto Co., et al., C.A. No. 3:09-1364
Patricia Crislip v. Monsanto Co., et al., C.A. No. 3:09-1365
George Goff v. Monsanto Co., et al., C.A. No. 3:09-1366
Shelby Bailey v. Monsanto Co., et al., C.A. No. 3:09-1367
Amy Bennett v. Monsanto Co., et al., C.A. No. 3:09-1368
Patricia Blizzard v. Monsanto Co., et al., C.A. No. 3:09-1369

MDL No. 381 Attachment A (Continued)

Southern District of West Virginia (Continued)

James Brothers v. Monsanto Co., et al., C.A. No. 3:09-1370
Shirley Brown v. Monsanto Co., et al., C.A. No. 3:09-1371
James H. Gibson v. Monsanto Co., et al., C.A. No. 3:09-1372
George Brown v. Monsanto Co., et al., C.A. No. 3:09-1373
Wanda Allen v. Monsanto Co., et al., C.A. No. 3:09-1374
Herman Arthur v. Monsanto Co., et al., C.A. No. 3:09-1377
Dorothy Bailes v. Monsanto Co., et al., C.A. No. 3:09-1378
Thomas Milam, etc. v. Monsanto Co., et al., C.A. No. 3:09-1381
Gary E. Hedrick, etc. v. Monsanto Co., et al., C.A. No. 3:09-1382
Loretta Milhoan, etc. v. Monsanto Co., et al., C.A. No. 3:09-1383
Johnnie D. Muck, etc. v. Monsanto Co., et al., C.A. No. 3:09-1384
Avril Mallory, etc. v. Monsanto Co., et al., C.A. No. 3:09-1385
John D. Muck, etc. v. Monsanto Co., et al., C.A. No. 3:09-1386
James Keeling, etc. v. Monsanto Co., et al., C.A. No. 3:09-1387
Carlos Luikart, etc. v. Monsanto Co., et al., C.A. No. 3:09-1388
Elma L. Hornish, etc. v. Monsanto Co., et al., C.A. No. 3:09-1389
Walter Krankemann, etc. v. Monsanto Co., et al., C.A. No. 3:09-1390
Gary W. Hughes, etc. v. Monsanto Co., et al., C.A. No. 3:09-1391
Evelyn Kessinger v. Monsanto Co., et al., C.A. No. 3:09-1392
Terry Lanham v. Monsanto Co., et al., C.A. No. 3:09-1393
Marian Hensley v. Monsanto Co., et al., C.A. No. 3:09-1394
Alice Hager v. Monsanto Co., et al., C.A. No. 3:09-1395
Noah Kidd v. Monsanto Co., et al., C.A. No. 3:09-1396
Richard Jett v. Monsanto Co., et al., C.A. No. 3:09-1397
Blanche Mace v. Monsanto Co., et al., C.A. No. 3:09-1398
Lester Hensley v. Monsanto Co., et al., C.A. No. 3:09-1399
Catherine Larck v. Monsanto Co., et al., C.A. No. 3:09-1400
Todd Hudson v. Monsanto Co., et al., C.A. No. 3:09-1401
Ritchie McGrew v. Monsanto Co., et al., C.A. No. 3:09-1402
Arnold Huffman v. Monsanto Co., et al., C.A. No. 3:09-1403
Ramona Hickman v. Monsanto Co., et al., C.A. No. 3:09-1404

MDL No. 381 Attachment A (Continued)

Southern District of West Virginia (Continued)

Purvis King v. Monsanto Co., et al., C.A. No. 3:09-1405
Veril Jividen v. Monsanto Co., et al., C.A. No. 3:09-1407
Ruth Mann v. Monsanto Co., et al., C.A. No. 3:09-1408
Edna LeMaster v. Monsanto Co., et al., C.A. No. 3:09-1409
Gloria Hughes v. Monsanto Co., et al., C.A. No. 3:09-1410
Alice Kyle v. Monsanto Co., et al., C.A. No. 3:09-1411
Charles Higgins v. Monsanto Co., et al., C.A. No. 3:09-1412
James C. Hager v. Monsanto Co., et al., C.A. No. 3:09-1413
Kelley Miller v. Monsanto Co., et al., C.A. No. 3:09-1414
Gary Lane v. Monsanto Co., et al., C.A. No. 3:09-1415
Baaron Lewis v. Monsanto Co., et al., C.A. No. 3:09-1417
Melissa Hinton v. Monsanto Co., et al., C.A. No. 3:09-1418
Stephanie Johnston v. Monsanto Co., et al., C.A. No. 3:09-1419
John Miller v. Monsanto Co., et al., C.A. No. 3:09-1420
Shirley Janey v. Monsanto Co., et al., C.A. No. 3:09-1421
Leo Harrah v. Monsanto Co., et al., C.A. No. 3:09-1422
Debbie Harris v. Monsanto Co., et al., C.A. No. 3:09-1423
Harold Loudin v. Monsanto Co., et al., C.A. No. 3:09-1424
Alma Jarrell v. Monsanto Co., et al., C.A. No. 3:09-1425
Mary M. Jones, etc. v. Monsanto Co., et al., C.A. No. 3:09-1426
Ralph H. Lucas v. Monsanto Co., et al., C.A. No. 3:09-1427
James Marrs v. Monsanto Co., et al., C.A. No. 3:09-1428
Janet Harrison v. Monsanto Co., et al., C.A. No. 3:09-1429
Dana Harris v. Monsanto Co., et al., C.A. No. 3:09-1430
Mary Jones v. Monsanto Co., et al., C.A. No. 3:09-1431
John Mays v. Monsanto Co., et al., C.A. No. 3:09-1432
Lynn Hartsog v. Monsanto Co., et al., C.A. No. 3:09-1433
Angelique Miller v. Monsanto Co., et al., C.A. No. 3:09-1434
William Hoffman v. Monsanto Co., et al., C.A. No. 3:09-1436
Eugene Karcheski v. Monsanto Co., et al., C.A. No. 3:09-1437
Lois McCarthy v. Monsanto Co., et al., C.A. No. 3:09-1438
Lowell Holston v. Monsanto Co., et al., C.A. No. 3:09-1439

MDL No. 381 Attachment A (Continued)

Southern District of West Virginia (Continued)

Gwendolyn Morris v. Monsanto Co., et al., C.A. No. 3:09-1440
Victor Keathley v. Monsanto Co., et al., C.A. No. 3:09-1441
Robert McClanahan v. Monsanto Co., et al., C.A. No. 3:09-1442
Roberta Morton v. Monsanto Co., et al., C.A. No. 3:09-1443
Lisa Morton v. Monsanto Co., et al., C.A. No. 3:09-1444
JoAnn Tincher v. Monsanto Co., et al., C.A. No. 3:09-1446
Sheryl Pauley, etc. v. Monsanto Co., et al., C.A. No. 3:09-1447
Phyllis Perry, etc. v. Monsanto Co., et al., C.A. No. 3:09-1448
Leslie Oakes, etc. v. Monsanto Co., et al., C.A. No. 3:09-1449
Jimmie Smith, etc. v. Monsanto Co., et al., C.A. No. 3:09-1450
Carolyn Thumm, etc. v. Monsanto Co., et al., C.A. No. 3:09-1451
Larry Spence, etc. v. Monsanto Co., et al., C.A. No. 3:09-1452
Vada Searls, etc. v. Monsanto Co., et al., C.A. No. 3:09-1453
Ramona Tidd, etc. v. Monsanto Co., et al., C.A. No. 3:09-1454
Nancy Shelton, etc. v. Monsanto Co., et al., C.A. No. 3:09-1455
Bessie Roberts, etc. v. Monsanto Co., et al., C.A. No. 3:09-1456
Lois Oliver v. Monsanto Co., et al., C.A. No. 3:09-1457
Barbara Muck v. Monsanto Co., et al., C.A. No. 3:09-1458
Vernon Rollins v. Monsanto Co., et al., C.A. No. 3:09-1459
Phyllis Short v. Monsanto Co., et al., C.A. No. 3:09-1460
Theresa Oxley v. Monsanto Co., et al., C.A. No. 3:09-1461
Gerald Sayre v. Monsanto Co., et al., C.A. No. 3:09-1462
Jack Oxley v. Monsanto Co., et al., C.A. No. 3:09-1463
Steven Pauley v. Monsanto Co., et al., C.A. No. 3:09-1464
David Painter v. Monsanto Co., et al., C.A. No. 3:09-1465
James Thornton v. Monsanto Co., et al., C.A. No. 3:09-1466
William Scott v. Monsanto Co., et al., C.A. No. 3:09-1467
Donna Parker v. Monsanto Co., et al., C.A. No. 3:09-1468
Bervin Pauley v. Monsanto Co., et al., C.A. No. 3:09-1469
Paul Tincher v. Monsanto Co., et al., C.A. No. 3:09-1470
Jackie Shank v. Monsanto Co., et al., C.A. No. 3:09-1471
Stephen Stout v. Monsanto Co., et al., C.A. No. 3:09-1472

MDL No. 381 Attachment A (Continued)

Southern District of West Virginia (Continued)

Frank Perry v. Monsanto Co., et al., C.A. No. 3:09-1473
David Plumley v. Monsanto Co., et al., C.A. No. 3:09-1474
Thomas Shepherd v. Monsanto Co., et al., C.A. No. 3:09-1475
Arnold Persinger v. Monsanto Co., et al., C.A. No. 3:09-1476
Mary Young, etc. v. Monsanto Co., et al., C.A. No. 3:09-1477
Paul Stowers v. Monsanto Co., et al., C.A. No. 3:09-1478
Gloria Puckett v. Monsanto Co., et al., C.A. No. 3:09-1479
Marie Phillips v. Monsanto Co., et al., C.A. No. 3:09-1480
Carolyn Tipton v. Monsanto Co., et al., C.A. No. 3:09-1481
Gloria Strait v. Monsanto Co., et al., C.A. No. 3:09-1482
Sharon Puffenbarger v. Monsanto Co., et al., C.A. No. 3:09-1483
Bessie Roberts v. Monsanto Co., et al., C.A. No. 3:09-1485
Ronald Robson v. Monsanto Co., et al., C.A. No. 3:09-1486
Sherri Sutherland v. Monsanto Co., et al., C.A. No. 3:09-1487
Kelly Reimert v. Monsanto Co., et al., C.A. No. 3:09-1488
Betty Tyson v. Monsanto Co., et al., C.A. No. 3:09-1491
Lewis Taylor v. Monsanto Co., et al., C.A. No. 3:09-1492
William Thompson v. Monsanto Co., et al., C.A. No. 3:09-1493
Katherine Smith v. Monsanto Co., et al., C.A. No. 3:09-1494
Joan Smith v. Monsanto Co., et al., C.A. No. 3:09-1496
Susan Smith v. Monsanto Co., et al., C.A. No. 3:09-1498
Philander Smith v. Monsanto Co., et al., C.A. No. 3:09-1499
Pamela Simms v. Monsanto Co., et al., C.A. No. 3:09-1500
Karen Vaughan v. Monsanto Co., et al., C.A. No. 3:09-1501
Elizabeth Watson v. Monsanto Co., et al., C.A. No. 3:09-1502
Patricia Westfall v. Monsanto Co., et al., C.A. No. 3:09-1503
Michael Zitzelsberger v. Monsanto Co., et al., C.A. No. 3:09-1504
Dwight Wilborne v. Monsanto Co., et al., C.A. No. 3:09-1505
Ronald Withrow v. Monsanto Co., et al., C.A. No. 3:09-1506
Victoria Wood v. Monsanto Co., et al., C.A. No. 3:09-1507
Vada Zitzelsberger v. Monsanto Co., et al., C.A. No. 3:09-1508
James Wolfe v. Monsanto Co., et al., C.A. No. 3:09-1509
Guy Wilkinson v. Monsanto Co., et al., C.A. No. 3:09-1510
Rickie Winter v. Monsanto Co., et al., C.A. No. 3:09-1511

PROCEDURES FOR ORAL ARGUMENT BEFORE THE UNITED STATES JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

All oral argument is governed by the provisions of Rule 16.1 of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation (effective April 2, 2001). Rule 16.1(g) allows a maximum of twenty minutes for oral argument in each matter. In most cases, however, less time is necessary for the expression of all views and the Panel reserves the prerogative of reducing the time requested by counsel. Accordingly, counsel should be careful not to overstate the time requested for oral argument.

The Panel insists that counsel limit all oral argument to the appropriate criteria. See generally In re "East of the Rockies" Concrete Pipe Antitrust Cases, 302 F. Supp. 244, 255-56 (J.P.M.L. 1969) (concurring opinion) (discussion concerning criteria for transfer).

Rule 16.1 is duplicated in its entirety hereafter for your convenience.

RULE 16.1: HEARING SESSIONS AND ORAL ARGUMENT

(a) Hearing sessions of the Panel for the presentation of oral argument and consideration of matters taken under submission without oral argument shall be held as ordered by the Panel. The Panel shall convene whenever and wherever desirable or necessary in the judgment of the Chairman. The Chairman shall determine which matters shall be considered at each hearing session and the Clerk of the Panel shall give notice to counsel for all parties involved in the litigation to be so considered of the time, place and subject matter of such hearing session.

(b) Each party filing a motion or a response to a motion or order of the Panel under Rules 7.2, 7.3, 7.4 or 7.6 of these Rules may file simultaneously therewith a separate statement limited to one page setting forth reasons why oral argument should, or need not, be heard. Such statements shall be captioned "Reasons Why Oral Argument Should [Need Not] Be Heard," and shall be filed and served in conformity with Rules 5.12 and 5.2 of these Rules.

(c) No transfer or remand determination regarding any action pending in the district court shall be made by the Panel when any party timely opposes such transfer or remand unless a hearing session has been held for the presentation of oral argument except that the Panel may dispense with oral argument if it determines that:

(i) the dispositive issue(s) have been authoritatively decided; or

(ii) the facts and legal arguments are adequately presented in the briefs and record, and the decisional process would not be significantly aided by oral argument.

Unless otherwise ordered by the Panel, all other matters before the Panel, such as a motion for reconsideration, shall be considered and determined upon the basis of the papers filed.

(d) In those matters in which oral argument is not scheduled by the Panel, counsel shall be promptly advised. If oral argument is scheduled in a matter the Clerk of the Panel may require counsel for all parties who wish to make or to waive oral argument to file and serve notice to that effect within a stated time in conformity with Rules 5.12 and 5.2 of these Rules. Failure to do so shall be deemed a waiver of oral argument by that party. If oral argument is scheduled but not attended by a party, the matter shall not be rescheduled and that party's position shall be treated as submitted for decision by the Panel on the basis of the papers filed.

(e) Except for leave of the Panel on a showing of good cause, only those parties to actions scheduled for oral argument who have filed a motion or written response to a motion or order shall be permitted to appear before the Panel and present oral argument.

(f) Counsel for those supporting transfer or remand under Section 1407 and counsel for those opposing such transfer or remand are to confer separately prior to the oral argument for the purpose of organizing their arguments and selecting representatives to present all views without duplication.

(g) Unless otherwise ordered by the Panel, a maximum of twenty minutes shall be allotted for oral argument in each matter. The time shall be divided equally among those with varying viewpoints. Counsel for the moving party or parties shall generally be heard first.

(h) So far as practicable and consistent with the purposes of Section 1407, the offering of oral testimony before the Panel shall be avoided. Accordingly, oral testimony shall not be received except upon notice, motion and order of the Panel expressly providing for it.

(i) After an action or group of actions has been set for a hearing session, consideration of such action(s) may be continued only by order of the Panel on good cause shown.

MDL DOCKET NO. 2151

THIS FORM MUST BE RETURNED TO THE JUDICIAL PANEL NO LATER THAN **MARCH 8, 2010**

TO: Clerk of the Panel
U.S. Judicial Panel on Multidistrict Litigation
One Columbus Circle, NE
Thurgood Marshall Federal Judiciary Building
Room G-255, North Lobby
Washington, DC 20002-8004

NOTICE OF PRESENTATION OR WAIVER OF ORAL ARGUMENT

____ This is to give notice that the following designated attorney shall PRESENT ORAL ARGUMENT at the Panel hearing session on behalf of the designated party/parties. Panel Rule 16.1(e) states that:

> Except for leave of the Panel on a showing of good cause, only those parties to actions scheduled for oral argument who have filed a motion or written response to a motion or order shall be permitted to appear before the Panel and present oral argument.
>
> Also note Rule 16.1(f) requiring counsel with like positions to confer prior to the oral argument for the purpose of selecting a spokesperson to avoid duplication during oral argument.

____ This is to give notice that the party/parties noted hereafter will WAIVE ORAL ARGUMENT pursuant to Rule 16.1(d).

____ This is to give notice that the party/parties noted hereafter will WAIVE ORAL ARGUMENT IF ALL OTHER PARTIES IN THIS MATTER WAIVE ORAL ARGUMENT; otherwise the following designated attorney shall present oral argument at the Panel hearing session on behalf of the designated party/parties pursuant to Rule 16.1(d).

_____	_____	_____
Date	Name	Authorized Signature

Party/Parties Represented, District(s) & Civil Action Number(s) **(list even if waiving)**:

Name and Address of Attorney Designated to Present Oral Argument:

Telephone No.: _____ Fax No.: _____

Email Address: _____

ORIGINAL ONLY OF ORAL ARGUMENT APPEARANCE NEEDED FOR FILING. ***THIS NOTICE MUST BE SERVED ON ALL OTHER PARTIES IN THE AFFECTED LITIGATION AND A CERTIFICATE OF SERVICE WITH PANEL SERVICE LIST MUST BE ATTACHED TO THIS ORAL ARGUMENT APPEARANCE.***

JPML Form 9 (9/08)

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

CHAIRMAN:
John G. Heyburn II
United States District Court
Western District of Kentucky

MEMBERS:
Robert L. Miller, Jr.
United States District Court
Northern District of Indiana

Kathryn H. Vratil
United States District Court
District of Kansas

David R. Hansen
United States Court of Appeals
Eighth Circuit

W. Royal Furgeson, Jr.
United States District Court
Northern District of Texas

Frank C. Damrell, Jr.
United States District Court
Eastern District of California

David G. Trager
United States District Court
Eastern District of New York

DIRECT REPLY TO:

Jeffery N. Lüthi
Clerk of the Panel
One Columbus Circle, NE
Thurgood Marshall Federal
Judiciary Building
Room G-255, North Lobby
Washington, D.C. 20002

Telephone: [202] 502-2800
Fax: [202] 502-2888
http://www.jpml.uscourts.gov

ADVISORY

Counsel appearing for oral argument before the Panel are advised to familiarize themselves with local court practices that may prohibit bringing cellphones and/or computers into the courthouse.

EXHIBIT D

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION

ADILIA AVILES on behalf of herself and all others similarly situated,

Plaintiff(s),

v.

TOYOTA MOTOR CORPORATION and TOYOTA MOTOR SALES U.S.A., Inc.,

Defendants.

Case No.: CV10-00706 AHM (FMOx)

CLASS ACTION

[Honorable A. Howard Matz]

ORDER GRANTING STAY

[SUBMITTED CONCURRENTLY WITH STIPULATION TO STAY PROCEEDINGS]

Having considered the Parties' Stipulation to Stay Proceedings pending a ruling by the Judicial Panel on Multidistrict Litigation ("JPML") concerning the transfer of this action for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407, and for good cause shown, the Court hereby GRANTS the Parties' request to stay the proceedings.

IT IS HEREBY ORDERED that the proceedings in this case are stayed in their entirety, including but not limited to (1) all scheduling deadlines pursuant to the Federal Rules of Civil Procedure, Local Rules of the USDC for the Central District of California, and this Honorable Court, (2) discovery, and (3) the deadline to answer or otherwise respond to Plaintiffs' Complaint pending a ruling by the Judicial Panel on Multidistrict Litigation ("JPML") concerning the transfer of this action for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407.

SO ORDERED.

DATED: February 22, 2010

Judge of the United States District Court

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION

ANI GAZARYAN, an individual; SVETLANA ABAJYAN, an individual; ELZA DZHIVALEGYAN, an individual; TAMARA HARUTYUNYAN, an individual; NERSES MAZMANYAN, an individual; KARINE MAZMANYAN, an individual; HRAYR OKKASIAN, an individual; CHRISTINE AZNAVOU, an individual; AKOP GALADZHYAN; an individual;

Plaintiffs, on Behalf of Themselves and All Others Similarly Situated as Well as on Behalf of the General Public and Acting in the Public Interest,

v.

TOYOTA MOTOR SALES U.S.A., INC, a California corporation; TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC. a foreign corporation; TOYOTA MOTOR CORPORATION, a foreign corporation; and DOES 1-10; Inclusive,

Defendants.

Case No.: CV10-00849 AHM (FMOx)

CLASS ACTION

[Honorable A. Howard Matz]

ORDER GRANTING STAY

Having considered the Parties' Stipulation to Stay Proceedings pending a ruling by the Judicial Panel on Multidistrict Litigation ("JPML") concerning the transfer of this action for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407, and for good cause shown, the Court hereby GRANTS the Parties' request to stay the proceedings.

IT IS HEREBY ORDERED that the proceedings in this case are stayed in their entirety, including but not limited to (1) all scheduling deadlines pursuant to the Federal Rules of Civil Procedure, Local Rules of the USDC for the Central District of California, and this Honorable Court, (2) discovery, and (3) the deadline to answer or otherwise respond to Plaintiffs' Complaint pending a ruling by the Judicial Panel on Multidistrict Litigation ("JPML") concerning the transfer of this action for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407.

SO ORDERED.

DATED: February 22, 2010

Judge of the United States District Court

TOY-RQ-05E-00009113

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JOHN D. ARYA (SBN 156108)
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Attorneys for Defendant TOYOTA MOTOR SALES U.S.A., INC.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION

ROZ SCHWARTZ, on Behalf of Herself and All Others Similarly Situated,

Plaintiff,

v.

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

Defendants.

Case No.: CV10-00710 AHM (FMOx)

PUTATIVE CLASS ACTION

[Honorable A. Howard Matz]

ORDER RE DEFENDANT TOYOTOA MOTOR SALES, U.S.A., INC.'S EX PARTE APPLICATION TO STAY ALL PROCEEDINGS PENDING ACTION BY THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

[Filed concurrently with Ex Parte Application and Declaration of Lisa Gilford]

On February 23, 2010, Defendant Toyota Motor Sales, U.S.A., Inc. ("Toyota") appeared before this Court, on an *ex parte* basis for an Application to Stay All Proceedings Pending Action by the Judicial Panel on Multidistrict Litigation.

The Court, having considered the application, points and authorities, evidence, and arguments offered by counsel, and any opposition thereto filed, and good cause appearing therefore,

HEREBY ORDERS AND ADJUDGES THAT:

(1) Toyota's *ex parte* application for an immediate stay of all proceedings in the action is **GRANTED**; and

(2) No further proceedings in this matter shall take place until the Court issues a further Order lifting this stay or the matter is transferred by the Judicial Panel on Multi-District Litigation.

IT IS SO ORDERED.

DATED: February 25, 2010

A. Howard Matz
Judge of the United States District Court

O

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV 09-8478 AHM (FMOx) Date February 25, 2010

Title ERIC KMETZ *et al.* v. TOYOTA MOTOR SALES U.S.A. INC., *et al.*

Present: The Honorable A. HOWARD MATZ, U.S. DISTRICT JUDGE

Stephen Montes	Not Reported	
Deputy Clerk	Court Reporter / Recorder	Tape No.

Attorneys **NOT** Present for Plaintiffs: Attorneys **NOT** Present for Defendants:

Proceedings: IN CHAMBERS (No Proceedings Held)

The Court, on its own motion, STAYS all proceedings in this action until the Court issues an Order lifting this stay or until the matter is transferred by the Judicial Panel on Multi-District Litigation, whichever comes first.

The Court also VACATES the hearing on and TAKES OFF CALENDAR Defendants' Motion to Dismiss the First Amended Complaint[1] and Defendants' Motion to Strike all Class Allegations.[2]

Initials of Preparer SMO

[1] Docket No. 18.

[2] Docket No. 22.

TOY-RQ-05E-00009117

O

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV 09-8143 AHM (FMOx) Date February 25, 2010

Title SEONG BAE CHOI, *et al.* v. TOYOTA MOTOR CORPORATION, *et al.*

Present: The Honorable A. HOWARD MATZ, U.S. DISTRICT JUDGE

Stephen Montes	Not Reported	
Deputy Clerk	Court Reporter / Recorder	Tape No.

Attorneys **NOT** Present for Plaintiffs: Attorneys **NOT** Present for Defendants:

Proceedings: IN CHAMBERS (No Proceedings Held)

The Court, on its own motion, STAYS all proceedings in this action until the Court issues an Order lifting this stay or until the matter is transferred by the Judicial Panel on Multi-District Litigation, whichever comes first.

The Court also VACATES the hearing on and TAKES OFF CALENDAR Plaintiffs' Motion for a Preliminary Injunction,[1] Plaintiffs' Motion to Certify the Class,[2] Defendants' Motion to Dismiss,[3] and Defendants' Motion to Strike all Class Allegations.[4]

Initials of Preparer SMO

[1] Docket No. 22.

[2] Docket No. 39.

[3] Docket No. 41.

[4] Docket No. 45.

TOY-RQ-05E-00009118

LINK: 12, 13

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 09-9158 GAF (FMOx)	Date	February 26, 2010
Title	Heather A. Lane v. Toyota Motor Sales, U.S.A., Inc.		

Present: The Honorable	**GARY ALLEN FEESS**	
Renee Fisher	None	N/A
Deputy Clerk	Court Reporter / Recorder	Tape No.

Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
None	None

Proceedings: **(In Chambers)**

ORDER RE: MOTION TO DISMISS & MOTION TO STRIKE ALLEGATIONS FROM PLAINTIFF'S COMPLAINT

The Court has received Defendants' Motion to Dismiss and Motion to Strike Allegations from Plaintiff's Complaint. (Docket Nos. 12, 13.) Because the present action is the subject of, or is related to, an action before the Judicial Panel on Multidistrict Litigation, all matters in this case are hereby **STAYED**.

Accordingly, the hearing regarding Defendants' motions presently scheduled for March 29, 2010, is hereby **VACATED**.

IT IS SO ORDERED.

TOY-RQ-05E-00009119

LINK: 20, 21

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 09-9386 GAF (FMOx)	Date	February 26, 2010
Title	Dale Baldiseeri v. Toyota Motor Sales, U.S.A., Inc. et al		

Present: The Honorable	**GARY ALLEN FEESS**	
Renee Fisher	None	N/A
Deputy Clerk	Court Reporter / Recorder	Tape No.
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:	
None	None	

Proceedings: **(In Chambers)**

ORDER RE: MOTION TO DISMISS & MOTION TO STRIKE ALLEGATIONS FROM FIRST AMENDED COMPLAINT

The Court has received Defendants' Motion to Dismiss and Motion to Strike Allegations from First Amended Complaint. (Docket Nos. 20, 21.) Because the present action is the subject of, or is related to, an action before the Judicial Panel on Multidistrict Litigation, all matters in this case are hereby **STAYED**.

Accordingly, the hearing regarding Defendants' motions presently scheduled for March 8, 2010, is hereby **VACATED**.

IT IS SO ORDERED.

TOY-RQ-05E-00009120

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 10-20006-CIV-COOKE/BANDSTRA

JONATHAN GELLMAN, and all others
similarly situated,

Plaintiffs,

v.

TOYOTA MOTOR SALES, USA, INC.,

Defendant.
_____/

ORDER STAYING AND ADMINISTRATIVELY CLOSING CASE PENDING RULING BY THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

THIS CASE is before me on Defendant's Unopposed Motion to Stay Pending Ruling by the Judicial Panel on Multidistrict Litigation [D.E. 12]. I have reviewed and considered the motion, the record, and the relevant legal authorities. It is **ORDERED and ADJUDGED** as follows:

1. Defendants' Unopposed Motion to Stay Pending Ruling by the Judicial Panel on Multidistrict Litigation [D.E. 12] is **GRANTED**. This case shall be **STAYED** pending a determination by the Judicial Panel on Multidistrict Litigation.

2. Within fourteen days of the Judicial Panel on Multidistrict Litigation releasing its decision, Defendant shall file a notice with this Court informing the Court as to the Panel's decision. The Court will reopen and recommence proceedings if the Panel determines that the actions are inappropriate for coordinated treatment or that this case is inappropriate for transfer.

3. The Clerk shall ***administratively*** **CLOSE** this case.

DONE and ORDERED in chambers at Miami, Florida, this 25th day of February 2010.

Marcia G. Cooke
MARCIA G. COOKE
United States District Judge

Copies furnished to:
All Counsel of record

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

JOEL GRUNKEMEYER
1041 Central Avenue
Cincinnati, OH 45202

and

SHARON WILSON
9105 Tag Drive
Cincinnati, OH 45231

and

JOHN SUKOLA
4939 Hathaway Road
Cincinnati, OH 45036

Plaintiffs,

v.

TOYOTA MOTOR SALES USA, INC.
19001 South Western Ave.
Torrance, CA 90501

and

TOYOTA MOTOR CREDIT CORPORATION
19001 South Western Ave.
Torrance, CA 90501

and

TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC.
25 Atlantic Ave.
Erlanger, KY 41018

and

JOSEPH TOYOTA OF CINCINNATI
9101 Colerain Ave.
Cincinnati, OH 45251

and

KINGS TOYOTA
9500 Kings Automall Dr.
Cincinnati, OH 45249

Defendants.

Civil Action No. A1001119

JUDGE ROBERT P. RUEHLMAN

NOTICE OF NOTICE OF REMOVAL BY DEFENDANTS TOYOTA MOTOR SALES, U.S.A., INC., TOYOTA MOTOR CREDIT CORPORATION AND TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC.

Pursuant to 28 U.S.C. §§1332, 1441, 1446 and 1453, Defendants Toyota Motor Sales, U.S.A., Inc., Toyota Motor Credit Corporation and Toyota Motor Engineering & Manufacturing North America, Inc. ("Toyota Defendants") hereby give notice that they have filed a Notice of Removal with the Clerk of the United States District Court for the Southern District of Ohio, Western Division (Cincinnati). A true and correct copy of the Notice of Removal is attached hereto as Exhibit A. This Notice is being filed with the Clerk of Courts for Hamilton County, Ohio.

Respectfully submitted,

/s/Gregory A. Harrison
Gregory A. Harrison (0029814)
Trial Attorney for Defendants
DINSMORE & SHOHL, LLP
1900 Chemed Center
255 E. Fifth Street
Cincinnati, Ohio 45202
Phone: (513) 977-8200
Fax: (513) 977-8141
greg.harrison@dinslaw.com

Attorneys for Defendants Toyota Motor Sales, U.S.A., Inc., Toyota Motor Credit Corporation and Toyota Motor Engineering & Manufacturing North America, Inc.

TOY-RQ-05E-00009123

Of counsel:

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glenn.morris@alston.com

TOY-RQ-05E-00009124

CERTIFICATE OF SERVICE

I hereby certify that one copy of the foregoing Notice of Notice of Removal was served via e-mail on the 25th day of February, 2010, upon the following counsel at the e-mail addresses listed below:

Richard S. Wayne [rswayne@strausstroy.com]
Thomas P. Glass [tpglass@strausstroy.com]
Joseph J. Braun [jjbraun@strausstroy.com]
STRAUSS & TROY
The Federal Reserve Building
150 East Fourth Street
Cincinnati, OH 45202

Counsel for Plaintiffs

John H. Stachler [johns@mfhslaw.com]
MARTIN, FOLINO, HARMON & STACHLER, LPA
P.O. Box 10068
214 West Monument Avenue
Dayton OH 45402-4139

Counsel for Plaintiffs

and that a copy also will be mailed via ordinary mail postage prepaid on the 25th day of February, 2010 upon the same counsel.

/s/Gregory A. Harrison

1739316_1
30213-288

TOY-RQ-05E-00009125

JURY

U.S. District Court
Southern District of Ohio (Cincinnati)
CIVIL DOCKET FOR CASE #: 1:10-cv-00128-MRB

Grunkemeyer et al v. Toyota Motor Sales USA, Inc. et al
Assigned to: Judge Michael R. Barrett
Case in other court: Hamilton County Court of Common Pleas, A1001119
Cause: 28:1332 Diversity-Other Contract

Date Filed: 02/25/2010
Jury Demand: Plaintiff
Nature of Suit: 190 Contract: Other
Jurisdiction: Diversity

Plaintiff

Joel Grunkemeyer

represented by **Richard Stuart Wayne**
Strauss &Troy - 1
The Federal Reserve Building
150 E Fourth Street
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513-621-2120
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

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937-461-5980
Fax: 937-461-4139
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ATTORNEY TO BE NOTICED

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Plaintiff

Sharon Wilson

represented by **Richard Stuart Wayne**
(See above for address)
LEAD ATTORNEY
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John Henry Stachler
(See above for address)

ATTORNEY TO BE NOTICED

Joseph J Braun
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Thomas P Glass
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Plaintiff

John Sukola represented by **Richard Stuart Wayne**
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

John Henry Stachler
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ATTORNEY TO BE NOTICED

Joseph J Braun
(See above for address)
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Thomas P Glass
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V.

Defendant

Toyota Motor Sales USA, Inc. represented by **Gregory Alan Harrison**
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Defendant

Toyota Motor Credit Corporation represented by **Gregory Alan Harrison**
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ATTORNEY TO BE NOTICED

Defendant

Toyota Motor Engineering &Manufacturing North America, Inc. represented by **Gregory Alan Harrison**
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Kings Toyota, Inc. represented by **Gregory Alan Harrison**
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ATTORNEY TO BE NOTICED

Defendant

Joseph Toyota of Cincinnati represented by **Gregory Alan Harrison**
(See above for address)
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
02/25/2010	1	NOTICE OF REMOVAL from Hamilton County Court of Common Pleas, case number A1001119 (Filing fee $ 350 paid − receipt number: 0648−2511589), filed by Toyota Motor Engineering &Manufacturing North America, Inc., Toyota Motor Sales USA, Inc., Toyota Motor Credit Corporation, Joseph Toyota of Cincinnati, and Kings Toyota, Inc. (Attachments: #1 Exhibit 1 State Court Pleadings, #2 Civil Cover Sheet) (Harrison, Gregory) Modified to edit text to include all the party names on 2/25/2010 (mr1). (Entered: 02/25/2010)
02/25/2010	2	*** Former DN 2 *** AFFIDAVIT in Support re 1 Notice of Removal *(Declaration of George Morino)* by Defendants Toyota Motor Credit Corporation, Toyota Motor Engineering &Manufacturing North America, Inc., Toyota Motor Sales USA, Inc. (Harrison, Gregory) Modified to edit text and remove PDF on 2/25/2010 (mr1). (Entered: 02/25/2010)
02/25/2010	3	NOTICE of *Consent to Removal* re 1 Notice of Removal by Defendant Joseph Toyota of Cincinnati(Harrison, Gregory) Modified to edit text and party name on 2/25/2010 (mr1). (Entered: 02/25/2010)
02/25/2010	4	NOTICE of *Consent to Removal* re 1 Notice of Removal by Defendant Kings Toyota, Inc. (Harrison, Gregory) Modified to edit text for clarity on 2/25/2010 (mr1). (Entered: 02/25/2010)
02/25/2010	5	*** Former DN 5 *** AFFIDAVIT in Support re 1 Notice of Removal *(Declaration of Bill Reber)* by Defendants Toyota Motor Credit Corporation, Toyota Motor Engineering &Manufacturing North America, Inc., Toyota Motor Sales USA, Inc. (Harrison, Gregory) Modified to edit text and remove PDF on 2/25/2010 (mr1). (Entered: 02/25/2010)
02/25/2010		Notice of Correction re: former dn 2 Affidavit in Support and former dn 5 Affidavit in Support. PDFs removed. A call has been made to counsel regarding the need to re−file. Both Docs. 2 and 5 lacked the attorney signature block as well as a Certificate of Service. (mr1) (Entered: 02/25/2010)
02/25/2010	6	State COMPLAINT with JURY DEMAND against Joseph Toyota of Cincinnati, Kings Toyota, Inc., Toyota Motor Credit Corporation, Toyota Motor Engineering &Manufacturing North America, Inc., and Toyota Motor Sales USA, Inc. originally filed in the Court of Common Pleas, Hamilton County, Ohio on February 5, 2010 by John Sukola, Sharon Wilson, and Joel Grunkemeyer. (mr1) (Entered: 02/25/2010)
02/25/2010	7	NOTICE of Filing of *Amended Civil Cover Sheet* re 1 Notice of Removal by Defendants Toyota Motor Credit Corporation, Toyota Motor Engineering &Manufacturing North America, Inc., Toyota Motor Sales USA, Inc. (Harrison, Gregory) Modified to edit text for clarity on 2/25/2010 (mr1). (Entered: 02/25/2010)
02/25/2010	8	NOTICE of Filing of *Declaration of Bill Reber* re 1 Notice of Removal by Defendants Toyota Motor Credit Corporation, Toyota Motor Engineering &Manufacturing North America, Inc., Toyota Motor Sales USA, Inc. (Harrison, Gregory) Modified to edit text and correct link on 2/25/2010 (mr1). (Entered: 02/25/2010)
02/25/2010	9	NOTICE of Filing of *Declaration of George T. Morino* re 1 Notice of Removal by Defendants Toyota Motor Credit Corporation, Toyota Motor Engineering &Manufacturing North America, Inc., Toyota Motor Sales USA, Inc. (Harrison, Gregory) Modified to edit text for clarity and correct link on 2/25/2010 (mr1). (Entered: 02/25/2010)
03/01/2010	10	STIPULATION re 6 Complaint, *For Extension of Time to and including March 11, 2010 to Respond* by Defendants Joseph Toyota of Cincinnati, Kings Toyota, Inc., Toyota Motor Credit Corporation, Toyota Motor Engineering &Manufacturing North America, Inc., Toyota Motor Sales USA, Inc.. (Harrison, Gregory) (Entered: 03/01/2010)

03/02/2010	11	MOTION to Stay *Proceedings Pending Action by the Judicial Panel on Multidistrict Litigation And Memorandum In Support* by Defendants Joseph Toyota of Cincinnati, Kings Toyota, Inc., Toyota Motor Credit Corporation, Toyota Motor Engineering &Manufacturing North America, Inc., Toyota Motor Sales USA, Inc.. (Attachments: # 1 Exhibits A through D) (Harrison, Gregory) (Entered: 03/02/2010)

FILE START

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

DIANE GUMBLE, on behalf of herself and all others similarly situated, Plaintiff, v. TOYOTA MOTOR CORPORATION, TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC. and TOYOTA MOTOR SALES U.S.A., INC. Defendants.	Case No.: _____ CLASS ACTION JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiff, DIANE GUMBLE, by and through her undersigned attorneys, bring this action on their own behalf and on behalf of a class of persons defined below against Defendants, Toyota Motor Corporation, Toyota Motor Engineering & Manufacturing North America, Inc. and Toyota Motor Sales, U.S.A., Inc. and seeks class status on behalf of herself and the class described below, and alleges upon information and belief as follows:

NATURE OF CASE

1. This class action concerns Defendants' manufacture and sale of

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defective automobiles which can suddenly and without warning accelerate out of control.

2. In the last four months, Defendants have instituted at least three voluntary recalls of these defective automobiles. The first recall occurred on September 29, 2009 and Defendants claimed that the sudden unintended acceleration problem was caused by defective floor mats. The second recall occurred in early January 2010 and expanded the first recall to include additional models within the scope of the first recall and again identifying the issue as a problem with floor mats in the automobiles. The third voluntary recall was announced on January 21, 2010, and included a different set of automobiles, some within the scope of the first two recalls, but others not. This third recall attributed the risk of sudden unintended acceleration to the "possibility that certain accelerator pedal mechanisms may, in rare instances, mechanically stick in a partially depressed position or return slowly to the idle position. . . ." In total, these three recalls encompass well over 4 million vehicles (the "Recalled Vehicles").

3. In conjunction with the third voluntary recall, Defendants publicly announced on January 26, 2010, that they would cease sales of eight models falling within the scope of the January 21, 2010, recall. Defendants did not state when sales of these eight models would resume, instead stating "[t]his action is necessary until a remedy is finalized."

4. Finally, Defendants have suggested actions that consumers owning a Recalled Vehicle should take to ameliorate the risk of sudden unintended

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acceleration. With respect to vehicles falling within the floor mat recall of September 2009 and January 2010, Defendants have suggested consumers remove the floor mats and place them in the trunk pending Defendants developing a permanent fix. With respect to vehicles falling within the most recent January 21, 2010 recall, Defendants have suggested to consumers that "no action is required unless you feel you are experiencing this condition." Defendants suggest that consumers would have reason to believe their vehicle is experiencing "this condition," if the consumer has "noticed that [the] accelerator pedal is hard to depress, slow to return or is unsmooth during operation." Finally, Defendants have told consumers that if they experience any of these symptoms, "the vehicle should be driven to the nearest safe location, the engine shut off, and a Toyota dealer contacted for assistance."

5. On February 1, 2010, Defendants announced a repair for the Recalled Vehicles, but its efficacy remains to be seen.

THE PARTIES

6. Plaintiff is an individual currently residing in Lancaster, Pennsylvania who purchased a 2009 Toyota Camry.

7. Toyota Motor Corporation is a Japanese corporation with its headquarters in Toyota City, Aichi Prefecture, Japan and conducts and transacts business within this Judicial District.

8. Toyota Motor Engineering & Manufacturing North America, Inc. is a Kentucky corporation with its principal place of business at 25 Atlantic Avenue,

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Erlanger, Kentucky 41018 and conducts and transacts business within this Judicial District.

9. Toyota Motor Sales, U.S.A., Inc. is a California corporation with its principal place of business at 19001 South Western Avenue, Torrance, California 90501 and conducts and transacts business within this Judicial District.

10. The above-named Defendants are collectively referred to as the "Defendants"

JURISDICTION AND VENUE

11. This Court has subject matter jurisdiction over this action pursuant to the Class Action Fairness Act of 2005, 28 U.S.C.§ 1332(d), because it is a class action filed pursuant to Fed R. Civ. P. 23, Plaintiff and the class members are of diverse citizenship from Defendants, there are more than 100 class members, and the aggregate amount in controversy, excluding interest and costs, exceeds $5,000,000.

12. Venue is proper within this District under 28 U.S.C. § 1391 because a substantial part of the events giving rise to Plaintiff's and the other class members' claims occurred within this District.

SUMMARY OF FACTS COMMON TO ALL CLAIMS

13. Defendant Toyota Motor Corporation is one of the world's largest manufacturers of automobiles sold throughout the United States and the world.

14. Defendant Toyota Motor Engineering & Manufacturing North America, Inc. is a wholly-owned subsidiary of Toyota Motor Corporation and is responsible for

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Toyota's engineering design, development, R&D, and manufacturing activities in the United States, Canada and Mexico.

15. Defendant Toyota Motor Sales, U.S.A, Inc. is a wholly-owned subsidiary of Toyota Motor Corporation and is responsible for the sales, marketing, and distribution of motor vehicles manufactured by Toyota Motor Corporation throughout the United States.

16. For many years, automobiles manufactured and sold by Defendants have had a good reputation among consumers for safety and quality. Indeed, a December 23, 2009, newspaper article published by the *Los Angeles Times,* recognized that "[a] peerless reputation for quality and safety has helped Toyota become the world's largest automaker."

17. In recent years, however, Defendants have maintained this good reputation by deceiving consumers about safety problems it has had with many of its automobiles. Rather than being forthcoming about the nature and severity of manufacturing defects in their products, Defendants have intentionally failed to disclose and have made numerous false statements to consumers to hide known manufacturing defects in its automobiles.

18. For instance, as reported by the *Los Angeles Times* in its December 23, 2009, story:

> 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 claimed vehicles were defective.
>
> * * *

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> After Toyota this fall announced its biggest recall to address the sudden-acceleration problem, it insisted publically 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."

19. The National Highway Traffic Safety Administration ("NHTSA") did, in fact, issue a statement on November 4, 2009, "correcting inaccurate and misleading information put out by Toyota concerning a safety recall involving 3.8 million Toyota and Lexus vehicles." This statement indicated that:

> A press release put out by Toyota earlier this week about their recall of 3.8 million Toyota and Lexus vehicles inaccurately stated NHTSA had reached a conclusion "that no defect exists in vehicles in which the driver's floor mat is compatible with the vehicle and properly secured." NHTSA has told Toyota and consumers that removing the recalled floor mats is the most immediate way to address the safety risk and avoid the possibility of the accelerator becoming stuck. But it is simply an interim measure. This remedy does not correct the underlying defect in the vehicles involving the potential for entrapment of the accelerator by floor mats, which is related to accelerator and floor pan design. Safety is the number one priority for NHTSA and this is why officials are working with Toyota to find the right way to fix this very dangerous problem. This matter is not closed until Toyota has effectively addressed the defect by providing a suitable vehicle based solution.

20. Defendants' carefully crafted attempts to minimize any public revelation of the problems with its vehicles are further discussed in the December 23, 2009, *Los Angles 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. But it told regulators that no recall was necessary in the U.S.,

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> despite having received numerous complaints from drivers. Toyota said a subsequent investigation led it to order a U.S. recall in 2005.
>
> * * *
>
> Although the sudden acceleration issue erupted publically only in recent months, it has been festering for nearly a decade. A computerized search of NHTSA records by the Times has found Toyota issued either previous recalls related to unintended acceleration since 2000, more than any other automaker.

21. Defendants have engaged in this pattern and practice of deception with respect to all of the Recalled Vehicles and the risk of sudden unintended acceleration with those automobiles.

22. Specifically, Defendants failed to fully and accurately inform consumers of the true magnitude of the risk of sudden unintended acceleration with the Recalled Vehicles. Prior to September 2009, Defendants completely failed to warn consumers of the sudden unintended acceleration risks it knew existed with the Recalled Vehicles. In conjunction with the September 2009 recall, Defendants also falsely indicated to consumers that the sole source of the risk of sudden unintended acceleration arose from potentially faulty floor mats when in fact Defendants knew of other potential risk factors, including but not limited to, mechanical design defects, problems with the electronic throttle control, the absence of a safety mechanism to cut fuel flow to the engine when the throttle is in the full open position but the brake pedal is fully depressed, or the "possibility that certain accelerator pedal mechanisms may, in rare instances, mechanically stick." Finally, in this final January 21, 2010, recall, Defendants have once again failed to fully

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inform consumers of the magnitude of the risk and its potential causes.

23. In addition, Defendants failed to adequately inform consumers of the risk of sudden unintended acceleration during the time period between the September 2009 recall and the January 2010 recall such that many consumers were duped into buying Toyota vehicles now within the scope of the Recalled Vehicles without having been told of the risk of sudden unintended acceleration inherent in those vehicles.

NAMED PLAINTIFF'S FACTUAL ALLEGATIONS

24. Plaintiff purchased a 2009 Toyota Camry. Plaintiff's vehicle falls within both the September 2009 recall for potentially defective floor mats and the January 21, 2010, recall for the risk that the accelerator pedal mechanism may mechanically stick.

25. On one occasion since her purchase, the accelerator on her 2009 Toyota Camry became stuck for a brief period.

26. Plaintiff is nervous about driving her Toyota until the issue is corrected, but in the absence of assistance from Defendants in defraying the costs associated with obtaining alternative transportation, is unable to do so.

CLASS ACTION ALLEGATIONS

Numerosity of the Class

27. Pursuant to Federal Rule of Civil Procedure 23(b)(3), Plaintiff brings this action on behalf of herself and the members of the following proposed Class:

> All Pennsylvania residents who own a Recalled Vehicle (i.e. a vehicle subject to the voluntary recalls announced

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by the Toyota Defendants in September 2009 and January 2010).

The Class excludes all federal, state, and local governmental entities, and Defendants, their officers, directors, board members or employees; any entity in which Defendants have a controlling interest; and affiliates, legal representatives, attorneys, heirs or assigns of Defendants.

28. Members of the proposed Class are so numerous that the individual joinder of all absent class members is impracticable. While the exact number of class members is unknown to Plaintiff at this time, it is ascertainable by appropriate discovery. Plaintiff is informed and believes based upon the nature and the trade and commerce involved, that the proposed Class includes thousands of consumers.

29. Plaintiff and the class are claiming damages and injunctive relief based upon the misconduct alleged herein including Defendants' manufacture and sale of vehicles with a risk of sudden unintended acceleration and Defendants' deceptive and misleading conduct in failing to inform consumers of the scope and causes of that risk.

Predominance of Common Questions of Law and Fact

30. Common questions of law or fact predominate over any questions affecting only individual members of the Class. Common questions include, but are not limited to, the following:

a) Whether Defendants have manufactured and sold vehicles with a risk of sudden unintended acceleration;

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b) Whether Defendants knew of the risk of sudden unintended acceleration present in Recalled Vehicles and whether Defendants concealed that risk from consumers;

c) Whether Defendants concealed information regarding the scope and cause of the risk of unintended sudden acceleration in Recalled Vehicles.

d) Whether Defendants engaged in unfair or deceptive trade or business practices in connection with the manufacture, sale, and marketing of Recalled Vehicles;

e) Whether Defendants concealed, suppressed, or omitted material facts when they failed to reveal to consumers that any of the Recalled Vehicles had a risk of sudden unintended acceleration or when they made statements to consumers regarding the potential causes of the risk of sudden unintended acceleration;

f) What steps Defendants have taken to remedy the risk of sudden unintended acceleration in Recalled Vehicles;

g) To what extent, and in what amounts, was Plaintiff and the class damaged by Defendants' unlawful actions; and

h) Whether Defendants have any affirmative defenses and if so, whether those defenses are common to all class members and are valid.

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Typicality

31. Plaintiff in this proposed class action asserts claims typical of those of the individual members of the proposed Class. The interests of Plaintiff are consistent with, and not antagonistic to, those of other members of the Class, and Defendant has no defenses unique to Plaintiff.

Adequacy of Representation

32. Plaintiff is a member of the Class and will fairly and adequately assert and protect the interests of the Class. Plaintiff has retained attorneys who are experienced in class action litigation.

Superiority

33. A Class action is an appropriate method for the fair and efficient adjudication of this controversy and Class action treatment is superior to the alternatives. Class treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently and without the duplication of effort and expense that numerous individual actions would entail. No difficulties are likely to be encountered in the management of this Class action that would preclude its maintenance as a Class action, and no superior alternative exists for the fair and efficient adjudication of this controversy.

COUNT I

BREACH OF IMPLIED WARRANTY

34. Plaintiff realleges and incorporates Paragraphs 1-33 as if fully set

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forth herein.

35. At the times Defendants marketed, sold, and distributed automobiles for use by Plaintiff and Class Members, Defendants knew of the use for which the Recalled Vehicles were intended and impliedly warranted the product to be of a certain quality.

36. Defendants embarked on and carried out a common scheme of marketing and selling automobiles by a falsely and deceptively representing that the vehicles were safe and without defects, specifically, that the accelerator pedal of the Recalled Vehicles was fit for its intended use.

37. Said representations and warranties aforementioned are false, misleading, and inaccurate in that the recalled automobiles are unsafe and unreasonably dangerous due to the defective accelerator pedals.

38. The Recalled Vehicles were defective, unmerchantable, and unfit for ordinary use when sold.

39. The damages in question arose from the reasonably anticipated use of the product in question.

40. Defendants breached the implied warranties of merchantability when its recalled automobiles were sold to Plaintiff and class members, in that the accelerator pedals are defective and have otherwise failed to function as represented and intended.

41. As a direct and proximate cause of Defendants' breach of the implied warranty of merchantability, Plaintiff and Class Members have sustained and will

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continue to sustain the loss of use of their vehicles, severe emotional distress, economic losses and consequential damages, and are therefore entitled to compensatory damages and equitable and declaratory relief according to proof.

COUNT II

UNJUST ENRICHMENT

42. Plaintiff realleges and incorporates Paragraphs 1-41 as if fully set forth herein.

43. To the detriment of Plaintiff and the Class, Defendants benefited from and were unjustly enriched by Defendant's receipt of monies as a result of Plaintiff's and the other class members' purchases of Recalled Vehicles, due to Defendants' concealment and failure to disclose the risk of sudden unintended acceleration associated with the Recalled Vehicles.

44. Defendants had knowledge of, voluntarily accepted, and retained these benefits.

45. Defendants received these benefits to the detriment of Plaintiff and the Class.

46. It would be inequitable, unconscionable, unfair, unlawful, and unjust for Defendants to retain these ill-gotten benefits.

47. As a result of Defendant's unjust enrichment, Plaintiff and the Class are entitled to restitution and disgorgement in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself and all others similarly

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situated, prays for judgment as requested above against Defendant and further prays for:

A. An order certifying the class proposed herein and appointing Plaintiff and her counsel to represent the class;

B. Enter judgment in favor of Plaintiff and the class and against Defendants Toyota Motor Company, Toyota Motor Engineering & Manufacturing North America, Inc. and Toyota Motor Sales, U.S.A., Inc.;

C. Award Plaintiff and the class members restitution, disgorgement, actual, statutory and punitive damages, and attorney fees and costs, including pre-judgment and post-judgment interest thereon;

D. Enter a temporary, preliminary and permanent order for injunctive relief enjoining Defendants from continuing to engage in the business practices complained of herein;

E. Provide such further relief as the Court deems just and proper.

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JURY DEMAND

Plaintiff hereby demands a trial by jury.

Dated: February 4, 2010

Respectfully submitted,

/s/ DMN 1791
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RodaNast, P.C.
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TOY-RQ-05E-00009145

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

DIANE GUMBLE,
on behalf of herself
and all others similarly situated,

Plaintiff,

v.

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

Defendants.

Case No.: _____

CLASS ACTION

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiff, DIANE GUMBLE, by and through her undersigned attorneys, bring this action on their own behalf and on behalf of a class of persons defined below against Defendants, Toyota Motor Corporation, Toyota Motor Engineering & Manufacturing North America, Inc. and Toyota Motor Sales, U.S.A., Inc. and seeks class status on behalf of herself and the class described below, and alleges upon information and belief as follows:

NATURE OF CASE

1. This class action concerns Defendants' manufacture and sale of

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defective automobiles which can suddenly and without warning accelerate out of control.

2. In the last four months, Defendants have instituted at least three voluntary recalls of these defective automobiles. The first recall occurred on September 29, 2009 and Defendants claimed that the sudden unintended acceleration problem was caused by defective floor mats. The second recall occurred in early January 2010 and expanded the first recall to include additional models within the scope of the first recall and again identifying the issue as a problem with floor mats in the automobiles. The third voluntary recall was announced on January 21, 2010, and included a different set of automobiles, some within the scope of the first two recalls, but others not. This third recall attributed the risk of sudden unintended acceleration to the "possibility that certain accelerator pedal mechanisms may, in rare instances, mechanically stick in a partially depressed position or return slowly to the idle position. . . ." In total, these three recalls encompass well over 4 million vehicles (the "Recalled Vehicles").

3. In conjunction with the third voluntary recall, Defendants publicly announced on January 26, 2010, that they would cease sales of eight models falling within the scope of the January 21, 2010, recall. Defendants did not state when sales of these eight models would resume, instead stating "[t]his action is necessary until a remedy is finalized."

4. Finally, Defendants have suggested actions that consumers owning a Recalled Vehicle should take to ameliorate the risk of sudden unintended

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acceleration. With respect to vehicles falling within the floor mat recall of September 2009 and January 2010, Defendants have suggested consumers remove the floor mats and place them in the trunk pending Defendants developing a permanent fix. With respect to vehicles falling within the most recent January 21, 2010 recall, Defendants have suggested to consumers that "no action is required unless you feel you are experiencing this condition." Defendants suggest that consumers would have reason to believe their vehicle is experiencing "this condition," if the consumer has "noticed that [the] accelerator pedal is hard to depress, slow to return or is unsmooth during operation." Finally, Defendants have told consumers that if they experience any of these symptoms, "the vehicle should be driven to the nearest safe location, the engine shut off, and a Toyota dealer contacted for assistance."

5. On February 1, 2010, Defendants announced a repair for the Recalled Vehicles, but its efficacy remains to be seen.

THE PARTIES

6. Plaintiff is an individual currently residing in Lancaster, Pennsylvania who purchased a 2009 Toyota Camry.

7. Toyota Motor Corporation is a Japanese corporation with its headquarters in Toyota City, Aichi Prefecture, Japan and conducts and transacts business within this Judicial District.

8. Toyota Motor Engineering & Manufacturing North America, Inc. is a Kentucky corporation with its principal place of business at 25 Atlantic Avenue,

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Erlanger, Kentucky 41018 and conducts and transacts business within this Judicial District.

9. Toyota Motor Sales, U.S.A., Inc. is a California corporation with its principal place of business at 19001 South Western Avenue, Torrance, California 90501 and conducts and transacts business within this Judicial District.

10. The above-named Defendants are collectively referred to as the "Defendants"

JURISDICTION AND VENUE

11. This Court has subject matter jurisdiction over this action pursuant to the Class Action Fairness Act of 2005, 28 U.S.C.§ 1332(d), because it is a class action filed pursuant to Fed R. Civ. P. 23, Plaintiff and the class members are of diverse citizenship from Defendants, there are more than 100 class members, and the aggregate amount in controversy, excluding interest and costs, exceeds $5,000,000.

12. Venue is proper within this District under 28 U.S.C. § 1391 because a substantial part of the events giving rise to Plaintiff's and the other class members' claims occurred within this District.

SUMMARY OF FACTS COMMON TO ALL CLAIMS

13. Defendant Toyota Motor Corporation is one of the world's largest manufacturers of automobiles sold throughout the United States and the world.

14. Defendant Toyota Motor Engineering & Manufacturing North America, Inc. is a wholly-owned subsidiary of Toyota Motor Corporation and is responsible for

TOY-RQ-05E-00009149

Toyota's engineering design, development, R&D, and manufacturing activities in the United States, Canada and Mexico.

15. Defendant Toyota Motor Sales, U.S.A, Inc. is a wholly-owned subsidiary of Toyota Motor Corporation and is responsible for the sales, marketing, and distribution of motor vehicles manufactured by Toyota Motor Corporation throughout the United States.

16. For many years, automobiles manufactured and sold by Defendants have had a good reputation among consumers for safety and quality. Indeed, a December 23, 2009, newspaper article published by the *Los Angeles Times*, recognized that "[a] peerless reputation for quality and safety has helped Toyota become the world's largest automaker."

17. In recent years, however, Defendants have maintained this good reputation by deceiving consumers about safety problems it has had with many of its automobiles. Rather than being forthcoming about the nature and severity of manufacturing defects in their products, Defendants have intentionally failed to disclose and have made numerous false statements to consumers to hide known manufacturing defects in its automobiles.

18. For instance, as reported by the *Los Angeles Times* in its December 23, 2009, story:

> 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 claimed vehicles were defective.
>
> * * *

TOY-RQ-05E-00009150

> After Toyota this fall announced its biggest recall to address the sudden-acceleration problem, it insisted publically 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."

19. The National Highway Traffic Safety Administration ("NHTSA") did, in fact, issue a statement on November 4, 2009, "correcting inaccurate and misleading information put out by Toyota concerning a safety recall involving 3.8 million Toyota and Lexus vehicles." This statement indicated that:

> A press release put out by Toyota earlier this week about their recall of 3.8 million Toyota and Lexus vehicles inaccurately stated NHTSA had reached a conclusion "that no defect exists in vehicles in which the driver's floor mat is compatible with the vehicle and properly secured." NHTSA has told Toyota and consumers that removing the recalled floor mats is the most immediate way to address the safety risk and avoid the possibility of the accelerator becoming stuck. But it is simply an interim measure. This remedy does not correct the underlying defect in the vehicles involving the potential for entrapment of the accelerator by floor mats, which is related to accelerator and floor pan design. Safety is the number one priority for NHTSA and this is why officials are working with Toyota to find the right way to fix this very dangerous problem. This matter is not closed until Toyota has effectively addressed the defect by providing a suitable vehicle based solution.

20. Defendants' carefully crafted attempts to minimize any public revelation of the problems with its vehicles are further discussed in the December 23, 2009, *Los Angles 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. But it told regulators that no recall was necessary in the U.S.,

> despite having received numerous complaints from drivers. Toyota said a subsequent investigation led it to order a U.S. recall in 2005.
>
> * * *
>
> Although the sudden acceleration issue erupted publically only in recent months, it has been festering for nearly a decade. A computerized search of NHTSA records by the Times has found Toyota issued either previous recalls related to unintended acceleration since 2000, more than any other automaker.

21. Defendants have engaged in this pattern and practice of deception with respect to all of the Recalled Vehicles and the risk of sudden unintended acceleration with those automobiles.

22. Specifically, Defendants failed to fully and accurately inform consumers of the true magnitude of the risk of sudden unintended acceleration with the Recalled Vehicles. Prior to September 2009, Defendants completely failed to warn consumers of the sudden unintended acceleration risks it knew existed with the Recalled Vehicles. In conjunction with the September 2009 recall, Defendants also falsely indicated to consumers that the sole source of the risk of sudden unintended acceleration arose from potentially faulty floor mats when in fact Defendants knew of other potential risk factors, including but not limited to, mechanical design defects, problems with the electronic throttle control, the absence of a safety mechanism to cut fuel flow to the engine when the throttle is in the full open position but the brake pedal is fully depressed, or the "possibility that certain accelerator pedal mechanisms may, in rare instances, mechanically stick." Finally, in this final January 21, 2010, recall, Defendants have once again failed to fully

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inform consumers of the magnitude of the risk and its potential causes.

23. In addition, Defendants failed to adequately inform consumers of the risk of sudden unintended acceleration during the time period between the September 2009 recall and the January 2010 recall such that many consumers were duped into buying Toyota vehicles now within the scope of the Recalled Vehicles without having been told of the risk of sudden unintended acceleration inherent in those vehicles.

NAMED PLAINTIFF'S FACTUAL ALLEGATIONS

24. Plaintiff purchased a 2009 Toyota Camry. Plaintiff's vehicle falls within both the September 2009 recall for potentially defective floor mats and the January 21, 2010, recall for the risk that the accelerator pedal mechanism may mechanically stick.

25. On one occasion since her purchase, the accelerator on her 2009 Toyota Camry became stuck for a brief period.

26. Plaintiff is nervous about driving her Toyota until the issue is corrected, but in the absence of assistance from Defendants in defraying the costs associated with obtaining alternative transportation, is unable to do so.

CLASS ACTION ALLEGATIONS

Numerosity of the Class

27. Pursuant to Federal Rule of Civil Procedure 23(b)(3), Plaintiff brings this action on behalf of herself and the members of the following proposed Class:

> All Pennsylvania residents who own a Recalled Vehicle (i.e. a vehicle subject to the voluntary recalls announced

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by the Toyota Defendants in September 2009 and January 2010).

The Class excludes all federal, state, and local governmental entities, and Defendants, their officers, directors, board members or employees; any entity in which Defendants have a controlling interest; and affiliates, legal representatives, attorneys, heirs or assigns of Defendants.

28. Members of the proposed Class are so numerous that the individual joinder of all absent class members is impracticable. While the exact number of class members is unknown to Plaintiff at this time, it is ascertainable by appropriate discovery. Plaintiff is informed and believes based upon the nature and the trade and commerce involved, that the proposed Class includes thousands of consumers.

29. Plaintiff and the class are claiming damages and injunctive relief based upon the misconduct alleged herein including Defendants' manufacture and sale of vehicles with a risk of sudden unintended acceleration and Defendants' deceptive and misleading conduct in failing to inform consumers of the scope and causes of that risk.

Predominance of Common Questions of Law and Fact

30. Common questions of law or fact predominate over any questions affecting only individual members of the Class. Common questions include, but are not limited to, the following:

a) Whether Defendants have manufactured and sold vehicles with a risk of sudden unintended acceleration;

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b) Whether Defendants knew of the risk of sudden unintended acceleration present in Recalled Vehicles and whether Defendants concealed that risk from consumers;

c) Whether Defendants concealed information regarding the scope and cause of the risk of unintended sudden acceleration in Recalled Vehicles.

d) Whether Defendants engaged in unfair or deceptive trade or business practices in connection with the manufacture, sale, and marketing of Recalled Vehicles;

e) Whether Defendants concealed, suppressed, or omitted material facts when they failed to reveal to consumers that any of the Recalled Vehicles had a risk of sudden unintended acceleration or when they made statements to consumers regarding the potential causes of the risk of sudden unintended acceleration;

f) What steps Defendants have taken to remedy the risk of sudden unintended acceleration in Recalled Vehicles;

g) To what extent, and in what amounts, was Plaintiff and the class damaged by Defendants' unlawful actions; and

h) Whether Defendants have any affirmative defenses and if so, whether those defenses are common to all class members and are valid.

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Typicality

31. Plaintiff in this proposed class action asserts claims typical of those of the individual members of the proposed Class. The interests of Plaintiff are consistent with, and not antagonistic to, those of other members of the Class, and Defendant has no defenses unique to Plaintiff.

Adequacy of Representation

32. Plaintiff is a member of the Class and will fairly and adequately assert and protect the interests of the Class. Plaintiff has retained attorneys who are experienced in class action litigation.

Superiority

33. A Class action is an appropriate method for the fair and efficient adjudication of this controversy and Class action treatment is superior to the alternatives. Class treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently and without the duplication of effort and expense that numerous individual actions would entail. No difficulties are likely to be encountered in the management of this Class action that would preclude its maintenance as a Class action, and no superior alternative exists for the fair and efficient adjudication of this controversy.

COUNT I

BREACH OF IMPLIED WARRANTY

34. Plaintiff realleges and incorporates Paragraphs 1-33 as if fully set

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forth herein.

35. At the times Defendants marketed, sold, and distributed automobiles for use by Plaintiff and Class Members, Defendants knew of the use for which the Recalled Vehicles were intended and impliedly warranted the product to be of a certain quality.

36. Defendants embarked on and carried out a common scheme of marketing and selling automobiles by a falsely and deceptively representing that the vehicles were safe and without defects, specifically, that the accelerator pedal of the Recalled Vehicles was fit for its intended use..

37. Said representations and warranties aforementioned are false, misleading, and inaccurate in that the recalled automobiles are unsafe and unreasonably dangerous due to the defective accelerator pedals.

38. The Recalled Vehicles were defective, unmerchantable, and unfit for ordinary use when sold.

39. The damages in question arose from the reasonably anticipated use of the product in question.

40. Defendants breached the implied warranties of merchantability when its recalled automobiles were sold to Plaintiff and class members, in that the accelerator pedals are defective and have otherwise failed to function as represented and intended.

41. As a direct and proximate cause of Defendants' breach of the implied warranty of merchantability, Plaintiff and Class Members have sustained and will

TOY-RQ-05E-00009157

continue to sustain the loss of use of their vehicles, severe emotional distress, economic losses and consequential damages, and are therefore entitled to compensatory damages and equitable and declaratory relief according to proof.

COUNT II

UNJUST ENRICHMENT

42. Plaintiff realleges and incorporates Paragraphs 1-41 as if fully set forth herein.

43. To the detriment of Plaintiff and the Class, Defendants benefited from and were unjustly enriched by Defendant's receipt of monies as a result of Plaintiff's and the other class members' purchases of Recalled Vehicles, due to Defendants' concealment and failure to disclose the risk of sudden unintended acceleration associated with the Recalled Vehicles.

44. Defendants had knowledge of, voluntarily accepted, and retained these benefits.

45. Defendants received these benefits to the detriment of Plaintiff and the Class.

46. It would be inequitable, unconscionable, unfair, unlawful, and unjust for Defendants to retain these ill-gotten benefits.

47. As a result of Defendant's unjust enrichment, Plaintiff and the Class are entitled to restitution and disgorgement in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself and all others similarly

TOY-RQ-05E-00009158

situated, prays for judgment as requested above against Defendant and further prays for:

A. An order certifying the class proposed herein and appointing Plaintiff and her counsel to represent the class;

B. Enter judgment in favor of Plaintiff and the class and against Defendants Toyota Motor Company, Toyota Motor Engineering & Manufacturing North America, Inc. and Toyota Motor Sales, U.S.A., Inc.;

C. Award Plaintiff and the class members restitution, disgorgement, actual, statutory and punitive damages, and attorney fees and costs, including pre-judgment and post-judgment interest thereon;

D. Enter a temporary, preliminary and permanent order for injunctive relief enjoining Defendants from continuing to engage in the business practices complained of herein;

E. Provide such further relief as the Court deems just and proper.

TOY-RQ-05E-00009159

JURY DEMAND

Plaintiff hereby demands a trial by jury.

Dated: February 4, 2010

Respectfully submitted,

/s/ DMN 1791
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TOY-RQ-05E-00009160

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

DIANE GUMBLE, on behalf of herself and all others similarly situated, Plaintiff, v. TOYOTA MOTOR CORPORATION, TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC. and TOYOTA MOTOR SALES U.S.A., INC. Defendants.	Case No.: _____ CLASS ACTION JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiff, DIANE GUMBLE, by and through her undersigned attorneys, bring this action on their own behalf and on behalf of a class of persons defined below against Defendants, Toyota Motor Corporation, Toyota Motor Engineering & Manufacturing North America, Inc. and Toyota Motor Sales, U.S.A., Inc. and seeks class status on behalf of herself and the class described below, and alleges upon information and belief as follows:

NATURE OF CASE

1. This class action concerns Defendants' manufacture and sale of

TOY-RQ-05E-00009161

defective automobiles which can suddenly and without warning accelerate out of control.

2. In the last four months, Defendants have instituted at least three voluntary recalls of these defective automobiles. The first recall occurred on September 29, 2009 and Defendants claimed that the sudden unintended acceleration problem was caused by defective floor mats. The second recall occurred in early January 2010 and expanded the first recall to include additional models within the scope of the first recall and again identifying the issue as a problem with floor mats in the automobiles. The third voluntary recall was announced on January 21, 2010, and included a different set of automobiles, some within the scope of the first two recalls, but others not. This third recall attributed the risk of sudden unintended acceleration to the "possibility that certain accelerator pedal mechanisms may, in rare instances, mechanically stick in a partially depressed position or return slowly to the idle position. . . ." In total, these three recalls encompass well over 4 million vehicles (the "Recalled Vehicles").

3. In conjunction with the third voluntary recall, Defendants publicly announced on January 26, 2010, that they would cease sales of eight models falling within the scope of the January 21, 2010, recall. Defendants did not state when sales of these eight models would resume, instead stating "[t]his action is necessary until a remedy is finalized."

4. Finally, Defendants have suggested actions that consumers owning a Recalled Vehicle should take to ameliorate the risk of sudden unintended

acceleration. With respect to vehicles falling within the floor mat recall of September 2009 and January 2010, Defendants have suggested consumers remove the floor mats and place them in the trunk pending Defendants developing a permanent fix. With respect to vehicles falling within the most recent January 21, 2010 recall, Defendants have suggested to consumers that "no action is required unless you feel you are experiencing this condition." Defendants suggest that consumers would have reason to believe their vehicle is experiencing "this condition," if the consumer has "noticed that [the] accelerator pedal is hard to depress, slow to return or is unsmooth during operation." Finally, Defendants have told consumers that if they experience any of these symptoms, "the vehicle should be driven to the nearest safe location, the engine shut off, and a Toyota dealer contacted for assistance."

5. On February 1, 2010, Defendants announced a repair for the Recalled Vehicles, but its efficacy remains to be seen.

THE PARTIES

6. Plaintiff is an individual currently residing in Lancaster, Pennsylvania who purchased a 2009 Toyota Camry.

7. Toyota Motor Corporation is a Japanese corporation with its headquarters in Toyota City, Aichi Prefecture, Japan and conducts and transacts business within this Judicial District.

8. Toyota Motor Engineering & Manufacturing North America, Inc. is a Kentucky corporation with its principal place of business at 25 Atlantic Avenue,

TOY-RQ-05E-00009163

Erlanger, Kentucky 41018 and conducts and transacts business within this Judicial District.

9. Toyota Motor Sales, U.S.A., Inc. is a California corporation with its principal place of business at 19001 South Western Avenue, Torrance, California 90501 and conducts and transacts business within this Judicial District.

10. The above-named Defendants are collectively referred to as the "Defendants"

JURISDICTION AND VENUE

11. This Court has subject matter jurisdiction over this action pursuant to the Class Action Fairness Act of 2005, 28 U.S.C.§ 1332(d), because it is a class action filed pursuant to Fed R. Civ. P. 23, Plaintiff and the class members are of diverse citizenship from Defendants, there are more than 100 class members, and the aggregate amount in controversy, excluding interest and costs, exceeds $5,000,000.

12. Venue is proper within this District under 28 U.S.C. § 1391 because a substantial part of the events giving rise to Plaintiff's and the other class members' claims occurred within this District.

SUMMARY OF FACTS COMMON TO ALL CLAIMS

13. Defendant Toyota Motor Corporation is one of the world's largest manufacturers of automobiles sold throughout the United States and the world.

14. Defendant Toyota Motor Engineering & Manufacturing North America, Inc. is a wholly-owned subsidiary of Toyota Motor Corporation and is responsible for

TOY-RQ-05E-00009164

Toyota's engineering design, development, R&D, and manufacturing activities in the United States, Canada and Mexico.

15. Defendant Toyota Motor Sales, U.S.A, Inc. is a wholly-owned subsidiary of Toyota Motor Corporation and is responsible for the sales, marketing, and distribution of motor vehicles manufactured by Toyota Motor Corporation throughout the United States.

16. For many years, automobiles manufactured and sold by Defendants have had a good reputation among consumers for safety and quality. Indeed, a December 23, 2009, newspaper article published by the *Los Angeles Times,* recognized that "[a] peerless reputation for quality and safety has helped Toyota become the world's largest automaker."

17. In recent years, however, Defendants have maintained this good reputation by deceiving consumers about safety problems it has had with many of its automobiles. Rather than being forthcoming about the nature and severity of manufacturing defects in their products, Defendants have intentionally failed to disclose and have made numerous false statements to consumers to hide known manufacturing defects in its automobiles.

18. For instance, as reported by the *Los Angeles Times* in its December 23, 2009, story:

> 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 claimed vehicles were defective.
>
> * * *

TOY-RQ-05E-00009165

> After Toyota this fall announced its biggest recall to address the sudden-acceleration problem, it insisted publically 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."

19. The National Highway Traffic Safety Administration ("NHTSA") did, in fact, issue a statement on November 4, 2009, "correcting inaccurate and misleading information put out by Toyota concerning a safety recall involving 3.8 million Toyota and Lexus vehicles." This statement indicated that:

> A press release put out by Toyota earlier this week about their recall of 3.8 million Toyota and Lexus vehicles inaccurately stated NHTSA had reached a conclusion "that no defect exists in vehicles in which the driver's floor mat is compatible with the vehicle and properly secured." NHTSA has told Toyota and consumers that removing the recalled floor mats is the most immediate way to address the safety risk and avoid the possibility of the accelerator becoming stuck. But it is simply an interim measure. This remedy does not correct the underlying defect in the vehicles involving the potential for entrapment of the accelerator by floor mats, which is related to accelerator and floor pan design. Safety is the number one priority for NHTSA and this is why officials are working with Toyota to find the right way to fix this very dangerous problem. This matter is not closed until Toyota has effectively addressed the defect by providing a suitable vehicle based solution.

20. Defendants' carefully crafted attempts to minimize any public revelation of the problems with its vehicles are further discussed in the December 23, 2009, *Los Angles 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. But it told regulators that no recall was necessary in the U.S.,

> despite having received numerous complaints from drivers. Toyota said a subsequent investigation led it to order a U.S. recall in 2005.
>
> * * *
>
> Although the sudden acceleration issue erupted publically only in recent months, it has been festering for nearly a decade. A computerized search of NHTSA records by the Times has found Toyota issued either previous recalls related to unintended acceleration since 2000, more than any other automaker.

21. Defendants have engaged in this pattern and practice of deception with respect to all of the Recalled Vehicles and the risk of sudden unintended acceleration with those automobiles.

22. Specifically, Defendants failed to fully and accurately inform consumers of the true magnitude of the risk of sudden unintended acceleration with the Recalled Vehicles. Prior to September 2009, Defendants completely failed to warn consumers of the sudden unintended acceleration risks it knew existed with the Recalled Vehicles. In conjunction with the September 2009 recall, Defendants also falsely indicated to consumers that the sole source of the risk of sudden unintended acceleration arose from potentially faulty floor mats when in fact Defendants knew of other potential risk factors, including but not limited to, mechanical design defects, problems with the electronic throttle control, the absence of a safety mechanism to cut fuel flow to the engine when the throttle is in the full open position but the brake pedal is fully depressed, or the "possibility that certain accelerator pedal mechanisms may, in rare instances, mechanically stick." Finally, in this final January 21, 2010, recall, Defendants have once again failed to fully

TOY-RQ-05E-00009167

inform consumers of the magnitude of the risk and its potential causes.

23. In addition, Defendants failed to adequately inform consumers of the risk of sudden unintended acceleration during the time period between the September 2009 recall and the January 2010 recall such that many consumers were duped into buying Toyota vehicles now within the scope of the Recalled Vehicles without having been told of the risk of sudden unintended acceleration inherent in those vehicles.

NAMED PLAINTIFF'S FACTUAL ALLEGATIONS

24. Plaintiff purchased a 2009 Toyota Camry. Plaintiff's vehicle falls within both the September 2009 recall for potentially defective floor mats and the January 21, 2010, recall for the risk that the accelerator pedal mechanism may mechanically stick.

25. On one occasion since her purchase, the accelerator on her 2009 Toyota Camry became stuck for a brief period.

26. Plaintiff is nervous about driving her Toyota until the issue is corrected, but in the absence of assistance from Defendants in defraying the costs associated with obtaining alternative transportation, is unable to do so.

CLASS ACTION ALLEGATIONS

Numerosity of the Class

27. Pursuant to Federal Rule of Civil Procedure 23(b)(3), Plaintiff brings this action on behalf of herself and the members of the following proposed Class:

> All Pennsylvania residents who own a Recalled Vehicle (i.e. a vehicle subject to the voluntary recalls announced

by the Toyota Defendants in September 2009 and January 2010).

The Class excludes all federal, state, and local governmental entities, and Defendants, their officers, directors, board members or employees; any entity in which Defendants have a controlling interest; and affiliates, legal representatives, attorneys, heirs or assigns of Defendants.

28. Members of the proposed Class are so numerous that the individual joinder of all absent class members is impracticable. While the exact number of class members is unknown to Plaintiff at this time, it is ascertainable by appropriate discovery. Plaintiff is informed and believes based upon the nature and the trade and commerce involved, that the proposed Class includes thousands of consumers.

29. Plaintiff and the class are claiming damages and injunctive relief based upon the misconduct alleged herein including Defendants' manufacture and sale of vehicles with a risk of sudden unintended acceleration and Defendants' deceptive and misleading conduct in failing to inform consumers of the scope and causes of that risk.

Predominance of Common Questions of Law and Fact

30. Common questions of law or fact predominate over any questions affecting only individual members of the Class. Common questions include, but are not limited to, the following:

a) Whether Defendants have manufactured and sold vehicles with a risk of sudden unintended acceleration;

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b) Whether Defendants knew of the risk of sudden unintended acceleration present in Recalled Vehicles and whether Defendants concealed that risk from consumers;

c) Whether Defendants concealed information regarding the scope and cause of the risk of unintended sudden acceleration in Recalled Vehicles.

d) Whether Defendants engaged in unfair or deceptive trade or business practices in connection with the manufacture, sale, and marketing of Recalled Vehicles;

e) Whether Defendants concealed, suppressed, or omitted material facts when they failed to reveal to consumers that any of the Recalled Vehicles had a risk of sudden unintended acceleration or when they made statements to consumers regarding the potential causes of the risk of sudden unintended acceleration;

f) What steps Defendants have taken to remedy the risk of sudden unintended acceleration in Recalled Vehicles;

g) To what extent, and in what amounts, was Plaintiff and the class damaged by Defendants' unlawful actions; and

h) Whether Defendants have any affirmative defenses and if so, whether those defenses are common to all class members and are valid.

TOY-RQ-05E-00009170

Typicality

31. Plaintiff in this proposed class action asserts claims typical of those of the individual members of the proposed Class. The interests of Plaintiff are consistent with, and not antagonistic to, those of other members of the Class, and Defendant has no defenses unique to Plaintiff.

Adequacy of Representation

32. Plaintiff is a member of the Class and will fairly and adequately assert and protect the interests of the Class. Plaintiff has retained attorneys who are experienced in class action litigation.

Superiority

33. A Class action is an appropriate method for the fair and efficient adjudication of this controversy and Class action treatment is superior to the alternatives. Class treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently and without the duplication of effort and expense that numerous individual actions would entail. No difficulties are likely to be encountered in the management of this Class action that would preclude its maintenance as a Class action, and no superior alternative exists for the fair and efficient adjudication of this controversy.

COUNT I

BREACH OF IMPLIED WARRANTY

34. Plaintiff realleges and incorporates Paragraphs 1-33 as if fully set

TOY-RQ-05E-00009171

forth herein.

35. At the times Defendants marketed, sold, and distributed automobiles for use by Plaintiff and Class Members, Defendants knew of the use for which the Recalled Vehicles were intended and impliedly warranted the product to be of a certain quality.

36. Defendants embarked on and carried out a common scheme of marketing and selling automobiles by a falsely and deceptively representing that the vehicles were safe and without defects, specifically, that the accelerator pedal of the Recalled Vehicles was fit for its intended use..

37. Said representations and warranties aforementioned are false, misleading, and inaccurate in that the recalled automobiles are unsafe and unreasonably dangerous due to the defective accelerator pedals.

38. The Recalled Vehicles were defective, unmerchantable, and unfit for ordinary use when sold.

39. The damages in question arose from the reasonably anticipated use of the product in question.

40. Defendants breached the implied warranties of merchantability when its recalled automobiles were sold to Plaintiff and class members, in that the accelerator pedals are defective and have otherwise failed to function as represented and intended.

41. As a direct and proximate cause of Defendants' breach of the implied warranty of merchantability, Plaintiff and Class Members have sustained and will

continue to sustain the loss of use of their vehicles, severe emotional distress, economic losses and consequential damages, and are therefore entitled to compensatory damages and equitable and declaratory relief according to proof.

COUNT II

UNJUST ENRICHMENT

42. Plaintiff realleges and incorporates Paragraphs 1-41 as if fully set forth herein.

43. To the detriment of Plaintiff and the Class, Defendants benefited from and were unjustly enriched by Defendant's receipt of monies as a result of Plaintiff's and the other class members' purchases of Recalled Vehicles, due to Defendants' concealment and failure to disclose the risk of sudden unintended acceleration associated with the Recalled Vehicles.

44. Defendants had knowledge of, voluntarily accepted, and retained these benefits.

45. Defendants received these benefits to the detriment of Plaintiff and the Class.

46. It would be inequitable, unconscionable, unfair, unlawful, and unjust for Defendants to retain these ill-gotten benefits.

47. As a result of Defendant's unjust enrichment, Plaintiff and the Class are entitled to restitution and disgorgement in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself and all others similarly

TOY-RQ-05E-00009173

situated, prays for judgment as requested above against Defendant and further prays for:

A. An order certifying the class proposed herein and appointing Plaintiff and her counsel to represent the class;

B. Enter judgment in favor of Plaintiff and the class and against Defendants Toyota Motor Company, Toyota Motor Engineering & Manufacturing North America, Inc. and Toyota Motor Sales, U.S.A., Inc.;

C. Award Plaintiff and the class members restitution, disgorgement, actual, statutory and punitive damages, and attorney fees and costs, including pre-judgment and post-judgment interest thereon;

D. Enter a temporary, preliminary and permanent order for injunctive relief enjoining Defendants from continuing to engage in the business practices complained of herein;

E. Provide such further relief as the Court deems just and proper.

TOY-RQ-05E-00009174

JURY DEMAND

Plaintiff hereby demands a trial by jury.

Dated: February 4, 2010

Respectfully submitted,

/s/ DMN 1791
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TOY-RQ-05E-00009175

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

DIANE GUMBLE, on behalf of herself and all others similarly situated, Plaintiff, v. TOYOTA MOTOR CORPORATION, TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC. and TOYOTA MOTOR SALES U.S.A., INC. Defendants.	Case No.: _____ CLASS ACTION JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiff, DIANE GUMBLE, by and through her undersigned attorneys, bring this action on their own behalf and on behalf of a class of persons defined below against Defendants, Toyota Motor Corporation, Toyota Motor Engineering & Manufacturing North America, Inc. and Toyota Motor Sales, U.S.A., Inc. and seeks class status on behalf of herself and the class described below, and alleges upon information and belief as follows:

NATURE OF CASE

1. This class action concerns Defendants' manufacture and sale of

TOY-RQ-05E-00009176

defective automobiles which can suddenly and without warning accelerate out of control.

2. In the last four months, Defendants have instituted at least three voluntary recalls of these defective automobiles. The first recall occurred on September 29, 2009 and Defendants claimed that the sudden unintended acceleration problem was caused by defective floor mats. The second recall occurred in early January 2010 and expanded the first recall to include additional models within the scope of the first recall and again identifying the issue as a problem with floor mats in the automobiles. The third voluntary recall was announced on January 21, 2010, and included a different set of automobiles, some within the scope of the first two recalls, but others not. This third recall attributed the risk of sudden unintended acceleration to the "possibility that certain accelerator pedal mechanisms may, in rare instances, mechanically stick in a partially depressed position or return slowly to the idle position. . . ." In total, these three recalls encompass well over 4 million vehicles (the "Recalled Vehicles").

3. In conjunction with the third voluntary recall, Defendants publicly announced on January 26, 2010, that they would cease sales of eight models falling within the scope of the January 21, 2010, recall. Defendants did not state when sales of these eight models would resume, instead stating "[t]his action is necessary until a remedy is finalized."

4. Finally, Defendants have suggested actions that consumers owning a Recalled Vehicle should take to ameliorate the risk of sudden unintended

TOY-RQ-05E-00009177

acceleration. With respect to vehicles falling within the floor mat recall of September 2009 and January 2010, Defendants have suggested consumers remove the floor mats and place them in the trunk pending Defendants developing a permanent fix. With respect to vehicles falling within the most recent January 21, 2010 recall, Defendants have suggested to consumers that "no action is required unless you feel you are experiencing this condition." Defendants suggest that consumers would have reason to believe their vehicle is experiencing "this condition," if the consumer has "noticed that [the] accelerator pedal is hard to depress, slow to return or is unsmooth during operation." Finally, Defendants have told consumers that if they experience any of these symptoms, "the vehicle should be driven to the nearest safe location, the engine shut off, and a Toyota dealer contacted for assistance."

5. On February 1, 2010, Defendants announced a repair for the Recalled Vehicles, but its efficacy remains to be seen.

THE PARTIES

6. Plaintiff is an individual currently residing in Lancaster, Pennsylvania who purchased a 2009 Toyota Camry.

7. Toyota Motor Corporation is a Japanese corporation with its headquarters in Toyota City, Aichi Prefecture, Japan and conducts and transacts business within this Judicial District.

8. Toyota Motor Engineering & Manufacturing North America, Inc. is a Kentucky corporation with its principal place of business at 25 Atlantic Avenue,

TOY-RQ-05E-00009178

Erlanger, Kentucky 41018 and conducts and transacts business within this Judicial District.

9. Toyota Motor Sales, U.S.A., Inc. is a California corporation with its principal place of business at 19001 South Western Avenue, Torrance, California 90501 and conducts and transacts business within this Judicial District.

10. The above-named Defendants are collectively referred to as the "Defendants"

JURISDICTION AND VENUE

11. This Court has subject matter jurisdiction over this action pursuant to the Class Action Fairness Act of 2005, 28 U.S.C.§ 1332(d), because it is a class action filed pursuant to Fed R. Civ. P. 23, Plaintiff and the class members are of diverse citizenship from Defendants, there are more than 100 class members, and the aggregate amount in controversy, excluding interest and costs, exceeds $5,000,000.

12. Venue is proper within this District under 28 U.S.C. § 1391 because a substantial part of the events giving rise to Plaintiff's and the other class members' claims occurred within this District.

SUMMARY OF FACTS COMMON TO ALL CLAIMS

13. Defendant Toyota Motor Corporation is one of the world's largest manufacturers of automobiles sold throughout the United States and the world.

14. Defendant Toyota Motor Engineering & Manufacturing North America, Inc. is a wholly-owned subsidiary of Toyota Motor Corporation and is responsible for

TOY-RQ-05E-00009179

Toyota's engineering design, development, R&D, and manufacturing activities in the United States, Canada and Mexico.

15. Defendant Toyota Motor Sales, U.S.A, Inc. is a wholly-owned subsidiary of Toyota Motor Corporation and is responsible for the sales, marketing, and distribution of motor vehicles manufactured by Toyota Motor Corporation throughout the United States.

16. For many years, automobiles manufactured and sold by Defendants have had a good reputation among consumers for safety and quality. Indeed, a December 23, 2009, newspaper article published by the *Los Angeles Times,* recognized that "[a] peerless reputation for quality and safety has helped Toyota become the world's largest automaker."

17. In recent years, however, Defendants have maintained this good reputation by deceiving consumers about safety problems it has had with many of its automobiles. Rather than being forthcoming about the nature and severity of manufacturing defects in their products, Defendants have intentionally failed to disclose and have made numerous false statements to consumers to hide known manufacturing defects in its automobiles.

18. For instance, as reported by the *Los Angeles Times* in its December 23, 2009, story:

> 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 claimed vehicles were defective.
>
> * * *

TOY-RQ-05E-00009180

> After Toyota this fall announced its biggest recall to address the sudden-acceleration problem, it insisted publically 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."

19. The National Highway Traffic Safety Administration ("NHTSA") did, in fact, issue a statement on November 4, 2009, "correcting inaccurate and misleading information put out by Toyota concerning a safety recall involving 3.8 million Toyota and Lexus vehicles." This statement indicated that:

> A press release put out by Toyota earlier this week about their recall of 3.8 million Toyota and Lexus vehicles inaccurately stated NHTSA had reached a conclusion "that no defect exists in vehicles in which the driver's floor mat is compatible with the vehicle and properly secured." NHTSA has told Toyota and consumers that removing the recalled floor mats is the most immediate way to address the safety risk and avoid the possibility of the accelerator becoming stuck. But it is simply an interim measure. This remedy does not correct the underlying defect in the vehicles involving the potential for entrapment of the accelerator by floor mats, which is related to accelerator and floor pan design. Safety is the number one priority for NHTSA and this is why officials are working with Toyota to find the right way to fix this very dangerous problem. This matter is not closed until Toyota has effectively addressed the defect by providing a suitable vehicle based solution.

20. Defendants' carefully crafted attempts to minimize any public revelation of the problems with its vehicles are further discussed in the December 23, 2009, *Los Angles 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. But it told regulators that no recall was necessary in the U.S.,

TOY-RQ-05E-00009181

> despite having received numerous complaints from drivers. Toyota said a subsequent investigation led it to order a U.S. recall in 2005.
>
> * * *
>
> Although the sudden acceleration issue erupted publically only in recent months, it has been festering for nearly a decade. A computerized search of NHTSA records by the Times has found Toyota issued either previous recalls related to unintended acceleration since 2000, more than any other automaker.

21. Defendants have engaged in this pattern and practice of deception with respect to all of the Recalled Vehicles and the risk of sudden unintended acceleration with those automobiles.

22. Specifically, Defendants failed to fully and accurately inform consumers of the true magnitude of the risk of sudden unintended acceleration with the Recalled Vehicles. Prior to September 2009, Defendants completely failed to warn consumers of the sudden unintended acceleration risks it knew existed with the Recalled Vehicles. In conjunction with the September 2009 recall, Defendants also falsely indicated to consumers that the sole source of the risk of sudden unintended acceleration arose from potentially faulty floor mats when in fact Defendants knew of other potential risk factors, including but not limited to, mechanical design defects, problems with the electronic throttle control, the absence of a safety mechanism to cut fuel flow to the engine when the throttle is in the full open position but the brake pedal is fully depressed, or the "possibility that certain accelerator pedal mechanisms may, in rare instances, mechanically stick." Finally, in this final January 21, 2010, recall, Defendants have once again failed to fully

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inform consumers of the magnitude of the risk and its potential causes.

23. In addition, Defendants failed to adequately inform consumers of the risk of sudden unintended acceleration during the time period between the September 2009 recall and the January 2010 recall such that many consumers were duped into buying Toyota vehicles now within the scope of the Recalled Vehicles without having been told of the risk of sudden unintended acceleration inherent in those vehicles.

NAMED PLAINTIFF'S FACTUAL ALLEGATIONS

24. Plaintiff purchased a 2009 Toyota Camry. Plaintiff's vehicle falls within both the September 2009 recall for potentially defective floor mats and the January 21, 2010, recall for the risk that the accelerator pedal mechanism may mechanically stick.

25. On one occasion since her purchase, the accelerator on her 2009 Toyota Camry became stuck for a brief period.

26. Plaintiff is nervous about driving her Toyota until the issue is corrected, but in the absence of assistance from Defendants in defraying the costs associated with obtaining alternative transportation, is unable to do so.

CLASS ACTION ALLEGATIONS

Numerosity of the Class

27. Pursuant to Federal Rule of Civil Procedure 23(b)(3), Plaintiff brings this action on behalf of herself and the members of the following proposed Class:

> All Pennsylvania residents who own a Recalled Vehicle (i.e. a vehicle subject to the voluntary recalls announced

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by the Toyota Defendants in September 2009 and January 2010).

The Class excludes all federal, state, and local governmental entities, and Defendants, their officers, directors, board members or employees; any entity in which Defendants have a controlling interest; and affiliates, legal representatives, attorneys, heirs or assigns of Defendants.

28. Members of the proposed Class are so numerous that the individual joinder of all absent class members is impracticable. While the exact number of class members is unknown to Plaintiff at this time, it is ascertainable by appropriate discovery. Plaintiff is informed and believes based upon the nature and the trade and commerce involved, that the proposed Class includes thousands of consumers.

29. Plaintiff and the class are claiming damages and injunctive relief based upon the misconduct alleged herein including Defendants' manufacture and sale of vehicles with a risk of sudden unintended acceleration and Defendants' deceptive and misleading conduct in failing to inform consumers of the scope and causes of that risk.

Predominance of Common Questions of Law and Fact

30. Common questions of law or fact predominate over any questions affecting only individual members of the Class. Common questions include, but are not limited to, the following:

a) Whether Defendants have manufactured and sold vehicles with a risk of sudden unintended acceleration;

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b) Whether Defendants knew of the risk of sudden unintended acceleration present in Recalled Vehicles and whether Defendants concealed that risk from consumers;

c) Whether Defendants concealed information regarding the scope and cause of the risk of unintended sudden acceleration in Recalled Vehicles.

d) Whether Defendants engaged in unfair or deceptive trade or business practices in connection with the manufacture, sale, and marketing of Recalled Vehicles;

e) Whether Defendants concealed, suppressed, or omitted material facts when they failed to reveal to consumers that any of the Recalled Vehicles had a risk of sudden unintended acceleration or when they made statements to consumers regarding the potential causes of the risk of sudden unintended acceleration;

f) What steps Defendants have taken to remedy the risk of sudden unintended acceleration in Recalled Vehicles;

g) To what extent, and in what amounts, was Plaintiff and the class damaged by Defendants' unlawful actions; and

h) Whether Defendants have any affirmative defenses and if so, whether those defenses are common to all class members and are valid.

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Typicality

31. Plaintiff in this proposed class action asserts claims typical of those of the individual members of the proposed Class. The interests of Plaintiff are consistent with, and not antagonistic to, those of other members of the Class, and Defendant has no defenses unique to Plaintiff.

Adequacy of Representation

32. Plaintiff is a member of the Class and will fairly and adequately assert and protect the interests of the Class. Plaintiff has retained attorneys who are experienced in class action litigation.

Superiority

33. A Class action is an appropriate method for the fair and efficient adjudication of this controversy and Class action treatment is superior to the alternatives. Class treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently and without the duplication of effort and expense that numerous individual actions would entail. No difficulties are likely to be encountered in the management of this Class action that would preclude its maintenance as a Class action, and no superior alternative exists for the fair and efficient adjudication of this controversy.

COUNT I

BREACH OF IMPLIED WARRANTY

34. Plaintiff realleges and incorporates Paragraphs 1-33 as if fully set

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forth herein.

35. At the times Defendants marketed, sold, and distributed automobiles for use by Plaintiff and Class Members, Defendants knew of the use for which the Recalled Vehicles were intended and impliedly warranted the product to be of a certain quality.

36. Defendants embarked on and carried out a common scheme of marketing and selling automobiles by a falsely and deceptively representing that the vehicles were safe and without defects, specifically, that the accelerator pedal of the Recalled Vehicles was fit for its intended use.

37. Said representations and warranties aforementioned are false, misleading, and inaccurate in that the recalled automobiles are unsafe and unreasonably dangerous due to the defective accelerator pedals.

38. The Recalled Vehicles were defective, unmerchantable, and unfit for ordinary use when sold.

39. The damages in question arose from the reasonably anticipated use of the product in question.

40. Defendants breached the implied warranties of merchantability when its recalled automobiles were sold to Plaintiff and class members, in that the accelerator pedals are defective and have otherwise failed to function as represented and intended.

41. As a direct and proximate cause of Defendants' breach of the implied warranty of merchantability, Plaintiff and Class Members have sustained and will

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continue to sustain the loss of use of their vehicles, severe emotional distress, economic losses and consequential damages, and are therefore entitled to compensatory damages and equitable and declaratory relief according to proof.

COUNT II

UNJUST ENRICHMENT

42. Plaintiff realleges and incorporates Paragraphs 1-41 as if fully set forth herein.

43. To the detriment of Plaintiff and the Class, Defendants benefited from and were unjustly enriched by Defendant's receipt of monies as a result of Plaintiff's and the other class members' purchases of Recalled Vehicles, due to Defendants' concealment and failure to disclose the risk of sudden unintended acceleration associated with the Recalled Vehicles.

44. Defendants had knowledge of, voluntarily accepted, and retained these benefits.

45. Defendants received these benefits to the detriment of Plaintiff and the Class.

46. It would be inequitable, unconscionable, unfair, unlawful, and unjust for Defendants to retain these ill-gotten benefits.

47. As a result of Defendant's unjust enrichment, Plaintiff and the Class are entitled to restitution and disgorgement in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself and all others similarly

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situated, prays for judgment as requested above against Defendant and further prays for:

A. An order certifying the class proposed herein and appointing Plaintiff and her counsel to represent the class;

B. Enter judgment in favor of Plaintiff and the class and against Defendants Toyota Motor Company, Toyota Motor Engineering & Manufacturing North America, Inc. and Toyota Motor Sales, U.S.A., Inc.;

C. Award Plaintiff and the class members restitution, disgorgement, actual, statutory and punitive damages, and attorney fees and costs, including pre-judgment and post-judgment interest thereon;

D. Enter a temporary, preliminary and permanent order for injunctive relief enjoining Defendants from continuing to engage in the business practices complained of herein;

E. Provide such further relief as the Court deems just and proper.

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JURY DEMAND

Plaintiff hereby demands a trial by jury.

Dated: February 4, 2010

Respectfully submitted,

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TOY-RQ-05E-00009190

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Michael E. Kunz
Clerk of Court

NOTICE OF RIGHT TO CONSENT TO EXERCISE OF JURISDICTION BY A UNITED STATES MAGISTRATE JUDGE

The district judges of this Court have found that the United States magistrate judges are experienced judicial officers who have regularly handled the disposition of hundreds of civil cases through motions and trials and are fully qualified to try any civil cases arising before this Court.

In accordance with the provisions of 28 U.S.C. §636(c), you are hereby notified that pursuant to Local Rules 72.1(h), the United States magistrate judges of this district, in addition to their other duties, may, upon the consent of all the parties in a civil case, conduct any or all proceedings in a civil case, including a jury or non-jury trial, and order the entry of a final judgment. Appropriate consent forms for this purpose are available from the clerk of court.

Your decision to consent, or not to consent, to the referral of your case to a United States magistrate judge for disposition is entirely voluntary and should be communicated solely to the clerk of the district court. Only if all the parties in the case consent to the reference to a magistrate judge will either the judge or magistrate judge be informed of your decision. **If you decide to consent, your case will receive a date certain for trial.**

No action eligible for arbitration will be referred by consent of the parties until the arbitration has been concluded and trial *de novo* demanded pursuant to Local Rules 53.2, Paragraph 7. The Court may, for good cause shown, or on its own motion, or under extraordinary circumstances shown by any party, vacate a reference of a civil matter to a magistrate judge.

When a case is referred to a magistrate judge for all further proceedings, including the entry of final judgment, the final judgment shall be appealed directly to the Court of Appeals for the Third Circuit in the same manner as an appeal from any other judgment of a district court.

Nothing herein shall be construed to be a limitation of any party's right to seek review by the Supreme Court of the United States.

HARVEY BARTLE III
CHIEF JUDGE

MICHAEL E. KUNZ
CLERK OF COURT

Civ 635(1/06)

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February 22, 2010

Via Facsimile (202) 502-2888 and Federal Express
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FILED
MAR 02 [illegible]
MICHAEL E. KUNZ, Clerk
By_____Dep. Clerk

In Re: Toyota Motor Corp. Defective Gas Pedal Products Liability Litigation
MDL No. 2151

Dear Mr. Lüthi:

We were informed by Teresa Bishop of the Panel staff, that our motion papers were submitted too late to be included on the same hearing session as the previous motions filed on February 4, 2010 and February 5, 2010. Please file our motion papers as a "Response".

Sincerely,

Benjamin L. Bailey

BLB/tsc

367983

BEFORE THE JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION

IN RE: TOYOTA UNINTENDED ACCELERATION PRODUCT LIABILITY LITIGATION	)	MDL Docket No. 2151

CERTIFICATE OF SERVICE

I hereby certify that I have this 22nd day of February 2010 caused to be served a copy of the foregoing Letter to Jeffery N. Lüthi dated February 22, 2001 by United States mail with postage paid thereon to parties listed below:

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BEFORE THE JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION

IN RE: TOYOTA UNINTENDED ACCELERATION PRODUCT LIABILITY LITIGATION	)	MDL Docket No. 2151
	)	10-521

MOTION TO TRANSFER TO THE SOUTHERN DISTRICT OF WEST VIRGINIA AND OPPOSITION TO VARIOUS OTHER TRANSFER MOTIONS

The *Graves* Plaintiffs respectfully ask this panel to transfer multiple class actions now pending against Toyota Motor North America and its related entities to the Southern District of West Virginia for coordinated and consolidated pretrial proceedings, pursuant to 28 USC § 1407. Each of these cases involves claims that Toyota markets and has marketed vehicles with a propensity for sudden and unintended acceleration, without an adequate failsafe or brake override.

For the reasons set forth more fully in the attached Memorandum, the Graves Plaintiffs urge that these matters shall be consolidated, believe that the Southern District of West Virginia is the most appropriate transferee court, and conversely – submit that the other venues suggested as transferee courts are not as appropriate or convenient for all parties. A list of the cases known to movants as of February 18th is attached to the Memorandum.

Respectfully submitted,

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BEFORE THE JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION

IN RE: TOYOTA UNINTENDED ACCELERATION PRODUCT LIABILITY LITIGATION	)	MDL Docket No. 2151

MEMORANDUM IN SUPPORT OF MOTION
TO TRANSFER TO THE SOUTHERN DISTRICT OF WEST VIRGINIA
AND OPPOSITION TO VARIOUS OTHER TRANSFER MOTIONS

Michael Graves, Michael C. Graves, and Jeff Mullins, (the "*Graves* Plaintiffs"), by counsel, respectfully move the Panel for an Order transferring the actions listed on the attached Schedule of Actions to the Southern District of West Virginia where their case is pending for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. §1407 for the following reasons:

- The Southern District of West Virginia in general, and Chief Judge Goodwin in particular, have the least docket pressure of any forum selected by any party, thus lending to an efficient and expeditious resolution of the case.

- Toyota, through its subsidiary Toyota Motor Manufacturing West Virginia, Inc., a West Virginia Corporation, maintains a corporate and physical presence within the Southern District of West Virginia.

- The *Graves* case (*Michael Graves, et al. v. Toyota Motor Manufacturing, West Virginia, Inc., et al.* No. 2:09-cv-01247 (S.D. W. Va.)), filed November 20, 2009, was one of the first filed class actions.

- Counsel for the Graves Plaintiffs are also counsel in *Alberto v. Toyota, et al,* a wrongful death case pending in state court in Flint, Michigan since August 14, 2009, have been investigating these claims since early 2009, and have already begun depositions and written discovery in that matter.

For all these reasons, and others addressed below, the Southern District of West Virginia is a most convenient and appropriate forum for transfer.

INTRODUCTION

There are currently several dozen separate class actions pending in at least ten different districts seeking redress for Toyota's deceptive marketing of defective vehicles and the number increases every day. *See Schedule of Actions*, Ex. 1. At a minimum, the Panel currently has before it motions seeking to transfer the consolidated actions to the Central District of California, Eastern District of Kentucky, Southern District of Florida, District of New Jersey, and Eastern District of Pennsylvania. Other Motions will no doubt be filed.

The *Graves* Plaintiffs and their counsel currently represent five of the actions filed, nine of the named plaintiffs, and seven of the law firms involved.[1] The *Graves* Plaintiffs agree that coordinated or consolidated pretrial proceedings are appropriate. For the reasons set forth below, however, the *Graves* Plaintiffs respectfully suggest that the Southern District of West Virginia is the most appropriate transferee district.

ARGUMENT

I. TRANSFER AND COORDINATION PURSUANT TO 28 U.S.C. § 1407 IS APPROPRIATE.

There should be little dispute that transfer and pretrial coordination of the various class actions is appropriate. Transfer and coordination are appropriate upon a finding that (1) the

[1] Linda Alford Wooten, plaintiff in the action pending in the United States District court for the District of South Carolina, *Wooten v. Toyota Motor North America, Inc., et al.*, Civil Action No. 3:10-cv-00279-MJP; Elaine Byrnes, plaintiff in the action pending in the Central District of California, *Byrnes v. Toyota Motor North America, Inc., et al*, Civil Action No.CV10-0947-GW; Kevin P. Fogarty, Barbara Jackson and Alex Farrugia, plaintiffs in the action pending in the United States District Court for the Eastern District of New York, Civil Action No. 10-0542; and Daniel D. Lee, plaintiff in the action pending in the Northern District of Ohio, *Lee v. Toyota Motor North America, et al.*, Civil Action No. 3:10-cv-00280, also support transfer to the Southern District of West Virginia

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cases "involve[] one or more common questions of fact," (2) the transfers would further "the convenience of the parties and witnesses," and (3) the transfers "will promote the just and efficient conduct of such actions." 28 U.S.C. § 1407(a). All of the subject actions satisfy these criteria.

All of the Toyota class actions known to the undersigned contain allegations that Toyota Motor Corporation and its affiliated companies wrongfully marketed vehicles which were unreasonably dangerous, because of a propensity of the vehicles to experience sudden unintended acceleration events and the absence of a failsafe or brake override mechanism. Where such common questions exist, transfer and coordination is necessary to eliminate the risk of inconsistent rulings. *See In re First Nat'l Bank, Heavener, Okla. Sec. Litig.*, 451 F.Supp. 995, 997 (J.P.M.L. 1978) (holding that transfer and consolidation was necessary to "eliminate the possibility of inconsistent pre-trial rulings").

Consolidation will also promote a more efficient resolution of the complex issues of law and fact presented in these cases. The various actions couple the engineering issues surrounding the potential defects in Toyota's Electronic Control System equipped vehicles, their floormats and their pedals, with complex legal issues surrounding Toyota's marketing of these vehicles and the impacts of massive and ongoing recalls of Toyota Vehicles. Each case asks what Toyota knew of these issues and when it knew.

Without consolidation, discovery on these common factual and legal issues will be needlessly time consuming, inefficient and repetitive. *See Transfer Under Section 1407 of the Judicial Code - Factors Influencing The Choice of a Transferee Forum and a Transferee Judge*, Wright & Miller, 15 Fed. Prac. & Proc. Juris. 3d §3864 (West 2007) ("In particularly large complex multidistrict class actions, it has been argued that it is especially important to order

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pretrial consolidation; this will enable a single judge to restructure 'disjointed actions into what can be termed a 'super class action' [which] may be the only form in which the litigation can be handled by the judicial system"). While there is little doubt that the multiple class actions should be consolidated, there remains a question as to which forum should receive the consolidated class actions.[2] For the reasons set forth below, the *Graves* Plaintiffs suggest that the Southern District of West Virginia should be selected as the transferee district.

II. THE SOUTHERN DISTRICT OF WEST VIRGINIA IS THE MOST APPROPRIATE TRANSFEREE DISTRICT.

The *Graves* Plaintiffs represent a class of consumers who, among other things, seek to compel Toyota to fit a brake override or similar failsafe in their vehicles equipped with ETCS-i and also seek damages. The defect alleged in the class actions is currently blamed for several automotive fatalities throughout the country. In fact, in December, 2009, Toyota voluntary suspended the sales of eight of its most popular vehicles, purportedly to allow Toyota to address safety issues surrounding these vehicles. Toyota has recalled millions of its vehicles for reasons relating to their floormats and pedals. As recently as February 17, 2010 Toyota publicly announced its intentions to begin installing brake overrides on certain vehicles.

Toyota's own unwillingness to continue selling such vehicles until a fail-safe is installed in them is a stark illustration of the urgency presented by this issue. Because the class actions involve such an urgent safety issue, the Panel's primary concern in transferring the actions should center upon the transferee district's ability to promptly and efficiently resolve the class members' demand for installation of a failsafe or other remedy.

The Southern District of West Virginia is such a forum. The *Graves* action is further advanced than most if not all the other class cases, with briefing underway on Toyota's motion to

[2] The *Graves* Plaintiffs express no opinion as to whether individual, personal injury cases should be consolidated.

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dismiss. Moreover, this is a not a case in which one district stands out as a geographic focal point for the litigation. To the contrary, the various class actions are dispersed in courts across the United States. Toyota, in fact, has operations in many parts of the United States, including West Virginia, Kentucky, New York, Washington, DC, and California. In past cases, when the Panel has faced such a diverse range of forums, it has selected the forum that is able to most efficiently resolve the consolidated cases. *See, e.g., In Re Digitek® Product Liability Litigation*, 2:08-md-01968 (S.D.W. Va.), MDL No. 1968; *Serzone Products Liability Litigation*, 2:02-md-01477 (S.D.W. Va.), MDL No. 1477; *Maytag Corp. Neptune Washer Products Liability Litigation*, 2:04-md-10617 (S.D.W. Va.), MDL No. 1617. (consolidating 12 actions and 25 potential tag-along actions, pending in multiple districts).

> Given the geographic dispersal of constituent actions and potential tag-along actions, no district stands out as the geographic focal point for this nationwide docket. Thus, we have searched for a transferee judge with the time and experience to steer this litigation on a prudent course and sitting in a district with the capacity to handle this litigation.

Id. at p. 1367.

The Panel has previously recognized the Southern District of West Virginia as an appropriate forum for consolidated cases and one that "is well equipped with the resources that this docket is likely to require." *See Maytag Corp. Neptune Washer Products Liability Litigation,* 333 F.Supp.2d 1382, 1383 (J.P.M.L. 2004). The Honorable Joseph R. Goodwin, who presided over the *Maytag* case, currently presides over *Graves.*. Judge Goodwin is extremely well suited to handle this case, which presents significant complexity. Judge Goodwin has extensive experience with product liability cases, and as a MDL transferee Judge. See, e.g. *In Re Digitek® Product Liability Litigation (MDL No. 1968); Serzone Products Liability (MDL No. 1477); Maytag Corp. Neptune Washer Products Liability (MDL No. 1617).* Moreover, upon

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information and belief, Judge Goodwin is no longer presiding over any criminal cases, which will make available additional judicial resources for utilization on this case.

The Southern District of West Virginia also presents a more favorable docket for the consolidated cases. The most recent Federal Court Management Statistics show that the Southern District of West Virginia saw a total of only 1,875 filings in 2008. *See S. D. W. Va. Judicial Case Load Profile*, attached as Ex. 2. Spread among five judgeships at that time, these were distributed at a rate of 306 civil cases per judge. *Id.* The majority of these cases are listed as Personal Injury/or Product Liability. The median time from filing to disposition of civil cases was 9.2 months and only 50 civil cases, representing 3.3 percent of civil cases in the district, were over three years old. *Id.* These numbers demonstrate that the Southern District of West Virginia has sufficient docket resources to devote to the consolidated cases. Since these statistics were compiled in 2008, the Southern District of West Virginia has seen the addition of Honorable Irene C. Berger as a district judge, making it reasonable to anticipate that the docket load in the Southern District of West Virginia will be even further reduced.

The Panel has traditionally placed significant weight on docket pressure when making close decisions, and has recognized that the transferee district having the lightest docket is best suited to expeditiously handle cases. *In re Eastern Airlines, Inc. Flight Attendant Weight Program Litigation*, 391 F.Supp. 763, 764-65 (J.P.M.L. 1975) (transferring class action from District of Massachusetts to Eastern District of Virginia on grounds that the latter had a significantly lighter civil action docket). This rationale supports the Southern District of West Virginia as the most appropriate transferee district for this action.

Geography supports West Virginia, as well. The Southern District presents a direct connection to the controversy, which adds convenience to the litigation. Toyota Motor

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Manufacturing West Virginia, Inc., which manufactured many of the engines at issue in this litigation, is located within the Southern District of West Virginia. Toyota Motor Manufacturing Kentucky, Inc. which also manufactured many of the engine assemblies, is located in Georgetown, Kentucky, in relatively close proximity to the Southern District of West Virginia. Some ETCS-i components are believed to have been manufactured by Denso Manufacturing Tennessee, Inc., in Maryville, Tennessee. The Southern District of West Virginia is located in Charleston, the capitol of West Virginia. Consequently, travel to and from the district is reasonably accommodated. Charleston is served by its own airport, which offers direct flights to and from several major cities, including Chicago, New York, Washington D.C., Atlanta, Houston, Detroit, Cincinnati and Orlando. Travel within Charleston and between the courthouse and the airport (which is a ten minute drive) is nothing short of easy. For these reasons, the Southern District of West Virginia presents an appropriate and convenient forum to accept transfer of the consolidated cases.

III. THE WEST VIRGINIA CLASS ACTION IS BEST SUITED TO ASSUME A LEAD ROLE IN THE LITIGATION.

In addition to a more favorable docket, the *Graves* case is well situated to assume a lead role in the consolidated actions. The *Graves* case is more advanced than those pending in other jurisdictions. The Southern District of West Virginia has already imposed a briefing schedule in *Graves*. By the time of the Panel's transfer hearing, briefing on Toyota's Motion to Dismiss will be complete and the court may have already ruled on the motion and conducted a planning meeting the part commenced.

Counsel in *Graves* is also counsel in a wrongful death action pending in Michigan State Court which has been pending since August, 2009. *See Lilia Alberto, personal representative of Guadalupe Alberto v. Toyota Motor Corporation, et al,* Civ. Action No. 09-91973 Second

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Amended Complaint attached as Exhibit A. In that case, the undersigned counsel have already been taking depositions, and exchanged written discovery on many of the same technical issues presented in the class actions. As such, *Graves* is even further advanced then would otherwise appear.

Similarly, counsel for the *Graves* Plaintiffs have significant experience in automobile litigation and class action litigation. The work the undersigned have performed in *Graves* and related cases, combined with the many defendant manufacturers that are located within the Southern District of West Virginia, or in close proximity to it, and the light docket for the Southern District of West Virginia, all combine to make this forum the most appropriate venue for consolidating the actions.

IV. THE CENTRAL DISTRICT OF CALIFORNIA DOES NOT PROVIDE A MORE APPROPRIATE TRANSFEREE DISTRICT.

The Central District of California does not present a more favorable transferee district. Federal Court Management Statistics show that the Central District of California reported a case load nearly three times greater than that reported in the Southern District of West Virginia, with 15,144 total filings in 2008. *See S. D. W. Va. Judicial Case Load Profile*, relevant portions attached as Ex. 2. The case load per judgeship is also greater in the Central District of California which distributed 540 cases per judgeship in 2008, 433 of these were civil cases. The Central District of California also took more time to resolve its cases. In 2008, 821 cases were reported as "over [three] years old." This number was over 8% of the Central District's civil docket, and ranked the Central District 68th in the nation. However this was an improvement from 2006, when the Central District had 1,240 civil cases or 11.6% of its civil docket in this category. *Id.*

Finally, while various Toyota entities may have offices in California, this is a convenience primarily enjoyed only by those in Toyota's California offices, to the detriment of

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the plaintiffs, defendants other Toyota facilities and counsel located elsewhere in the United States. For these reasons, the Panel should not select the Central District of California to be the transferee district.

VI. THE EASTERN DISTRICT OF KENTUCKY DOES NOT PROVIDE A MORE APPROPRIATE TRANSFEREE DISTRICT.

Plaintiffs in the case of *Al Viviano, et al. v. Toyota Motor Engineering & Manufacturing North America, Inc., et al.*, (E.D. Ky.) ("*Viviano* Plaintiffs") recently filed their own opposition challenging the transfer of this action to the Central District of California. *See Viviano Opposition*. While the *Viviano* Plaintiffs correctly point out many of the disadvantages of transferring the case to the Central District of California, the *Graves* plaintiffs suggest that the docket in the Eastern District of Kentucky should not be selected over the Southern District of West Virginia. The Eastern District of Kentucky has a heavier docket than that in the Southern District of West Virginia.

The Eastern District of Kentucky had 2,400 filings in 2008. *Judicial Case Load Profile*, relevant portions attached as Ex. 2. It also had a greater number of cases per judgeship, with 436 total and 313 of these reported as civil case. *Id.* The Eastern District of Kentucky also reported 73 civil cases, or 5% of its civil docket as over three years old. In addition, 36.7 % of jurors were not selected or subject to challenge. *Id.* These facts show that the Southern District of West Virginia has a more favorable docket for the litigation. Moreover, the *Viviano* case has not advanced as far in its litigation as *Graves* and *Alberto*.

CONCLUSION

For all of the foregoing reasons, Respondents respectfully move for the consolidated cases to be transferred to the Southern District of West Virginia.

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Exhibit

"A"

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA (Charleston Division)

MICHAEL GRAVES, and MICHAEL C. GRAVES, and JEFF MULLINS, Individually, and on Behalf of all others similarly situated,

Plaintiffs,

v. **CASE NO. 2:09-cv-1247**

TOYOTA MOTOR MANUFACTURING, WEST VIRGINIA, INC., a West Virginia Corporation; TOYOTA MOTOR NORTH AMERICA INC., a California corporation; TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC., a Kentucky corporation; and TOYOTA MOTOR SALES U.S.A., INC., a California corporation, TOYOTA MOTOR CORPORATION, a Japanese Corporation.

Defendants.

FIRST AMENDED COMPLAINT

This is a Class Action seeking damages, restitution and equitable relief for consumers who have purchased a Toyota or Lexus vehicle containing the electronic throttle control system known as the ETCS-Intelligent System ("ETCS-i.") Vehicles equipped with ETCS-i have a dangerous propensity to suddenly accelerate without driver input and against the intentions of the driver. This increased propensity for runaway acceleration stems in part from the ETCS-i's vulnerability to electronic "confusion" in the ETCS-i sensors and electronics processors. Despite knowledge of such risks, Toyota failed to provide necessary and available electronic and mechanical failsafes to enable drivers to bring their vehicles back under control if a runaway event

should occur, as other vehicle manufacturers have done. The Plaintiffs bring this action on behalf of themselves, and all others similarly situated.

Plaintiffs, MICHAEL GRAVES, MICHAEL C. GRAVES, and JEFF MULLINS, by their undersigned counsel make the allegations in this Class Action on personal knowledge as to their own acts and status upon actual knowledge, and as to all other matters upon information and belief and the investigation of counsel.

JURISDICTION AND VENUE

1. This action asserts claims under West Virginia law, for negligence, breach of express and implied warranties, and for unjust enrichment.

2. The Court has jurisdiction pursuant to 28 U.S.C. § 1332(d) because the matter in controversy exceeds the sum or value of $5,000,000 exclusive of interests and costs and is a class action in which the members of the Class are citizens of a different state than the Defendants.

3. Plaintiff Michael Graves is a resident of Fayette County, West Virginia. Plaintiff Michael C. Graves is a resident of Kanawha County, West Virginia. Plaintiff Jeff Mullins is a resident of Marion County, West Virginia. The Defendant TOYOTA MOTOR MANUFACTURING WEST VIRGINIA, INC. is a West Virginia corporation having a principal place of business in Putnam County, West Virginia. Defendant TOYOTA MOTOR ENGINEERING AND MANUFACTURING NORTH AMERICA, INC. is a Kentucky corporation. Defendant TOYOTA MOTOR NORTH AMERICA, INC. is a California corporation. Defendant TOYOTA MOTOR SALES U.S.A., INC., is a California corporation. Defendant Toyota Motor Corporation is a Japanese corporation.

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Hereinafter all Defendants are referred to collectively as "Toyota" or the "Toyota Defendants."

4. The Toyota Defendants combine money, skills, property and effects jointly for a common economic purpose. The Toyota Defendants operate as a joint enterprise or joint venture in regard to the design, manufacture, and marketing of motor vehicles located within this jurisdiction.

5. The Court has personal jurisdiction over the Toyota Defendants because they conduct substantial business in the State of West Virginia, have sufficient minimum contacts with the State, and otherwise avail themselves of the markets in this State, through promotion, sale, marketing, and distribution of their products and services in this State, so as to render the exercise of jurisdiction by this Court permissible under traditional notions of fair play and substantial justice. The State of West Virginia has a substantial and paramount interest in preventing the practices alleged herein from occurring in West Virginia.

6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because, among other things, a substantial portion of the acts and omissions complained of occurred in this judicial district. The Plaintiff Michael C. Graves, is a resident of the City of Charleston, in Kanawha County, West Virginia, and purchased a Toyota vehicle from a Toyota dealer located in Kanawha County, West Virginia. The Plaintiff Michael Graves purchased a Toyota vehicle from a Toyota dealer located in Kanawha County, West Virginia. Toyota vehicles are marketed, sold, and serviced by Toyota throughout this judicial district, including but not limited to Kanawha County, West Virginia.

PRELIMINARY STATEMENT

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7. The Plaintiffs seek damages, restitution and equitable relief for themselves and on behalf of all others similarly situated, who have purchased a Toyota vehicle containing the electronic throttle control system known as the ETCS-Intelligent System ("ETCS-i") due to the dangerous propensity for vehicles so equipped to suddenly accelerate without driver input and against the intentions of the driver, coupled with Toyota's failure to provide necessary and available electronic and/or mechanical failsafes to enable drivers to bring such vehicles back under control if a runaway event should occur. This increased propensity for runaway acceleration stems in part from the ETCS-i's vulnerability to transient signals, which can cause confusion in the ETCS-i sensors and electronics processors.

8. The Plaintiff Michael Graves is the owner of a 2007 Toyota FJ Cruiser. The Plaintiff Michael C. Graves is also the owner of a 2007 Toyota FJ Cruiser. The Plaintiff Jeff Mullins is the owner of a 2007 Toyota Highlander. The 2007 Toyota FJ Cruiser and the 2007 Toyota Highlander are both equipped with the ETCS-i.

9. Runaway acceleration occur when the throttle opens contrary to the driver's intentions. The automobile continues out of control despite desperate braking efforts by the driver and, unless the driver manages to disengage the engine quickly, the likelihood of a catastrophic outcome is great. Consequently, many manufacturers provide an electronic or mechanical failsafe to allow the driver to return the vehicle safely under control when faced with such an emergency. Toyota has failed to provide such failsafe.

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10. Reports of unintended accelerations of Toyota vehicles began to increase significantly in 2002, when Toyota began installing the ETCS-i in a broad range of its vehicle lines.

11. ETCS-i-equipped vehicles are sometimes referred to as "throttle-by-wire" or "drive-by-wire" because the ETCS-i has no mechanical linkage between the accelerator pedal and the throttle plate in the engine.

12. It soon became apparent that models with the ETCS-i were experiencing a failure rate significantly greater than other models. As the number of reports involving Toyota models with "throttle-by-wire" electronics grew, the claimed injury and death toll also increased alarmingly. However, Toyota and Toyota dealers continue to market ETCS-i-equipped vehicles without an appropriate failsafe despite knowledge that they are unreasonably dangerous by virtue of their design.

13. By marketing vehicles equipped with ETCS-i such as the 2007 Toyota FJ Cruiser, and 2007 Toyota Highlander, without incorporating an electronic or mechanical failsafe similar to those provided by Toyota's competitors, Toyota has misled and harmed the Plaintiffs and thousands of unsuspecting consumers throughout West Virginia.

14. Toyota engaged in unfair and deceptive marketing of its ETCS-i-equipped vehicles both in direct communications to its consumers and in misinformation supplied by Toyota to the National Highway Transportation Safety Administration ("NHTSA") investigators. Specifically, Defendant Toyota Motor North America ("TMNA") was the Toyota entity charged with communicating with NHTSA and is liable for its misconduct in causing or contributing to unfair deceptive acts and practices in so doing.

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15. When the NHTSA opened an investigation[1] of 2002 and 2003 model year Camrys, (all equipped with the ETCS-i) the safety agency described the defect alleged by Toyota owners: "Allegations of (A) an engine speed increase without the driver pressing on the accelerator pedal or, (B) the engine speed failing to decrease when the accelerator pedal was no longer being depressed--both circumstances requiring greater than expected brake pedal application force to control or stop the vehicle and where the brake system functioned normally."

16. At the outset of its investigation, NHTSA asked Toyota to "state the number of each of the following, received by Toyota, or of which Toyota is otherwise aware, which relate to, or may relate to, the alleged defect in the subject vehicles:

a. Consumer complaints, including those from fleet operators;

b. Field reports, including dealer field reports;

c. Reports involving a crash, injury, or fatality, based on claims against the manufacturer involving a death or injury; notices received by the manufacturer alleging or proving that a death or injury was caused by a possible defect in a subject vehicle; property damage claims; consumer complaints; and/or field reports;

d. Property damage claims;

e. Third-party arbitration proceedings where Toyota is or was a party to the arbitration; and

f. Lawsuits, both pending and closed, in which Toyota is or was a defendant or codefendant.

For subparts 'a' through 'd,' show each category (e.g., consumer complaints, field reports, etc.) separately. Multiple incidents involving the same vehicle are to be counted/shown separately. Multiple reports of the same incident are also to be counted/shown separately (i.e., a consumer complaint and a field report involving the

[1] Defect Petition DP04-003; Investigation PE04-021

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same incident in which a crash occurred are to be shown as a crash report, a field report and a consumer complaint)."

17. The scope of the information request became the subject of discussions and/or negotiations between officers of Toyota Motor North America, Inc., acting on behalf of Defendants Toyota Motor Corporation and Toyota Motor Sales, Inc., on the one hand, and representatives of NHTSA's Office of Defects Investigation ("ODI"), on the other, with the result that certain relevant categories of incidents were inexplicably excluded.

18. Toyota, through TMNA, reported 123 complaints that it said "may relate to the alleged defect;" however, Toyota *intentionally excluded* from its response the following categories of complaints, among others:

"(1) an incident alleging uncontrollable acceleration that occurred for a long duration;[2]

(2) an incident in which the customer alleged that they could not control a vehicle by applying the brake; and

(3) an incident alleging unintended acceleration occurred when moving the shift lever to the reverse or the drive position."

19. Toyota, through TMNA, thus *deceptively concealed* from NHTSA "as well as from the news media and consumer safety groups that monitor NHTSA safety defect investigations, an entire universe of potentially relevant customer complaints. For example, the report from a driver who had experienced a sudden acceleration which lasted for a considerable time would not be seen by NHTSA because Toyota did not include it in its response, since it occurred for a "long duration." Similarly, a driver who

[2] "long duration" is defined as lasting longer than one (1) second

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reported that he/she was standing on the brake and could not overcome the open throttle would have had his/her report excluded from the investigation.

20. NHTSA's investigation of the alleged defect in 2002 and 2003 Camrys was based largely on information supplied by Toyota, through TMNA, including a cleverly-limited group of customer complaints and assertions by the company that its dealers and manufacturer representatives had "failed to identify a fault within the vehicle." NHTSA conducted no testing of the integrity of the ETCS-i in terms of its vulnerability to transient electronic interference; nor did NHTSA conduct any tests as to the efficacy of the braking system in an open-throttle condition. NHTSA closed its investigation, stating that "[a] defect trend has not been identified at this time and further use of agency resources does not appear to be warranted."[3]

21. Complaints and incident reports from Toyota customers who had experienced sudden, unintended accelerations continued to come in to NHTSA and Toyota in substantial numbers after the NHTSA investigation was closed. Both the agency and the manufacturer issued statements blaming the driver's-side floor mat, despite evidence that floormats were almost never the cause.

22. In 2007, and prompted by the failure rate of Toyota models, NHTSA's Office of Defects Investigation ("ODI") opened an engineering analysis of 2007 Lexus ES-350 vehicles. According to the report, the purposes of the engineering analysis were to:

- Determine whether reported incidents of unintended acceleration were caused by a vehicle system malfunction or mechanical interference;

[3] ODI Resume, PE04-021, Date Closed 07/22/2004.

- Understand and document the effects of unintended acceleration as they impact controllability of the vehicle; and
- Document potential difficulties experienced by the operator while attempting to regain control of the vehicle.

23. A section of the NHTSA report entitled "Analysis of the Effects of Unintended Acceleration on Vehicle Control," also supports this action under the Consumers Credit and Protection Act. The agency's analysis began as follows:

> The safety consequences of an unsecured rubber floor mat trapping the accelerator pedal with the vehicle in gear can be severe. With the engine throttle plate open, the vacuum power assist of the braking system cannot be replenished and the effectiveness of the brakes is reduced significantly. During trapped throttle acceleration testing, several methods to defeat acceleration proved effective *but not necessarily intuitive*. (Emphasis supplied).

24. The engineering analysis described the first redundancy as follows: "Application of the brake – Significant brake pedal force in excess of 150 pounds was required to stop the vehicle, compared to 30 pounds required when the vehicle is operating normally. Stopping distances increased from less than 200 feet to more than 1,000 feet. *This required brake pedal force is beyond the physical capabilities of most drivers.*" (Emphasis added). This indicates a pressing need for an electronic or mechanical failsafe.

25. On September 29, 2009, following the widespread publicity surrounding the apparent sudden acceleration of a 2009 Lexus ES350 that resulted in a four-fatality crash near San Diego, California, Toyota issued a "Safety Advisory," saying that the company had "taken a closer look" at the potential for the accelerator to get "stuck in the full open position" *due to interfering floor mats*. The advisory stated that the company

would soon be recalling certain 2007 – 2010 Camrys and Lexus vehicles, 3.8 million in all, to address the issue -- the largest automobile recall in Toyota's history and the sixth largest in United States history.

26. Toyota's advisory is misleading, for the following reasons, among others:

- By suggesting that only a trapped floor mat can cause a loss of throttle and braking control, it lures owners of models with no driver's side floor mat into believing there is no possibility of a potentially catastrophic loss of throttle and braking control.
- The advisory also misleads owners with a driver's-side floor mat into believing that, in the event of a sustained near-wide-open throttle malfunction, the first response should be to visually determine if the floor mat is interfering with the accelerator pedal. This will, in many cases, exacerbate the driver's loss of control as he/she will lose valuable time in shifting to neutral and/or turning off the ignition.

27. Without the remedies provided by West Virginia law there is a danger to the public at large from the subject Toyota models that will continue without the benefit of: (1) a warning to Toyota owners as to the dangers presented by the defects in the system that allow sudden, unintended acceleration, (2) cogent instructions from Toyota to drivers of those vehicles as to the steps to be taken in the event of a sudden, uncontrollable loss of throttle control, (3) the implementation by Toyota of a failsafe device that would ensure that the system will return the throttle to idle or immediately

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disengage the engine, and (4) the installation by Toyota of an electronic component in each at-risk vehicle that senses the conditions which produce an unintended acceleration and prevents such an occurrence.

28. The Toyota models at risk ("Class Vehicles") are listed on the attached Exhibit A. Class Vehicles include, *but are not limited to*, the following:

Toyota FJ Cruisers from MY 2007 through 2008

Toyota Tacoma pickup trucks from MY 2003 through 2008

Toyota Camrys from Model Year (MY) 2002 though 2009

Lexus models from MY 1998 through 2009

Toyota Tundra pickup trucks MY 2000 through 2009

Toyota 4Runner SUVs from MY 2001 through 2009

Toyota Avalons from MY 2005 through 2009

Toyota Land Cruisers from MY 2001 through 2009

Toyota RAV-4s from MY 2005 through 2009

Toyota Sequoias from MY 2001 through 2009

Toyota Siennas from MY 2004 through 2009

Toyota Corollas from MY 2005 through 2009

Toyota Highlanders from MY2004 through 2009

THE PLAINTIFFS AND THEIR VEHICLES

29. The Plaintiff Michael C. Graves is a resident of Kanawha County, West Virginia. In November 2006, Michael C. Graves purchased a 2007 FJ Cruiser from Bert Wolfe Toyota, located in the City of Charleston, in Kanawha County, West Virginia. Michael C. Graves paid a purchase price in excess of $33,000 for the new vehicle. In

reality, the 2007 Toyota FJ Cruiser is unreasonably dangerous as designed and manufactured by Toyota.

30. The Plaintiff Michael Graves is a resident of Fayette County, West Virginia. In November 2006, Mr. Graves purchased a 2007 FJ Cruiser from Bert Wolfe Toyota, located in the City of Charleston, in Kanawha County, West Virginia. Mr. Graves paid a purchase price in excess of $30,000 for the vehicle. In reality, the 2007 Toyota FJ Cruiser is unreasonably dangerous as designed and manufactured by the Toyota.

31. The Plaintiff Jeff Mullins is a resident of Marion County, West Virginia. On or about April 29, 2008 Mr. Mullins purchased a 2007 Toyota Highlander from Dan Cava Toyota, located in the City of Fairmont, in Marion County, West Virginia. Mr. Mullins paid a purchase price in excess of $30,000 for the vehicle. The vehicle had limited miles on it when Mr. Mullins purchased it. Toyota sold the vehicle as being covered by a new vehicle warranty. In reality, the 2007 Toyota Highlander is unreasonably dangerous as designed and manufactured by the Toyota.

32. Plaintiffs did not learn of the vehicle's unique propensity for runaway acceleration, or that Toyota failed to provide adequate failsafes until after Toyota issued a safety warning regarding the floor mats in certain Toyota vehicles.

33. As a consequence of Defendants' unlawful and misleading business practices, Plaintiffs have suffered harm which includes being deprived of the full use, benefit, and value of their vehicles.

34. Plaintiffs appear in this action on behalf of themselves and on behalf of all others similarly situated.

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35. Plaintiffs also appear in this action on behalf of a "Sub-Class" of consumers that purchased a Class Vehicle as a new motor vehicle which continues to be covered by an express warranty by Toyota, or which was covered by an express warranty by Toyota that expired within one-year prior to the filing of this suit.

FACTS COMMON TO ALL CLAIMS FOR RELIEF

36. Toyota vehicles containing the ETCS-i system have been purchased throughout West Virginia, and are in wide use on West Virginia roads.

37. Consumers purchasing a Toyota vehicle containing the ETCS-i are not informed of the heightened propensity for runaway acceleration in ETCS-i-equipped vehicles, and are not informed that Toyota does not incorporate an adequate electronic or mechanical failsafe into its design.

38. Toyota had actual knowledge that ETCS-i-equipped vehicles, as currently designed and manufactured, are unreasonably dangerous consumers expected to use them.

39. ETCS-i-equipped vehicles are unreasonably dangerous due to the following acts and omissions by the Defendants:

a. On the part of each Defendant, failure properly and adequately to design the Class Vehicles and the systems, components, and parts thereof, including, but not limited to, the electronic engine control, the cruise control and other components of the Engine Control Module, collectively denominated by the Toyota entities as the Electronic Throttle Control System-Intelligent ("ETCS-i), and the braking system;

b. On the part of each Defendant, failure properly and adequately to install a fail-safe software component and/or mechanical safeguard against sudden, unintended acceleration;

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c. On the part of each Defendant, failure properly and adequately to specify components and component systems for the Class Vehicles that would shield the sensors from transient signals that confuse the ETCS-i and thereby ensure that the vehicle's throttle responded to the intentions and actions of the driver;

d. On the part of each Defendant, failure properly and adequately to test the Class Vehicle and the systems, components, and parts thereof, specifically including, but not limited to, the electronic engine control, the cruise control and other components of the Engine Control Module, the ETCS-i and the braking system;

e. On the part of each Defendant, failure properly and adequately to perform and/or heed an adequate failure mode and effects analysis (FMEA) or fault tree analysis (FTA) of the Class Vehicle and the systems, components, and parts thereof, specifically including, but not limited to, the ETCS-i, the cruise control and other components of the Engine Control Module, and the braking system;

f. On the part of each Defendant, failure properly and adequately to manufacture, fabricate, and assemble the Class Vehicle and the systems, components, and parts thereof, specifically including, but not limited to, the electronic engine control, the cruise control and other components of the ETCS-i, and the braking system;

g. On the part of each Defendant, failure properly and adequately to warn of the dangers attendant upon use of the Class Vehicle, specifically including, but not limited to, the extreme risk to the driver and occupants of a loss of control of the throttle and resultant sudden, unintended acceleration of the vehicle, with the attendant risk of severe bodily injury and/or death.

h. Prior to and during the design, manufacturing, marketing and sale of the subject vehicle and thereafter, the Toyota Defendants knew, or in the exercise of reasonable care should have known, that other feasible and safer design alternatives were available to them which would have significantly

reduced the risk of sudden, unintended accelerations and the lack of efficacy of the braking system under such conditions. Defendants, and each of them, negligently failed to utilize such other and feasible safer designs in their design of the electronic engine control, the cruise control and other components of the ETCS-*i*, and the braking system in the Class Vehicles;

CLASS ALLEGATIONS

40. Plaintiffs bring this action on behalf of themselves and all others similarly situated as a class action pursuant to Rule 23(b)(1) and (b)(3) of the Federal Rules of Civil Procedure. The class that Plaintiff seeks to represent is composed of and defined as follows:

All citizens of West Virginia who purchased one or more of the ETCS-i vehicles listed on Exhibit A. These include, but are not limited, to all citizens that purchased one or more of the following vehicles:

Toyota FJ Cruisers from MY 2007 through MY 2008;

Toyota Highlanders from MY2004 through 2009;

Toyota Tacoma pickup trucks from MY 2003 through 2008;

Toyota Camrys from Model Year (MY) 2002 though 2009;

Lexus models from MY 1998 through 2009;

Toyota Tundra pickup trucks MY 2000 through 2009;

Toyota 4Runner SUVs from MY 2001 through 2009;

Toyota Avalons from MY 2005 through 2009;

Toyota Land Cruisers from MY 2001 through 2009;

Toyota RAV-4s from MY 2005 through 2009;

Toyota Sequoias from MY 2001 through 2009;

Toyota Siennas from MY 2004 through 2009;

Toyota Corollas from MY 2005 through 2009;

Plaintiffs reserve the right to expand, refine and/or further define the class depending upon facts uncovered during the course of discovery in this case.

41. Excluded from the Class are (a) Toyota Defendants herein, and any person, firm, trust, corporation, or other entity related to or affiliated with Toyota Defendants, including without limitation, persons who are directors, officers and/or partners of Toyota Defendants and any legal representatives, heirs, successors, and assigns of Toyota Defendants, and (b) any Judge assigned to this action, and her or his immediate family.

42. Excluded from the Class are any individuals who have suffered a bodily injury or wrongful death as a result of a runaway acceleration event.

43. The members of the Class are so numerous that joinder of all members would be neither feasible nor practical. The membership of the entire class is unknown to Plaintiff at this time; however, it is estimated that the entire class is greater than 1,000 individuals. The disposition of the Class members' claims in a class action will provide substantial benefit to the parties and the Court.

44. Plaintiff's claims are typical of the claims of the Class, and Plaintiff has no interests adverse to the interests of other members of the Class.

45. This dispute raises questions of law and fact that are common to all Class members, which predominate over questions that arise on an individual basis for Class

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members. The common questions of law and fact include, without limitation, the following:

a. Did Toyota sell, market, advertise, distribute and otherwise place its vehicles utilizing ETCS-i into the stream of commerce throughout West Virginia and the United States?

b. Did Toyota mislead consumers as to the relative safety of the Toyota vehicles listed above as being equipped with the ETCS-i?

c. Did Toyota cause likelihood of confusion as to sponsorship, approval or certification of the Class Vehicles, by among other things, making misrepresentations or omissions to NHTSA?

d. Did Toyota misrepresent that the Class Vehicles had characteristics or benefits that they do not have?

e. Did Toyota engage in other conduct that created a likelihood of confusion or misunderstanding by consumers as to the Class Vehicles?

f. Did Toyota engage in the act, use or employment by any person of any deception, fraud, false pretense, false promise or misrepresentation, or the concealment, suppression or omission of any material fact with the intent that others would rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any Class Vehicle?

g. Did Toyota engage in any advertising, printing, displaying, publishing, distributing or broadcasting, or causing to be advertised, printed displayed, published, distributed or broadcast in any manner, any statement or representation with regard to the sale of Class Vehicles?

h. Did Plaintiff and others similarly situated suffer ascertainable loss?

i. The extent of damages or loss suffered by Plaintiff and the Class and the appropriate amount of compensation?

j. Was Toyota unjustly enriched?

k. Was Toyota negligent with regard to the design, manufacture or sale of Class Vehicles?

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l. Did Toyota breach any express or implied warranties with regard to the Class Vehicles?

m. Did Toyota act with malice, oppression and fraud so as to justify an award of punitive and exemplary damages?

n. Are the Plaintiff and the Class entitled to injunctive relief?

46. Plaintiff, as a representative party, will fairly and adequately protect the interests of the Class and has retained counsel experienced and competent in the prosecution of class action litigation.

47. The nature of this action and the nature of the laws available to the Class make use of the class action format a particularly efficient and appropriate procedure to afford relief to the Class. Further, this case involves business entity defendants and a large number of individuals possessing claims with common issues of law and fact. If each individual were required to file an individual lawsuit, the business entity defendants would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources. Proof of common business practices or factual patterns, which the named Plaintiff experienced, is representative of the class mentioned herein and will establish the right of each of the members of the class to recovery on the claims alleged herein.

48. The prosecution of separate actions by the individual class members, even if possible, would create: (a) a substantial risk of inconvenient or varying verdicts or adjudications with respect to the individual class members against Toyota herein; and (b) legal determinations with respect to individual class members not parties to the adjudications or which would substantially impair or impede the ability of class members

to protect their interests. Further, the claims of the individual members of the class are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses attending thereto. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action. Plaintiff anticipates providing appropriate notice to be approved by the Court after discovery into the size and nature of the Class.

FIRST CLAIM FOR RELIEF
(Negligence)

49. Plaintiff realleges and incorporates by reference all preceding paragraphs as if fully set forth herein.

50. Plaintiff asserts these claims on behalf of himself and others similarly situated who have expended funds that Toyota should be required to pay or reimburse under West Virginia law.

51. Each of the Toyota Defendants participates in a joint enterprise to design, manufacture, assemble, market, advertise, distribute and sell ETCS-i-equipped vehicles. Toyota thus has a duty to design, manufacture, and market vehicles that are reasonably safe for their intended uses, and to provide true and accurate information to the public to prevent undue risks arising from the foreseeable use of its products.

52. Toyota was negligent, and breached this duty owed to the Plaintiffs.

53. The following acts and omissions by the Defendants were negligent:

a. On the part of each Defendant, failure properly and adequately to design the Class Vehicles and the systems, components, and parts thereof, including, but not limited to, the electronic engine control, the cruise control and other components of the Engine Control Module, collectively denominated by the

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Toyota entities as the Electronic Throttle Control System-Intelligent ("ETCS-i), and the braking system;

b. On the part of each Defendant, failure properly and adequately to install a fail-safe software component and/or mechanical safeguard against sudden, unintended acceleration;

c. On the part of each Defendant, failure properly and adequately to specify components and component systems for the Class Vehicles that would shield the sensors from transient signals that confuse the ETCS-i and thereby ensure that the vehicle's throttle responded to the intentions and actions of the driver;

d. On the part of each Defendant, failure properly and adequately to test the Class Vehicles and the systems, components, and parts thereof, specifically including, but not limited to, the electronic engine control, the cruise control and other components of the Engine Control Module, the ETCS-i and the braking system;

e. On the part of each Defendant, failure properly and adequately to perform and/or heed an adequate failure mode and effects analysis (FMEA) or fault tree analysis (FTA) of the Class Vehicles and the systems, components, and parts thereof, specifically including, but not limited to, the ETCS-i, the cruise control and other components of the Engine Control Module, and the braking system;

f. On the part of each Defendant, failure properly and adequately to manufacture, fabricate, and assemble the Class Vehicles and the systems, components, and parts thereof, specifically including, but not limited to, the electronic engine control, the cruise control and other components of the ETCS-i, and the braking system;

g. On the part of each Defendant, failure properly and adequately to warn of the dangers attendant upon use of the Class Vehicle, specifically including, but not limited to, the extreme risk to the driver and occupants of a loss of control of the throttle and resultant sudden, unintended acceleration of the

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vehicle, with the attendant risk of severe bodily injury and/or death.

h. Prior to and during the design, manufacturing, marketing and sale of the subject vehicle and thereafter, the Toyota Defendants knew, or in the exercise of reasonable care should have known, that other feasible and safer design alternatives were available to them which would have significantly reduced the risk of sudden, unintended accelerations and the lack of efficacy of the braking system under such conditions. Defendants, and each of them, negligently failed to utilize such other and feasible safer designs in their design of the electronic engine control, the cruise control and other components of the ETCS-i, and the braking system in the Class Vehicles;

54. At all times relevant, Toyota sold, marketed, advertised, distributed, and otherwise placed the above-listed Toyota vehicles into the stream of commerce in an unlawful, unfair, fraudulent, and/or deceptive manner that was likely to deceive the public.

55. Toyota's marketing of vehicles containing ETCS-i, without incorporating adequate electronic or mechanical failsafes, and while misrepresenting the dangers of such vehicles to the public, constitutes unlawful, unfair and/or fraudulent business acts and/or practices within the meaning of West Virginia law.

SECOND CLAIM FOR RELIEF
(Breach of Express and Implied Warranty)

56. Plaintiffs reallege and incorporate by reference all preceding paragraphs as if fully set forth verbatim herein.

57. By marketing, advertising, distributing and selling vehicles containing ETCS-i, without incorporating adequate electronic or mechanical fail-safes, and while

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misrepresenting the dangers of such vehicles to the public Toyota created and breached both express and implied warranties that the vehicle was safe for use as public transportation, when in fact, it was not.

58. As a result of the foregoing, Plaintiffs and the Class have suffered economic damages in an amount to be proven at trial.

THIRD CLAIM FOR RELIEF
(Unjust Enrichment)

59. Plaintiffs reallege and incorporate by reference all preceding paragraphs as if fully set forth verbatim herein.

60. Plaintiffs and the Class unknowingly conferred a benefit upon Toyota by paying for vehicles which were in fact, unreasonably dangerous for use as public transportation.

61. The circumstances, as described in this Complaint, are such that allowing Toyota to retain all of the benefits provided by Plaintiffs and the Class would be inequitable.

62. Toyota has been unjustly enriched at the expense of Plaintiffs and the Class and, as a matter of equity, Toyota should be required to make Plaintiff and the Class whole in an amount to be proven at trial.

FOURTH CLAIM FOR RELIEF
(Violation of Consumer Credit and Protection Act)

63. Plaintiffs reallege and incorporate by reference all preceding paragraphs as if fully set forth verbatim herein.

64. Plaintiffs bring this action on their own behalf, on behalf of the Class defined above, and on behalf of the general public.

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65. Plaintiffs and each member of the Class are "consumers" within the meaning of West Virginia Code §46A-6-102(2).

66. West Virginia's Consumer Credit and Protection Act ("CCPA") codified at West Virginia Code §§ 46A-6-101, *et seq.*, applies to Defendant Toyota's actions and conduct, as described herein, because it extends to transactions that are intended to result, or which have resulted, in the sale or lease of goods or services to consumers.

67. Prior to Plaintiffs' purchase of Class Vehicles, Toyota by selling, marketing, advertising and distributing vehicles containing ETCS-i, without incorporating adequate electronic or mechanical fail safes, and while misrepresenting the dangers of such vehicles to the public, did represent that such goods had sponsorship, approval, characteristics, uses, or benefits which they do not have, all of which is in violation of the CCPA, West Virginia Code §46A-6-104.

68. Prior to Plaintiffs' purchase of Class Vehicles, Toyota by selling, marketing, advertising and distributing vehicles containing ETCS-i, without incorporating adequate electronic or mechanical fail safes, and while misrepresenting the dangers of such vehicles to the public, did represent that such goods were of a particular standard, quality, or grade, or that such goods were of a particular style or model, when they were of another, all of which is in violation of the CCPA, West Virginia Code §46A-6-104.

69. Prior to Plaintiffs' purchase of Class Vehicles, Toyota by selling, marketing, advertising and distributing vehicles containing ETCS-i, without incorporating adequate electronic or mechanical fail safes, and while misrepresenting the dangers of such vehicles to the public, did act, use or employ deception, fraud, false pretense, false promise and/or misrepresentation, and/or the concealment, suppression or omission of

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material facts with intent that others would rely upon such concealment, suppression and/or omission, in connection with the sale or advertisement of such goods and services, all of which is in violation of the CCPA, West Virginia Code §46A-6-104.

70. Prior to seeking relief under the CCPA, the Plaintiffs wrote Toyota,via certified mail notifying Toyota of its violations of the CCPA and providing Toyota an opportunity to cure such violations pursuant to West Virginia Code §46A-6-106. More than twenty days have passed since Plaintiffs provided such written notice to Toyota, and Toyota has not made an offer to cure its violations of the CCPA.

71. The Plaintiffs have suffered actual damages and ascertainable loss as a result of Toyota's violations of the CCPA including but not limited to diminished and/or lost value for the vehicles they purchased, lost and/or diminished use enjoyment and utility of such vehicles, and annoyance aggravation and inconvenience resulting from Toyota's violations of the CCPA.

72. For each violation of the CCPA Toyota is liable to each Plaintiff for the sum of $200, or the actual damages resulting from each such violation, whichever is greater, together with equitable relief to be determined by the Court.

FIFTH CLAIM FOR RELIEF
(Breach of New Motor Vehicle Warranties)

73. Plaintiffs reallege and incorporate by reference all preceding paragraphs as if fully set forth verbatim herein.

74. Plaintiffs bring this action on their own behalf, and on behalf of the Sub-Class defined above, and on behalf of the general public.

75. Plaintiffs and each member of the Class are "consumers" within the meaning of West Virginia Code §46A-6A-2(1).

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76. The Toyota is a "manufacturer" within the meaning of West Virginia Code §46A-6A-2(2).

77. West Virginia's Consumer Protection – New Motor Vehicle Warranties Act ("Lemon Law") codified at West Virginia Code §§ 46A-6A-1, *et seq.*, applies to Defendant Toyota's actions and conduct, as described herein, because the stated legislative intent of this law is to is to place upon the manufacturers of motor vehicles the duty to meet their obligations and responsibilities under the terms of the express warranties extended to the consumers in this state, and to require that the manufacturer shall bear the total cost of performing any duty or responsibility imposed by their warranties.

78. By marketing, advertising, distributing and selling vehicles containing ETCS-i, without incorporating adequate electronic or mechanical fail-safes, and while misrepresenting the dangers of such vehicles to the public Toyota breached its express warranties.

79. As a result of the foregoing, Plaintiffs and the Sub-Class have suffered a substantial impairment in the use and market value of their vehicles.

80. Toyota has a duty under 46A-6A-3 to make all repairs necessary to bring the Sub-Class Plaintiffs' vehicles to correct the defect herein described, so as to bring the vehicles back into conformity with such written warranties. In the event that Toyota cannot effect such repairs, Toyota as a duty to replace the Sub-Class Plaintiffs' vehicles with a comparable new motor vehicle which does conform to the warranty.

81. Toyota has breached its duty to correct the described defect, or provide a comparable new replacement vehicle.

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82. As a result of Toyota's breach, the Plaintiffs and the Class are entitled to the following:

(1) Revocation of acceptance and refund of the purchase price, including, but not limited to, sales tax, license and registration fees, and other reasonable expenses incurred for the purchase of the new motor vehicle, or if there be no such revocation of acceptance, damages for diminished value of the motor vehicle;

(2) Damages for the cost of repairs reasonably required to conform the motor vehicle to the express warranty;

(3) Damages for the loss of use, annoyance or inconvenience resulting from the nonconformity, including, but not limited to, reasonable expenses incurred for replacement transportation during any period when the vehicle is not out of service by reason of the nonconformity or by reason of repair; and

(4) Reasonable attorney fees.

JURY DEMAND

83. Plaintiffs hereby demand trial by jury of their claims against Defendant Toyota.

THEREFORE, Plaintiffs pray for relief as set forth below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, and each of them in his own behalf, on behalf of all others similarly situated and on behalf of the general public, prays for judgment against Toyota as follows:

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a. For an order certifying this case as a class action and appointing Plaintiffs and their counsel to represent the Class and the Sub-Class;

b. Awarding damages to Plaintiffs and the other Class members for all causes of action alleged herein;

c. Awarding restitution and disgorgement as a result of Toyota's unfair business practices;

d. For an order requiring Toyota to immediately cease and desist from marketing, advertising, distributing and selling vehicles containing ETCS-i;

e. All equitable remedies available under West Virginia law;

f. Awarding each Plaintiff its actual damages or $200, whichever may be greater as provided in West Virginia Code §46A-6-106(a);

g. Awarding attorneys' fees, expenses and costs;

h. Punitive Damages

i. Awarding pre- and post-judgment interest; and

j. Providing such other and further relief as this Court may deem just and proper.

PLAINTIFFS

BY COUNSEL

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CERTIFICATE OF SERVICE

I, Eric B. Snyder, counsel for Plaintiffs, Michael Graves, Michael C. Graves, and Jeff Mullins, individually and on behalf of all others similarly situated, do hereby certify that on the 11th day of January, 2010, I filed the foregoing First Amended Complaint with the Clerk of the Court and upon counsel, via the Court's ECF notification system:

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/s/ Eric B. Snyder

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Exhibit

"B"

	CASE CAPTION	COURT	CIVIL ACTION NO.
1.	Abken et al v. Toyota Motor North America Inc et al	US District Court for the District of New Jersey	3:10cv763
2.	Abken, et al. v. Toyota Motor North America, Inc., et al.	US District Court for the District of New Jersey	1:33av1
3.	Baldiseeri v. Toyota Motor Sales, USA, Inc et al	US District Court for the Central District of California	2:09cv9386
4.	Beard et al v. Toyota Motor Corporation et al	US District Court for the Central District of California	8:10cv183
5.	Bithorn et al v. Toyota Motor North America, Inc et al	US District Court for the District of Puerto Rico	3:10cv1083
6.	Brock v. Toyota Motor North America, Inc et al	US District Court for the Eastern District of Louisiana	2:10cv281
7.	Colaberdino v. Toyota Motor North America Inc et al	US District Court for the District of New Jersey	3:10cv672
8.	Deborah v. Toyota Motor North America, Incorporated et al	US District Court for the Eastern District of Michigan	2:10cv10525
9.	Donahue v. Toyota Motors Manufacturing USA Inc et al	US District Court for the Middle District of Louisiana	3:10cv108
10.	Early et al v. Toyota Motor Corporation et al	US District Court for the Northern District of Texas	3:10cv332
11.	Enderle v. Toyota Motor North America, Inc et al	US District Court for the Southern District of Indiana	1:10cv142
12.	Firgon v. Toyota Motor Corporation et al	US District Court for the District of Kansas	2:10cv2075
13.	Fitts et al v. Toyota Motor Corporation	US District Court for the Eastern District of Texas	2:10cv52
14.	Fogarty et al v. Toyota Motor North America, Inc et al	US District Court for the Eastern District of New York	1:10cv542
15.	Gaspard	US District Court for the Western District of Louisiana	1:10cv179
16.	Gazaryan et al v. Toyota Motor Sales USA, Inc et al	US District Court for the Central District of California	2:10cv849

	CASE CAPTION	COURT	CIVIL ACTION NO.
17.	Gellman v. Toyota Motor Sales USA, Inc	US District Court for the Southern District of Florida	1:10cv20006
18.	Gonzalez v. Toyota Motor Sales USA Inc et al	US District Court for the District of New Jersey	3:10cv595
19.	Graves et al v. Toyota Motor Manufacturing, West Virginia, Inc Et A	US District Court for the Southern District of West Virginia	2:09cv1247
20.	Greisiger et al v. Toyota Motor North America, Inc et al	US District Court for the Eastern District of Pennsylvania	5:10cv554
21.	Gumble v. Toyota Motor Corporation et al	US District Court for the Eastern District of Pennsylvania	5:10cv521
22.	Guokas v. Toyota Motor Corporation et al	US District Court for the District of New Jersey	3:10cv778
23.	Haustein v. Toyota Motor Corporation et al	US District Court for the Northern District of New York	5:10cv178
24.	Hauter et al v. Toyota Motor Sales USA Inc et al	US District Court for the Central District of California	8:10cv105
25.	Heather A Lane v. Toyota Motor Sales, USA, Inc	US District Court for the Central District of California	2:09cv9158
26.	Heilbrunn v. Toyota Motor Corporation et al	US District Court for the Southern District of Florida	9:10cv80208
27.	Horn v. Toyota Motor Sales USA Inc et al	US District Court for the Eastern District of Arkansas	4:10cv90
28.	Hulsen v. Toyota Motor Corporation et al	US Consolidated Court for the Western District of Missouri	4:10cv103
29.	Iglesias et al v. Toyota Motor Corporation et al	US District Court for the Southern District of New York	1:10cv1014
30.	Jacobson v. American Honda Motor Company, Inc et al	US District Court for the District of Oregon	3:10cv134
31.	Jerry Baker Auto Sales, LLC v. Toyota Motor Sales,	US Consolidated Court for the Western District of	2:10cv4025

	CASE CAPTION	COURT	CIVIL ACTION NO.
	USA, Inc Et A	Missouri	
32.	Johnson v. Toyota Motor Corporation et al	US District Court for the Northern District of Florida	5:10cv26
33.	Leaverton v. Toyota Motor Engineering & Manufacturing North America, Inc Et A	US District Court for the Eastern District of Kentucky	2:10cv32
34.	Lee v. Toyota Motor North America, Inc	US District Court for the Northern District of Ohio	3:10cv280
35.	Lynch v. Toyota Motor Corporation et al	US District Court for the Middle District of Florida	8:10cv326
36.	Maillho v. Toyota Motor North America, Inc et al	US District Court for the Eastern District of Louisiana	2:10cv279
37.	Menssen v. Toyota Motor Sales, USA, Inc et al	US District Court for the Northern District of Ohio	1:10cv260
38.	Miller et al v. Toyota Motor Sales, USA, Inc et al	US District Court for the Eastern District of Kentucky	2:10cv31
39.	Mitchell v. Toyota Motor North America, Inc et al	US District Court for the Southern District of Mississippi	3:10cv104
40.	Ochs v. Toyota Motor Corporation et al	US District Court for the Northern District of Illinois	1:10cv918
41.	Patel v. Toyota Motor North America Inc et al	US District Court for the District of Connecticut	3:10cv210
42.	Pena et al v. Toyota Motor Corporation et al	US Consolidated Court for the Southern District of Texas	2:10cv37
43.	Phaneuf v. Toyota Motor Sales USA, Inc et al	US District Court for the Eastern District of New York	2:10cv487
44.	Poynter et al v. Toyota Motor North America Inc, et al	US District Court for the Eastern District of Kentucky	2:10cv21
45.	Rainwater v. Toyota Motor Sales USA Inc	US District Court for the Eastern District of Arkansas	4:10cv116
46.	Real v. Toyota Motor Sales USA Inc et al	US District Court for the Central District of California	8:10cv173

	CASE CAPTION	COURT	CIVIL ACTION NO.
47.	Rivas-Vigil v. Toyota Motor North America, Inc et al	US District Court for the Southern District of Florida	0:10cv60183
48.	Roberts v. Toyota Motor Corporation et al	US District Court for the District of South Carolina	7:10cv281
49.	Roz Schwartz v. Toyota Motor Sales USA Inc et al	US District Court for the Central District of California	2:10cv710
50.	Sander et al v. Toyota Motor Sales, U.sa, Inc et al	US District Court for the Southern District of New York	1:10cv1111
51.	Scharrel v. Toyota Motor North America, Inc et al	US District Court for the District of Colorado	1:10cv227
52.	Seong Bae Choi et al v. Toyota Motor Corporation et al	US District Court for the Central District of California	2:09cv8143
53.	Shah et al v. Toyota Motor North America, inc et al	US District Court for the District of Massachusetts	1:10cv10263
54.	Shumaker v. Toyota Motor Engineering et al	US District Court for the Southern District of Ohio	3:10cv61
55.	Sill et al v. Toyota Motor Sales USA Inc et al	US District Court for the Western District of Oklahoma	5:10cv117
56.	Simmons v. Toyota Motor Corporation et al	US District Court for the Northern District of Mississippi	3:10cv9
57.	Stackhouse v. Toyota Motor Corporation et al	US District Court for the Central District of California	2:10cv922
58.	Stadler v. Toyota Motor North America, Inc et al	US District Court for the Eastern District of Kentucky	2:10cv30
59.	Viviano et al v. Toyota Motor Engineering and Manufacturing North America, Inc Et A	US District Court for the Eastern District of Kentucky	2:10cv24
60.	Weimer et al v. Toyota Motor North America, Inc et al	US District Court for the Eastern District of Louisiana	2:10cv219
61.	Whiddon v. Toyota Motor Sales USA Inc et al	US District Court for the Eastern District of Texas	1:10cv80
62.	Wisner v. Toyota Motor Corporation et al	US District Court for the Central District of California	2:10cv942

	CASE CAPTION	COURT	CIVIL ACTION NO.
63.	Wooten v. Toyota Motor North America Inc et al	US District Court for the District of South Carolina	3:10cv229

BEFORE THE JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION

IN RE: TOYOTA UNINTENDED ACCELERATION PRODUCT LIABILITY LITIGATION	)	MDL Docket No. 2151

CERTIFICATE OF SERVICE

I hereby certify that I have this 19th day of February 2010 caused to be served a copy of the foregoing "Motion to Transfer to the Southern District of West Virginia and Opposition to Various Other Transfer Motions" and "Memorandum in Support of Motion to Transfer to the Southern District of West Virginia and Opposition to Various Other Transfer Motions" by United States mail with postage paid thereon to parties listed below:

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United States District Court
California, Central
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Los Angeles, CA 90012-4793

United States District Court
California, Central
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Los Angeles, CA 90012

United States District Court
California, Central
411 West Fourth Street, Room 1053
Santa Ana, CA 92701-4516

United States District Court
West Virginia, Southern
P. O. Box 2546
Charleston, WV 25329

United States District Court
Florida, Southern
400 N. Miami Ave., 8th Floor
Miami, FL 33128

United States District Court
Florida, Middle
801 N. Florida Avenue
Tampa, FL 33602

United States District Court
Texas, Southern
1133 N. Shoreline Blvd.
Corpus Christi, TX 78401

United States District Court
Texas, Eastern
100 E. Houston, Rm. 125
Marshall, TX 75670

United States District Court
Louisiana, Eastern
500 Poydras Street
New Orleans, LA 70130

United States District Court
District of Utah
350 Main Street, Rm. 150
Salt Lake City, Utah 84101-2180

United States District Court
South Carolina
901 Richland Street
Columbia, SC 29201

United States District Court
Federico Degetau Federal Building, Room 150
150 Carlos Chardon Street
San Juan, Puerto Rico 00918-1767

United States District Court
New Jersey
Clarkson S. Fisher Building
& U.S. Courthouse
402 East State Street Room 2020
Trenton, NJ 08608

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Lynn Battaglia, Deputy-in-Charge
35 West 5th Street
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Covington, KY 41012-1073

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Eastern District of Pennsylvania
Office of the Clerk of Court
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BEFORE THE JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION

In re: Toyota Motor Corp. Defective Gas Pedal Products Liability Litigation	:	MDL No. 2151

NOTICE OF RELATED ACTION

Plaintiffs Michael and Cathy Miller, on behalf of themselves and others, hereby notice the Panel that on February 12, 2010 they filed a related action in the Eastern District of Kentucky styled *Miller v. Toyota Motor Sales, USA, Inc.*, 2:10-cv-00031-WOB. The action has been assigned to the Honorable William O. Bertelsman. A copy of the complaint is attached as Exhibit A.

February 25, 2010

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The Certificate of Service Is Included as a Separate Document.

TOY-RQ-05E-00009267

In re: Toyota Motor Corp. Defective Gas Pedal Products Liability Litigation
Before the Judicial Panel on Multidistrict Litigation
MDL No. 2151

EXHIBIT A

to Notice of Related Action

Complaint
Miller, et al. v. Toyota Motors Sales, USA, Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
NORTHERN DIVISION at COVINGTON

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Individually and on behalf of others
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And

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And

PLAINTIFFS

NO. _____
CLASS ACTION COMPLAINT
Electronically Filed

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Lexington, KY 40515)
)
And)
)
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Individually and on behalf of others)
similarly situated)
4165 Sherel Lane)
Cincinnati, Ohio 45209)
)
v.)
)
TOYOTA MOTOR SALES, U.S.A., INC.,)
Agent for Service of Process:)
CT Corporation System)
4169 Westport Road)
Louisville, Kentucky 40207)
)
And)
)
TOYOTA MOTOR CORP.,)
Served Pursuant to The Hague Convention)
)
And)
)
TOYOTA MOTOR ENGINEERING &)
MANUFACTURING NORTH AMERICA, INC.)
Agent for Service of Process:)
CT Corporation System)
4169 Westport Road)
Louisville, Kentucky 40207)
)
And)
)
TOYOTA MOTOR MANUFACTURING,)
KENTUCKY, INC.)
Agent for Service of Process:)
CT Corporation System)
4169 Westport Road)
Louisville, Kentucky 40207)
)
And)

TOY-RQ-05E-00009270

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DEFENDANTS

Plaintiffs, Michael & Cathy Miller, Steve Clemons, Sonya Gray, Wayne & Betty Tomlin, Patrick Kwiatkowski, Edward and Joan Skillman, and Melissa Arnzen Moeddel bring this action on their own behalf and on behalf of a class of persons defined below against the Defendants, Toyota Motor Sales, U.S.A., Inc., Toyota Motor Corp., Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Manufacturing, Kentucky, Inc., Toyota Motor Manufacturing, Northern Kentucky, Inc., and for their Class Action Complaint allege upon information and belief and based on the investigation to date of counsel, as follows:

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction under the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d); 28 U.S.C §1331 because at least one class member is of diverse citizenship from at least one defendant; there are more than 100 class members nationwide; and the aggregate amount in controversy exceeds $5 million. This Court has personal jurisdiction over Defendants because Toyota Motor Engineering & Manufacturing North America, Inc. ("TEMA") is headquartered and its principal place of business is in Erlanger, Kentucky, within this District, Defendant Toyota Motor Manufacturing, Kentucky, Inc., ("TMMK") is located in Georgetown, Kentucky, within this District, and all Defendants conduct business in this state.
2. Pursuant to 28 U.S.C. § 1391(a)(2), venue is proper in this District because a substantial part of the acts and omissions giving rise to Plaintiffs' claims occurred in this District.

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NATURE OF ACTION

3. This is a class action lawsuit against Defendants for an admittedly dangerous defect in millions of its vehicles that can cause accelerator pedal mechanisms to get stuck in an open position, causing the vehicle to accelerate unintentionally ("unintended acceleration").
4. Defendants issued two separate recalls to address problems with unintended acceleration in its vehicles. One involved accelerator pedals interfering with floor mats (the "Floor Mat Interference" recall). The other involved worn accelerator mechanisms getting stuck in an open position, independent of any floor mat interference (the "Worn Accelerator" recall). In total, Defendants recalled 5.9 million cars due to these defects.
5. Notably, the recalls did not provide immediate relief for vehicle owners. Rather, Toyota disclosed that dangerous defects existed and stated that Toyota would implement a repair plan in the future. With respect to the Floor Mat Interference recall, Toyota advised owners to remove the floor mats as an interim measure, and that more complete repairs would not be available for several weeks or months. With respect to the Worn Accelerator recall, Toyota advised owners of the dangerous condition and stated that a remedy was not yet available. These announcements left vehicle owners in the position of having to drive knowingly dangerous vehicles.
6. Some vehicle owners, including Plaintiffs, have driven their cars less than they otherwise would due to fear of being in an accident.
7. According to a Los Angeles Times article dated January 30, 2010, since 1999, nearly 2,000 complaints about sudden, unintended acceleration in Toyota and Lexus vehicles have reportedly been identified. Sudden, unintended accelerations have been blamed for at least 815 vehicle crashes and at least 19 deaths.
8. Defendants have been reportedly aware of many of the incidents that resulted in personal injuries or deaths, as well as many more complaints from consumers about unintended accelerations since as early as 1999. However, the company failed to adequately investigate or fix the defect in the United States and denied that there was any problem.
9. Plaintiffs seek damages suffered by the Class as a result of Toyota's conduct, including but not limited to: (i) loss of use of the vehicles; (ii) reimbursement of out of pocket costs for, among other things, alternative transportation, prior repairs to address accelerator problems,

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floor mats that had to be discarded, etc.; (iii) diminution in resale value of the vehicles; and (iv) an increased risk of physical harm.

10. Plaintiffs also seeks injunctive relief including: (i) repairs to remove the dangerous condition; (ii) an extension of warranty coverage covering components of the acceleration system; and (iii) individual notice to each owner effected by the Worn Accelerator recall disclosing the dangerous condition.
11. An undated article on usatoday.com discussing the recalls stated: "Kelley Blue Book says resale values of [Toyota's] affected models could fall 4% to 5% within the next six weeks."
12. An Associated Press article dated Monday, February 8, 2010, and entitled, "Toyota Resale Value, Reputation Fall From Heights," also discussing the recalls, stated: "Kelley Blue Book dropped the resale values of recalled Toyotas for the second time in four days Monday, leaving them as much as 4 percent or $300 to $750 lower than a week ago, depending on the model." The article further stated: "[A] key factor in Toyota's rise to the top was its reputation for quality vehicles with high resale values."
13. Defendants' unlawful conduct emanated, in part, from Kentucky, where TEMA and TMMK are based. On information and belief, this is where Defendants' decisions regarding safety issues, including the accelerator defect, were made or approved.

PARTIES

14. Plaintiffs Michael and Cathy Miller are residents of Kentucky. They own a 2008 Lexus RX 350. Their model year Lexus RX 350 is not subject to any of the sudden acceleration recalls to date, but upon information and belief, there have been reported sudden, unintended acceleration events involving 2008 Lexus RX 350s.
15. Plaintiff Steve Clemons is a resident of Kentucky. He owns a 2008 Toyota Tundra, a vehicle model subject to both the Floor Mat Interference recall and the Worn Accelerator recall.
16. Plaintiff Sonya Gray is a resident of Kentucky. She owns a 2007 Toyota Camry LE, a model that is subject to both the Floor Mat Interference recall and the Worn Accelerator recall.
17. Plaintiffs Wayne and Betty Tomlin are residents of Kentucky. They own a 2004 Toyota Rav 4. Their model year Rav 4 is not subject to any of the sudden acceleration recalls to date, but upon information and belief, there have been reported sudden, unintended acceleration events involving 2004 Rav 4s.

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18. Plaintiff Patrick Kwiatkowski is a resident of Ohio. He owns a 2005 Toyota Corolla. His model year Corolla is not subject to any of the sudden acceleration recalls to date, but upon information and belief, there have been reported sudden, unintended acceleration events involving 2005 Corollas.
19. Plaintiffs Edward Skillman and Joan Skillman are residents of Kentucky. They lease a 2009 Toyota Corolla, a model affected by both the Floor Mat Interference recall and Worn Accelerator recall. Based upon the VIN number of their vehicle and Toyota's representations, their particular vehicle may be excluded from either or both the Floor Mat Interference recall and Worn Accelerator recall. However, Mrs. Skillman has experienced sudden, unintended acceleration events in the 2009 Corolla.
20. Plaintiff Melissa Arnzen Moeddel is a resident of the State of Ohio. She owns a 2007 Lexus 400h Hybrid, a model not affected by any of the sudden acceleration recalls to date.
21. Defendant Toyota Motor Corporation ("Toyota-Japan") is headquartered in Japan. Toyota-Japan wholly owns and controls Defendants Toyota-USA, TEMA, TMMK, and TMMNK and conducts business in this District.
22. Defendant Toyota Motor Sales, U.S.A., Inc. ("Toyota-USA") is headquartered in Los Angeles, California. Toyota-USA is a wholly owned subsidiary of Defendant Toyota Motor Corporation, and is responsible for the manufacture, distribution, and sale of all Toyota automobiles in the United States.
23. Defendant Toyota Motor Engineering & Manufacturing North America, Inc. ("TEMA") is headquartered and its principal place of business is in Erlanger, Kentucky. TEMA is a wholly owned subsidiary of Defendant Toyota. Defendant TEMA is responsible for Toyota's engineering design, development, research and development, and manufacturing activities in the U.S., Canada, and Mexico.
24. Defendant Toyota Motor Manufacturing, Kentucky, Inc., ("TMMK") is located at 1001 Cherry Blossom Way in Georgetown, Kentucky, within this District. TMMK is Toyota's largest manufacturing facility outside of Japan and builds the Toyota Avalon and Toyota Camry. In addition, TMMK builds 4-cylinder and V6 engines and powertrain parts that upon information and belief, are subject to the unintended acceleration defect.
25. Defendant Toyota Motor Manufacturing, Northern Kentucky, Inc., ("TMMNK") is located at 25 Atlantic Avenue in Erlanger, Kentucky, within this District. Upon information and belief,

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TMMNK is responsible, in part, for Toyota's production control, production engineering, purchasing, and quality in North Ameriea, including Northern Kentucky, within this District.

26. Toyota-Japan, Toyota-USA, TEMA, TMMK, and TMMNK are collectively referred to herein as "Toyota."

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

FACTUAL BACKGROUND

A. Toyota's Electronic Throttle Control System

28. Beginning in the late 1990s and continuing to today, Toyota manufactured certain automobiles with an Electronic Throttle Control system ("ETC").

29. Unlike traditional throttle control systems, where a physical cable connects 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 pressed 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.

30. When Toyota first introduced the ETC, they continued to include a mechanical linkage between the accelerator and the engine throttle control. This mechanical fail-safe was intended as a safety measure in the event of a sudden, unintended acceleration. The safety measure system would disconnect the ETC and automatically allow the throttle to be controlled by the mechanical linkage.

31. Beginning with the 2001 model year, however, Toyota began manufacturing vehicles without a mechanical linkage.

32. In additiou, Toyota's ETC system fails to include a "brake over-ride" safety measure incorporated by other manufacturers that instructs the ETC system to reduce the engine idle when the brakes are applied while the accelerator is in an open position.

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33. Many of Toyota's vehicles now include an electronic ignition button rather than a key-turned switch. In these cars, no easy mechanical means exist to turn off the engine in case of an unintended acceleration.

34. The combination of a lack of these safety systems creates a situation in which there are no mechanical or electronic safety mechanisms to allow the driver to stop or slow the car during an unintended acceleration. Upon information and belief, Toyota deliberately chose to omit the fail-safe mechanisms to stop or slow a vehicle in the event of a sudden, unintended acceleration in order to save money and reap greater profits on sales of its vehicles.

35. Moreover, in a January 21, 2010 press release announcing the Worn Accelerator recall, Toyota warned drivers that, in the event of unintended acceleration, the "brakes should not be pumped repeatedly because it could deplete vacuum assist, requiring stronger brake pedal pressure." Thus, pumping the brakes, which occurs instinctually for some drivers, could actually impair the vehicle's ability to slow or stop.

B. Toyota's Recalls

36. Toyota has engaged in a campaign to conceal the sudden, unintended acceleration defect in many of its vehicle models and model years from its customers and the general public.

37. For years, Toyota's method of dealing with the hundreds of reports it received each year of its vehicles suddenly and unintentionally accelerating out of control, up to speed of 100 miles per hour or more, and resulting in serious physical injuries and deaths, was to simply deny the existence of any problem.

38. On September 29, 2009, Toyota issued a consumer alert on its website that it was investigating the "potential for an accelerator pedal to get stuck in the full open position due to an unsecured or incompatible driver's floor mat." Toyota claimed that the sudden acceleration issue affected only a limited number of models of Toyota and Lexus vehicles. Toyota advised owners of those particular models to remove their floor mats and not replace them.

39. On November 2, 2009, Toyota issued a press release announcing a "future voluntary recall" related to floor mats that interfere with accelerator pedals. Toyota stated that it had not yet developed a remedy, but it was advising owners to remove the driver's side floor mat as a temporary measure. Toyota also mailed letters to affected owners notifying them of the issue.

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40. The following makes and models were affected by the recall:

- 2007-2010 Toyota Camry
- 2005-2010 Toyota Avalon
- 2004-2009 Toyota Prius
- 2005-2010 Toyota Tacoma
- 2007-2010 Toyota Tundra
- 2007-2010 Lexus ES350
- 2006-2010 Lexus IS250 and IS350

41. The recall initially affected 3.8 million vehicles. The number of vehicles was later increased to 4.2 million.

42. On November 6, 2009, Toyota issued a press release responding to media reports about growing suspicion that the unintended acceleration was caused by a glitch in the "electronic engine management system" rather than simple interference with floor mats. Toyota's press release noted that removal of floor mats was only a temporary measure, and that further repairs would be needed once a remedy was available. Thus, vehicle owners were placed in the position of having to drive dangerously defective cars until a future remedy was implemented.

43. On November 8, 2009, the Los Angeles Times published an article reporting that many instances of unwanted acceleration had occurred, fanning the flames of consumer skepticism and distrust of the Toyota brand by Toyota owners and the general public.

44. The article noted that Toyota was aware of many of the instances of unintended acceleration, and that Toyota withheld certain consumer complaints about unintended acceleration when responding to the NHTSA's requests for customer complaints.

45. On November 25, 2009, Toyota issued a press release claiming that, in addition to floor mats, the accelerator pedal design in many models was also contributing to the sudden, unintended accelerations. Toyota announced a remedy it developed for the Floor Mat Interference recall. The shape of the accelerator pedal would be reconfigured for all effected vehicles, and the shape of the floor surface underneath the floor mat would be reconfigured for certain vehicles.

46. The November 25, 2009 press release also stated that a brake over-ride system to cut engine power in case of simultaneous application of both the accelerator and brake pedals would be installed on Camry, Avalon, Lexus 350, Lexus IS350, and Lexus IS250 as "an extra measure

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of confidence." These vehicle models, it should be noted, are among the most expensive and best-selling in Toyota's fleet. Apparently, Toyota's practice is to provide greater safety advantages to the owners of the vehicles that account for the most profits.

47. In any event, the repairs described in the November 25, 2009 press release would only be available some months later for three Toyota models, and on a "rolling schedule during 2010" for the remaining models. Thus, all vehicle owners had to continue to drive dangerously defective cars.

48. On December 5, 2009, the Los Angeles Times again reported that the unintended acceleration might be related to a problem beyond floor mat interference.

49. On December 10, 2009, Toyota issued a statement on its website rebutting the Los Angeles Times report and denying that an electronic problem existed.

50. On December 23, 2009, the Los Angeles Times reported that Toyota had a history of delaying recalls and keeping a "tight lid on disclosure of potential problems." The article outlined several instances of Toyota's failure to notify consumers of known dangerous conditions.

51. On January 21, 2010, Toyota announced that it was recalling a further 2.3 million vehicles and claimed that it had discovered yet another problem, "sticking accelerator pedals," that was supposedly the root of the sudden acceleration issue.

52. This recall, the Worn Accelerator recall, was "separate from the on-going recall of approximately 4.2 million Toyota and Lexus vehicles to reduce the risk of pedal entrapment by ... floor mats." The Worn Accelerator recall addressed a condition that "can occur when the pedal mechanism becomes worn and, in certain conditions, the accelerator pedal may become harder to depress, slower to return or, in the worst case, stuck in a partially depressed position." According to the press release, this defect was discovered when Toyota was investigating reports of sticking accelerator pedals "without the presence of floor mats."

53. The Worn Accelerator recall involved the following Toyota models:

- 2009-2010 RAV4
- 2009-2010 Corolla
- 2009-2010 Matrix
- 2005-2010 Avalon
- 2007-2010 Camry
- 2010 Highlander

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- 2007-2010 Tundra
- 2008-2010 Sequoia

54. Some, but not all, of these 2.3 million vehicles were also affected by the Floor Mat Interference recall. Approximately 1.7 million vehicles were affected by both recalls.

55. The January 21, 2010 press release noted that Toyota had not yet determined how to correct the defect underlying the Worn Accelerator recall. Thus, similar to owners subject to the Floor Mat Interference recall, owners subject to the Worn Accelerator recall could not yet bring their cars to dealerships for repairs. This left more owners in the position of having to drive a dangerously defective car indefinitely.

56. The Worn Accelerator recall was more serious than the Floor Mat Interference recall because drivers could not simply remove the floor mat as an interim measure.

57. On January 26, 2009, Toyota issued a press release announcing that it would suspend sales of vehicles affected by the Worn Accelerator recall until a remedy was available.

58. Toyota also failed to notify vehicle owners affected by the Worn Accelerator recall. Toyota announced the recall via press release, but has not contacted owners by mail or other direct means.

59. On January 27, 2010, Toyota announced on its website that the following additional models were being added to the Floor Mat Interference recall:

- 2008-2010 Highlander
- 2009-2010 Corolla
- 2009-2010 Venza
- 2009-2010 Matrix

60. This development increased the total number of vehicles subject to the Floor Mat Interference recall by 1.1 million, to a total of 5.3 million.

61. To date, 5.9 million vehicles have been affected by one or both of the recalls: 5.3 million vehicles related to the Floor Mat Interference recall, plus 2.3 million vehicles related to the Worn Accelerator recall, less 1.7 million vehicles affected by both recalls

62. On February 1, 2010, Toyota announced that it had developed a "comprehensive fix" for the sudden acceleration problem in its vehicles, and that the fix would be performed on all vehicles subject to the January 21, 2010 recall.

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63. On February 1, 2010, Jim Lentz, president and chief operating officer of Defendant Toyota Motor Sales U.S.A., Inc., appeared on NBC's "Today" show and announced that the recalls and the "comprehensive fix" would "stop what is going on" with the sudden accelerations in Toyota vehicles.

64. The majority of Toyota owners, however, who have experienced sudden, unintended accelerations, have been offered no "fix" or solution by Toyota at all, and their vehicles have not been part of any recalls addressing the sudden acceleration defect. 702 of the 1,234 reported sudden acceleration events (about 57%) have occurred in Toyota models and models years that are not included in any of the relevant recalls.

65. The sticking accelerator pedal recall of January 21, 2010 included Toyota models and model years that were involved in only 245 of the 1234, or about 20%, of the reported sudden acceleration events.

66. The brake over-ride safeguard system that Toyota announced as a means of bringing the vehicle's engine to idle in case of a sudden acceleration affected models and models years involved in only 296 of 1234 (about 24%) reported sudden acceleration events.

67. Akio Toyoda, the president of Toyota, submitted an op-ed in the Washington post acknowledging that "Toyota has not lived up to the high standards we set for ourselves."

68. Toyota continues to misrepresent to Plaintiffs, to prospective class members, and to the public at large that it has identified the problem causing the sudden accelerations and that it is recalling and repairing all vehicles affected by this defect. Toyota has continued to downplay and deny the suspicions and concerns of safety experts, the media, and consumers alike that the defect is actually caused by a flaw in the computer-controlled accelerator system.

69. Given the vast number of instances of unintended acceleration since 2001, and Toyota's knowledge of many or all of the instances, Toyota should have aggressively investigated the cause of the unintended acceleration and developed a remedy years ago. Toyota failed to do either, evidenced by the fact that the first recall wasn't implemented until 2009, eight years after instances of unintended acceleration first began.

70. The sudden, unintended acceleration defect in Toyota vehicles has adversely affected the company's reputation as a manufacturer of safe, reliable vehicles with high resale value, as compared to vehicles made by their competitors. In the wake of the news reports about this

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serious problem, Toyota customers and the general public are extremely skeptical about the quality and safety of Toyota vehicles. The entire fleet of Toyota vehicles has been stigmatized by this defect, regardless of which vehicle models and model years have been included in the recalls or excluded therefrom.

71. Defendants' mishandling of the sudden, unintended acceleration defect, including but not limited to their denial of any problem, even after receiving a substantial number of reports of sudden, unintended acceleration events, including ones that resulted in serious physical injury or death, and all other allegations set forth herein, has adversely affected the company's reputation as a manufacturer of safe, reliable vehicles with high resale value, as compared to vehicles made by its competitors. Toyota customers and the general public have reason to be skeptical about whether Toyota is coming forth with truthful information about the sudden acceleration defect. Likewise, Toyota customers and the general public are left to wonder whether safety concerns about Toyota vehicles are limited to this particular problem. In essence, American consumers have no way to know the lengths to which Defendants will go to cover up other potentially deadly defects in its vehicles, as they did for so long with the sudden acceleration defect.

C. Plaintiffs' Experiences

a. Michael & Cathy Miller

72. Plaintiffs Miller own a 2008 Lexus RX 350, a model that has not been subject to any sudden acceleration recall. Upon information and belief, there have been incidents of sudden acceleration in Lexus RX vehicles reported to Toyota and the federal government.

73. Plaintiffs Miller chose the Lexus RX 350 over competing brands' vehicles, at least in part, because of Toyota's reputation for selling cars with higher resale, as compared to vehicles manufactured by its competitors.

74. Plaintiffs Miller have experienced sudden, unintended acceleration in their Lexus RX 350 on a number of occasions. They have reported the problem to their Lexus dealer, Lexus of Lexington (Ky.).

75. Plaintiffs Miller were told by the service technicians at Lexus of Lexington that there was nothing wrong with the vehicle, despite Plaintiffs' insistence that the vehicle was

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accelerating for no apparent reason and adversely affecting their ability to drive it in a controlled manner.

76. Plaintiffs Miller have lost trust in the Toyota and Lexus brand names, and the RX 350 in particular. They are skeptical that their RX 350 will ever be completely safe, as evidenced by the fact that their local Lexus dealer has told them that there is nothing wrong with the vehicle.

77. Plaintiffs Miller also believe that the resale value of their Lexus RX 350 will decrease due to general consumer skepticism about Toyota and Lexus vehicles.

78. Plaintiffs Miller are concerned for their safety and the safety of others. They believe Defendants' actions and omissions have caused economic harm to them, namely damage to their property and devaluation of their Lexus RX 350.

b. Steve Clemons

79. Plaintiff Steve Clemons is a resident of Kentucky. He owns a 2008 Toyota Tundra. He chose the Tundra over competing brands' vehicles, at least in part, because of Toyota's reputation for selling cars with higher resale, as compared to vehicles manufactured by its competitors.

80. Plaintiff Clemons is concerned about his safety and that of others, especially since learning that his vehicle is part of both Toyota recalls relating to sudden accelerations.

81. Plaintiff Clemons has lost trust in Toyota and the Tundra he owns. He is skeptical that the Tundra will be safe, even if he takes the vehicle to his Toyota dealer to have it fixed.

82. Plaintiff Clemons is concerned for his safety and the safety of others. He believes Defendants' actions and omissions have caused him economic harm, namely damage to his property and devaluation of his Toyota Tundra.

c. Sonya Gray

83. Plaintiff Sonya Gray owns a 2007 Toyota Camry. She chose the Camry over competing brands' vehicles, at least in part, because of Toyota's reputation for selling cars with higher resale, as compared to vehicles manufactured by its competitors.

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84. Plaintiff Gray is concerned about her safety and that of others, especially since learning that her vehicle is part of both Toyota recalls relating to sudden accelerations.
85. Plaintiff Gray has driven her Camry less often since learning about the sudden acceleration defect and corresponding recalls. This has caused her inconvenience and worry.
86. Plaintiff Gray has lost trust in Toyota and the Camry she owns. She is skeptical that the Camry will be safe, even if she takes the vehicle to her Toyota dealer to have it fixed.
87. Plaintiff Gray is concerned for her safety and the safety of others. She believes Defendants' actions and omissions have caused her economic harm, namely damage to her property and devalnation of her Toyota Camry.

d. Wayne and Betty Tomlin

88. Plaintiffs Wayne and Betty Tomlin are residents of Kentucky. They own a 2004 Toyota Rav4, a model not affected by either recall based on Toyota's representations.
89. Plaintiffs Tomlin chose the Rav4 over a competing brand's vehicle partly because of Toyota's reputation for selling cars with higher resale value than other brands. Plaintiffs Mr. and Mrs. Tomlin have lost trust in Toyota and their Rav4 in the wake of news reports and public outcry over sudden accelerations.
90. Plaintiffs Tomlin are concerned for their safety and the safety of others. They believe Defendants' actions and omissions have caused them economic harm, namely damage to their property and devaluation of their Toyota Rav4.

e. Patrick Kwiatkowski

91. Plaintiff Patrick Kwiatkowski is a resident of the state of Ohio. He owns a 2005 Toyota Corolla. His model year Corolla is not subject to any relevant recalls.
92. Plaintiff Kwiatkowski chose the Corolla over a competing brand's vehicle partly because of Toyota's reputation for selling cars with higher resale valne than other brands. Plaintiff Kwiatkowski has lost trust in Toyota and his Corolla in the wake of news reports and public outcry over sudden accelerations.
93. Plaintiff Kwiatkowski is skeptical that Toyota is being honest and straightforward with him and the American public, based on the fact that the 2005 Corolla is not subject to the recalls,

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despite sudden acceleration events involving that model and model year being reported to Toyota and the federal government.

94. Plaintiff Kwiatkowski is concerned for his safety and the safety of his family and others. He believes Defendants' actions and omissions have caused him economic harm, namely damage to his property and devaluation of his Toyota Corolla.

f. Edward and Joan Skillman

95. Plaintiffs Edward and Joan Skillman live in Lexington, Kentucky and lease a 2009 Toyota Corolla, with an option to buy the vehicle at the end of the lease term.

96. Plaintiffs Skillman chose the Corolla over a competing brand's vehicle partly in reliance upon Toyota's reputation for manufacturing cars with higher resale value than other brands.

97. In late 2009, Mrs. Skillman experienced unintended acceleration in the 2009 Corolla. Fortunately, she was able to stop the car without incident. She has experienced unintended acceleration on other occasions since then.

98. Plaintiffs Skillman have driven their Corolla less often since learning of the recalls and after experiencing unintended acceleration in their Corolla. Plaintiffs are concerned about putting themselves and others at risk. They generally do not allow passengers to ride with them in their Corolla, for fear that passengers could get hurt. This has been an inconvenience to Plaintiffs.

99. Plaintiffs Skillman own a non-Toyota vehicle, in addition to their Corolla. Since experiencing sudden acceleration and learning of the Toyota recalls, they have been so scared of driving their Corolla that they drive their other, non-Toyota vehicle unless it is absolutely essential that they need to use both cars at the same time. They have, as much as possible, reorganized their daily schedules and routines to avoid driving their Corolla as much as they can. This has been an inconvenience to Plaintiffs.

100. Plaintiffs Skillman have lost trust in Toyota and their 2009 Corolla. They are skeptical that their Corolla will be safe, even if they take it to their Toyota dealer to have it fixed.

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101. Plaintiffs Skillman are concerned for their safety and the safety of others. Additionally, Plaintiffs Skillman believe Defendants' actions have caused economic harm to them, namely damage to their property and devaluation of their Toyota Corolla.

g. Melissa Arnzen Moeddel

102. Plaintiff Melissa Arnzen Moeddel is a resident of Ohio. She owns a 2007 Lexus 400h Hybrid. Her vehicle model has not been subject to any of the sudden acceleration recalls to date, and she has not experienced any sudden acceleration while driving her vehicle.

103. Notwithstanding the lack of reported sudden accelerations involving the Lexus 400h Hybrid, Plaintiff Moeddel is concerned for the safety of herself and others, including her young daughter, who rides as a passenger in the vehicle on a daily basis.

104. Plaintiff Moeddel chose the Lexus 400h Hybrid over a competing brand's vehicle, at least in part, because of Toyota's and Lexus's reputation for selling cars with a higher resale value than competing brands. Plaintiff Moeddel have lost trust in Toyota and her Lexus 400h Hybrid in the wake of news reports and public outcry over sudden accelerations.

105. Plaintiff Moeddel believes Defendants' actions and omissions have caused economic harm to her, namely damage to her property and devaluation of her Lexus 400h Hybrid.

CLASS ACTION ALLEGATIONS

106. Pursuant to Rule 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure, Plaintiff brings this action individually and on behalf of all other persons similarly situated (the "Class"), defined as follows:

> All persons or entities in the United States owning Toyota vehicles, or leasing Toyota vehicles with the option to buy at the end of the lease term, regardless of whether their vehicle models and model years have been the subject of a recall involving sudden, unintended accelerations.

107. The Class does not include Defendants or their officers or directors.

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108. Also excluded from the Class are individuals who have claims for personal injury as a result of unintended acceleration. The claims at issue in this case do not seek damages for physical injury. Thus, individualized determinations as to causation of bodily injury will not be required. This class action only seeks the economic and equitable relief requested herein.

109. The Class is comprised of millions of persons, making joinder of such cases impracticable. Disposition of the claims in a class action context will provide substantial benefits to the parties and the Court.

110. There are questions of law or fact common to the class, including but not limited to the following:

a. Whether the recalled automobiles contained a dangerous or defective condition;

b. Whether Defendants' conduct constituted actionable negligence;

c. Whether Defendants entered into and breached implied contracts;

d. Whether Defendants' conduct violated the Kentucky Consumer Protection Act;

e. Whether Defendants' conduct constituted false advertising;

f. Whether Defendants' conduct constituted a breach of the implied warranty of merchantability; and

i. Whether Defendants' conduct constituted a breach of the implied warranty of fitness for a particular purpose.

g. Whether Defendants engaged in a pattern and practice of deceiving and defrauding the class and suppressing the defective nature of the cars;

h. Whether Defendants failed to give adequate warnings regarding the cars;

i. Whether Plaintiffs' and the members of the Class are entitled to compensatory damages, and, if so, the nature of such damages;

j. Whether Plaintiffs and the members of the Class are entitled to punitive or exemplary damages and, if so, the nature of such damages; and

k. Whether Plaintiffs and members of the Plaintiffs' Class are entitled to an award of reasonable attorneys' fees, prejudgment interest, post-judgment interest and costs of suit.

111. Plaintiffs' claims are typical of the claims of the Class they seek to represent.

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112. Plaintiffs will fairly and adequately represent and protect the interests of the Class. Plaintiffs have no interests that are antagonistic to or that irreconcilably conflict with those of other Class members. In addition, Plaintiffs have retained counsel competent and experienced in the prosecution of class action litigation.

113. Questions of law or fact common to the Class predominate over any questions effecting only individual Class members.

114. A class action is superior to all other available methods for the fair and efficient adjudication of Plaintiffs' and Class members' claims.

115. Plaintiffs and Class members have suffered similar harm as a result of Defendants' conduct. Certification of a class action to resolve these disputes will reduce the possibility of repetitious litigation involving millions of Class members.

116. Class certification is appropriate under Fed. R. Civ. P. 23, as the Class satisfies the requirements of Fed. R. Civ. P. 23(a) and 23(h)(3). Class certification is also appropriate under Fed. R. Civ. P. 23(b)(2) with respect to injunctive relief.

FIRST CLAIM FOR RELIEF NEGLIGENCE

117. Plaintiffs re-allege all preceding allegations as if fully set forth herein.

118. Defendants assumed a duty to exercise reasonable care in, among other things, manufacturing and selling automobiles that did not contain a dangerous condition. Defendants' duties arose from, among other things, the relationship between the parties as buyers and sellers and/or lessor and lessee.

119. Defendants also assumed a duty to adequately investigate claims of unintended acceleration and to timely notify Class members of known dangerous conditions.

120. Defendants breached their duties by manufacturing and selling automobiles with dangerous accelerator systems. They also breached their duties by failing to adequately investigate acceleration complaints and failing to individually notify Class members of the Worn Accelerator recall and underlying dangerous condition.

121. But for Defendants' breach of duties, Plaintiffs and Class members would not be faced with driving unsafe automobiles and suffering the related consequences alleged herein, including but not limited to economic injuries, specifically damage to their property.

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122. Plaintiffs and Class members suffered and will continue to suffer damages including but not limited to those set forth in paragraph 9.

123. The damages set forth in paragraph 9 are not limited to those individuals who own or lease Toyota vehicles subject to the recalls associated with the sudden acceleration defect. The acts and omissions of Defendants have caused their entire fleet of vehicles to be stigmatized as dangerous cars and trucks prone to uncontrolled acceleration that could result in serious physical injury or death. The harm to Toyota's reputation is brand-wide and all Toyota drivers have suffered economic loss, including but not limited to diminution in resale value of their vehicles.

SECOND CLAIM FOR RELIEF BREACH OF IMPLIED CONTRACT

124. Plaintiffs re-allege all preceding allegations as if fully set forth herein.

125. The essential elements of an implied contract under Kentucky law are an offer, acceptance, and consideration. The existence and terms of the contract are implied by the conduct of the parties.

126. An offer, acceptance, and consideration for the sale or lease of vehicles existed, evidenced by the fact that Plaintiffs and Class members paid money to Defendants in exchange for vehicles or, for those Plaintiffs and Class members who leased vehicles, the right to use and drive the vehicles for the stated lease term, and in many, if not all leases, the option to purchase the vehicles at the end of the lease term. The act of exchanging money for vehicles was an offer and acceptance. The money and vehicles constituted consideration.

127. An implied term of the sale was that Defendants would provide vehicles that did not contain an unreasonably dangerous condition. There was a meeting of the minds regarding the absence of unreasonably dangerous conditions.

128. Defendants' intent to provide safe vehicles was evidenced by, among other things, its advertising and marketing materials emphasizing the safety qualities of its vehicles. For example, a statement on Toyota's website dated November 18, 2009, states: "Toyota is confident its vehicles are among the safest on the road today and is committed to the highest levels of vehicle safety and quality." In light of this statement and others like it, Plaintiffs and Class members had a reasonable expectation that the vehicles they purchased would not contain an unreasonably dangerous condition.

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129. The absence of unreasonably dangerous conditions was a material term to the contracts. Plaintiffs and Class members would not have purchased or leased the vehicles, or would not have paid the purchase price or lease price they paid, had they known of the unintended acceleration defect.

130. Defendants breached the implied terms of their contracts by providing vehicles that contained unreasonably dangerous conditions.

131. Plaintiffs and Class members suffered and will continue to suffer damages including but not limited to those set forth in paragraph 9.

THIRD CLAIM FOR RELIEF VIOLATION OF THE KENTUCKY CONSUMER PROTECTION ACT – UNFAIR CONDUCT

132. Plaintiffs re-allege all preceding allegations as if fully set forth herein.

133. KRS § 367.110 *et seq.*, also known as the Kentucky Consumer Protection Act, makes unlawful all "unfair, false, misleading, or deceptive acts or practices in the conduct of any trade or commerce." KRS § 367.170.

134. Defendants violated and continue to violate the KCPA through one or more of the following unfair and/or deceptive practices:

a. Manufacturing and selling vehicles containing a dangerous condition;

b. Failing to adequately investigate claims of unintended acceleration;

c. Failing to adequately and individually notify Class members of the recalls and underlying dangerous condition;

d. Violating other laws alleged herein.

135. Plaintiffs and Class members suffered and will continue to suffer damages including but not limited to those set forth in paragraph 9.

136. Defendants' conduct has impaired competition in the motor vehicle industry. It provided Defendants with an unfair advantage compared to its competitors when manufacturing and selling vehicles and earning profits thereon. Plaintiffs and Class members bought or leased Toyota vehicles, at least in part, because of Toyota's reputation as a safe brand whose vehicles have a high resale value. This reputation has thrived, in part, because of Toyota's efforts to keep quiet the sudden acceleration defect and corresponding threat to the safety of Toyota customers and the general public.

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FOURTH CLAIM FOR RELIEF – VIOLATION OF THE KENTUCKY CONSUMER PROTECTION ACT – DECEPTIVE/FALSE CONDUCT

137. Plaintiffs re-allege all preceding allegations as if fully set forth herein.

138. Plaintiffs are informed and believe and thereon allege that, as described herein, Toyota has engaged in unfair practices, in violation of the Kentucky Consumer Protection Act, as codified in KRS 367.110 et seq.

139. Toyota stated directly and indirectly in various marketing and advertising campaigns that its vehicles are safe and reliable. For example, a statement on Toyota's website dated November 18, 2009 states: "Toyota is confident its vehicles are among the safest on the road today and is committed to the highest levels of vehicle safety and quality." These statements were untrue in light of the problems with unintended acceleration.

140. Defendants' statements in its brochures, websites, television ads, newspaper ads, and other means constituted advertising for purposes of this claim.

141. Defendants' advertising program contained statements concerning vehicle safety and reliability that were false or misleading and that were known or should have been known to Defendants to be false or misleading.

142. Defendant knew or should have know that its vehicles were defective and failed to inform Plaintiffs and the Class of known defects prior to Plaintiffs and the Class purchasing or leasing their Toyota vehicles.

143. As a direct result of Defendants' unlawful conduct, Plaintiffs and the Class have suffered the damages set forth in paragraph 9.

FIFTH CLAIM FOR RELIEF BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY

144. Plaintiffs re-allege all preceding allegations as if fully set forth herein.

145. Defendants' vehicles were accompanied by an implied warranty of merchantability when sold, pursuant to KRS § 355.2-314.

146. Pursuant to KRS § 355.2-314, for "good to be merchantable" the consumer goods must meet each of the following:

a. pass without objection in the trade under the contract description; and

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b. in the case of fungible goods, are of fair average quality within the description; and

c. are fit for the ordinary purposes for which such goods are used; and

d. run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved; and

e. are adequately contained, packaged, and labeled as the agreement may require; and

f. conform to the promises or affirmations of fact made on the container or label if any.

147. The vehicles encompassed by Toyota's recalls would not pass without objection in the automotive trade. The vehicles are unreasonably dangerous and in need of repair.

148. The vehicles are not fit for the ordinary purpose for which they were sold. The vehicles were purchased to, among other things, safely transport drivers and passengers. The vehicles cannot be used for safe transportation in their current condition.

149. The vehicles were not adequately labeled because the labeling failed to disclose the dangerous conditions.

150. Defendants breached the implied warranty of merchantability by manufacturing and selling vehicles containing an unreasonably dangerous condition.

151. As a result of Defendants' unlawful conduct, Plaintiffs and the Class have suffered and will continue to suffer the damages set forth in paragraph 9.

SIXTH CLAIM FOR RELIEF BREACH OF THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE

152. Plaintiffs re-allege all preceding allegations as if fully set forth herein.

153. KRS § 355.2-315 states:

> Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is unless excluded or modified under KRS 355.2-316 an implied warranty that the goods shall be fit for such purpose.

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154. Defendants knew at the time they sold or leased vehicles to Class members that such vehicles would be used for the specific purpose of, among other things, providing safe transportation.

155. Defendants knew at the time they sold or leased vehicles to Class members that those individuals chose to buy or lease their vehicles from Toyota at least in part because of the reputation of Toyota cars and trucks as safe vehicles with high resale value, as compared to cars and trucks manufactured by Toyota's competitors.

156. Defendants knew that Class members were relying on Defendants' skill and judgment in furnishing and/or recommending vehicles that were purportedly suitable for providing safe transportation and that enjoyed high resale value, as compared to cars and trucks manufactured by Toyota's competitors.

157. Defendants breached the implied warranty of fitness because the vehicles contained an unreasonably dangerous condition and were not suitable for providing safe transportation. Likewise, the unreasonably dangerous condition of the vehicles has resulted in a substantial drop in the resale value of those vehicles.

158. As a direct result of Defendants' unlawful conduct, Plaintiffs and the Class have suffered and will continue to suffer the damages set forth in paragraph 9.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of all others similarly situated, respectfully request that the Court enter an Order:

A. Certifying the proposed Class under Fed. R. Civ. P. 23(b)(2) and (3) and appointing Plaintiffs and Plaintiffs' counsel to represent the Class;

B. Finding that Defendants are liable under all legal claims asserted herein;

C. Awarding damages to the Class under the common law and statutory theories alleged herein, including compensatory and consequential damages as set forth in paragraph 9, punitive damages, and any other damages provided under the law;

D. Ordering injunctive relief as set forth in paragraph 10;

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E. Awarding attorneys' fees and litigation costs; and

F. Awarding any other legal or equitable relief as justice so requires.

Dated: February 12, 2010.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable.

Dated: February 12, 2010.

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BEFORE THE JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION

In re: Toyota Motor Corp. Defective Gas Pedal Products Liability Litigation	:	MDL No. 2151

PROOF OF SERVICE

I hereby certify that on Thursday, February 25, 1010, a copy of the foregoing Notice of Entry of Appearance, Notice of Related Action, and Response of Interested Parties to Pending Transfer Motions was served by Federal Express to the following:

Jeffery N. Lüthi, Clerk of the Panel
U.S. Judicial Panel on Multidistrict Litigation
Thurgood Marshall Federal Judiciary Building
Room G-255, North Lobby
Washington, D.C. 20002

and service by U.S. Mail to the following:

Service on Courts:

United States District Court
California, Central
312 N. Spring St.
Los Angeles, CA 90012-4793

United States District Court
California, Central
255 East Temple Street.
Los Angeles, CA 90012

United States District Court
California, Central
411 West Fourth Street, Room 1053
Santa Ana, CA 92701-4516

United States District Court
West Virginia, Southern
P. O. Box 2546
Charleston, WV 25329

United States District Court
Florida, Southern
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Miami, FL 33128

United States District Court
Florida, Middle
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United States District Court
Texas, Southern
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Corpus Christi, TX 78401

United States District Court
Texas, Eastern
100 E. Houston, Rm. 125
Marshall, TX 75670

United States District Court
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500 Poydras Street
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United States District Court
District of Utah
350 Main Street, Rm. 150
Salt Lake City, Utah 84101-2180

United States District Court
South Carolina
901 Richland Street
Columbia, SC 29201

United States District Court
Federico Degetau Federal Building, Room 150
150 Carlos Chardon Street
San Juan, Puerto Rico 00918-1767

United States District Court, New Jersey
Clarkson S. Fisher Building
& U.S. Courthouse
402 East State Street Room 2020
Trenton, NJ 08608

United States District Court
Kentucky, Eastern
Lynn Battaglia, Deputy-in-Charge
35 West 5th Street
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Covington, KY 41012-1073

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Eastern District of Pennsylvania
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BEFORE THE JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION

In re: Toyota Motor Corp. Defective Gas Pedal Products Liability Litigation	:	MDL No. 2151

NOTICE OF ENTRY OF APPEARANCE

The undersigned hereby enters his appearance as counsel for Michael and Cathy Miller, plaintiffs in a related action recently filed in the Eastern District of Kentucky styled *Miller v. Toyota Motor Sales USA, Inc.*, 2:10-cv-00031-WOB. I request that I be added to the service list in this proceeding and state that I am authorized to receive all pleadings, orders and other papers relating to these parties. I am also aware that only one attorney may be designated for these parties.

Date: February 25, 2010

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TOY-RQ-05E-00009312

BEFORE THE JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION

In re: Toyota Motor Corp. Defective Gas Pedal Products Liability Litigation	:	MDL No. 2151

RESPONSE OF INTERESTED PARTIES TO PENDING TRANSFER MOTIONS

Michael and Cathy Miller, plaintiffs in a related action styled *Miller v. Toyota Motor Sales USA, Inc.*, 2:10-cv-00031-WOB (Eastern District of Kentucky filed Feb. 12, 2010), hereby respond to the pending motions to transfer before this Panel. Plaintiffs agree with those who filed the pending motions that there is a need for coordination and consolidation and thus that transfer under 28 U.S.C. § 1407 is appropriate and should be ordered. However, plaintiffs submit that transfer should be made to the Eastern District of Kentucky rather than to one of the other districts that have been proposed.

Actions generally are transferred to a district where one or more actions are pending. *See In re A.H. Robins Co."Dalkon Shield" Liab. Litig.*, 406 F. Supp. 540, 542 (J.P.M.L. 1975). Among the other factors considered by the Panel include the number of cases pending in the proposed forum, the accessibility of the forum, the convenience of the parties and witnesses, the relative progress to date in the various actions, the respective caseloads of the proposed transferee courts, and the location of the parties, witnesses and documents. *See, e.g,* 15 C.Wright, A.Miller & E.Cooper, *Federal Practice and Procedure,* §3864 (3d ed. 2007).

The Eastern District of Kentucky satisfies the Panel's criteria and, indeed, is the most appropriate transferee forum for the following reasons. First, five of the cases at issue are pending in the Eastern District of Kentucky:

(1) *Leaverton v. Toyota Motor Engineering & Manufacturing North America, Inc.*, 2:10-cv-00032-WOB;

(2) *Miller v. Toyota Motor Sales USA, Inc.* 2:10-cv-00031-WOB;

(3) *Poynter v. Toyota Motor North America, Inc.*, 2:10-cv-00021-WOB;

(4) *Staderrton v. Toyota Motor North America, Inc.*, 2:10-cv-00030-WOB; and

(5) *Viviano v. Toyota Motor Engineering & Manufacturing North America, Inc.*, 2:10-cv-00024-WOB.

All of these cases have been assigned to the Honorable William O. Bertelsman. Judge Bertelsman is a highly respected, skilled senior judge,

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with over thirty-one (31) years of experience, and is well positioned to handle this litigation efficiently. While the cases were all filed recently, that factor does not undercut transfer to the Eastern District of Kentucky since all of the cases in this litigation have been filed recently and none is substantially further advanced than any other.

Second, the Eastern District of Kentucky is one of, if not the, critical loci of the current controversy as demonstrated by the following:

- Defendant Toyota Motor Engineering & Manufacturing, Inc. (TEMA), a wholly owned subsidiary of Toyota Motor Corporation, is headquartered in the Eastern District of Kentucky. According to Toyota's website, TEMA "is responsible for Toyota's engineering design and development, R&D, and manufacturing activities in the U.S., Mexico and Canada."[1]

- Defendant Toyota Motor Manufacturing Kentucky, Inc. (TMMK), operates Toyota's largest manufacturing facility outside of Japan, employs more than 6500 people, and builds many of its models at issue in this litigation. Both TMMK and its plant are located in the Eastern District of Kentucky.[2]

- A division of TEMA called the Toyota Technical Center (TTC) oversees the design and development of Toyota's vehicles and, according to Toyota, is engaged in such matters as "evaluation and design of parts and materials, regulatory affairs ... and technical research."[3]

- A map of Toyota's operations in the United States demonstrates that the Eastern District of Kentucky is located at

[1] http://www.toyota.com/about/our_business/operations/manufacturing/
[2] http://www.toyota.com/about/our_business/operations/manufacturing/tmmk/
[3] http://www.toyota.com/about/our_business/research_and_development

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the geographical center of its manufacturing facilities and suppliers, most of which are located in the eastern part of the country. A copy of the map is attached as Exhibit A.

- The extent of Toyota's operations in Kentucky is further demonstrated by the fact that its direct investment there exceeds $5 billion, almost twice the amount invested in any other state. *See* Exhibit B.

These factors support transfer to the Eastern District of Kentucky. *See, e.g In re Fretted Musical Instruments Antitrust Litig.*, 657 F. Supp. 2d 1379, 1381 (J.P.M.L. 2009) (transferee forum selected in part because two defendants were headquartered there and another had a manufacturing facility there); *In re Air Crash Near Medan, Indonesia, On September 5, 2005*, 544 F. Supp. 2d 1379, 1380 -81 (J.P.M.L. 2008) (transferee forum selected in part because it was located midway between defendants' headquarters); *In re CertainTeed Corp. Roofing Shingle Prods. Liability Litig.*, 474 F. Supp. 2d 1357, 1358 (J.P.M.L. 2007) (transferee forum selected in part because defendant was headquartered there); *In re Amer. Cont. Corp. Sec. Litig.*, 130 F.R.D. 475, 476 (J.P.M.L. 1990) (same).

Third, because the bulk of Toyota's manufacturing and engineering operations are located in or supervised by employees in Kentucky, most of the relevant witnesses and documents likely are located there. Consequently, a court in Kentucky is particularly well-suited to oversee the discovery process. The Eastern District of Kentucky, moreover, likely is the best forum for the convenience of the witnesses and parties. This is particularly so since, with the

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exception of Toyota's sales operations in California, most of its activities in this country take place in states in the East and Midwest, places which are convenient to the Eastern District of Kentucky.

Fourth, as a result of the strong and longstanding presence of Toyota in Kentucky, many persons in the Eastern District of Kentucky speak Japanese. Accordingly, to the extent that translation services will be needed, they will be readily available.

Fifth, the Eastern District of Kentucky is readily accessible to all parties and counsel. Covington, where Judge Bertelsman sits, is part of the Cincinnati, Ohio metropolitan area and is only 12 miles from the Cincinnati/Northern Kentucky International Airport. The airport is served by most major carriers and is a major hub for Delta Airlines, the world's largest. Moreover, there are numerous hotels nearby.

Sixth, the status of the docket in the Eastern District of Kentucky is favorable. In *In re ClassicStar Mare Lease Litig.*, 528 F. Supp. 2d 1345, 1347 (J.P.M.L. 2007), this panel consolidated several actions and transferred the consolidated action to the Eastern District of Kentucky, in part, because 'the district's general docket conditions permit us to make the Section 1407 assignment knowing that the court has the resources available to manage this litigation." The most recently published Federal Court Management Statistics, issued in 2008,

confirm this assessment. The number of pending cases per judge in the Eastern District of Kentucky was 350. In contrast, the national average was 528 cases per judge.

For the reasons set forth above, plaintiffs request that all of the actions related to this proceeding be transferred to the Eastern District of Kentucky.

February 25, 2010

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TOY-RQ-05E-00009318

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The Certificate of Service Is Included as a Separate Document.

TOY-RQ-05E-00009319

In re: Toyota Motor Corp. Defective Gas Pedals Products Liability Litigation
Before the Judicial Panel on Multidistrict Litigation
MDL No 2151

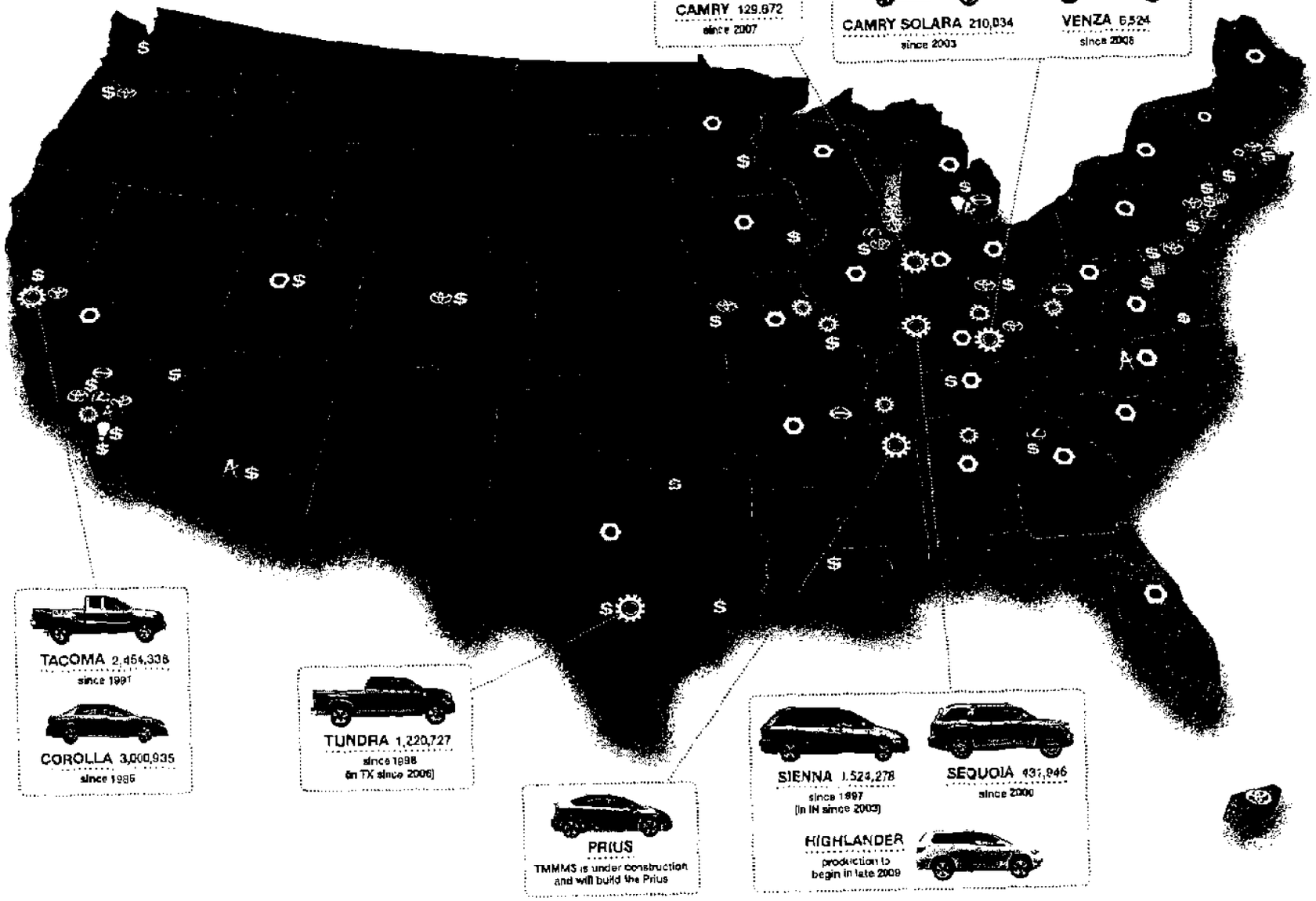
EXHIBIT A

to Response of Interested Parties to Pending Transfer Motions

Toyota Across the United States

Toyota Sales or Service Office* | Manufacturing Facility† | Research and Development Center
Lexus Sales or Service Office* | Supplier State | Design Center
Financial Services Office* | Holding Company | Hino Operation or Manufacturing Facility

Dealerships Throughout the U.S.
All data as of December 2008. *May represent more than one location.
†Toyota vehicles and components are built using U.S. and globally sourced parts.



In re: Toyota Motor Corp. Defective Gas Pedals Products Liability Litigation
Before the Judicial Panel on Multidistrict Litigation
MDL No 2151

EXHIBIT B

to Response of Interested Parties to Pending Transfer Motions

Toyota State by State Impact

	Employment		Investment ($ mil)		Products and Parts	
	Direct	Indirect[2]	Direct	Dealer[3]	Made by Toyota and Affiliate Companies[1]	Purchased In-State
AL	867	2,142	559.0	211.5	Engines	Exterior Lighting, Hoses, Seals/Gaskets, Stampings
AR	468	1,362	179.9	105.8	Axles	Grilles & Ornamentation, HVAC Systems
CA	10,725	21,485	2,278.1	2,664.2	Corolla, Tacoma, Catalytic Converters, Steering Columns, Race Engines, Race Engine Components, Axle Components	Door Frames, Door Trim, Injection Moldings, Multimedia (Navigation, Bluetooth®), Weatherstrips
GA	72	3,941	71.2	505.1		Door Frames, Locks, Hinges, Seals/Gaskets
IN	4,582	9,169	2,678.3	193.0	Camry, Highlander, Sequoia, Sienna	Brake Components, Engine Plastics, Exterior Moldings, Injection Moldings (Instrument Panel & Console), Locks, Hinges, Seats
KY	9,161	10,521	5,058.0	180.1	Avalon, Camry/Camry Hybrid, Camry Solara, Venza, Engines, Powertrain Parts	Brake Components, Hoses, Injection Moldings, Large Die Casting, Seats, Weatherstrips
MD	712	3,377	47.0	453.9		
MI	1,016	6,441	1,035.7	187.4		Brake Components, Convenience Electronics (Remote Keyless Entry), Hoses, HVAC Systems, Radiators, Sun Visors, Switches
MO	909	2,019	590.2	210.0	Engine Parts/Components	Airbags, Injection Moldings (Instrument Panel), Grilles & Ornamentation, Steering Wheels
MS	2,000 Projected	1,088	1,300 Projected	99.6	Our plant in MS is under construction and will build the Prius.	
NC	46	5,651	49.3	426.6	Race Engines, Race Engine Components	Automatic Transmissions, Driveshafts, Seals/Gaskets, Window Motors
OH	174	7,497	342.9	455.2		Brake Components, Engine Sensors, Vehicle Stability Control Systems
TN	221	9,122	623.2	255.2	Engine Parts/Components	Automatic Transmission Components, Display Products, Engine Sensors, HVAC ECU, Power Steering Components, Starters/Alternators
TX	2,040	12,510	1,106.4	1,297.8	Tundra	Carpet, Horn Pads, Injection Moldings (Instrument Panel and Console), Power Steering Components, Seats, Washers
WV	1,173	1,160	1,005.9	61.6	Engines, Transmissions, Hino Trucks	O2 Sensors, Spark Plugs
Other U.S. States	3,515	68,473	1,822.4	8,013.6		
TOTALS	35,838	165,958	17,459.1	15,320.6		

States with the largest Toyota and supplier operations. All data as of December 2008 except where noted. All figures are reported in U.S. dollars.
[1]Toyota vehicles and components are built using U.S. and globally sourced parts. [2]Represents dealer and supplier jobs. [3]Includes U.S. and Puerto Rico.

BEFORE THE JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION

IN RE TOYOTA MOTOR CORP. DEFECTIVE GAS PEDAL PRODUCTS LIABILITY LITIGATION	MDL NO. 2151

PLAINTIFF'S RESPONSE TO THE MOTION FOR TRANSFER AND CONSOLIDATION OR COORDINATION TO THE CENTRAL DISTRICT OF CALIFORNIA PURSUANT TO 28 U.S.C. § 1407

Dru Colin Lee Plaintiff and proposed class representative in the action titled *Dru Colin Lee, individually and on behalf of all others similarly situated, v. Toyota Motor Sales U.S.A., Inc., Toyota Motor North America, Inc., Toyota Motor Manufacturing, Inc., and Toyota Motor Engineering & Manufacturing North American, Inc.*, Case No. 5:10-cv-00117-R, attached hereto as Exhibit A[1], currently pending before the Honorable David L. Russell in the United States District Court for the Western District of Oklahoma, by and through his undersigned counsel and on behalf of himself and all others similarly situated, respectfully moves the Judicial Panel for Multidistrict Litigation (the "Panel") pursuant to 28 U.S.C. § 1407 of the Rules of Procedure of the Panel, to transfer and consolidate all pending and subsequently filed federal class action cases against Toyota Motor Sales, U.S.A., Toyota Motor Engineering & Manufacturing North America, Inc., and/or Toyota Motor Corporation (collectively "Toyota") alleging similar or related claims, including but not limited to those listed on the Schedule of Actions, attached

[1] The original complaint, amended complaint, and docket entry for this case are attached as Exhibit A.

hereto as Exhibit B, to the United States District Court for the Central District of California for consolidated pretrial proceedings.

In support of the Motion, Plaintiff submits the accompanying Memorandum. As explained and demonstrated in greater detail, the pending and yet-to-be filed actions for which transfer is proposed assert common questions of fact and law. Consolidation or coordination of the related cases will promote efficiency and convenience not only for the parties and the witnesses, but for the courts. The requirements for transfer and consolidation or coordination are thereby satisfied and transfer should be granted. In support of this Motion, Plaintiff states as follows:

1. Dru Colin Lee is the Plaintiff and the class representative in the following captioned case in the Western District of Oklahoma, *Dru Colin Lee, individually and on behalf of all others similarly situated, v. Toyota Motor Sales U.S.A., Inc., Toyota Motor North America, Inc., Toyota Motor Manufacturing, Inc., and Toyota Motor Engineering & Manufacturing North American, Inc.*, Case No. 5:10-cv-00117-R.

2. Class actions and personal injury cases have been filed around the country against Toyota arising from certain defects in Toyota and Lexus motor vehicles manufactured and sold by Toyota that cause the vehicles suddenly, without warning, and without intention on the part of the driver, to accelerate. This sudden, unintended acceleration ("SUA") has given rise to two recalls by Toyota and to all the actions listed in the Schedule of Actions. These cases are of two types: (1) class actions on behalf of Toyota owners seeking damages and/or injunctive relief for breaches of warranty and/or fraudulent, deceptive or unfair practices relating to SUA; and (2) personal injury actions arising from accidents caused by SUA that resulted in injuries or death.

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3. There are currently at least 30 pending separate or consolidated class action cases against Toyota concerning the acceleration of Toyota's motor vehicles.

4. This case and all of the cases listed on the Schedule of Actions and subsequently filed actions arise out of the same or similar nucleus of operative facts arising out of Toyota's same or similar alleged wrongful conduct and from the same defect based on facts and legal claims concerning SUA of Toyota's motor vehicles.

5. This case and all of the cases listed on the Schedule of Actions and subsequently filed actions assert claims for similar relief and damages arising out of Toyota's same or similar alleged wrongful conduct and from the same defect based on facts and legal claims concerning SUA of Toyota's motor vehicles.

6. Discovery in this case and the cases listed in the Schedule of Actions and subsequently filed actions will be substantially similar and will involve the same or similar documents and witnesses. Consolidation or coordination of these actions before a single judge will eliminate duplicative discovery, prevent conflicting pretrial rulings, conserve judicial resources, reduce the costs of litigation, allow the case to proceed more efficiently, and will not unduly prejudice any cases. Rulings on what documents Defendants are required to produce, what information they are entitled to seek from plaintiffs, and what documents are entitled to protection as confidential or propriety information should be uniform.

7. Defendant Toyota Motor Sales, U.S.A., Inc., is headquartered in Torrance, California, being the Central District of California, and thus, judicial 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 of California.

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8. 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 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.

For the reasons stated above, and in more detail in the accompanying Memorandum, the transfer and consolidation or coordination of this case and the Schedule of Actions to the Central District of California will promote the just and efficient administration of these Actions. Thus, Plaintiff respectfully requests that the Schedule of Actions, and subsequently filed actions, be transferred to the Central District of California for consolidated proceedings.

RESPECTFULLY SUBMITTED,

Dated: February 26, 2010

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BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

IN RE TOYOTA MOTOR CORP. DEFECTIVE GAS PEDAL PRODUCTS LIABILITY LITIGATION	MDL NO. 2151

MEMORANDUM IN SUPPORT OF PLAINTIFF'S RESPONSE TO THE MOTION FOR TRANSFER AND CONSOLIDATION OR COORDINATION TO THE CENTRAL DISTRICT OF CALIFORNIA PURSUANT TO 28 U.S.C. § 1407

Dru Colin Lee Plaintiff and proposed class representative in the action titled *Dru Colin Lee, individually and on behalf of all others similarly situated, v. Toyota Motor Sales U.S.A., Inc., Toyota Motor North America, Inc., Toyota Motor Manufacturing, Inc., and Toyota Motor Engineering & Manufacturing North American, Inc.*, Case No. 5:10-cv-00117-R, attached hereto as Exhibit A[2], currently pending before the Honorable David L. Russell in the United States District Court for the Western District of Oklahoma, respectfully moves for an Order pursuant to 28 U.S.C. § 1407, to transfer this case and the pending cases in the Schedule of Actions, attached hereto as Exhibit B, and subsequently filed cases involving similar facts of claims to the United States District Court for the Central District of California, and to consolidate the cases for pretrial proceedings.

I. INTRODUCTION

Plaintiff is aware of at least 30 class action complaints that are currently pending in federal courts against some combination of the Defendants in these litigations. All cases stem

[2] The amended complaint for this case is attached as Exhibit A.

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from the alleged tendency of Toyota and Lexus branded motor vehicles to experience unintended acceleration ("SUA"). The Schedule of Actions satisfies all of the requirements for transfer: they are "pending in different districts" and they involve "common questions of fact." *See* 28 U.S.C. § 1407(a). Moreover, their transfer and consolidation or coordination will further the "convenience of parties and witnesses" and will "promote the just and efficient conduct of the litigation," by (1) eliminating duplicative discovery; (2) preventing conflicting pretrial rulings; (3) conserving judicial resources; (4) reducing the costs of litigation for the parties involved; and (5) allowing the cases to proceed more efficiently. *See* § 1407(a). These efficiencies will especially be realized if the consolidated cases are transferred to the Central District of California.

II. LITIGATION BACKGROUND

These are consumer class actions and mass tort motor vehicle products liability lawsuits. This case and the actions listed in the Schedule of Actions have been filed by plaintiffs who allege damages from Toyota or Lexus automobiles designed, manufactured, distributed and/or sold by the Defendants that are prone to a defectively designed throttle control system and Defendants' failure to properly and timely remedy the defect. Plaintiffs in the various actions contend that Defendants Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Manufacturing, West Virginia, Inc., Toyota Motor Manufacturing, Kentucky, Inc., and other related entities (collectively, "Toyota") are liable for these injuries because Toyota (1) by its acts and practices as described in the complaints constituted unlawful, fraudulent, and unfair business acts and practices in violation of various consumer fraud statutes; (2) made material misrepresentations to consumers which caused them to justifiably rely on such misrepresentations, nondisclosure, and/or concealment of material facts in agreeing to purchase

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or lease the defective subject vehicles; and (3) impliedly and/or expressly warranted that the subject vehicles were not unreasonably dangerous and were safe when used as designed by Defendants.

This case and the Schedule of Cases all concern the Defendants' defectively designed Electronic Throttle Control System also known as the "drive-by-wire" throttle control ("ETCS-i") that are used in automobiles designed, manufactured, distributed, and sold by the Defendants. It also concerns Defendants' failure to honestly acknowledge the true nature of the defects in the ETCS-*i* and properly remedy those dangerous defects in a timely manner.

Centralization of pretrial proceedings is particularly appropriate at this time because all the cases are in the early stages. Discovery and pretrial proceedings in the Schedule of Actions will be substantially the same because the allegations and claims arise out of the same nucleus of operative facts and require the same or similar questions of law and fact to be determined by a court of law. Accordingly, transfer and consolidation or coordination of these actions to the Central District of California will promote a just and efficient resolution of this case and the Schedule of Aetions, enhanee judicial economy, and serve the eonvenience of the parties, witnesses, and courts.

III. ARGUMENT

A. THESE ACTIONS WARRANT TRANSFER AND CONSOLIDATION OR COORDINATION PURSUANT TO 28 U.S.C. § 1407

Consolidation or coordination of the Toyota cases under § 1407 is proper because these cases involve common questions of fact and consolidation or coordination will promote the convenienee of witnesses and parties and the just and effieient eonduct of these actions. Section 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

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of fact. 28 U.S.C. § 1407(a). Transfers are authorized where the Judicial Panel for Multidistrict Litigation (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" through coordination of 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 or coordination 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 avoids conflicting pretrial discovery and ensures uniform and expeditious treatment in the pretrial procedures. *In re Phenylpropanolamine (PPA) Prods. Liab. Litig.*, 460 F.3d 1217, 1230 (9th Cir. 2006).

1. **These Actions Involve Common Questions of Fact**

Transfer and consolidation or coordination is appropriate here because many common questions of fact exist. This case and all of the cases listed on the Schedule of Actions and subsequently filed actions arise out of the same or similar nucleus of operative facts arising out of Toyota's same or similar alleged wrongful conduct and from the same defect based on facts and legal claims concerning SUA of Toyota's motor vehicles. *See In re Air West, Inc. Sec. Litig.*, 384 F. Supp. 609, 611 (J.P.M.L. 1974) ("Indeed, when two of more complaints assert comparable allegations against identical defendants based on similar transactions or events, common factual questions are presumed."). The common questions develop from the unknown cause of uncontrolled, unintended, and/or SUA in the subject vehicles, Defendants' knowledge of the SUA defect, when Defendants' acquired or should have acquired said knowledge, and Defendants' conduct after learning of the SUA. Additionally, all of the cases listed on the

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Schedule of Actions and subsequently filed actions assert claims for similar relief and damages arising out of Toyota's same or similar alleged wrongful conduct and from the same defect based on facts and legal claims concerning SUA of Toyota's motor vehicles. Therefore, common questions of facts exist and transfer and consolidation or coordination is appropriate.

2. Consolidation or Coordination of this Case and the Schedule of Actions Will Be for the Convenience of the Parties and Witness

Consolidation or coordination of these actions will satisfy the convenience element under Section 1407(a) by eliminating party and witness inconvenience and unnecessary expenses that would result from the production of the duplicative documents and evidence and the depositions of the same witnesses in each of this case and the Schedule of Actions and subsequently filed actions based on SUA. Additionally, consolidation or coordination will eliminate the possibility of duplicative discovery that will result from common factual issues by enabling a single judge to manage pretrial proceedings and discovery. Transfer will facilitate a significant savings to all parties involved in this case and the Schedule of Actions. Therefore, consolidation or coordination would convenience the parties and witness involved in this case and the Schedule of Actions and transfer and consolidation or coordination is appropriate. .

3. Consolidation or Coordination of this Case and the Schedule of Actions Will Promote the Just and Efficient Conduct of this Case and the Schedule of Actions

Determination of the common questions of fact 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 Schedule of Actions and subsequently filed actions. Without transfer and consolidation or coordination of the Actions, the significant hazard of inconsistent rulings exists, and judicial inefficiency, overlapping discovery, and unnecessary expense will certainly result.

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Transfer and consolidation or coordination will eliminate the potential for contemporaneous pretrial rulings by coordinating district and appellate courts in multidistrict related civil actions.

Coordination is especially justified where, as here, more than one class action is based on the same underlying factual questions because of danger of conflicting class certification decisions if the class actions are not coordinated of consolidated. The Panel has consistently held that the "transfer of actions under § 1407 is appropriate, if not necessary, where the possibility of inconsistent class determination exists. *In re Sugar Indus. Antitrust Litig.*, 395 F. Supp. 1271, 1273 (J.P.M.L. 1975) Therefore, for the convenience of the parties and witnesses and judicial efficiency and consistency, the Panel should consolidate or coordinate this case the Schedule of Actions for pretrial proceedings.

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 including the number of cases pending in the jurisdiction, convenience of the parties, and location of witnesses and other evidence. *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 Servo Pit 7-12 Test Scoring Litig.*, 350 F. Supp. 2d 1363, 1365 (J.P.M.L. 2004). The Central District of California best meets the abovementioned factors, and therefore, the Central District of California is the appropriate forum for transfer.

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1. **Number of Cases Pending**

Currently, the Central District of California is the jurisdiction with the greatest number of pending cases. No other jurisdiction other than the Central District of California has any significant number of filed cases. Moreover, given that the American location for Toyota's headquarters is located in the Central District of California, and that it appears that the number of lawsuits being filed regarding the issues addressed in this case and the Schedule of Actions appear to increase daily, it is likely that the number of lawsuits 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 receiving the greatest number of filed \ lawsuits.

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 numbers 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.

The Central District of California is located in the city of Los Angeles, which is home to Los Angeles International Airport. Los Angeles International Airport is one of the business airports in the world and offers direct flights to and from major American and International cities, thus making it easily accessible for all parties and witnesses involved. Thus, of the jurisdictions available to the Panel, the Central District of California provides the greatest convenience to the parties and witnesses.

3. **Location of Witnesses and Additional Evidence**

The Central District of California is the appropriate venue given both the location of the witnesses and additional evidence. The primary Defendant in the litigation, Toyota Motor Sales, U.S.A., Inc., has its American headquarters in the Central District of California, thus making it convenient for witnesses to be present and evidence to be produced. A large number of fact and expert witnesses are undoubtedly located in the Central District of California given the location of Toyota's headquarters. Among the potential witnesses in this case is Dimitrious Biller, a California resident and former attorney for Toyota, who has commenced suit against Toyota in the Central District of California, Case No. CV-09-529 GHK, *Biller, et al v. Toyota Motor Corporation*. The *Biller* suit alleges fraud by Toyota, a key allegation in MDL 2151, and it is reasonable that some documents or testimony produced in the *Biller* case will be germane in MDL 2151. Moreover, there are no other jurisdictions that have any stronger claim regarding the location convenience of witnesses or other evidence. Thus, of the jurisdictions available to the Panel, the Central District of California is appropriate given the location of witness and evidence.

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IV. CONCLUSION

For the reasons set forth above, Plaintiff respectfully requests that the Panel transfer this case and the Schedule of Actions to the Central District of California for consolidation and coordination pursuant to 28 U.S.C. § 1407.

RESPECTFULLY SUBMITTED,

Dated: February 26, 2010

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Counsel for Plaintiff Dru Colin Lee

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CERTIFICATE OF SERVICE

I hereby certify that I have this 26th day of February 2010 caused to be served a copy of the foregoing Plaintiff's Response to Motion for Transfer to the Central District of California and Memorandum in Support of Motion to Transfer to the Central District of California via Electronic filing and/or United States mail with postage paid thereon to clerks of record listed below and parties listed on the attached Panel Service List:

Matthew J. Sill, OBA #21547

United States District Court
California, Central
312 N. Spring St.
Los Angeles, CA 90012-4793

United States District Court
California, Central
255 East Temple Street.
Los Angeles, CA 90012

United States District Court
California, Central
411 West Fourth Street, Room 1053
Santa Ana, CA 92701-4516

United States District Court
West Virginia, Southern
P.O. Box 2546
Charleston, WV 25329

United States District Court
Florida, Southern
400 N. Miami Ave., 8th Floor
Miami, FL 33128

United States District Court
Kentucky, Eastern
Lynn Battaglia, Deputy-in-Charge
35 West 5th Street
P.O. Box 1073
Covington, KY 41012-1073

United States District Court
Eastern District of Pennsylvania
Office of the Clerk of Court
James A. Byrne Federal Courthouse
601 Market Street, Room 2609
Philadelphia, P.A. 19106-1797

United Stated District Court
Western District of Oklahoma
200 NW 4th Street
Room 1210
Oklahoma City, OK 73102

Printed on 02/23/2010

Judicial Panel on Multidistrict Litigation - Panel Service List
for
MDL 2151 - IN RE: Toyota Motor Corp. Defective Gas Pedal Products Liability Litigation

***** Report Key and Title Page *****

Please Note: This report is in alphabetical order by the last name of the attorney. A party may not be represented by more then one attorney. See Panel rule 5.2(c).

Party Representation Key

* Signifies that an appearance was made on behalf of the party by the representing attorney.
# Specified party was dismissed in some, but not all, of the actions in which it was named as a party.
All counsel and parties no longer active in this litigation have been suppressed.

This Report is Based on the Following Data Filters

Docket: 2151 - Toyota Motor Corp. Defective Gas Pedal PL
For Open Cases

Judicial Panel on Multidistrict Litigation - Panel Service List

Docket: 2151 - IN RE: Toyota Motor Corp. Defective Gas Pedal Products Liability Litigation
Status: Pending on / /
Transferee District: Judge: Printed on 02/23/2010

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EXHIBIT A

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

DRU COLIN LEE, Individually, and on behalf of all others similarly situated,	)	
Plaintiff,	)	Case No. CIV-10-00117 -R
v.	)	
(1) TOYOTA MOTOR SALES U.S.A., INC., (2) TOYOTA MOTOR NORTH AMERICA, INC., (3) TOYOTA MOTOR MANUFACTURING, INC., and (4) TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC.	)	JURY TRIAL DEMANDED
Defendants.	)	

FIRST AMENDED COMPLAINT

Plaintiff, Dru Colin Lee, by and through his counsel, brings this action individually and on behalf of a class of similarly situated individuals defined below (the "Class") to recover damages suffered as a result of Toyota Motor Sales, U.S.A., Inc., Toyota Motor North, Inc., Toyota Motor Manufacturing, Inc., and Toyota Motor Engineering & Manufacturing North America, Inc. (collectively referred to as the "Defendants" or "Toyota Defendants") wrongful conduct. All allegations made in this Complaint are based on personal knowledge as to his own acts and status upon actual knowledge, and as to all other matters upon information and belief and the investigation of counsel.

Accordingly, Plaintiff brings this action on behalf of himself, and a class of those persons similarly situated, to obtain injunctive relief, to be compensated for economic injuries suffered as a result of the collective Defendants' pattern of racketeering activity, to be compensated for economic and personal injuries suffered as a result of Defendants' violations of the state substantive laws cited herein as a result of the intentional, reckless, and negligent conduct of Defendants, and to obtain punitive damages. Plaintiff asserts the following short and plain statements pursuant to Fed.R.Civ.P. 8(a) in support of his claims for relief against Defendants:

INTRODUCTION

1. This is a Class Action on behalf of Plaintiff and all others similarly situated to obtain injunctive relief, to be compensated for economic injuries they suffered as a result of the collective Defendants' pattern of racketeering activity, to be compensated for economic and personal injuries they suffered as a result of Defendants' violations of the state substantive laws cited herein and as a result of the intentional, reckless, and negligent conduct of Defendants.

2. Plaintiff brings this cause of action on behalf of himself and all others similarly who have purchased a Toyota or Lexus vehicle containing the electronic throttle control system known as the ETCS Intelligent System ("ETCS-i.").

3. Vehicles equipped with ETCS-i have a dangerous propensity to suddenly accelerate without driver input and against the intentions of the driver. This increased propensity for runaway acceleration stems in part from the ETCS-i's vulnerability to electronic "confusion" in the ETCS-i sensors and electronics processors.

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4. Defendants have known for years that their vehicles were defective in that they suffered from a defect that can cause them to suddenly accelerate uncontrollably, which is referred to as sudden unintended acceleration (hereinafter "SUA"). Upon information and belief, Defendants have known since 2002 that their vehicles' acceleration controls were adversely affected by radio waves. During those years, Defendants became aware of numerous customers who were injured and killed in accidents where SUA caused their vehicles to speed out of control and crash. In 2004, Defendants met with National Highway Transportation Safety officials in an effort to minimize the investigation of SUA incidents, to minimize the publicity adverse to them, and to avoid substantial costly recalls of millions of their automobiles. Upon information and belief, as part of the scheme to defraud consumers, Defendants have replaced experienced automobile workers with less expensive temporary workers at various Toyota Motor Manufacturing facilities, causing manufacturing quality to suffer, at the same time as they publicly represented to consumers the excellent engineering and reliability of their vehicles. Upon information and belief, during this time period, Defendants quietly repaired vehicles brought to them by customers who experienced SUA, but intentionally and recklessly failed to warn customers driving similar vehicles. Instead, they intentionally misrepresented to consumers, including Plaintiff and the proposed class, that their vehicles were suited for their intended purpose, were well-engineered, were safe to drive, and were reliable in order to avoid the substantial costs of recall programs involving millions of vehicles.

5. Upon information and belief, during 2008, Defendants were aware that the Toyota organization engaged in a repair campaign for European vehicles suffering from SUA, yet Defendants intentionally and recklessly failed to warn American consumers of the defect. During 2009, when the SUA problems became more frequent and the subject of substantial publicity, Defendants issued public statements designed to minimize public knowledge of the SUA defect and to misrepresent to current and prospective purchasers and lessees the true cause of the defect as part of their continuing scheme to defraud Plaintiff and the proposed class in an effort to minimize any recall and its effect on profits. Initially, in the fall of 2009, Defendants falsely alleged that the cause of the SUA defect was floor mats and offered to replace floor mats in certain vehicles. Defendants knew that only a small percentage of those notified would actually bring their vehicles in to replace floormats. As late as November 2009, Defendants insisted that "there is no evidence to support" any other cause for the defect, a statement that NHTSA later determined was "misleading and inaccurate."

6. In early 2010, Defendants falsely represented that many of its vehicles suffered from sticking accelerator pedals and conducted a recall program to physically modify the accelerators. Defendants have known about the repair of accelerator modification to allegedly correct SUA since at least 2006, when they modified the accelerator of a 2005 Toyota Camry at a dealership in Cincinnati, Ohio. At that time, they intentionally and recklessly failed to recall similarly-affected vehicles. Through the fall of 2009, more than 2,000 complaints of unintended acceleration were made regarding Toyota vehicles and Toyota was the subject of multiple investigations by the federal

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government. Defendants' recent allegation of sticking accelerator pedals as the cause of SUA, upon information and belief, is not truthful and is part of the scheme to minimize recalls and repairs and defraud Plaintiff and prospective class members.

7. Defendants and their affiliates have known since at least 2002 that their vehicles could accelerate uncontrollably, resulting in crashes causing serious injuries and deaths of occupants. During this time period, as set forth in detail below, Defendants and their parent company falsely assured Plaintiff and prospective class members in statements made to them via interstate mail and wire communications that their cars were safe and reliable and misrepresented the true nature and extent of Toyota-manufactured vehicle defects.

8. Instead of being told the truth about the dangerous propensity of Toyota-manufactured vehicles to suddenly accelerate, Plaintiff and prospective class members were given assurances that their vehicles were safe and defect free. For example, they were given a Warranty and Maintenance Guide that states:

> 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 goal is for every Toyota customer to enjoy **outstanding quality, dependability and peace of mind** . . . (Emphasis added).

9. Despite knowledge of such risks, Toyota failed to provide necessary electronic and mechanical failsafes to enable drivers to bring their vehicles back under control if a runaway event should occur, as other vehicle manufacturers have done.

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10. Due to ever-increasing publicity about the life-threatening defects of Toyota-manufactured vehicles, on January 21, 2010, Defendants announced that they were recalling millions of vehicles for the alleged reason of "sticking accelerator pedals." Defendants stated that Toyota's investigation, which they said had been conducted "in recent months," "indicates there is a possibility that certain accelerator pedal mechanisms may, in rare instances, **mechanically** stick in a partially depressed position or return slowly to the idle position." (Emphasis added).

11. They continue to cover up the fact drivers were experiencing SUA when their foot was on the brake and not touching the accelerator. They conceal the fact that when Toyota replaced its mechanical throttle linkage in the late 1990's with a computer-controlled accelerator system, it could be adversely affected by "radio waves." Upon information and belief, unlike American automobile companies, Toyota failed to include sufficient back-up safety systems that would prevent uncontrolled acceleration, all in order to save money and increase profits. As a result of the lack of appropriate safety systems, there is no adequate fail-safe mechanism to stop Toyota vehicles in the event the acceleration systems malfunction and engage in uncontrolled acceleration, as evidenced by the continuing injuries and deaths caused by Toyota SUA.

12. Despite acknowledging that the defect was serious enough that it was necessary to stop selling certain vehicles, Toyota failed to prevent both the recall model vehicles already sold or leased from being operated and additional vehicle models that contain the ETCS-s, nor did it offer to cancel leases and purchases and refund the monies paid by its customers.

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13. As a consequence of Defendants' unlawful scheme and misleading business practices, Plaintiff and prospective class members have suffered economic harm, which includes the loss in value of their vehicles and being deprived of the full use and benefit of their vehicles.

PARTIES

14. Plaintiff Dru Colin Lee is a resident of Cleveland County, Oklahoma.

15. Defendant Toyota Motor Sales U.S.A., Inc., is a California corporation and a citizen of California, with its principal place of business in California and is subject to personal jurisdiction in the Western District of Oklahoma, and therefore, deemed to reside in said district.

16. Defendant Toyota Motor North American, Inc., is a California corporation and a citizen of California, with its principal place of business in California and is subject to personal jurisdiction in the Western District of Oklahoma, and therefore, deemed to reside in said district.

17. Defendant Toyota Motor Manufacturing California, Inc., is a California corporation and a citizen of California, with its principal place of business in California and is subject to personal jurisdiction in the Western District of Oklahoma, and therefore, deemed to reside in said District.

18. Defendant Toyota Motor Engineering and Manufacturing North American, Inc., is a Kentucky corporation and a citizen of Kentucky, with its principal place of business in Kentucky and is subject to personal jurisdiction in the Western District of Oklahoma, and therefore, deemed to reside in said district.

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19. On information and belief: Each Defendant is a wholly owned subsidiary of the Japanese company, Toyota Motor Corporation. Each Defendant is part of a joint enterprise for profit whose business is to sell and manufacture Toyota and Lexus vehicles, including the vehicles that are the subject of this Complaint. Each Defendant is, in the last resort, under common control and management.

JURISDICTION AND VENUE

20. This Court has jurisdiction pursuant to the Class Action Fairness Act ("CAFA), 28 U.S.C. § 1332(d), in that (1) the Class (as defined below) has more than 100 Class members, (2) the amount at issue exceeds five million dollars ($5,000,000.00), exclusive of interest and costs, and (3) minimal diversity exists as at least one plaintiff and one Defendant are citizens of different states. Additionally, this Court has federal question jurisdiction pursuant to 28 U.S.C. § 1331 and 18 U.S.C. § 1962 (c). The Court has supplemental jurisdiction over claims not arising under 18 U.S.C. § 1962 (c), pursuant to 28 U.S.C. § 1367.

21. The Court has personal jurisdiction over the Toyota Defendants because they have, at all relevant times, conducted substantial and continuous business in the State of Oklahoma promoting, selling, marketing, designing, and distributing their products and services in this State, so as to render the exercise of jurisdiction by this Court permissible under traditional notions of fair play and substantial justice. The State of Oklahoma has a substantial and paramount interest in preventing the practices alleged herein from occurring in Oklahoma.

22. Venue is proper in the United States District Court for the Western District of Oklahoma, pursuant to 28 U.S.C. § 1391beeause one or more of the Defendants reside in the state, one more of the Defendants are subject to personal jurisdiction in the District, and a substantial part of the events or omissions giving rise to the claims herein have occurred in the District.

FACTUAL ALLEGATIONS

23. This Class Action arises from the damages caused by Defendants' negligence, negligent representations, breach of express and implied warranties, and unfair and/or deceptive acts or practiees.

24. The Plaintiff seeks damages, restitution and cquitable relief for himself and on behalf of all others similarly situated, who have purchased a Toyota vehicle containing the electronic throttle control system known as the ETCS-Intelligent System ("ETCS-i") due to the dangerous propensity for vehieles so equipped to suddenly aecelerate without driver input and against the intentions of the driver, coupled with Toyota's failure to provide necessary and available electronic and/or mechanical failsafes to enable drivers to bring such vehicles back under control if a runaway event should oecur. This increased propensity for runaway acceleration stems in part from the ETCS-i's vulnerability to transient signals, which can cause confusion in the ETCS-i sensors and electronics processors.

25. Plaintiff is the owner of a 2008 Lexus IS 250 that is equipped with the ETCS-i.

26. Runaway acceleration occurs when the throttle opens contrary to the driver's intentions. The automobile continues out of control despite desperate braking efforts by the driver and, unless the driver manages to disengage the engine quickly, the likelihood of a catastrophic outcome is great. Consequently, many manufacturers provide an electronic or mechanical failsafe to allow the driver to return the vehicle safely under control when faced with such an emergency. Defendants have failed to provide such failsafe.

27. Defendants have since 2002, through a pattern of mail and wire fraud, fraudulently encouraged members of the proposed class to rely on the safety and quality of Toyota vehicles in their purchase and retention decisions, while at the same time concealing the fact that these vehicles were unsafe due to SUA and braking defects and thus were of a significantly lower value than represented. Defendants marketed these defective vehicles to the proposed class members through a pattern of mail fraud and wire fraud.

28. To carry out this scheme, Defendants conducted or participated, directly or indirectly, in the affairs of multiple enterprises through a pattern of racketeering activity consisting of numerous acts of mail and wire fraud over an eight-year year period, continuing to this day.

29. One enterprise utilized by Defendants consists of the North American Toyota Dealers. This enterprise is engaged in, and its activities affect, interstate commerce. The lawful purpose of this association-in-fact enterprise is the promotion and sale of Toyota vehicles. The Toyota Defendants are culpable "persons" under federal

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racketeering laws that used this enterprise to further their fraudulent scheme. The Toyota Defendants effectively controlled the day-to-day operations of the enterprise by controlling the vehicles the dealers could sell and dictating the repairs that the dealers should make to correct and repair SUA and ETCS-i's braking defects.

30. Another enterprise consists of the individual Toyota Defendants, the North American Toyota Dealers, and NHTSA. This enterprise is engaged in, and its activities affect, interstate commerce. The lawful purpose of this association-in-fact enterprise is the evaluation and public dissemination of information concerning safety issues of vehicles within the United States. The Toyota Defendants are culpable "persons" under federal racketeering laws, who used this enterprise to further their fraudulent scheme by causing the false and misleading evaluation and public dissemination of information concerning Toyota vehicles' SUA and ETCS-i's braking defects.

31. Reports of unintended accelerations of Toyota vehicles began to increase significantly in 2002, when Toyota began installing the ETCS-i in a broad range of its vehicle lines.

32. ETCS-i-equipped vehicles are sometimes referred to as "throttle-by-wire" or "drive-by-wire" because the ETCS-i has no mechanical linkage between the accelerator pedal and the throttle plate in the engine.

33. It soon became apparent that models with the ETCS-i were experiencing a failure rate significantly greater than other models. As the number of reports involving Toyota models with "throttle-by-wire" electronics grew, the claimed injury and death toll also increased alarmingly. However, Toyota and Toyota dealers continued to market

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ETCS-i-equipped vehicles without an appropriate failsafe despite knowledge that they are unreasonably dangerous by virtue of their design.

34. By marketing vehicles equipped with ETCS-i such as the 2008 Lexus IS 250, without incorporating an electronic or mechanical failsafe similar to those provided by Toyota's competitors, Toyota has misled and harmed the Plaintiff and thousands of unsuspecting consumers throughout Oklahoma.

35. Toyota engaged in unfair and deceptive marketing of its ETCS-i-equipped vehicles both in direct communications to its consumers and in misinformation supplied by Toyota to the National Highway Transportation Safety Administration ("NHTSA") investigators. Specifically, Defendant Toyota Motor North America ("TMNA") was the Toyota entity charged with communicating with NHTSA and is liable for its misconduct in causing or contributing to unfair deceptive acts and practices in so doing.

36. When the NHTSA opened an investigation[1] of 2002 and 2003 model year Camrys, (all equipped with the ETCS-i) the safety ageney described the defect alleged by Toyota owners: "[a]llegations of (A) an engine speed increase without the driver pressing on the accelerator pedal or, (B) the engine speed failing to decrease when the accelerator pedal was no longer being depressed--both circumstances requiring greater than expected brake pedal application force to control or stop the vehicle and where the brake system functioned normally."

[1] Defect Petition DP04-003; Investigation PE04-021

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37. At the outset of its investigation, NHTSA asked Toyota to "state the number of each of the following, received by Toyota, or of which Toyota is otherwise aware, which relate to, or may relate to, the alleged defect" in the subject vehicles at issues:

a. Consumer complaints, including those from fleet operators;

b. Field reports, including dealer field reports;

c. Reports involving a crash, injury, or fatality, based on claims against the manufacturer involving a death or injury; notices received by the manufacturer alleging or proving that a death or injury was caused by a possible defect in a subject vehicle; property damage claims; consumer complaints; and/or field reports;

d. Property damage claims;

e. Third-party arbitration proceedings where Toyota is or was a party to the arbitration; and

f. Lawsuits, both pending and closed, in which Toyota is or was a defendant or codefendant.

Additionally, they were asked for subparts a through d to show "each category (e.g., consumer complaints, field reports, etc.) separately." Multiple incidents involving the same vehicle are to be counted/shown separately" and "[m]ultiple reports of the same incident are also to he counted/shown separately (i.e., a consumer complaint and a field report involving the same incident in which a crash occurred are to be shown as a crash report, a field report and a consumer complaint)."

38. The scope of the information request became the subject of discussions and/or negotiations between officers of TMNA, acting on behalf of Defendants Toyota Motor Corporation and Toyota Motor Sales, Inc., on the one hand, and representatives of

NHTSA's Office of Defects Investigation ("ODI"), on the other, with the result that certain relevant categories of incidents were inexplicably excluded.

39. Toyota, through TMNA, reported 123 complaints that it said "may relate to the alleged defect;" however, Toyota *intentionally excluded* from its response the following categories of complaints, among others the following:

a. An incident alleging uncontrollable acceleration that occurred for a long duration;[2]

b. An incident in which the customer alleged that they could not control a vehicle by applying the brake; and

c. An incident alleging unintended acceleration occurred when moving the shift lever to the reverse or the drive position.

40. Toyota, through TMNA, thus *deceptively concealed* from NHTSA "as well as from the news media and consumer safety groups that monitor NHTSA safety defect investigations, an entire universe of potentially relevant customer complaints. For example, the report from a driver who had experienced a sudden acceleration which lasted for a considerable time would not be seen by NHTSA because Toyota did not include it in its response, since it occurred for a "long duration." Similarly, a driver who reported that he/she was standing on the brake and could not overcome the open throttle would have had his/her report excluded from the investigation.

41. NHTSA's investigation of the alleged defect in 2002 and 2003 Camrys was based largely on information supplied by Toyota, through TMNA, including a cleverly-limited group of customer complaints and assertions by the company that its dealers and

[2] "long duration" is defined as lasting longer than one (1) second

manufacturer representatives had "failed to identify a fault within the vehicle." NHTSA conducted no testing of the integrity of the ETCS-i in terms of its vulnerability to transient electronic interference; nor did NHTSA conduct any tests as to the efficacy of the braking system in an open-throttle condition. NHTSA closed its investigation, stating that "[a] defect trend has not been identified at this time and further use of agency resources does not appear to be warranted."[3]

42. Complaints and incident reports from Toyota customers who had experienced sudden, unintended accelerations continued to come in to NHTSA and Toyota in substantial numbers after the NHTSA investigation was closed. Both the agency and the manufacturer issued statements blaming the driver's-side floor mat, despite evidence that floormats were almost never the cause.

43. In 2007, and prompted by the failure rate of Toyota models, NHTSA's Office of Defects Investigation ("ODI") opened an engineering analysis of 2007 Lexus ES-350 vehicles. According to the report, the purposes of the engineering analysis were to:

a. Determine whether reported incidents of unintended acceleration were caused by a vehicle system malfunction or mechanical interference;

b. Understand and document the effects of unintended acceleration as they impact controllability of the vehicle; and

c. Document potential difficulties experienced by the operator while attempting to regain control of the vehicle.

[3] ODI Resume, PE04-021, Date Closed 07/22/2004

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44. A section of the NHTSA report entitled "Analysis of the Effects of Unintended Acceleration on Vehicle Control," also supports this action under the Consumers Credit and Protection Act. The agency's analysis began as follows:

> The safety consequences of an unsecured rubber floor mat trapping the accelerator pedal with the vehicle in gear can be severe. With the engine throttle plate open, the vacuum power assist of the braking system cannot be replenished and the effectiveness of the brakes is reduced significantly. During trapped throttle acceleration testing, several methods to defeat acceleration proved effective *but not necessarily intuitive*. (Emphasis supplied).

45. The engineering analysis described the first redundancy as follows: "Application of the brake – Significant brake pedal force in excess of 150 pounds was required to stop the vehicle, compared to 30 pounds required when the vehicle is operating normally. Stopping distances increased from less than 200 feet to more than 1,000 feet. *This required brake pedal force is beyond the physical capabilities of most drivers.*" (Emphasis added). This indicates a pressing need for an electronic or mechanical failsafe.

46. On September 29, 2009, following the widespread publicity surrounding the apparent sudden acceleration of a 2009 Lexus ES350 that resulted in a four-fatality crash near San Diego, California, Toyota issued a "Safety Advisory," saying that the company had "taken a closer look" at the potential for the accelerator to get "stuck in the full open position" *due to interfering floor mats*. The advisory stated that the company would soon be recalling certain 2007 – 2010 Camrys and Lexus vehicles, 3.8 million in all, to address the issue -- the largest automobile recall in Toyota's history and the sixth largest in United States history.

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47. During the summer of 2009, an off-duty California Highway Patrol officer and his family were killed when the Toyota-made Lexus he was driving sped out of control. In response to the sudden-acceleration debacle, on October 30, 2009, Toyota began mailing, to 3.8 million owners[4] of its cars, a notice required by the National Traffic and Motor Vehicle Safety Act.[5] The notice is indicated that "Toyota has decided that a defect which relates to motor vehicle safety exists" in specified Toyota and Lexus vehicles. Toyota claims on its website that the "Interim Notice" is "in compliance with the National Traffic and Motor Vehicle Safety Act." It is not.

48. Section 30118 of the NTM requires that when a manufacturer "decides" that its vehicles have a "defect ... related to motor vehicle safety," the manufacturer must send a mailed notice to "the owners [and] purchasers. Section 30119 requires that the notice "shall contain", among other things:

> (2) an evaluation of the risk to motor vehicle safety reasonably related to the defect or noncompliance;
>
> "(3) the measures to be taken to obtain a remedy of the defect or noncompliance;
>
> "(4) a statement that the manufacturer giving notice will remedy the defect or noncompliance without charge under section 30120 of this title;
>
> "(5) the earliest date on which the defect or noncompliance will be remedied without charge, and for tires, the period during which the defect or noncompliance will be remedied without charge under section 30120 of this title."

[4] Many people lease the vehicles rather than own them. When we refer to "owners," we include lessees.

[5] 49 U.S.C. 30101 *et seq.*

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49. As to "(2) an evaluation of the risk to motor vehicle safety reasonably related to the defect or noncompliance," the notice, rather than stating the true risk, contains horribly dangerous instructions about the risk. It falsely implies that the risk is avoidable or controllable by taking steps that are terribly dangerous, and add to the risk. It falsely and strongly implies that if the safety risk of the defect occurs, namely sudden acceleration, the car can still be safe, can safely be stopped at the side of the road. That is dangerously misleading. It is the opposite of a truthful "evaluation of the risk to motor vehicle safety."

50. As to items (3), (4) or (5), the notice states that this infoffilation will be given in a later notice, and it fails to indicate how much later. The Act does not provide that some of the information required by section 30119 can be given in one notice, and some in a later notice. It provides that all the information is to be in a single notice. The Act does provide for a second notice, but not for the purposes Toyota is using it. Section 30119(e) provides as follows for a second notice:

> (e) Second Notification.-If the Secretary decides that a notification sent by a manufacturer under this section has not resulted in an adequate number of motor vehieles or items of replacement equipment being returned *for* remedy, the Secretary may order the manufactured to send a 2d [sie] notification in the way the Secretary prescribes by regulation."

Toyota violates the Act by not including all the section 30119 information in its notice, and by using a seeond notice for a different purpose.

51. Toyota's advisory is misleading, for the following reasons, among others:

a. By suggesting that only a trapped floor mat can cause a loss of throttle and braking control, it lures owners of models with no

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driver's side floor mat into believing there is no possibility of a potentially catastrophic loss of throttle and braking control.

b. The advisory also misleads owners with a driver's-side floor mat into believing that, in the event of a sustained near-wide-open throttle malfunction, the first response should be to visually determine if the floor mat is interfering with the accelerator pedal. This will, in many cases, exacerbate the driver's loss of control as he/she will lose valuable time in shifting to neutral and/or turning off the ignition.

52. Without the remedies provided by Oklahoma law there is a danger to the public at large from the subject Toyota models that will continue without the benefit of: (1) a warning to Toyota owners as to the dangers presented by the defects in the system that allow sudden, unintended acceleration, (2) cogent instructions from Toyota to drivers of those vehicles as to the steps to be taken in the event of a sudden, uncontrollable loss of throttle control, (3) the implementation by Toyota of a failsafe device that would ensure that the system will return the throttle to idle or immediately disengage the engine, and (4) the installation by Toyota of an electronic component in each at-risk vehicle that senses the conditions which produce an unintended acceleration and prevents such an occurrence.

53. The Toyota models at risk ("Class Vehicles") are listed on the attached Exhibit A. Class Vehicles include, *but are not limited to*, the following:

1. Toyota FJ Cruisers from MY 2007 through 2008
2. Toyota Tacoma pickup trucks from MY 2003 through 2008
3. Toyota Camrys from Model Year (MY) 2002 though 2009
4. Lexus models from MY 1998 through 2009

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5. Toyota Tundra pickup trucks MY 2000 through 2009

6. Toyota 4Runner SUVs from MY 2001 through 2009

7. Toyota Avalons from MY 2005 through 2009

8. Toyota Land Cruisers from MY 2001 through 2009

9. Toyota RAV-4s from MY 2005 through 2009

10. Toyota Sequoias from MY 2001 through 2009

11. Toyota Siennas from MY 2004 through 2009

12. Toyota Corollas from MY 2005 through 2009

13. Toyota Highlanders from MY2004 through 2009

THE PLAINTIFF AND HIS VEHICLE

54. The Plaintiff Dru Colin Lee is a resident of Cleveland County, Oklahoma. Plaintiff purchased a 2008 Lexus IS 250 from Eskridge Lexus located in the City of Oklahoma City, in Oklahoma County, Oklahoma. Plaintiff paid a purchase price in excess of $38,000 for the new vehicle. In reality, the 2008 Lexus IS 250 is unreasonably dangerous as designed and manufactured by Toyota.

55. Plaintiff did not learn of the vehicle's unique propensity for runaway acceleration, or that Toyota failed to provide adequate failsafes until after Toyota issued a safety warning regarding the floor mats in certain Toyota vehicles.

56. As a consequence of Defendants' unlawful and misleading business practices, Plaintiff has suffered harm, which includes being deprived of the full use, benefit, and value of his vehicle.

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57. Plaintiff appears in this action individually and on behalf of all others similarly situated.

CLASS ALLEGATIONS

58. Plaintiff brings this action on behalf of himself and all others similarly situated as a class action pursuant to Rule 23(b)(1) and (b)(3) of the Federal Rules of Civil Procedure. The class that Plaintiff seeks to represent is composed of and defined as follows:

59. Class Definition: The Class that Plaintiff seeks to represent is defined as all citizens who purchased one or more of the ETCS-i vehicles listed on Exhibit A. These include, but are not limited, to all citizens that purchased one or more of the following vehicles:

1. Toyota FJ Cruisers from MY 2007 through MY 2008
2. Toyota Highlanders from MY2004 through 2009
3. Toyota Tacoma pickup trucks from MY 2003 through 2008
4. Toyota Camrys from Model Year (MY) 2002 though 200
5. Lexus models from MY 1998 through 2009
6. Toyota Tundra pickup trucks MY 2000 through 2009
7. Toyota 4Runner SUVs from MY 2001 through 2009
8. Toyota Avalons from MY 2005 through 2009
9. Toyota Land Cruisers from MY 2001 through 2009
10. Toyota RAV-4s from MY 2005 through 2009
11. Toyota Sequoias from MY 2001 through 2009

12. Toyota Siennas from MY 2004 through 2009

13. Toyota Corollas from MY 2005 through 2009

Plaintiff reserves the right to expand, refine and/or further define the Class depending upon facts uncovered during the course of discovery in this case.

60. Excluded from the Class are (a) Toyota Defendants herein, and any person, firm, trust, corporation, or other entity related to or affiliated with Toyota Defendants, including without limitation, persons who are directors, officers and/or partners of Toyota Defendants and any legal representatives, heirs, successors, and assigns of Toyota Defendants, and (b) any Judge assigned to this action, and her or his immediate family.

61. Excluded from the Class are any individuals who have suffered a bodily injury or wrongful death as a result of a runaway acceleration event.

62. *Numerosity*: The numerosity requirements are satisfied in that there are thousands of Class Members the joinder of which is impracticable. Thousands of consumers have purchased the vehicles that are the subject of this Class Action.

63. *Typicality*: Plaintiff's claims and defenses are typical of the claims and defenses belonging to the Class, because Defendants failed to provide necessary electronic and mechanical failsafes to enable drivers to bring their vehicles back under control if a runaway event should occur, as other vehicle manufacturers have done. Plaintiff has no interests adverse to the interests of other members of the Class.

64. *Commonality*: This claims raise dispute raises questions of law and fact that are common to all Class members, which predominate over questions that arise on an

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individual basis for Class members. The common questions of law and fact include, without limitation, the following:

a. Whether Toyota sold, marketed, advertised, distributed and otherwise placed its vehicles utilizing ETCS-i into the stream of commerce throughout Oklahoma and the United States;

b. Whether Toyota misled consumers as to the relative safety of the Toyota vehicles listed above as being equipped with the ETCS-I;

c. Whether Toyota caused likelihood of confusion as to sponsorship, approval or certification of the Class Vehicles, by among other things, making misrepresentations or omissions to NHTSA;

d. Whether Toyota misrepresented that the Class Vehicles had characteristics or benefits that they do not have;

e. Whether Toyota engaged in other conduct that created a likelihood of confusion or misunderstanding by consumers as to the Class Vehicles;

f. Whether Toyota engaged in the act, use or employment by any person of any deception, fraud, false pretense, false promise or misrepresentation, or the concealment, suppression or omission of any material fact with the intent that others would rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any Class Vehicle;

g. Whether Toyota engaged in any advertising, printing, displaying, publishing, distributing or broadcasting, or caused to be advertised, printed displayed, published, distributed or broadcast in any manner, any statement or representation with regard to the sale of Class Vehicles;

h. Whether Plaintiff and others similarly situated suffered ascertainable loss;

i. The extent of damages or loss suffered by Plaintiff and the Class and the appropriate amount of compensation;

j. Whether Toyota was unjustly enriched;

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k. Whether Toyota was negligent with regard to the design, manufacture or sale of Class Vehicles;

l. Whether Toyota breached any express or implied warranties with regard to the Class Vehicles;

m. Whether Defendants engaged in a pattern and practice of deceiving and defrauding the class and suppressing the defective nature of the cars;

n. Whether Toyota acted with malice, oppression and fraud so as to justify an award of punitive and exemplary damages;

o. Whether the Plaintiff and the Class are entitled to injunctive relief;

p. Whether Defendants violated 18 U.S.C. Section 1962 (c), Racketeer Influenced and Corrupt Organization Act; and

q. Whether Defendants engaged in two or more acts of mail or wire fraud during the previous six years.

65. Additionally, Toyota vehicles containing the ETCS-i system have been purchased throughout Oklahoma, and are in wide use on Oklahoma roads.

66. Consumers purchasing a Toyota vehicle containing the ETCS-i are not informed of the heightened propensity for runaway acceleration in ETCS-i-equipped vehicles, and are not informed that Toyota does not incorporate an adequate electronic or mechanical failsafe into its design.

67. Toyota had actual knowledge that ETCS-i-equipped vehicles, as currently designed and manufactured, are unreasonably dangerous and that consumers expected to use them.

68. ETCS-i-equipped vehicles are unreasonably dangerous due to the following acts and omissions by the Defendants:

a. On the part of each Defendant, failure properly and adequately to design the Class Vehicles and the systems, components, and parts thereof, including, but not limited to, the electronic engine control, the cruise control and other components of the Engine Control Module, collectively denominated by the Toyota entities as the Electronic Throttle Control System-Intelligent ("ETCS-i), and the braking system;

b. On the part of each Defendant, failure properly and adequately to install a fail-safe software component and/or mechanical safeguard against sudden, unintended acceleration;

c. On the part of each Defendant, failure properly and adequately to specify components and component systems for the Class Vehicles that would shield the sensors from transient signals that confuse the ETCS-i and thereby ensure that the vehicle's throttle responded to the intentions and actions of the driver;

d. On the part of each Defendant, failure properly and adequately to test the Class Vehicle and the systems, components, and parts thereof, specifically including, but not limited to, the electronic engine control, the cruise control and other components of the Engine Control Module, the ETCS-i and the braking system;

e. On the part of each Defendant, failure properly and adequately to perform and/or heed an adequate failure mode and effects analysis (FMEA) or fault tree analysis (FTA) of the Class Vehicle and the systems, components, and parts thereof, specifically including, but not limited to, the ETCS-i, the cruise control and other components of the Engine Control Module, and the braking system;

f. On the part of each Defendant, failure properly and adequately to manufacture, fabricate, and assemble the Class Vehicle and the systems, components, and parts thereof, specifically including, but not limited to, the electronic engine control, the cruise control and other components of the ETCS-i, and the braking system;

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g. On the part of each Defendant, failure properly and adequately to warn of the dangers attendant upon use of the Class Vehicle, specifically including, but not limited to, the extreme risk to the driver and occupants of a loss of control of the throttle and resultant sudden, unintended acceleration of the vehicle, with the attendant risk of severe bodily injury and/or death; and

h. Prior to and during the design, manufacturing, marketing and sale of the subject vehicle and thereafter, the Toyota Defendants knew, or in the exercise of reasonable care should have known, that other feasible and safer design alternatives were available to them which would have significantly reduced the risk of sudden, unintended accelerations and the lack of efficacy of the braking system under such conditions. Defendants, and each of them, negligently failed to utilize such other and feasible safer designs in their design of the electronic engine control, the cruise control and other components of the ETCS-i, and the braking system in the Class Vehicles.

69. Plaintiff, as a representative party, will fairly and adequately protect the interests of the Class and has retained counsel experienced and competent in the prosecution of class action litigation.

70. The nature of this action and the nature of the laws available to the Class make use of the class action format a particularly efficient and appropriate procedure to afford relief to the Class. Further, this case involves business entity Defendants and a large number of individuals possessing claims with common issues of law and fact. If each individual were required to file an individual lawsuit, the business entity Defendants would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources. Proof of common business practices or factual patterns,

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which the named Plaintiff experienced, is representative of the class mentioned herein and will establish the right of each of the members of the class to recovery on the claims alleged herein.

71. The prosecution of separate actions by the individual class members, even if possible, would create: (a) a substantial risk of inconvenient or varying verdicts or adjudications with respect to the individual class members against Toyota herein; and (b) legal determinations with respect to individual class members not parties to the adjudications or which would substantially impair or impede the ability of class members to protect their interests. Further, the claims of the individual members of the class are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses attending thereto. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action. Plaintiff anticipates providing appropriate notice to be approved by the Court after discovery into the size and nature of the Class.

FIRST CLAIM FOR RELIEF
(Negligence)

72. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as if fully set forth herein.

73. Plaintiff asserts these claims on behalf of himself and others similarly situated who have expended funds that Toyota should be required to pay or reimburse under Oklahoma law.

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74. Each of the Toyota Defendants participates in a joint enterprise to design, manufacture, assemble, market, advertise, distribute and sell ETCS-i-equipped vehicles. Toyota thus has a duty to design, manufacture, and market vehicles that are reasonably safe for their intended uses, and to provide true and accurate information to the public to prevent undue risks arising from the foreseeable use of its products.

75. Toyota had a duty to its customers as a manufacturer of motor vehicles to provide vehicles that, in their ordinary operation, would be safe. Toyota had a duty to adequately test its vehicles' safety before selling millions to American consumers. Toyota particularly had a duty to test vehicles for acceleration system problems once Toyota was on notice that its vehicles had a propensity to suddenly accelerate and were causing bodily injury, death, and property damage.

76. The following acts and omissions by the Defendants were negligent:

a. On the part of each Defendant, failure properly and adequately to design the Class Vehicles and the systems, components, and parts thereof, including, but not limited to, the electronic engine control, the cruise control and other components of the Engine Control Module, collectively denominated by the Toyota entities as the Electronic Throttle Control System-Intelligent ("ETCS-i), and the braking system;

b. On the part of each Defendant, failure properly and adequately to install a fail-safe software component and/or mechanical safeguard against sudden, unintended acceleration;

c. On the part of each Defendant, failure properly and adequately to specify components and component systems for the Class Vehicles that would shield the sensors from transient signals that confuse the ETCS-i and thereby ensure that the vehicle's throttle responded to the intentions and actions of the driver;

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d. On the part of each Defendant, failure properly and adequately to test the Class Vehicles and the systems, components, and parts thereof, specifically including, but not limited to, the electronic engine control, the cruise control and other components of the Engine Control Module, the ETCS-i and the braking system;

e. On the part of each Defendant, failure properly and adequately to perform and/or heed an adequate failure mode and effects analysis (FMEA) or fault tree analysis (FTA) of the Class Vehicles and the systems, components, and parts thereof, specifically including, but not limited to, the ETCS-i, the cruise control and other components of the Engine Control Module, and the braking system;

f. On the part of each Defendant, failure properly and adequately to manufacture, fabricate, and assemble the Class Vehicles and the systems, components, and parts thereof, specifically including, but not limited to, the electronic engine control, the cruise control and other components of the ETCS-i, and the braking system;

g. On the part of each Defendant, failure properly and adequately to warn of the dangers attendant upon use of the Class Vehicle, specifically including, but not limited to, the extreme risk to the driver and occupants of a loss of control of the throttle and resultant sudden, unintended acceleration of the vehicle, with the attendant risk of severe bodily injury and/or death; and

h. Prior to and during the design, manufacturing, marketing and sale of the subject vehicle and thereafter, the Toyota Defendants knew, or in the exercise of reasonable care should have known, that other feasible and safer design alternatives were available to them which would have significantly reduced the risk of sudden, unintended accelerations and the lack of efficacy of the braking system under such conditions. Defendants, and each of them, negligently failed to utilize such other and feasible safer designs in their design of the electronic engine control, the cruise control and other components of the ETCS-i, and the braking system in the Class Vehicles.

77. Toyota was negligent, and breached this duty owed to the Plaintiff.

78. As direct and proximate causes of the breach, Plaintiff and Class members have been damaged including, but not limited to, the financial loss of owning or leasing vehicles that are unsafe as well as being subject to the potential risk of injury.

SECOND CLAIM FOR RELIEF
(Breach of Express Warranty)

79. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as if fully set forth verbatim herein.

80. Defendants expressly warranted to the market, including Plaintiff, by and through statements made by Defendants or its authorized agents or sales representatives, orally or in publications, product pamphlets and other written materials that Defendants' vehicles were safe, operational, highly reliable, and fit for its intended use.

81. By marketing, advertising, distributing and selling vehicles containing ETCS-i, without incorporating adequate electronic or mechanical fail-safes, and while misrepresenting the dangers of such vehicles to the public Toyota created and breached express warranties that the vehicle was safe for use as public transportation, when in fact, it was not.

82. Additionally, Defendants breached these warranties because the vehicles sold to Plaintiff and other Class members have been demonstrated to be unsafe, and, indeed, Toyota has now admitted the vehicles are unsafe by first recalling them and then ceasing their sale altogether. Toyota further breached the warranties by failing to provide safe automobiles after the problems were acknowledged and, instead are forcing customers to drive what were publicly identified as unsafe vehicles.

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83. Plaintiff and other Class members have been harmed as a result of the breaches of warranty. First, Plaintiff and other Class members have received vehicles that were worth far less than what they paid to lease or to purchase the vehicles. Second, the Class has been subjected to the very real fear of a horrendous accident if their vehicle were to reach uncontrollable speeds -- and this is because Defendants have failed and refused to provide substitute vehicles while the defective ones are repaired.

84. As a direct and proximate result of Defendants' breaches of warranties, Plaintiff and the Class have suffered economic damages in an amount to be proven at trial.

THIRD CLAIM FOR RELIEF
(Breach of Implied Warranty)

85. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as if fully set forth herein.

86. Defendants impliedly warranted to the market, including Plaintiff, Defendants' vehicles were safe and fit for its intended use.

87. By marketing, advertising, distributing and selling vehicles containing ETCS-i, without incorporating adequate electronic or mechanical fail-safes, and while misrepresenting the dangers of such vehicles to the public Toyota created and breached express warranties that the vehicle was safe for use as public transportation, when in fact, it was not.

88. As a direct and proximate result of Defendants' breaches of warranties, Plaintiff and the Class have suffered economic damages in an amount to be proven at trial.

FOURTH CLAIM FOR RELIEF
(Unjust Enrichment)

89. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as if fully set forth herein.

90. As a result of the foregoing wrongful, unjust and inequitable conduct, Defendants have obtained funds and property to which they are not entitled, and have been unjustly enriched at the expense of Plaintiff and Class members.

91. Plaintiff and the Class unknowingly conferred a benefit upon Toyota by paying for vehicles which were in fact, unreasonably dangerous for use as public transportation.

92. The circumstances, as described in this Complaint, are such that allowing Toyota to retain all of the benefits provided by Plaintiff and the Class would be inequitable.

93. Toyota has been unjustly enriched at the expense of Plaintiff and the Class and, as a matter of equity, Defendants should be required to make restitution of all amounts by which they were enriched through their misconduct.

FIFTH CLAIM FOR RELIEF
(Violations of the Oklahoma Consumer Protection Act)

94. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as if fully set forth verbatim herein.

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95. Defendants engaged in the unfair trade practices set forth above and specifically declared unlawful under 15 Okla. Stat. §753. Such practices include, but are not limited to, making false or misleading representations, knowingly or with reason to know, as to the safety of Defendants' vehicles, and by committing a deceptive trade practice as defined by 15 OKLA. STAT. §752.

96. The unlawful practices occurred in the course of the Defendants' business operations and caused damages to Plaintiff and the Class, in their capacities as consumers.

97. Prior to Plaintiff's purchase of Class Vehicles, Toyota by selling, marketing, advertising and distributing vehicles containing ETCS-i, without incorporating adequate electronic or mechanical fail safes, and while misrepresenting the dangers of such vehicles to the public, did represent that such goods had sponsorship, approval, characteristics, uses, or benefits which they do not have, all of which is in violation of the Oklahoma Consumer Protection Act ("OCPA"), 15 OKLA. STAT. §753.

98. Prior to Plaintiff's purchase of Class Vehicles, Toyota by selling, marketing, advertising and distributing vehicles containing ETCS-i, without incorporating adequate electronic or mechanical fail safes, and while misrepresenting the dangers of such vehicles to the public, did represent that such goods were of a particular standard, quality, or grade, or that such goods were of a particular style or model, when they were of another, all of which is in violation of the OCPA under 15 OKLA. STAT. §753.

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99. Prior to Plaintiff's purchase of Class Vehicles, Toyota by selling, marketing, advertising and distributing vehicles containing ETCS-i, without incorporating adequate electronic or mechanical fail safes, and while misrepresenting the dangers of such vehicles to the public, did act, use or employ deception, fraud, false pretense, false promise and/or misrepresentation, and/or the concealment, suppression or omission of material facts with intent that others would rely upon such concealment, suppression and/or omission, in connection with the sale or advertisement of such goods and services, all of which is in violation of the OCPA under 15 OKLA. STAT. §753.

100. Plaintiff demands judgment against Defendants for actual damages plus costs and attorney's fees incurred in bringing this action as provided for in 15 OKLA. STAT. 761.1(1).

SIXTH CLAIM FOR RELIEF
(Fraud)

101. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as if fully set forth verbatim herein.

102. Defendants represented to Plaintiff and Class members in advertising and other forms of communication, including standard and uniform material provided with each car, that the vehicles they were selling were new, had no significant defects and would perform and operate properly when driven in normal usage. In fact, Toyota affirmatively represents that its vehicles are "reliable."

103. The vehicles purchased or leased by Plaintiff and Class Members were, in fact, defective, unsafe and unreliable, because the vehicles were subject to sudden, extreme acceleration leading to personal injury or death.

104. The aforesaid representations of Defendants were material, because they were facts that would typically be relied on by a person purchasing or leasing a new motor vehicle. Toyota knew the representations were false, because it knew that people had died in its vehicles unintended acceleration between 2002 and 2009. Plaintiff and Class members relied on the statements and others like them in purchasing their vehicles. Toyota intentionally made the false statements in order to sell vehicles.

105. As a result of Toyota's conduct, Plaintiff and Class members have been defrauded into leasing or purchasing vehicles that had undisclosed defects. Plaintiff and Class members have been damaged in an amount to be proven at trial.

106. Defendants' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in conscious disregard for the rights of Plaintiff and other Class members. Plaintiff and other Class members are therefore entitled to an award of punitive damages.

SEVENTH CLAIM FOR RELIEF
(Fraudulent Concealment and Fraud by Omission)

107. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as if fully set forth verbatim herein.

108. Toyota has known since at least 2002 and possibly as early as 2000, and likely much earlier, that its vehicles were subject to sudden and unintended acceleration

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that placed occupants of its vehicles at great risk of death. Toyota was aware that there were fatalities in its vehicles because of unintended acceleration from 2002-09. Toyota knew that the risk of losing control of a vehicle in a high speed accident would be very frightening and dangerous to consumers and would cause Toyota's sales to decline. Toyota intentionally concealed the information, or acted with reckless disregard for the truth, and denied the consuming public information that is highly relevant to their purchasing decision. Toyota fraudulently concealed the information for years, because it was more important to Toyota to increase sales and become the largest manufacturer in the world. Toyota sacrificed innocent, trusting lives for profit and pride.

109. Toyota's customers relied on Toyota's reputation coupled with the fact that Toyota did not disclose the acceleration problems, in purchasing or leasing Toyota's vehicles. The facts concealed were material, because if they had been disclosed Class members would not have bought or leased the vehicles. The concealment was all the more effective because it came from one that had represented itself to be honorable and trustworthy.

110. As a result of their reliance, Plaintiff and other Class members have been injured in an amount to be proved at trial, including, but not limited to the loss of value of the use of the vehicles they leased or bought, the fear and other emotional trauma as a result of being forced to drive vehicles that Toyota has admitted are unsafe due to Toyota's refusal to provide replacement vehicles, and injuries and deaths resulting from accidents caused by sudden acceleration.

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111. Defendants' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of Plaintiff and other Class members. Plaintiff and other Class members are therefore entitled to an award of punitive damages.

EIGHTH CLAIM FOR RELIEF
(Violation of Racketeer Influences And corrupt Organization Act)

112. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as if fully set forth verbatim herein.

113. Defendants are and were at all times mentioned herein "persons" as that term is defined in 18 U.S.C. § 1961(3).

114. The North American Toyota Dealers constitute an association-in-fact "enterprise" as that term is defined in 18 U.S.C. § 1961(4), which is engaged in and affects interstate and foreign commence. This enterprise at all times mentioned herein was and is engaged in the promotion, distribution and sale of Toyota vehicles to consumers throughout the United States. The individual Defendants, the North American Toyota Dealers, and the NHTSA constitute another association-in-fact "enterprise" as that term is defined in 18 U.S.C. § 1961(4), which is engaged in and affects interstate and foreign commence. This enterprise at all times mentioned herein was and is engaged in the evaluation and public dissemination of safety issues regarding vehicles within the United States.

115. Defendants are associated with both enterprises, and knowingly and willfully conduct and participate in the conduct of the enterprises' affairs, directly and

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indirectly, through a pattern of racketeering activity in violation of 18 U.S.C. § 1962(c). Each of the Defendants derives income, directly and indirectly, through their operation, management or control of the enterprises.

116. The pattern of racketeering activity engaged in by Defendants involves a scheme to promote and sell defective and dangerous vehicles, publicly minimizing the defects, carried out for several years and continuing to this time. The pattern of racketeering is separate and distinct from the legitimate promotion and sale of vehicles, and evaluation and dissemination of safety information, undertaken by the enterprises.

117. As discussed throughout this Complaint, Defendants were aware of reports of SUA and brake issues and understood that their vehicles had safety and design issues. Yet, Defendants as part of their scheme sought to use the enterprises to promote the safety of, and sell, the defective vehicles to Plaintiff and members of the class. Defendants represented in multiple mailings and telephone calls to the Enterprise and its members and in communications with Federal and State officials including but not limited to NHTSA that Toyota vehicles were safe. Defendants in their mailings and telephone calls omitted material information concerning the known dangers of driving Toyota vehicles that shared common design and engineering characteristics that cause the vehicles to suddenly accelerate. Many of the mailings and statements falsely represented that:

a. drivers were responsible for the incidents of SUA;

b. that it is impossible for Toyota vehicles to experiences SUA;

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c. that NHTSA had cleared Toyota of any problems associated with SUA;

d. that the Toyota Defendants were forthcoming concerning SUA;

e. that Toyota vehicles had a fail safe system to prevent SUA;

f. that a statistical trend of SUA did not exist; and

g. that the Toyota Defendants had determined the fix for SUA.

118. The Toyota Defendants intended that the enterprises transmit this false and misleading information to Plaintiff and members of the class.

119. The enterprises did transmit this false and misleading information to Plaintiff and members of the class. Plaintiff and members of the class relied on the false and misleading information when they made their decisions to purchase, lease or retain the Toyota vehicles that form the subject matter of this litigation.

120. The pattern of racketeering activity engaged in by Defendants involves schemes and artifices to defraud constituting mail fraud (U.S.C. § 1341) and wire fraud (18 U.S.C. § 1343), all of which is "racketeering activity" as defined in 18 U.S.C. § 1961(1)(B). Defendants have engaged in these schemes and artifices with the specific intent to defraud, causing damage to the property interests of members of the class.

121. The pattern of racketeering engaged in by Defendants involves thousands of predicate acts constituting mail fraud and wire fraud, as previously set forth above. All of these acts are related to the pattern of racketeering and have taken place over many years, establishing both relatedness and continuity

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122. As a proximate result of the pattern of rackcteering engaged in by Defendants, members of the class suffered damage to its property, including decreased value to their vehicles, loan and mortgage payments made on dangerously defective vehicles, repair costs, increased insurance deductibles and insurance, and the cost of loaner or replacement vehicles. Members of the class do not allege that this claim applies to any personal injuries that class members sustained because of Defendants' conduct. However, the claim does apply to economic damage caused.

NINTH CLAIM FOR RELIEF
(Strict Product Liability)

123. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as if fully set forth verbatim herein.

124. Toyota is a manufacturer and supplier of automobiles.

125. The automobiles that were leased or purchased by Plaintiff and that were supplied by Toyota failed to comply with Toyota's representations, as alleged above, that the vehicles were safe, reliable and that they would accelerate and decelerate as users would reasonably expect.

126. The automobiles supplied by Toyota were defective because, as alleged above, they are subject to rapid acceleration without notice and without the ability to slow or stop the vehicle.

127. The vehicles were defective in design and manufacture because when they left the hands of Toyota they were more dangerous than an ordinary consumer would expect.

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128. The vehicles supplied by Toyota were defective due to inadequate warning or instruetion and because Toyota knew that thc product was defective and created a risk of harm to consumers and failed to warn of said risk.

129. The vehicles supplied by Toyota were dcfective due to inadequate post-marketing warning or instruction because after Toyota knew of the risk of rapid acceleration.

130. As a proximate result of the defective condition of Toyota's vehicles, Plaintiff and Class members have been damaged in an amount to be proved at trial.

PUNITIVE CONDUCT

131. Defendants have fraudulently and knowingly concealed for years that their automobiles had defective acceleration systems that were causing death, bodily injury and property damage in the United States. Defendants knowingly concealed this information in order to be able to continue to sell their defective, unsafe vehicles. Moreover, Defendants dcfrauded Ameriean consumers by representing that their vehicles were safe and reliable when they werc secretly aware of thc highly dangerous acceleration system. Dcfendants intentionally have violated consumer laws by falsely advertising that their cars were safe and reliable when, in fact, they are defective.

132. Dcfendants conduct was knowing, intentional, with malice, demonstrated a complete lack of eare and was in reckless disregard for the rights of the class members. Defendants' conduet has been outrageous and outside the bounds of decency. Defendants should be punished due their conduet of putting others at risk of serious injury and death

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in order to make more profit. Plaintiff hereby requests an award of punitive damages to appropriately punish Defendants for their extreme misconduct.

JURY DEMAND

133. Plaintiff hereby demands trial by jury of his claims against Defendant Toyota.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, prays for judgment against Toyota as follows:

a. For an order certifying this case as a class action and appointing Plaintiff and his counsel to represent the Class;

b. Awarding damages to Plaintiff and the other Class members for all causes of action alleged herein;

c. Awarding restitution and disgorgement as a result of Toyota's unfair business practices;

d. For an order requiring Toyota to immediately cease and desist from marketing, advertising, distributing and selling vehicles containing ETCS-i;

e. All equitable remedies available under Oklahoma law;

f. Awarding each Plaintiff its actual damages and civil penalty of $2,000.00 as provided in 15 OKLA. STAT. 761.1;

g. Awarding attorneys' fees, expenses and costs;

h. Punitive Damages;

i. Awarding pre- and post-judgment interest; and

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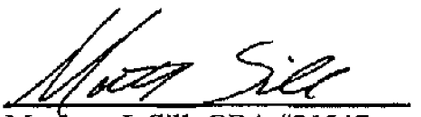
j. Providing such other and further relief as this Court may deem just and proper.

Respectfully submitted,



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ATTORNEY FOR PLAINTIFF
ATTORNEY LIEN CLAIMED
JURY TRIAL DEMANDED

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CLASS VEHICLES WITH ETCS-I			
Year	**Make**	**Model**	**Engine**
1998	Lexus	GS300	2JZ-GE
1998	Lexus	LX470	2UZ-FE
1998	Toyota	Land Cruiser	2UZ-FE
1999	Lexus	GS300	2JZ-GE
1999	Lexus	LX470	2UZ-FE
1999	Toyota	Land Cruiser	2UZ-FE
2000	Lexus	GS300	2JZ-GE
2000	Lexus	LX470	2UZ-FE
2000	Toyota	Land Cruiser	2UZ-FE
2000	Toyota	Tundra	2UZ-FE
2001	Lexus	GS300	2JZ-GE
2001	Lexus	GS430	3UZ-FE
2001	Lexus	IS300	2JZ-GE
2001	Lexus	LS430	3UZ-FE
2001	Lexus	LX470	2UZ-FE
2001	Lexus	LX470	2UZ-FE
2001	Toyota	4Runner	5VZ-FE
2001	Toyota	Land Cruiser	2UZ-FE
2001	Toyota	MR2 Spyder	1ZZ-FE
2001	Toyota	Sequoia	2UZ-FE
2001	Toyota	Tundra	2UZ-FE
2002	Lexus	ES300	1MZ-FE
2002	Lexus	GS300	2JZ-GE
2002	Lexus	GS430	3UZ-FE
2002	Lexus	IS300	2JZ-GE
2002	Lexus	LS430	3UZ-FE
2002	Lexus	LX470	2UZ-FE
2002	Lexus	SC430	3UZ-FE
2002	Toyota	4Runner	5VZ-FE
2002	Toyota	Camry	1MZ-FE
2002	Toyota	Camry	2AZ-FE
2002	Toyota	Land Cruiser	2UZ-FE
2002	Toyota	MR2 Spyder	1ZZ-FE
2002	Toyota	Sequoia	2UZ-FE
2002	Toyota	Solara	2AZ-FE
2002	Toyota	Tundra	2UZ-FE
2003	Lexus	ES300	1MZ-FE
2003	Lexus	GS300	2JZ-GE
2003	Lexus	GS430	3UZ-FE
2003	Lexus	GX470	2UZ-FE
2003	Lexus	IS300	2JZ-GE
2003	Lexus	LS430	3UZ-FE
2003	Lexus	LX470	2UZ-FE
2003	Lexus	SC430	3UZ-FE
2003	Toyota	4Runner	1GR-FE
2003	Toyota	4Runner	2UZ-FE

CLASS VEHICLES WITH ETCS-i			
Year	Make	Model	Engine
2003	Toyota	Camry	1MZ-FE
2003	Toyota	Camry	2AZ-FE
2003	Toyota	Celica	2ZZ-GE
2003	Toyota	Land Cruiser	2UZ-FE
2003	Toyota	MR2 Spyder	1ZZ-FE
2003	Toyota	Sequoia	2UZ-FE
2003	Toyota	Solara	2AZ-FE
2003	Toyota	Tacoma	5VZ-FE
2003	Toyota	Tundra	2UZ-FE
2003	Toyota	Tundra	5VZ-FE
2004	Lexus	ES330	3MZ-FE
2004	Lexus	GS300	2JZ-GE
2004	Lexus	GS430	3UZ-FE
2004	Lexus	GX470	2UZ-FE
2004	Lexus	GZ470	2UZ-FE
2004	Lexus	IS300	2JZ-GE
2004	Lexus	LS430	3UZ-FE
2004	Lexus	LX470	2UZ-FE
2004	Lexus	RX330	3MZ-FE
2004	Lexus	SC430	3UZ-FE
2004	Toyota	4Runner	1GR-FE
2004	Toyota	4Runner	2UZ-FE
2004	Toyota	Camry	1MZ-FE
2004	Toyota	Camry	2AZ-FE
2004	Toyota	Camry	3MZ-FE
2004	Toyota	Celica	2ZZ-GE
2004	Toyota	Highlander	2AZ-FE
2004	Toyota	Highlander	3MZ-FE
2004	Toyota	Land Cruiser	2UZ-FE
2004	Toyota	MR2 Spyder	1ZZ-FE
2004	Toyota	Prius	1NZ-FXE
2004	Toyota	RAV4	2AZ-FE
2004	Toyota	Sequoia	2UZ-FE
2004	Toyota	Sienna	3MZ-FE
2004	Toyota	Solara	2AZ-FE
2004	Toyota	Solara	3MZ-FE
2004	Toyota	Tacoma	5VZ-FE
2004	Toyota	Tundra	2UZ-FE
2004	Toyota	Tundra	5VZ-FE
2004	Toyota	Yaris	1SZ-FE
2005	Lexus	ES330	3MZ-FE
2005	Lexus	GS300	2JZ-GE
2005	Lexus	GS430	3UZ-FE
2005	Lexus	GX470	2UZ-FE
2005	Lexus	IS300	2JZ-GE
2005	Lexus	LS430	3UZ-FE

CLASS VEHICLES WITH ETCS-i			
Year	**Make**	**Model**	**Engine**
2005	Lexus	RX330	3MZ-FE
2005	Lexus	SC430	3UZ-FE
2005	Toyota	4Runner	1GR-FE
2005	Toyota	4Runner	2UZ-FE
2005	Toyota	Avalon	2GR-FE
2005	Toyota	Camry	1MZ-FE
2005	Toyota	Camry	2AZ-FE
2005	Toyota	Camry	3MZ-FE
2005	Toyota	Celica	2ZZ-GE
2005	Toyota	Corolla	1ZZ-FE
2005	Toyota	Highlander	2AZ-FE
2005	Toyota	Highlander	3MZ-FE
2005	Toyota	Land Cruiser	2UZ-FE
2005	Toyota	Matrix	1ZZ-FE
2005	Toyota	MR2 Spyder	1ZZ-FE
2005	Toyota	Prius	1NZ-FXE
2005	Toyota	RAV4	2AZ-FE
2005	Toyota	Sequoia	2UZ-FE
2005	Toyota	Sienna	3MZ-FE
2005	Toyota	Solara	2AZ-FE
2005	Toyota	Solara	3MZ-FE
2005	Toyota	Tacoma	1GR-FE
2005	Toyota	Tacoma	2TR-FE
2005	Toyota	Tundra	1GR-FE
2005	Toyota	Tundra	2UZ-FE
2005	Toyota	Yaris	1SZ-FE
2006	Lexus	ES330	3MZ-FE
2006	Lexus	GS300	3GR-FSE
2006	Lexus	GS430	3UZ-FE
2006	Lexus	GX470	2UZ-FE
2006	Lexus	IS250	4GR-FSE
2006	Lexus	IS350	2GR-FSE
2006	Lexus	LS430	3UZ-FE
2006	Lexus	LX470	2UZ-FE
2006	Lexus	RX330	3MZ-FE
2006	Lexus	RX400h	3MZ-FE
2006	Lexus	SC430	3UZ-FE
2006	Toyota	4Runner	1GR-FE
2006	Toyota	4Runner	2UZ-FE
2006	Toyota	Avalon	2GR-FE
2006	Toyota	Camry	1MZ-FE
2006	Toyota	Camry	2AZ-FE
2006	Toyota	Camry	3MZ-FE
2006	Toyota	Corolla	1ZZ-FE
2006	Toyota	Corolla	1ZZ-FE
2006	Toyota	Highlander	2AZ-FE

CLASS VEHICLES WITH ETCS-I			
Year	**Make**	**Model**	**Engine**
2006	Toyota	Highlander	3MZ-FE
2006	Toyota	Land Cruiser	2UZ-FE
2006	Toyota	Matrix	1ZZ-FE
2006	Toyota	Prius	1NZ-FXE
2006	Toyota	RAV4	2AZ-FE
2006	Toyota	RAV4	2GR-FE
2006	Toyota	Sequoia	2UZ-FE
2006	Toyota	Sienna	3MZ-FE
2006	Toyota	Solara	2AZ-FE
2006	Toyota	Solara	3MZ-FE
2006	Toyota	Tacoma	1GR-FE
2006	Toyota	Tacoma	2TR-FE
2006	Toyota	Tundra	1GR-FE
2006	Toyota	Tundra	2UZ-FE
2006	Toyota	Yaris	1NZ-FE
2007	Lexus	ES350	2GR-FE
2007	Lexus	GS350	2GR-FSE
2007	Lexus	GS430	3UZ-FE
2007	Lexus	GS450h	2GR-FSE
2007	Lexus	GX470	2UZ-FE
2007	Lexus	IS250	4GR-FSE
2007	Lexus	IS350	2GR-FSE
2007	Lexus	LS460	1UR-FSE
2007	Lexus	LX470	2UZ-FE
2007	Lexus	RX350	2GR-FE
2007	Lexus	RX400h	3MZ-FE
2007	Lexus	SC430	3UZ-FE
2007	Toyota	4Runner	1GR-FE
2007	Toyota	4Runner	2UZ-FE
2007	Toyota	Avalon	2GR-FE
2007	Toyota	Camry	2AZ-FE
2007	Toyota	Camry	2AZ-FE
2007	Toyota	Camry	2GR-FE
2007	Toyota	Camry	2GR-FE
2007	Toyota	Corolla	1ZZ-FE
2007	Toyota	FJ Cruiser	1GR-FE
2007	Toyota	Highlander	2AZ-FE
2007	Toyota	Highlander	3MZ-FE
2007	Toyota	Land Cruiser	2UZ-FE
2007	Toyota	Matrix	1ZZ-FE
2007	Toyota	Prius	1NZ-FXE
2007	Toyota	RAV4	2AZ-FE
2007	Toyota	RAV4	2GR-FE
2007	Toyota	Sequoia	2UZ-FE
2007	Toyota	Sienna	2GR-FE
2007	Toyota	Solara	2AZ-FE

CLASS VEHICLES WITH ETCS-i			
Year	Make	Model	Engine
2007	Toyota	Solara	3MZ-FE
2007	Toyota	Tacoma	1GR-FE
2007	Toyota	Tacoma	2TR-FE
2007	Toyota	Tundra	1GR-FE
2007	Toyota	Tundra	2UZ-FE
2007	Toyota	Tundra	3UR-FE
2007	Toyota	Yaris	1NZ-FE
2008	Lexus	ES350	2GR-FE
2008	Lexus	GS350	2GR-FSE
2008	Lexus	GS450h	2GR-FSE
2008	Lexus	GS460	1UR-FSE
2008	Lexus	GX470	2UZ-FE
2008	Lexus	IS F	2UR-GSE
2008	Lexus	IS250	4GR-FSE
2008	Lexus	IS350	2GR-FSE
2008	Lexus	LS460	1UR-FSE
2008	Lexus	LS600h	2UR-FSE
2008	Lexus	LX570	3UR-FE
2008	Lexus	RX350	2GR-FE
2008	Lexus	RX400h	3MZ-FE
2008	Lexus	SC430	3UZ-FE
2008	Toyota	4Runner	1GR-FE
2008	Toyota	4Runner	2UZ-FE
2008	Toyota	Avalon	2GR-FE
2008	Toyota	Camry	2AZ-FE
2008	Toyota	Camry	2GR-FE
2008	Toyota	Corolla	1ZZ-FE
2008	Toyota	FJ Cruiser	1GR-FE
2008	Toyota	Highlander	2GR-FE
2008	Toyota	Highlander	3MZ-FE
2008	Toyota	Land Cruiser	3UR-FE
2008	Toyota	Matrix	1ZZ-FE
2008	Toyota	Prius	1NZ-FXE
2008	Toyota	RAV4	2AZ-FE
2008	Toyota	RAV4	2GR-FE
2008	Toyota	Sequoia	2UZ-FE
2008	Toyota	Sequoia	3UR-FE
2008	Toyota	Sienna	2GR-FE
2008	Toyota	Solara	2AZ-FE
2008	Toyota	Solara	3MZ-FE
2008	Toyota	Tacoma	1GR-FE
2008	Toyota	Tacoma	2TR-FE
2008	Toyota	Tundra	1GR-FE
2008	Toyota	Tundra	2UZ-FE
2008	Toyota	Tundra	3UR-FE
2008	Toyota	Yaris	1NZ-FE

CLASS VEHICLES WITH ETCS-i			
Year	**Make**	**Model**	**Engine**
2009	Lexus	ES350	2GR-FE
2009	Lexus	GS350	2GR-FSE
2009	Lexus	GS450h	2GR-FSE
2009	Lexus	GS460	1UR-FSE
2009	Lexus	GX470	2UZ-FE
2009	Lexus	IS F	2UR-GSE
2009	Lexus	IS250	4GR-FSE
2009	Lexus	IS350	2GR-FSE
2009	Lexus	LS460	1UR-FSE
2009	Lexus	LS600h	2UR-FSE
2009	Lexus	LX570	3UR-FE
2009	Lexus	RX350	2GR-FE
2009	Lexus	SC430	3UZ-FE
2009	Toyota	4Runner	1GR-FE
2009	Toyota	4Runner	2UZ-FE
2009	Toyota	Avalon	2GR-FE
2009	Toyota	Camry	2AZ-FE
2009	Toyota	Camry	2GR-FE
2009	Toyota	Corolla	2AZ-FE
2009	Toyota	Corolla	2ZR-FE
2009	Toyota	FJ Cruiser	1GR-FE
2009	Toyota	Highlander	1AR-FE
2009	Toyota	Highlander	2GR-FE
2009	Toyota	Highlander	3MZ-FE
2009	Toyota	Land Cruiser	3UR-FE
2009	Toyota	Matrix	2AZ-FE
2009	Toyota	Matrix	2ZR-FE
2009	Toyota	Prius	1NZ-FXE
2009	Toyota	RAV4	2AR-FE
2009	Toyota	RAV4	2GR-FE
2009	Toyota	Sequoia	2UZ-FE
2009	Toyota	Sequoia	3UR-FBE
2009	Toyota	Sequoia	3UR-FE
2009	Toyota	Sienna	2GR-FE
2009	Toyota	Tacoma	1GR-FE
2009	Toyota	Tacoma	2TR-FE
2009	Toyota	Tundra	2UZ-FE
2009	Toyota	Tundra	3UR-FBE
2009	Toyota	Tundra	3UR-FE
2009	Toyota	Venza	1AR-FE
2009	Toyota	Venza	2GR-FE
2009	Toyota	Yaris	1NZ-FE

EXHIBIT B

Judicial Panel On Multidistrict Litigation - Case Listing Report

Docket: 2151 - IN RE: Toyota Motor Corp. Defective Gas Pedal Products Liability Litigation
Status: Pending On / /
Transferee District:
Judge:
Transferee District Master Docket No.:

Key: XYZ Case = Related civil action filed in the transferee court.

Transferor Civil Action #	Caption	Transferor Judge	CTO#	Panel Filing Status-Date	Panel Disposition Date	Transferee Civil Action #	Civil Action Termination Date
ARE-4-2010-90	Horn v. Toyota Motor Sales U.S.A., Inc., e	Holmes		Related Case - 02/19/2010	/ /	-	/ /
CAC-2-2009-9386	Baldisseri v. Toyota Motor Sales U.S.A., I	Feess		Motion - 02/04/2010	/ /	-	/ /
CAC-2-2009-9158	Lane v. Toyota Motor Sales U.S.A., Inc.	Feess		Motion - 02/04/2010	/ /	-	/ /
CAC-2-2009-8476	Kmetz, et al. v. Toyota Motor Sales U.S.A.	Matz		Motion - 02/04/2010	/ /	-	/ /
CAC-2-2009-8143	Choi, et al. v. Toyota Motor Corp., et al.	Matz		Motion - 02/04/2010	/ /	-	/ /
CAC-2-2010-1153	Boyack v. Toyota Motor Sales, U.S.A., Inc.	Wu		Related Case - 02/22/2010	/ /	-	/ /
CAC-2-2010-1094	Madden v. Toyota Motor Sales, USA, Inc., e	Feess		Related Case - 02/22/2010	/ /	-	/ /
CAC-2-2010-1078	Myers, et al. v. Toyota Motor North Americ	Matz		Related Case - 02/22/2010	/ /	-	/ /
CAC-2-2010-1073	Liberman, et al. v. Toyota Motor Corp., e	Klausner		Related Case - 02/22/2010	/ /	-	/ /
CAC-2-2010-1057	Donoghue, etc. v. Toyota Motor North Ameri	Otero		Related Case - 02/22/2010	/ /	-	/ /
CAC-2-2010-1039	Talbot v. Toyota Motor North America, Inc.	Matz		Related Case - 02/22/2010	/ /	-	/ /
CAC-2-2010-947	Byrnes v. Toyota Motor North America, Inc.	Matz		Related Case - 02/22/2010	/ /	-	/ /
CAC-2-2010-942	Wisner v. Toyota Motor Corp., et al.	Otero		Related Case - 02/22/2010	/ /	-	/ /
CAC-2-2010-849	Gazaryan, et al. v. Toyota Motor Sales U.S	Matz		Related Case - 02/22/2010	/ /	-	/ /
CAC-2-2010-798	Marr, et al. v. Toyota Motor Sales, U.S.A.	Matz		Related Case - 02/19/2010	/ /	-	/ /

CAC-2-2010-710	Schwartz v. Toyota Motor Sales USA, Inc.,	Matz	Related Case - 02/19/2010	/ /	-	/ /
CAC-2-2010-706	Aviles v. Toyota Motor Corp., et al.	Matz	Related Case - 02/22/2010	/ /	-	/ /
CAC-8-2010-183	Beard, et al. v. Toyota Motor Corp., et al	Selna	Related Case - 02/22/2010	/ /	-	/ /
CAC-8-2010-105	Hauter, et al. v. Toyota Motor Sales U.S.A	Carney	Motion - 02/04/2010	/ /	-	/ /
CO-1-2010-227	Scharrel, et al. v. Toyota Motor North Ame	Brimmer	Related Case - 02/19/2010	/ /	-	/ /
FLM-8-2010-326	Lynch v. Toyota Motor Corp., et al.	Merryday	Motion - 02/05/2010	/ /	-	/ /
FLN-4-2010-35	Heidenreich v. Toyota Motor North America	Hinkle	Related Case - 02/19/2010	/ /	-	/ /
FLN-5-2010-26	Johnson v. Toyota Motor Corp., et al.	Smoak	Related Case - 02/23/2010	/ /	-	/ /
FLS-0-2010-60183	Rivas-Vigil v. Toyota Motor North America,	Cohn	Related Case - 02/22/2010	/ /	-	/ /
FLS-1-2010-20006	Gellman v. Toyota Motor Sales U.S.A., Inc.	Cooke	Motion - 02/04/2010	/ /	-	/ /
FLS-9-2010-80208	Hellbrunn v. Toyota Motor Corp., et al.	Zloch	Related Case - 02/19/2010	/ /	-	/ /
INS-1-2010-142	Enderle v. Toyota Motor North America, Inc	Barker	Related Case - 02/19/2010	/ /	-	/ /
KYE-2-2010-24	Viviano, et al. v. Toyota Motor Engineeri	Bertelsman	Related Case - 02/22/2010	/ /	-	/ /
KYE-2-2010-21	Poynter, et al. v. Toyota Motor North Amer	Bertelsman	Related Case - 02/19/2010	/ /	-	/ /
LAE-2-2010-281	Brock v. Toyota Motor North America, Inc.,	Fallon	Motion - 02/05/2010	/ /	-	/ /
LAE-2-2010-279	Mailho v. Toyota Motor North America, Inc	Lemmon	Motion - 02/05/2010	/ /	-	/ /
LAE-2-2010-219	Weimer, et al. v. Toyota Motor North Ameri	Lemelle	Motion - 02/05/2010	/ /	-	/ /
MIE-2-2010-10525	Basmkal v. Toyota Motor North American, In	Edmunds	Related Case - 02/22/2010	/ /	-	/ /
MOW-4-2010-103	Hulsen, et al. v. Toyota Motor Corp., et a	Sachs	Related Case - 02/19/2010	/ /	-	/ /
MSS-3-2010-104	Mitchell v. Toyota Motor North Ameica, Inc	Wingate	Related Case - 02/23/2010	/ /	-	/ /
NJ-3-2010-672	Colaberdino v. Toyota Motor North America,	Cooper	Related Case - 02/19/2010	/ /	-	/ /
NJ-3-2010-595	Gonzalez v. Toyota Motor Sales U.S.A., Inc	Cooper	Related Case - 02/19/2010	/ /	-	/ /

NYE-1-2010-542	Fogarty, et al. v. Toyota Motor North Amer	Gleeson	Related Case - 02/22/2010	/ /	-	/ /
NYE-2-2010-487	Phaneuf v. Toyota Motor Sales, U.S.A., Inc	Bianco	Related Case - 02/22/2010	/ /	-	/ /
NYS-1-2010-1111	Sander, et al. v. Toyota Motor Sales, U.S.	Hellerstein	Related Case - 02/23/2010	/ /	-	/ /
NYS-1-2010-1014	Iglesias, et al. v. Toyota Motor Corp., et	Castel	Related Case - 02/22/2010	/ /	-	/ /
OHN-1-2010-260	Meriesen v. Toyota Motor Sales, U.S.A., Inc	Oliver	Related Case - 02/19/2010	/ /	-	/ /
OHN-3-2010-280	Lee v. Toyota Motor North America, Inc., e	Carr	Related Case - 02/22/2010	/ /	-	/ /
PAE-5-2010-521	Gumble v. Toyota Motor Corp., et al.	Golden	Related Case - 02/19/2010	/ /	-	/ /
PR-3-2010-1083	Bithorn, et al. v. Toyota Motor North Amer	Besosa	Related Case - 02/19/2010	/ /	-	/ /
SC-3-2010-229	Wooten v. Toyota Motor North America, Inc.	Perry	Related Case - 02/19/2010	/ /	-	/ /
SC-7-2010-281	Roberts v. Toyota Motor Corp., et al.	Herwell	Related Case - 02/22/2010	/ /	-	/ /
TXS-2-2010-37	Pena, et al. v. Toyota Motor Corp., et al.	Rainey	Related Case - 02/19/2010	/ /	-	/ /
WVS-2-2009-1247	Graves, et al. v. Toyota Motor Manufacturi	Goodwin	Motion - 02/04/2010	/ /	-	/ /

SILL & MEDLEY

L A W Y E R S

14005 N. Eastern Ave.
Edmond, OK 73013
Office: (405) 509-6300
Shawnee Office: (405) 275-0060
Fax: (405) 509-6268

February 26, 2010

Jeffery N. Luthi, Clerk of the Panel
Judicial Panel on Multidistrict Litigation
One Columbus Circle, NE
Thurgood Marshall Federal Judiciary Building
Room G-255
Washington, DC 2002-8004

VIA HAND DELIVERY

RE: In Re Toyota Motor Corp.
Defective Gas Pedal Products Liability Litigation; MDL No. 2151

Dear Mr. Luthi:

We write this correspondence to request that our Motion, Plaintiff's Response to Motion for Transfer and Consolidation to the Central District of California Pursuant to 28 U.S.C. § 1407 and Memorandum In Support of Plaintiff's Response to Motion for Transfer and Consolidation to the Central District of California, be filed with this Panel as an ***"Interested Party Response"***.

We have enclosed herein the original and four (4) copies of each referenced above as well as a computer generated disk of the Motion and Memorandum in Adobe Acrobat (PDF) format.

Please file stamp each document and return one copy to the courier before you.

Should you have any questions, please do not hesitate to contact us.

Sincerely,
SILL & MEDLEY

Matthew J. Sill
Kathryn Eidson Griffin

AO 440 (Rev. 8/01) Summons in a Civil Action

RETURN OF SERVICE

Service of the Summons and complaint was made by me[1]	DATE 2/25/2010
NAME OF SERVER *(PRINT)* Dale Dorning	TITLE Private Investigator

Check one box below to indicate appropriate method of service

☑ Served personally upon the defendant. Place where served: Served Toyota Motor Corp by Serving Tanya Herbert, Authorized Agent @ 25 Atlantic Ave Erlanger, Ky 41018

☐ Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.

Name of person with whom the summons and complaint were left: _____

☐ Returned unexecuted: _____

☐ Other (specify): _____

STATEMENT OF SERVICE FEES

TRAVEL	SERVICES	TOTAL

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on 2/25/2010
Date

Dale Dorning
Signature of Server

PRECISION INVESTIGATIONS
& CONSULTING LLC
8216 PRINCETON-GLENDALE RD., #260
WEST CHESTER, OH 45069
Address of Server PH. (513) 895-5400

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

SUMMONS IN A CIVIL ACTION

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DIANE GUMBLE, on behalf of herself and all others similarly situated

v.

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

CIVIL ACTION NO. 10-521

TO: (NAME AND ADDRESS OF DEFENDANT)

Toyota Motor Engineering & Manufacturing North America, Inc.
25 Atlantic Avenue
Erlanger, Kentucky 41018

YOU ARE HEREBY SUMMONED and required to serve upon

Plaintiff's Attorney (Name and Address)

Dianne M. Nast, Esq.
801 Estelle Drive
Lancaster, PA 17601

an answer to the complaint which is herewith served upon you, within 21 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. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

Michael E. Kunz, Clerk of Court

Date: February 5, 2010

(By) Deputy Clerk

Jesse Bruck

JESSE BRUCK

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

DIANE GUMBLE, on behalf of herself and all others similarly situated, Plaintiff, v. TOYOTA MOTOR CORPORATION, TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC. and TOYOTA MOTOR SALES U.S.A., INC. Defendants.	CIVIL ACTION NO.: 10-521

ENTRY OF APPEARANCE

Erin C. Burns of the law firm RodaNast, P.C., 801 Estelle Drive, Lancaster, Pennsylvania 17601 hereby enters her appearance as counsel for Plaintiff Diane Gumble.

Dated: March 4, 2010

Respectfully Submitted,

/s/ Erin C. Burns
Erin C. Burns
RodaNast, P.C.
801 Estelle Drive
Lancaster, Pennsylvania 17601
(717) 892-3000 (telephone)
(717) 892-1200 (facsimile)
eburns@rodanast.com

Counsel for Plaintiff Diane Gumble

CERTIFICATE OF SERVICE

I hereby certify that I have this 4th day of March, 2010 filed with the Court and served via the Court's ECF system and First Class Mail a true and correct copy of the foregoing Entry of Appearance of Erin C. Burns on the following parties and counsel:

/s/ Erin C. Burns

Dennis P. Ziemba, Esquire
Two Liberty Place
50 South 16th Street, 22nd Floor
Philadelphia, PA 19102

Counsel for Defendant Toyota Motor Corporation, Toyota Motor Engineering & Manufacturing North America, Inc. and Toyota Motor Sales U.S.A., Inc.

accepted on behalf
TMS only
J McDonald
11:00 AM
3/4/10

SUMMONS IN A CIVIL ACTION

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DIANE GUMBLE, on behalf of herself and all others similarly situated v. TOYOTA MOTOR CORPORATION TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC. TOYOTA MOTOR SALES U.S.A., INC. RECEIVED MAR - 4 2010 LEGAL DEPARTMENT	CIVIL ACTION NO. 10-521 TO: (NAME AND ADDRESS OF DEFENDANT) Toyota Motor Sales, U.S.A., Inc. 19001 South Western Avenue Torrance, California 90501

YOU ARE HEREBY SUMMONED and required to serve upon

Plaintiff's Attorney (Name and Address)

Dianne M. Nast, Esq.
801 Estelle Drive
Lancaster, PA 17601

an answer to the complaint which is herewith served upon you, within 21 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. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

Michael E. Kunz, Clerk of Court	Date: February 5, 2010

(By) Deputy Clerk

Jesse Bruck

JESSE BRUCK

RETURN OF SERVICE	
Service of the Summons and complaint was made by me[1]	DATE
NAME OF SERVER *(PRINT)*	TITLE

Check one box below to indicate appropriate method of service

☐ Served personally upon the defendant. Place where served: _____

☐ Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.

Name of person with whom the summons and complaint were left: _____

☐ Returned unexecuted: _____

☐ Other (specify): _____

STATEMENT OF SERVICE FEES		
TRAVEL	SERVICES	TOTAL

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on _____ _____
Date *Signature of Server*

_____
Address of Server

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

United States District Court
Eastern District of Pennsylvania
United States Courthouse
Independence Mall West
601 Market Street
Philadelphia, PA 19106-1797

Chambers of
Harvey Bartle III
Chief Judge

Clerk's Office
Room 2609
Telephone
(215)597-7704

Michael E. Kunz
Clerk of Court

NOTICE OF RIGHT TO CONSENT TO EXERCISE OF JURISDICTION BY A UNITED STATES MAGISTRATE JUDGE

The district judges of this Court have found that the United States magistrate judges are experienced judicial officers who have regularly handled the disposition of hundreds of civil cases through motions and trials and are fully qualified to try any civil cases arising before this Court.

In accordance with the provisions of 28 U.S.C. §636(c), you are hereby notified that pursuant to Local Rules 72.1(h), the United States magistrate judges of this district, in addition to their other duties, may, upon the consent of all the parties in a civil case, conduct any or all proceedings in a civil case, including a jury or non-jury trial, and order the entry of a final judgment. Appropriate consent forms for this purpose are available from the clerk of court.

Your decision to consent, or not to consent, to the referral of your case to a United States magistrate judge for disposition is entirely voluntary and should be communicated solely to the clerk of the district court. Only if all the parties in the case consent to the reference to a magistrate judge will either the judge or magistrate judge be informed of your decision. **If you decide to consent, your case will receive a date certain for trial.**

No action eligible for arbitration will be referred by consent of the parties until the arbitration has been concluded and trial *de novo* demanded pursuant to Local Rules 53.2, Paragraph 7. The Court may, for good cause shown, or on its own motion, or under extraordinary circumstances shown by any party, vacate a reference of a civil matter to a magistrate judge.

When a case is referred to a magistrate judge for all further proceedings, including the entry of final judgment, the final judgment shall be appealed directly to the Court of Appeals for the Third Circuit in the same manner as an appeal from any other judgment of a district court.

Nothing herein shall be construed to be a limitation of any party's right to seek review by the Supreme Court of the United States.

HARVEY BARTLE III
CHIEF JUDGE

MICHAEL E. KUNZ
CLERK OF COURT

Civ 635(1/06)

RETURN OF SERVICE	
Service of the Summons and complaint was made by me[1]	DATE
NAME OF SERVER *(PRINT)*	TITLE

Check one box below to indicate appropriate method of service

☐ Served personally upon the defendant. Place where served: _____

_____

☐ Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.

Name of person with whom the summons and complaint were left: _____

☐ Returned unexecuted: _____

_____

_____

☐ Other (specify): _____

_____

_____

STATEMENT OF SERVICE FEES

TRAVEL	SERVICES	TOTAL

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on _____ _____
Date *Signature of Server*

_____
Address of Server

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

A/R, SPECIAL

United States District Court
Eastern District of Pennsylvania (Allentown)
CIVIL DOCKET FOR CASE #: 5:10-cv-00521-TMG

GUMBLE v. TOYOTA MOTOR CORPORATION et al
Assigned to: HONORABLE THOMAS M. GOLDEN
Cause: 28:1332 Diversity-Personal Injury

Date Filed: 02/05/2010
Jury Demand: Plaintiff
Nature of Suit: 365 Personal Inj. Prod. Liability
Jurisdiction: Diversity

Plaintiff

DIANE GUMBLE
on behalf of herself and all others similarly situated

represented by **DIANNE M. NAST**
RODA &NAST, PC
801 ESTELLE DRIVE
LANCASTER, PA 17601
717-892-3000
Fax: 717-892-1200
Email: dnast@rodanast.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

ERIN C. BURNS
RODA NAST PC
801 ESTELLE DR.
LANCASTER, PA 17601
717-892-3000
Email: eburns@rodanast.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

TOYOTA MOTOR CORPORATION

Defendant

TOYOTA MOTOR ENGINEERING &MANUFACTURING NORTH AMERICA, INC.

Defendant

TOYOTA MOTOR SALES U.S.A., INC.

Date Filed	#	Docket Text
02/05/2010	1	COMPLAINT against TOYOTA MOTOR CORPORATION, TOYOTA MOTOR ENGINEERING &MANUFACTURING NORTH AMERICA, INC., TOYOTA MOTOR SALES U.S.A., INC. (Filing fee $ 350 receipt number PPE017341.), filed by DIANE GUMBLE.(jeb,) (Entered: 02/05/2010)
02/05/2010		Summons Issued as to TOYOTA MOTOR CORPORATION, TOYOTA MOTOR ENGINEERING &MANUFACTURING NORTH AMERICA, INC., TOYOTA MOTOR SALES U.S.A., INC.. 3 Forwarded To: Counsel on 2/5/10 (jeb,) (Entered: 02/05/2010)
02/05/2010		DEMAND for Trial by Jury by DIANE GUMBLE. (jeb,) (Entered: 02/05/2010)
03/01/2010	2	Copy Re: Documents (Motion to Transfer to the SD-WV, Memorandum) Filed Before the Judicial Panel on Multidistrict Litigation reagrding MDL 2151. (tjd)

		(Entered: 03/02/2010)
03/01/2010	3	Copy Re: Documents (Response to Motion to Transfer to the CD−CA, Memorandum, Exhibits) Filed Before the Judicial Panel on Multidistrict Litigation reagrding MDL 2151. (tjd) (Entered: 03/02/2010)
03/01/2010	4	Copy Re: Documents (Notice of Related Action, Exhibit, Proof of Service) Filed Before the Judicial Panel on Multidistrict Litigation reagrding MDL 2151. (tjd) (Entered: 03/02/2010)
03/02/2010	5	Copy Re: Documents (Letter, Cert of Service) Filed Before the Judicial Panel on Multidistrict Litigation regarding MDL 2151. (tjd) (Entered: 03/02/2010)
03/04/2010	6	NOTICE of Appearance by ERIN C. BURNS on behalf of DIANE GUMBLE with Certificate of Service(BURNS, ERIN) (Entered: 03/04/2010)
03/04/2010	7	AFFIDAVIT of Service by Precision Investigations &Consulting LLC re: served Complaint and Summons upon Toyota Motor Engineering &Manufacturing North America, Inc. on 02/25/2010 (NAST, DIANNE) (Entered: 03/04/2010)

FILE START

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA

RECEIVED

2010 FEB -5 P 4:55

JOHN HARDING, individually and on behalf of all others similarly situated,	*	
Plaintiff,	*	
v.	*	Civil Action No. 2:10-CV-100-MEF-SRW
TOYOTA MOTOR CORPORATION, a foreign corporation, **and** **TOYOTA MOTOR SALES, USA, INC.,** a California corporation,	*	**JURY TRIAL REQUESTED**
Defendants,	*	

CLASS ACTION COMPLAINT

Plaintiff, John Harding, sues Defendants, Toyota Motor Corporation and Toyota Motor Sales, USA, Inc., and alleges as follows:

PARTIES

1. Plaintiff, John Harding ("Plaintiff") as an individual consumer, who at all times material hereto, was and is a resident of Autauga County in the State of Alabama.

2. Defendant, Toyota Motor Corporation, is a Japanese Corporation having its principal place of business at 1 Toyota-Cho, Toyota City, Aichi Prefecture 471-8571, Japan. Toyota Motor Corporation designs, develops and manufactures automobiles that are sold throughout the world.

3. Defendant, Toyota Motor Sales, USA, Inc., is a corporation organized and existing under the laws of the State of California with its principal executive offices located at 19001 S.2. Western Avenue, Torrance, California 90509. Toyota Motor Sales, USA, Inc. markets, distributes and sells vehicles manufactured by Defendant Toyota Motor Corporation throughout the United States.

JURISDICTION AND VENUE

4. This court has jurisdiction over this class action under 18 U.S.C. § 1332(d), which under the provisions of the Class Action Fairness Act ("CAFA") explicitly provides for the original jurisdiction of the Federal Courts of any class action in which any member of the plaintiff class is a citizen of a State different from any defendant, and in which the matter in controversy exceeds in the aggregate the sum of $5,000,000, exclusive of interest and costs. Plaintiff alleges that the total claims of individual class members in this action are well in excess of $5,000,000 in the aggregate, exclusive of interest and costs, as required by 28 U.S.C. § 1332(d)(2), (5). Plaintiff is a citizen of the State of Alabama whereas, as set forth above, Defendant Toyota Motor Corporation is a citizen of a foreign country, Japan, and Defendant Toyota Motor Sales, USA, Inc. is a citizen of the State of California. Furthermore, Plaintiff alleges that the total number of members of the proposed Class is greater than 100, pursuant to 28 U.S.C. § 1332(d)(5)(B). Therefore, diversity of citizenship exists under CAFA as required by 28 U.S.C. § 1332(d)(2)(A).

5. Venue in this district is proper pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the claims alleged occurred in this district, Plaintiff resides in the this District, and Toyota Motor Corporation and Toyota Motor Sales, USA, Inc. are subject to personal jurisdiction in this District.

FACTUAL ALLEGATIONS

6. Toyota Motor Corporation is the world's largest automobile manufacturer, with approximately $270 billion in revenue. It designs and develops a wide range of automobiles including the brands Toyota, Lexus and Scion.

7. Toyota Motor Sales, USA, Inc., a subsidiary of the Toyota Motor Corporation, distributes, markets, and sells the Toyota, Lexus and Scion automobiles throughout the United States (Toyota Motor Corporation and Toyota Motor Sales, USA, Inc. collectively referred to as "Toyota"). Approximately two million Toyota vehicles are sold annually in the United States through over 1,500 dealerships.

8. Toyota prides itself on the safety of its vehicles. The website www.SafetyToyota.com, devoted exclusively to promoting the safety of Toyota vehicles, clams:

> "What can we do to realize an ideal vehicle, which is a goal we never cease pursuing? That is what we always have in mind. What technology can prevent an accident in any situation and minimize the damage in an accident? Toyota has been developing various safety technologies by using variant means..., in addition to the verification at the collision test center that can reproduce many different types of accidents. 'What causes accidents?' 'What can be done to prevent accidents?' 'What mitigates the damage of accidents that have occurred?' These are the questions to which we are constantly seeking answers. Our technologies will continue to advance toward the ultimate goal of making a vehicle that is safe for everybody."

9. Toyota automobile owners have been reporting incidents of sudden unintended acceleration of their vehicles since the 1990s. Sean Kane, a safety researcher, reported that his firm has documented thousands of reports of unintended acceleration. *See* "Toyota's Slow Awakening to a Deadly Problem" as Exhibit A, attached hereto.

10. The National Highway Traffic Safety Administration ("NHTSA"), which helps investigate consumer complaints of automotives, has, over the years, received far more sudden acceleration complaints for Toyota vehicles than for any other manufacturer. As a result of these complaints, NHTSA has launched more investigations into Toyota vehicles concerning this issue than all other automobile manufacturers combined. These investigations, relying on data provided by Toyota, had concluded that most of the accidents were caused by drivers accidentally hitting the accelerator pedal as opposed to the brakes.

11. Further, Toyota has downplayed or dismissed owner complaints, blaming it on driver error or other situation-specific reasons.

12. In 2007, due to an overwhelming number of customer complaints, Toyota conducted an investigation and determined that the floor mats were the cause of the accelerator problems, as it had the tendency to obstruct the accelerator pedal. Toyota further announced that the accelerator pedals were in no way a safety threat.

13. On August 28, 2009, California Highway Patrol Officer Mark Saylor, while

driving on the San Diego Freeway, could not slow down his 2009 Lexus ES 350 even after continuously applying the brakes, reaching speeds upwards of 130 miles per hour. While driving, he was on the phone with the police dispatcher and said: "We're in trouble...There's no brakes." Moments later, Officer Saylor, as well as three others on board, were dead.

14. A month after the Saylor tragedy, and after mounting pressure, Toyota recalled approximately four million vehicles from model years as far back as 2004 (the "September 2009 Recall").

15. Toyota, however, again claimed that the recall was due to improper installation of floor mats causing them to jam the accelerator pedal, and no defect with the accelerator existed. NHTSA, who believed there was an underlying problem with the accelerator pedals, criticized Toyota for making "inaccurate and misleading statements."

16. Shortly after the September 2009 Recall, the Los Angeles Times conducted an investigation into Toyota's safety issues over the past several years. *See* "Toyota Found To Keep Tight Lid On Potential Safety Problems" attached hereto as Exhibit B. The article found:

> " * 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. But it told regulators no recall was necessary in the U.S., despite having received dozens of complaints from drivers. Toyota said a subsequent investigation led it to order a U.S. recall in 2005.
>
> * Toyota has paid cash settlements to people who say their vehicles have raced out of control, sometimes causing serious accidents, according to consumers and their attorneys. Other motorists who complained of acceleration problems with their vehicles have received buybacks under lemon laws.
>
> * Although the sudden acceleration issue erupted publicly only in recent months, it has been festering for nearly a decade. A computerized search of NHTSA records by The Times has found Toyota issued eight previous recalls related to unintended acceleration since 2000, more than any other automaker.
>
> * A former Toyota lawyer who handled safety litigation has sued the automaker, accusing it of engaging in a "calculated conspiracy to prevent the disclosure of damaging evidence" as part of a scheme

> to "prevent evidence of its vehicles' structural shortcomings from becoming known" to plaintiffs lawyers, courts, NHTSA and the public."

17. On January 21, 2010, Toyota finally admitted that the accelerators were not entirely free from defects, as Toyota had stated time and time again, announcing in a press release that "Our investigation indicates that there is a possibility that certain accelerator pedal mechanisms may, in rare instances, mechanically stick in a partially depressed position or return slowly to the idle position."

18. In addition to the mechanical defect(s), the Electronic Throttle Control System with Intelligence ("ETCS-i") and/or Electronic Throttle Control System ("ETC") that is designed, manufactured, distributed and sold in certain vehicles by the Defendants is defective, in that it will allow sudden unintended acceleration of the vehicle engine. The Defendants' deny these defects; just as the Defendants' have previously denied any and all of the aforementioned defects. Another safety expert said that he does not believe Toyota's pedal fix addresses the core problem.

> "These are completely computer-guided systems, and we all know that electronics fail. They do fail, and they will fail. The problem with Toyota is they haven't built enough fail-safe devices into their cars to ensure that drivers get control of the vehicle when a failure happens." (US Headlines Examiner, Charisse Van Horn)

19. Following the announcement, Toyota announced an additional recall of 2.3 million U.S. built cars and trucks (the "January 2010 Recall") (all Toyota vehicles recalled for the sudden acceleration problem, and those not yet identified, referred to as "Vehicles in Question"). These models include but are not limited to the 2009-2010 RAV4, 2009-2010 Corolla, 2009-2010 Matrix, 2005-2010 Avalon, 2007-2010 Camry, 2010 Highlander, 2007-2010 Tundra, and the 2008-2010 Sequoia.

20. On January 30, 2010, the January 2010 Recall was broadened to include Toyota vehicles sold overseas, including a recall of 1.8 million units in Europe. As of the date of this recall, the total number of Toyota vehicles recalled is upwards of 7 million units.

21. Plaintiff John Harding, a resident of Autauga County, Alabama, is the owner of a

2009 Toyota Tundra.

22. Plaintiff contends that his 2009 Toyota vehicle is designed, manufactured and sold using Toyota's ETSC-i / or ETC.

23. Plaintiff's vehicle may no longer be safe to operate due to a potential sudden acceleration problem caused by a defective accelerator pedal and/or the ETC/ETSC-i system.

24. Plaintiff alleges upon information and belief, that the Defendants knew that this system was susceptible to malfunction that could result in unintended acceleration of the vehicles. The Defendants continued to manufacture vehicles with this system. The Defendants did not incorporate any failsafe or redundant equipment in their vehicles to mitigate this significant risk of injury or death, even knowing that similar systems are used by manufacturers throughout the industry.

25. Plaintiff contends upon information and belief, that the Defendants' actions have diminished or devalued Plaintiff's vehicle resulting in monetary loss.

CLASS ALLEGATIONS

26. Plaintiff repeats and realleges all preceding paragraphs, as if fully set forth herein.

27. Pursuant to F.R.C.P. 23, Plaintiff brings this action on behalf of himself and the Class comprised of all other consumers who purchased the Vehicles in Question during the relevant time period. Toyota's practices and omissions were applied uniformly to all members of the Class, so that the questions of law and fact are common to all members of the Class. All putative Class members were and are similarly affected by having purchased the Vehicles in Question for their intended and foreseeable purpose as promoted, marketed, advertised, packaged and labeled by Toyota as set forth in detail above, and the relief sought herein is for the benefit of the Plaintiff and members of the putative Class. Plaintiff alleges that the Class is so numerous that joinder of all members would be impractical.

28. Based on the annual sales of the Vehicles in Question and the popularity of the Vehicles in Question, it is apparent that the number of consumers of the Vehicles in Question would at least be in the many thousands, thereby making joinder impossible. Questions of law

and fact common to the Class exist and predominate over questions affecting only individual members, including, *inter alia*:

> (a) Whether Toyota designed, tested, manufactured, assembled, developed and sold defective Vehicles resulting in diminution of value and monetary loss to the Plaintiff and other Class members,
>
> (b) Whether Toyota breached express warranties in its sale of the Vehicles in Question, thereby causing harm to the Plaintiff and other Class members;
>
> (c) Whether Toyota breached implied warranties in its sale of the Vehicles in Question, thereby causing harm to the Plaintiff and other Class members;
>
> (d) Whether Toyota fraudulently concealed the risks associated with its design, testing, manufacture, assembly, development and sale of the Vehicles in Question; and
>
> (e) Whether Toyota's practices in connection with the promotion, marketing, advertising, packaging, labeling and sale of the Vehicles in Question unjustly enriched Toyota at the expense of, and to the detriment of, the Plaintiff and other Class members.

29. The claims asserted by the Plaintiff in this action are typical of the claims of other Class members as the claims arise from the same course of conduct by Toyota, and the relief sought is common.

30. The Plaintiff will fairly and adequately represent and protect the interests of the Class members. Plaintiff has retained counsel competent and experienced in both consumer protection and class action litigation.

31. Certification of this class action is appropriate under F.R.C.P. 23(b) because the questions of law or fact common to the respective Class members predominate over questions of law or fact affecting only individual members. This predominance makes class litigation superior to any other method available for the fair and efficient adjudication of these claims. Absent a class action remedy, it would be highly unlikely that the representative Plaintiff or any other Class member would be able to protect their own interests because the cost of litigation through individual lawsuits might exceed expected recovery. Certification is also appropriate

because Toyota acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief with respect to the Class as a whole. Further, given the large number of consumers of the Vehicles in Question, allowing individual actions to proceed in lieu of a class action would run the risk of yielding inconsistent and conflicting adjudications.

32. A class action is a fair and appropriate method for the adjudication of the controversy, in that it will permit a large number of claims to be resolved in a single forum simultaneously, efficiently, and without the unnecessary hardship that would result from the prosecution of numerous individual actions and the duplication of discovery, effort, expense and burden on the courts that such individual actions would engender. The benefits of proceeding as a class action, including providing a method for obtaining redress for claims that would not be practical to pursue individually, outweigh any difficulties that might be argued with regard to the management of this class action.

I. FIRST CAUSE OF ACTION

(BREACH OF EXPRESS WARRANTY)

33. Plaintiff repeats and realleges all preceding paragraphs, as if fully set forth herein.

34. Toyota provided the Plaintiff and other members of the Class with written express warranties including, but not limited to, that the Vehicles in Question were completely safe to operate. Specifically, Toyota's website promises that their ultimate goal is "making a vehicle that is safe for everybody."

35. Toyota breached these express warranties which resulted in damages to the Plaintiff and other members of the Class, who overpaid for the Vehicles in Question, as the Vehicles in Question were not safe as they may contain a defective accelerator pedal mechanism and/or the ETC/ETSC-i system causing sudden acceleration, potentially resulting in death, and as such, the Vehicles in Question were not safe to operate.

36. As a proximate result of the breach of warranties by Toyota, the Plaintiff and Class members have suffered damages in an amount to be determined at trial in that, among other things, they purchased and paid for a product that did not conform to what was promised as

promoted, marketed, advertised, packaged and labeled by Toyota, and they were deprived of the benefit of their bargain and spent money on a product that did not have any value or had less value than warranted or a product they would not have purchased and used had they known the true facts about it. The Plaintiff and other members of the class are further harmed in having to spend money on attaining other transportation while the Vehicles in Question are being fixed. Additionally, or in the alternative, the Plaintiff and other members of the class suffered actual damages, including a diminution of value of the subject vehicles (the difference in market value of the product in the condition in which it was delivered, and its market value in condition in which it should have been delivered according to contract of parties).

II. SECOND CAUSE OF ACTION

(BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY)

37. Plaintiff repeats and realleges all preceding paragraphs, as if fully set forth herein.

38. Plaintiff and other Class members purchased the Toyota's Vehicles in Question, which were promoted, marketed, advertised, packaged and labeled as being safe to operate. Pursuant to these sales, Toyota impliedly warranted that the Vehicles in Question would be merchantable, including that the Vehicles in Question would be fit for the ordinary purposes for which such goods are used and conform to the promises or affirmations of fact made in the Vehicles' in Question promotions, marketing, advertising, packaging and labels. In doing so, the Plaintiff and other Class members relied on Toyota's representations that the Vehicles in Question were safe to operate, and at or about that time, Toyota sold to the Plaintiff and other Class members the Vehicles in Question. By its representations regarding the reputable nature of its company and related entities, and by its promotion, marketing, advertising, packaging and labeling of the Vehicles in Question, Toyota warranted that the Vehicles in Question were safe to operate. The Plaintiff and Class members bought the Vehicles in Question from Toyota, relying on Toyota's representations that the Vehicles in Question were safe to operate; however, these vehicles may have contained a defective accelerator pedal mechanism and/or the ETC/ETSC-i

system causing sudden acceleration which could potentially result in death.

39. Toyota breached the warranty implied at the time of sale in that the Plaintiff and Class members did not receive a vehicle which was safe to operate and thus, the goods were not merchantable as fit for the ordinary purposes for which such goods are used or as promoted, marketed, advertised, packaged, labeled or sold.

40. As a proximate result of this breach of warranty by Toyota, the Plaintiff and Class members have suffered damages in an amount to be determined at trial in that, among other things, they purchased and paid for a product that did not conform to what was promised as promoted, marketed, advertised, packaged and labeled by Toyota, and they were deprived of the benefit of their bargain and spent money on a product that did not have any value or had less value than warranted or a product they would not have purchased and used had they known the true facts about it. The Plaintiff and other members of the class are further harmed in having to spend money on attaining other transportation while the Vehicles in Question are being fixed. Additionally, or in the alternative, the Plaintiff and other members of the class suffered actual damages, including a diminution of value of the subject vehicles (the difference in market value of the product in the condition in which it was delivered, and its market value in condition in which it should have been delivered according to contract of parties).

III. THIRD CAUSE OF ACTION

(BREACH OF IMPLIED WARRANTY OF FITNESS FOR PARTICULAR PURPOSE)

41. Plaintiff repeats and realleges all preceding paragraphs, as if fully set forth herein.

42. Plaintiff and other Class members purchased Toyota's Vehicles in Question, which were promoted, marketed, advertised, packaged and labeled as being safe to operate. Pursuant to these sales and by its representations regarding the reputable nature of its company and related entities, Toyota impliedly warranted by its promotion, marketing, advertising, packaging and labeling of the Vehicles in Question that they were safe to operate. The Plaintiff and Class members bought the Vehicles in Question from Toyota, relying on Toyota's skill and

judgment in furnishing suitable goods as well as Toyota's representations that the Vehicles in Question were safe to operate. However, Toyota's Vehicles in Question were not safe to operate as they may have contained a defective accelerator pedal mechanism and/or the ETC/ETSC-i system causing sudden acceleration potentially resulting in death.

43. Toyota breached the warranty implied at the time of sale in that Plaintiff and Class members did not receive products that were safe to operate as they possibly contained a defective accelerator pedal mechanism and/or the ETC/ETSC-i system potentially resulting in death, and thus the goods were not fit for the purpose as promoted, marketed, advertised, packaged, labeled or sold.

44. As a proximate result of this breach of warranty by Toyota, the Plaintiff and Class members have suffered damages in an amount to be determined at trial in that, among other things, they purchased and paid for a vehicle that did not conform to what was promised as promoted, marketed, advertised, packaged and labeled by Toyota, and they were deprived of the benefit of their bargain and spent money on a product that did not have any value or had less value than warranted or a product they would not have purchased and used had they known the true facts about it. The Plaintiff and other members of the class are further harmed in having to spend money on attaining other transportation while the Vehicles in Question are being fixed. Additionally, or in the alternative, the Plaintiff and other members of the class suffered actual damages, including a diminution of value of the subject vehicles (the difference in market value of the product in the condition in which it was delivered, and its market value in condition in which it should have been delivered according to contract of parties).

IV. FOURTH CAUSE OF ACTION

(FRAUDULENT CONCEALMENT)

45. Plaintiff repeats and realleges all preceding paragraphs, as if fully set forth herein.

46. Toyota had a duty to disclose the truth about risks associated with the design, testing, manufacture, assembly and development of the Vehicles in Question as set forth in detail above, but delayed and failed to do so.

47. Toyota concealed these facts relating to the accelerator pedal mechanism and/or the ETC/ETSC-i system of the Vehicles in Question when they knew, or had reason to know, the true and correct facts regarding the defectiveness of the Vehicles in Question, and that Toyota took steps to prevent these facts from becoming known to the general public in the marketing, promotion and sale of the vehicles.

48. The concealment of the true facts, from the Plaintiff and other members of the Class, was done with the intent to induce the Plaintiff and Class members to purchase the Vehicles in Question.

49. The reliance by the Plaintiff and Class members was reasonable and justified in that Toyota appeared to be, and represented itself to be, a reputable business. The Plaintiff and Class members would not have purchased the Vehicles in Question had they known the true facts about the Vehicles in Question that they may result in potential death.

50. As a direct and proximate result of the fraud and deceit alleged, the Plaintiff and Class members were induced to purchase the Vehicles in Question, who then used it for its intended and foreseeable purpose, and have suffered damages in an amount to be determined at trial.

51. Toyota knew, or should have known, that the design, testing, manufacture, assembly and development of the Vehicles in Question as set forth in detail above was defective before it issued a recall, and that Toyota intended that the customers should rely on Toyota's representations that it was a reputable and reliable business, as well as Toyota's suppression of the true facts about the Vehicles in Question, in purchasing such vehicles.

52. Plaintiff and other members of the Class, in purchasing and using the Vehicles in Question, did rely on Toyota's above representations and suppression of facts, all to their damage as hereinabove alleged. In doing these things, Toyota was guilty of malice, oppression and fraud, and the Plaintiff and Class members are, therefore, entitled to recover punitive damages.

53. Additionally, or in the alternative, the Plaintiff and other members of the class suffered actual damages, including a diminution of value of the subject vehicles (the difference

in market value of the product in the condition in which it was delivered, and its market value in condition in which it should have been delivered according to contract of parties).

V. FIFTH CAUSE OF ACTION

(UNJUST ENRICHMENT)

54. Plaintiff repeats and realleges all preceding paragraphs, as if fully set forth herein.

55. As a result of Toyota's deceptive, fraudulent and misleading labeling, advertising, marketing and sales of the Vehicles in Question, described in detail above, Toyota profited, at the expense of the Plaintiff and the Class, through the payment of the purchase price for Toyota's Vehicles in Question.

56. Under the circumstances, it would be against equity and good conscience to permit Toyota to retain the ill-gotten benefits that it received from the Plaintiff and other members of the Class in light of the fact that the Vehicles in Question were not what Toyota purported them to be. Thus, it would be unjust or inequitable for Toyota to retain the benefit without restitution to the Plaintiff and other members of the Class for the monies paid to Toyota for such Vehicles in Question.

VI. SIXTH CAUSE OF ACTION

(BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING)

57. Plaintiff realleges all prior paragraphs of this Complaint, as if set out forth herein in full an incorporated by reference.

58. Plaintiff's Agreement with the Defendant includes not only express written provisions, but also those terms and conditions, which although not formally expressed, are implied by the Law.

59. Such terms are as binding as the terms that are actually written into the agreement with the Plaintiff, and those who are similarly situated against the Defendants.

60. Inherent in all contracts and agreements is a covenant that the parties will act in

good faith and deal fairly with each other in the performance of their respective covenants and obligations under the Agreement and not take any action that will injure the other party or compromise the benefit of the Agreement.

61. The obligations of Defendants to abide by the covenant of good faith and fair dealing is heightened by the substantial imbalance of power between Defendants and the Plaintiff. This imbalance allows Defendants to implement the business scheme described in detail in this Complaint and incorporated by reference.

62. Through the actions and inactions of the Defendants as outlined above, Defendants have failed to abide by the covenant of good faith and have failed to deal fairly with the Plaintiff and others similarly situated.

63. As a proximate result of the aforesaid breach of the covenant of good faith and fair dealing by Toyota, the Plaintiff and Class members have suffered damages in an amount to be determined at trial in that, among other things, they purchased and paid for a vehicle that did not conform to what was promised as promoted, marketed, advertised, packaged and labeled by Toyota, and they were deprived of the benefit of their bargain and spent money on a product that did not have any value or had less value than warranted or a product they would not have purchased and used had they known the true facts about it. The Plaintiff and other members of the class are further harmed in having to spend money on attaining other transportation while the Vehicles in Question are being fixed. Additionally, or in the alternative, the Plaintiff and other members of the class suffered actual damages, including a diminution of value of the subject vehicles (the difference in market value of the product in the condition in which it was delivered, and its market value in condition in which it should have been delivered according to contract of parties).

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays for judgment as follows:

A. Certification of the Class, certifying Plaintiffs as representative of the Class, and designating their counsel as counsel for the Class;

B. An award of compensatory damages, and other damages, the amount of which is to be determined at trial;

C. For interest at the legal rate on the foregoing sums;

D. For costs of suit incurred; and

E. For such further relief as this Court may deem just and proper.

JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury.

Dated: February 5, 2010

Respectfully submitted,

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EXHIBIT "A"

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SECTION: Section A; Column 0; Business/Financial Desk; Pg. 1

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HEADLINE: Toyota's Slow Awakening to a Deadly Problem

BYLINE: By BILL VLASIC; Matt Richtel contributed reporting from San Francisco, Clifford Krauss from Houston and Matthew L. Wald from Washington.

DATELINE: DETROIT

BODY:

The 911 call came at 6:35 p.m. on Aug. 28 from a car that was speeding out of control on Highway 125 near San Diego.

The caller, a male voice, was panic-stricken: "We're in a Lexus ... we're going north on 125 and our accelerator is stuck ... we're in trouble ... there's no brakes ... we're approaching the intersection ... hold on ... hold on and pray ... pray ..."

The call ended with the sound of a crash.

The Lexus ES 350 sedan, made by Toyota, had hit a sport utility vehicle, careened through a fence, rolled over and burst into flames. All four people inside were killed: the driver, Mark Saylor, an off-duty California Highway Patrol officer, and his wife, daughter and brother-in-law.

It was the tragedy that forced Toyota, which had received more than 2,000 complaints of unintended acceleration, to step up its own inquiry, after going through multiple government investigations since 2002.

Yet only last week did the company finally appear to come to terms with the scope of the problem -- after expanding a series of recalls to cover millions of vehicles around the world, incalculable damage to its once-stellar reputation for quality and calls for Congressional hearings.

With prodding from the National Highway Traffic Safety Administration, Toyota halted production and sales of eight models, including its top-selling Camry sedan.

And late last week, the government allowed the company to go ahead to try yet another new fix for its vehicles, which it is expected to announce on Monday.

At almost every step that led to its current predicament, Toyota underestimated the severity of the sudden-acceleration problem affecting its most popular cars. It went from discounting early reports of problems to overconfidently announcing diagnoses and insufficient fixes.

As recently as the fall, Toyota was still saying it was confident that loose floor mats were the sole cause of any sudden acceleration, issuing an advisory to millions of Toyota owners to remove them. The company said on Nov. 2 that "there is no evidence to support" any other conclusion, and added that its claim was backed up by the federal traffic safety agency.

But, in fact, the agency had not signed on to the explanation, and it issued a sharp rebuke. Toyota's

statement was "misleading and inaccurate," the agency said. "This matter is not closed."

The effect on Toyota's business is already being felt. Its sales in the United States in January are expected to drop 11 percent from a year earlier, and its market share in the United States is likely to fall to its lowest point since 2006, according to Edmunds.com, an automotive research Web site.

The company has not yet projected the cost of its recalls and lost sales. But a prolonged slowdown in sales could substantially hurt a company that once minted profit.

Toyota's handling of the problem is a story of how a long-trusted carmaker lost sight of one of its bedrock principles.

In Toyota lore, the ultimate symbol of the company's attention to detail is the "andon cord," a rope that workers on the assembly line can pull if something is wrong, immediately shutting down the entire line. The point is to fix a small problem before it becomes a larger one.

But in the broadest sense, Toyota itself failed to pull the andon cord on this issue, and treated a growing safety issue as a minor glitch -- a point the company's executives are now acknowledging in a series of humbling apologies.

"Every day is a lesson and there is something to be learned," Yoshimi Inaba, Toyota's top executive in North America, said at the Detroit auto show in January. "This was a hard lesson."

In Davos, Switzerland, on Friday, Akio Toyoda, the grandson of Toyota's founder who now heads the company, told a Japanese broadcaster that he was "deeply sorry" for the problems.

Toyota's safety problems may prove to be a hard lesson for the N.H.T.S.A., as well. Six separate investigations were conducted by the agency into consumer complaints of unintended acceleration, and none of them found defects in Toyotas other than unsecured floor mats.

In at least three cases, the agency denied petitions for further investigative action because it did not see a pattern of defects and because of a "need to allocate and prioritize N.H.T.S.A.'s limited resources" elsewhere, according to agency documents.

The investigations, and Toyota's handling of the problem, will be the subject of Congressional hearings.

But the publicity surrounding the accident near San Diego, and Toyota's repeated inability to quell consumer concerns with a definitive solution, has also prompted a flood of lawsuits reminiscent of the litigation a decade ago arising out of the rollovers of Ford Explorers equipped with Firestone tires.

In addition to cases related to individual accidents, several class-action suits have been filed against Toyota. The cases are expected to focus on why the government and the carmaker were unable to identify problems beyond the floor mats, despite mounting instances of runaway cars.

David Ennis, a Washington lawyer, said he was working on three lawsuits that had been in the works for five months. "Over the last 24 hours, everybody's a Toyota lawyer now," he said last week.

Toyota now believes that the trouble with its cars is twofold -- a combination of loose floor mats that can interfere with accelerator pedals, and a pedal that itself can stick when a driver depresses it.

Toyota has told its dealers that it will announce its fix for the faulty accelerators on Monday, but has yet to release details. The CTS Corporation, the supplier of the pedals used in recalled models, is making replacement parts. But Toyota is also expected to try to repair or modify the pedals in some vehicles.

Before last August, Toyota had issued three limited recalls to replace floor mats and change an interior part that could catch on accelerator pedals.

But after the fatal crash near San Diego, and the public release of the 911 tape, Toyota was forced to, as it said in the fall, "take a closer look."

That crash, said Clarence M. Ditlow, executive director of the Center for Auto Safety in Washington, "was a watershed event."

"It captured on tape the deaths of four people in an uncontrolled acceleration where the driver was an experienced highway patrol officer," he said. "If he couldn't bring the car under control, who could?"

A lawyer for the Saylor family said he wished that the federal government had acted more quickly about concerns over the sudden acceleration.

"They're clearly starting to become more interested in the problem and more attentive to it," said the lawyer, John Gomez, of San Diego. "Do I wish they would have done more sooner? Obviously."

In one federal inquiry on Toyota models built from 2002 to 2005, investigators found that 20 percent of the 432 complaints studied involved "sudden or unintended acceleration."

But no defects were uncovered in any of the vehicles, and the rate of incidents was considered "unremarkable" in the context of the millions of cars on the road.

The petitioner in that case, Jordan Ziprin of Phoenix, said the regulators had focused exclusively on mechanical issues with his car, a 2002 Camry.

"I believe this is an electronic issue, but they have been avoiding that possibility entirely," Mr. Ziprin said in an interview.

Several lawsuits against Toyota also suggest that the company's electronic system could be at fault.

A Toyota spokesman said the company had looked extensively at its computerized electronic throttle system, which controls the speed of its cars, and had found no faults.

"If we found anything, we would take appropriate action," said the spokesman, Mike Michels. "But we continue to think it's entirely unlikely that an electronic malfunction is the cause."

A lawyer for a California man whose wife died in a 2007 crash of a Camry said the company was avoiding a potentially more pervasive problem by focusing on mats and stuck pedals, rather than its electronics.

"There are thousands of these complaints, and we're not seeing floor mats and we're not seeing stuck throttles," said the lawyer, Donald H. Slavik, of Milwaukee. The traffic safety agency "simply doesn't have the resources to analyze the electronic systems of these cars."

The agency, which is part of the Transportation Department, has stepped up its oversight of Toyota drastically since the fatal accident that involved the Saylor family.

Agency officials, who spoke on the condition of anonymity because the case was still being investigated, say their responsibility is to identify defects in autos, not to develop remedies to fix them. That responsibility, these officials said, rests with the automaker.

Many complaints by consumers were eliminated by the agency during its investigations because of possible driver error, or the lack of sufficient information about the circumstances of the incidents.

The agency separated braking problems from acceleration issues, further narrowing the number of complaints that could be linked to a faulty pedal or an electronic malfunction. Cases involving brief periods of acceleration were also considered separately from those that involved prolonged, high-speed incidents, many of which involved accidents.

Sean Kane, whose consulting firm, Safety Research and Strategies, counts plaintiffs' lawyers among its clients, contends that the agency did not push Toyota for more data, and too quickly accepted the company's explanations about floor-mat problems.

"The agency has not been very forceful with Toyota at all," Mr. Kane said. The agency "always took the low-hanging fruit for an explanation, which is the floor mat."

The discussions between federal officials and Toyota intensified in December, when the acting chief of the agency, Ronald Medford, flew to Japan to hold meetings with senior company executives, according to a government official with knowledge of the trip who was not authorized to speak publicly.

On Jan. 19, two days before the recall for the sudden-acceleration problem, Mr. Inaba of Toyota met in Washington with Mr. Medford and the new head of the agency, David Strickland.

The mounting number of complaints and accidents has led the agency to be more outspoken than it usually is during continuing investigations.

Last week, the transportation secretary, Ray LaHood, said in an interview with a Chicago radio station that Toyota had halted production of recalled vehicles "because we asked them to."

Indeed, Toyota had to be told by regulators to shut down production and suspend sales of the cars and trucks in the latest recall until it had the parts necessary to fix them. It was yet another example of a slow response from a company long known for its meticulous approach to building cars and servicing customers.

Mr. Michels, the Toyota spokesman, said the company never before had to halt production or stop selling millions of vehicles involved in a recall.

"It's not a typical case," he said. "Usually in a 'stop sale' it's a very small quantity."

In its attempts to play down the problem, Toyota may have raised more doubts among consumers.

"It thinks it can control this crisis, and in the process has thrown its own credibility out the window," said Mr. Kane, the safety consultant whose firm has documented thousands of reports of unintended acceleration.

Some owners of recalled Toyotas are now saying they are afraid to drive them. "I live only a half mile from the office and I drive there," said Elaine Byrnes, a Camry owner in Los Angeles. "If I had to go farther, I wouldn't consider it."

And the scrutiny of Toyotas will not end with its new plan to replace the pedals. Accidents are receiving swift attention from federal regulators.

On Dec. 26, a 2008 Toyota Avalon -- one of the cars under recall -- crashed just outside of Dallas. A police officer in Southlake, Tex., Roderick Page, said in an interview that "for undetermined reasons, the vehicle left the main roadway, and went through a metal pipe fence, striking a tree and causing the vehicle to flip and land upside down in a pond."

All four people in the car died. "There was no evidence that they attempted to hit the brake or slow down," he said. "Honestly, my reaction is, 'Wow.' "

Two weeks later, an investigator from the National Highway Traffic Safety Administration visited Southlake to inspect the car, accompanied by a Toyota engineer. Mr. Page said one factor they immediately ruled out was the floor mats, which were in the trunk.

URL: http://www.nytimes.com

GRAPHIC: PHOTOS: The wreckage of a Lexus ES 350 in which four people died in August after it accelerated out of control.(PHOTOGRAPH BY JOHN H. GOMEZ/GOMEZ LAW FIRM)(A1)
Jordan Ziprin of Phoenix said regulators had focused exclusively on mechanical issues. "I believe this is an electronic issue."(PHOTOGRAPH BY JOSHUA LOTT FOR THE NEW YORK TIMES)
Rescuers surrounding a 2008 Toyota Avalon that crashed into a pond on Dec. 26 in Southlake, Tex., killing four people.(PHOTOGRAPH BY WFAA.COM)(A11) TIMELINE: A Series of Warnings: Reports about uncontrolled acceleration in some Toyota vehicles first surfaced in 2002, but the company said the problem was caused either by driver errors or by floor mats and tried to minimize it. But late last year, after a crash near San Diego, the company issued the first of several recalls that culminated with the shutdown of many of its manufacturing plants.(Sources: Toyota
National Highway Traffic Safety Administration)
CHARTS: A Struggling Company: The problems with accelerator pedals affect more than half of Toyota's models at a time when the automaker is already struggling.
A Rival's Experience: **Toyota's problems** echo those of Ford a decade ago when rollover accidents in Explorers caused sales to fall.(Source: Motorintelligence.com)(A11)

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EXHIBIT "B"

Toyota found to keep tight lid on potential safety problems

A Times investigation shows the world's largest automaker has delayed recalls and attempted to blame human error in cases where owners claimed vehicle defects.

December 23, 2009|By Ken Bensinger and Ralph Vartabedian

During a routine test on its Sienna minivan in April 2003, Toyota Motor Corp. engineers discovered that a plastic panel could come loose and cause the gas pedal to stick, potentially making the vehicle accelerate out of control.

The automaker redesigned the part and by that June every 2004 model year Sienna off the assembly line came with the new panel. Toyota did not notify tens of thousands of people who had already bought vans with the old panel, however.

It wasn't until U.S. safety officials opened an investigation last year that Toyota acknowledged in a letter to regulators that the part could come loose and "lead to unwanted or sudden acceleration."

In January, nearly six years after discovering the potential hazard, the automaker recalled 26,501 vans made with the old panel.

In a statement to The Times, Toyota said that there was no defect in the Sienna and that "a safety recall was not deemed necessary" when it discovered the problem in 2003. The company called the replacement part "an additional safety measure."

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 claimed vehicle defects.

The automaker's handling of safety issues has come under scrutiny in recent months because of incidents of sudden acceleration in Toyota and Lexus vehicles, which The Times has reported were involved in accidents causing 19 fatalities since 2001, more deaths from that problem than all other automakers combined.

After Toyota this fall announced its biggest recall to address the sudden-acceleration problem, it insisted publicly that no defect existed. That drew a rare public rebuke from the National Highway Traffic Safety Administration, which chastised the automaker for making "inaccurate and misleading statements."

In the wake of Toyota's announcement of the massive recall, The Times examined some of the ways the automaker has dealt with safety problems in recent years and found that:

* 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. But it told regulators no recall was necessary in the U.S., despite having received dozens of complaints from drivers. Toyota said a subsequent investigation led it to order a U.S. recall in 2005.

* Toyota has paid cash settlements to people who say their vehicles have raced out of control, sometimes causing serious accidents, according to consumers and their attorneys. Other motorists who complained of acceleration problems with their vehicles have received buybacks under lemon laws.

* Although the sudden acceleration issue erupted publicly only in recent months, it has been festering for nearly a decade. A computerized search of NHTSA records by The Times has found Toyota issued eight previous recalls related to unintended acceleration since 2000, more than any other automaker.

* A former Toyota lawyer who handled safety litigation has sued the automaker, accusing it of engaging in a "calculated conspiracy to prevent the disclosure of damaging evidence" as part of a scheme to "prevent evidence of its vehicles' structural shortcomings from becoming known" to plaintiffs lawyers, courts, NHTSA and the public.

As a result, plaintiffs attorneys are considering reopening dozens of product-liability suits against the automaker.

Toyota has called the allegations of the attorney, Dimitrios Biller, "both misleading and inaccurate" and noted that he is also suing another former employer. The company said it had "acted appropriately in product liability cases and in all reporting to federal safety regulators."

In a written statement to The Times, Toyota said that it strove to keep government officials and consumers informed about potential safety problems with its vehicles, which it says are tested to meet or exceed federal standards.

"Toyota has absolutely not minimized public awareness of any defect or issue with respect to its vehicles," the company said.

Currently, Toyota is a defendant in at least 10 lawsuits alleging unintended acceleration that caused five fatalities and four injuries. Two of those suits are seeking class-action status.

But few, if any, sudden-acceleration cases ever make it to trial, according to attorneys who handle such cases.

After a 2007 crash of a Camry that accelerated out of control for 20 miles before killing the driver of another car in San Jose, Toyota was sued by members of the victim's family. Their attorney, Louis Franecke, said the automaker "didn't want to go to trial," and paid them a seven-figure sum in exchange for dropping the case and signing a non-disclosure form.

In an interview, Guadalupe Gomez, the driver of the runaway Camry, said he also signed a confidentiality agreement and received a settlement from Toyota. He was initially arrested on suspicion of manslaughter for causing the crash, but charges were never filed.

By settling, Toyota has managed to keep potentially damaging information out of the public eye, said Raymond Paul Johnson, a Los Angeles attorney who said he had settled four sudden-acceleration cases with the automaker.

"It's just a matter of risk control for them," Johnson said.

Toyota said that although it does not comment on individual cases, it "has resolved and will continue to resolve matters with litigants through confidential settlement when it is in both parties' interests to do so."

The majority of unintended acceleration incidents don't end up in accidents. But even after minor incidents, some consumers have obtained deals under which their cars were repurchased on favorable terms.

Tim Marks, a small businessman in Camden, Ark., parked his daughter's 2006 Lexus IS 250 in front of the dealership last year and said his family would never drive it again after experiencing four sudden-acceleration events.

"They told my daughter she was texting while driving and wasn't paying attention," Marks recalled. "She is a 95-pound, little itty-bitty thing, but she was fixing to twist off on that man."

The vehicle was bought back and the title branded as a lemon, according to vehicle registration records. It was later registered in Florida, suggesting that the dealer resold it.

Much the same thing happened to Joan Marschall, a Visalia resident whose 2003 Camry accelerated on its own three times before she complained.

"I took it to the dealer and said I wouldn't drive it again," Marschall recalled. "I said I don't care if you tell me the computer says nothing happened. I know it did."

Marschall received a lemon buyback too. Registration records show the car was transferred to a new owner in Southern California.

Toyota said it had no policy to repurchase vehicles from customers complaining about sudden acceleration, though its dealers may act on their own to "preserve goodwill."

Some motorists who have confronted safety issues said the automaker has hidden information from them.

In January, Jeffrey Pepski, a financial consultant in suburban Minneapolis, took his 2007 Lexus ES 350 to the dealer after it accelerated out of control on a Twin Cities freeway, reaching 80 miles per hour.

Toyota sent an expert to examine the car Feb. 3 and download electronic data stored on the vehicle's computers. When Pepski asked for a copy of the data, he was refused.

"They said it was proprietary," Pepski recalled.

He filed a defect petition with NHTSA, and the dealer allowed Pepski to trade in the sedan for a sport utility vehicle. The Lexus ES was not branded a lemon and was resold in Minnesota, records show.

How Toyota handles requests like Pepski's has frustrated investigators and vehicle owners who want to get information contained on computers in their vehicles.

Nearly all new cars today contain an event data recorder, often called a black box, that can record several seconds of key information when accidents occur or in other circumstances.

According to Toyota, its black boxes can capture vehicle speed, engine speed, brake pedal application, accelerator pedal position and seat belt usage, among other things. That data, experts say, could be crucial to investigating causes of sudden acceleration.

Unlike manufacturers such as General Motors Co. and Ford Motor Co., Toyota's data recorders are extremely difficult for non-Toyota personnel to read, said W.R. "Rusty" Haight, a black-box expert who owns a San Diego collision investigation company.

Toyota says it has only one device in the U.S. that can read the data. An operating manual for the device, a copy of which was reviewed by The Times, indicates that it takes two passwords to operate.

On its website, Toyota says that it "will not honor EDR readout requests from private individuals or their attorneys," because its device is a prototype.

On some safety issues, Toyota has little choice but to go public.

Sudden acceleration didn't become a national issue for the automaker until this fall, when it announced its largest recall shortly after a 2009 Lexus ES accelerated out of control and crashed in San Diego County, killing an off-duty California Highway Patrol officer along with his wife, daughter and brother-in-law.

In a 5:30 a.m. conference call the day before Thanksgiving, Toyota detailed remedies to prevent acceleration problems it has blamed on gas pedals trapped by floor mats. Toyota will replace or modify pedals, replace floor mats, modify floor well padding and add new safety software to seven models, representing 4.26 million cars and trucks.

The campaign follows eight recalls in the U.S. over the last decade to fix problems that in the automaker's own words could cause sudden acceleration or faulty throttle system operation, Times research shows.

Two years ago, a NHTSA investigation found that the gas pedal in Camry and Lexus ES sedans could be trapped by rubber all-weather floor mats -- the same problem being addressed in the current recall. Toyota responded by recalling 55,000 of the vehicles, but only enlarged a warning label on the underside of the mat and on its packaging.

In 2005, Toyota recalled 3,567 Lexus IS 250 sedans because the gas pedal had a propensity to stick on a floor pad. In 2006, it recalled 367,594 Highlander and Lexus RX SUVs after receiving complaints that an interior cover could interfere with the accelerator pedal, keeping it depressed.

All those followed a 2003 recall in Canada of 408 Celicas, also for floor mat interference with the accelerator pedal.

In the ongoing Sienna recall, Toyota is replacing a hard-plastic trim panel over the center console. In its statement to The Times, the automaker said that pedal entrapment could only be caused in the event of a missing attachment clip, which might not be replaced after service work.

Toyota said it issued the recall voluntarily after a single complaint to NHTSA prompted an investigation by the agency. "In response to Toyota's voluntary campaign, regulators closed the investigation," the company said.

NHTSA officials did not respond to a written question about the recall and the agency's oversight of the matter.

The Sienna incident wasn't the only time that Toyota issued a recall long after discovering a problem.

In 1994, NHTSA slapped Toyota with a $250,000 fine, at the time the agency's second-largest, for providing misleading information about a fuel leak in Land Cruisers and waiting two years to undertake a recall to fix the problem. Toyota acknowledged that it failed to conduct a timely recall but denied withholding information from the agency.

A decade later, Toyota recalled about 330,000 vehicles in Japan after a 2004 crash there -- caused by a broken steering linkage -- seriously injured five people. The vehicle in the accident, a Hilux Surf, was sold in the U.S. as the 4Runner. Other truck models sold here, including the Toyota 4x4 and T100 pickups, also used the same linkage, a steering relay rod.

Despite that, the company told NHTSA in an October 2004 letter that it would not conduct a U.S. recall because it had not received information here indicating a problem with the part.

Documents entered in four lawsuits filed in Los Angeles this year, however, show that Toyota had received numerous consumer complaints dating from 2000 and had replaced dozens of the parts under warranty. The documents also show that 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.

In September 2005, Toyota recalled nearly 1 million vehicles in the U.S. to replace the part, its second-largest campaign.

It came too late for Zackary Audulewicz of Ila, Ga., relatives said. The 20-year-old was driving his Toyota 4x4 to work in August 2003 when the pickup lost control. A witness said she heard a pop and saw a spark just before the pickup careened off the road, flipped into the air and rolled on its roof. Audulewicz was killed instantly.

"I feel like they knew about the problem long before the recall," said Don Audulewicz, Zackary's father and one of the plaintiffs in the suits. "I can't understand why whoever was making decisions at Toyota would do that."

Toyota declined to discuss the case, citing its policy not to comment on pending litigation. In a written statement, Toyota explained that its own investigation of the defective steering component part led it to broaden the recall to include the T100 truck.

On several occasions in the last decade, Toyota has been admonished by judges for failing to provide evidence. In 2000, for example, a Missouri state judge sanctioned it for failing to disclose results of five rear-impact tests of Corollas "despite numerous discovery requests." He ordered a new trial.

In 2007, California's Court of Appeal found that "Toyota had intentionally violated two orders compelling discovery" of stability test results in a case involving a Toyota-made forklift that tipped over and killed a worker. The court slapped Toyota with a $138,984.33 sanction and ordered a new trial. Toyota, which denied wrongdoing, ultimately settled the case.

E. Todd Tracy, a Texas attorney with 22 years of experience litigating against automakers, believes that Toyota's issues with legal discovery run far deeper than a few sanctions.

Over the last three months, he has moved to reopen 17 lawsuits against the automaker related to vehicle rollovers because he now believes Toyota routinely hid information in those cases.

His argument rests on four boxes of documents submitted by Biller, the former Toyota attorney. The contents have not yet been revealed, but Tracy believes they prove that Toyota hid crucial information about rollovers in those lawsuits.

"This is clearly information that Toyota does not want the public to see," Tracy said. "For years, they were the gold standard, but right now they have more problems than they know what to do with."

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Times staff writers Doug Smith and Thomas Suh Lauder contributed to this report.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA

RECEIVED

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JOHN HARDING, individually and on behalf of all others similarly situated,	*	
Plaintiff,	*	
v.	*	Civil Action No. 2:10-CV-100-MEF-SRW
TOYOTA MOTOR CORPORATION, a foreign corporation, **and** **TOYOTA MOTOR SALES, USA, INC.,** a California corporation,	*	**JURY TRIAL REQUESTED**
Defendants,	*	

CLASS ACTION COMPLAINT

Plaintiff, John Harding, sues Defendants, Toyota Motor Corporation and Toyota Motor Sales, USA, Inc., and alleges as follows:

PARTIES

1. Plaintiff, John Harding ("Plaintiff") as an individual consumer, who at all times material hereto, was and is a resident of Autauga County in the State of Alabama.

2. Defendant, Toyota Motor Corporation, is a Japanese Corporation having its principal place of business at 1 Toyota-Cho, Toyota City, Aichi Prefecture 471-8571, Japan. Toyota Motor Corporation designs, develops and manufactures automobiles that are sold throughout the world.

3. Defendant, Toyota Motor Sales, USA, Inc., is a corporation organized and existing under the laws of the State of California with its principal executive offices located at 19001 S.2. Western Avenue, Torrance, California 90509. Toyota Motor Sales, USA, Inc. markets, distributes and sells vehicles manufactured by Defendant Toyota Motor Corporation throughout the United States.

JURISDICTION AND VENUE

4. This court has jurisdiction over this class action under 18 U.S.C. § 1332(d), which under the provisions of the Class Action Fairness Act ("CAFA") explicitly provides for the original jurisdiction of the Federal Courts of any class action in which any member of the plaintiff class is a citizen of a State different from any defendant, and in which the matter in controversy exceeds in the aggregate the sum of $5,000,000, exclusive of interest and costs. Plaintiff alleges that the total claims of individual class members in this action are well in excess of $5,000,000 in the aggregate, exclusive of interest and costs, as required by 28 U.S.C. § 1332(d)(2), (5). Plaintiff is a citizen of the State of Alabama whereas, as set forth above, Defendant Toyota Motor Corporation is a citizen of a foreign country, Japan, and Defendant Toyota Motor Sales, USA, Inc. is a citizen of the State of California. Furthermore, Plaintiff alleges that the total number of members of the proposed Class is greater than 100, pursuant to 28 U.S.C. § 1332(d)(5)(B). Therefore, diversity of citizenship exists under CAFA as required by 28 U.S.C. § 1332(d)(2)(A).

5. Venue in this district is proper pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the claims alleged occurred in this district, Plaintiff resides in the this District, and Toyota Motor Corporation and Toyota Motor Sales, USA, Inc. are subject to personal jurisdiction in this District.

FACTUAL ALLEGATIONS

6. Toyota Motor Corporation is the world's largest automobile manufacturer, with approximately $270 billion in revenue. It designs and develops a wide range of automobiles including the brands Toyota, Lexus and Scion.

7. Toyota Motor Sales, USA, Inc., a subsidiary of the Toyota Motor Corporation, distributes, markets, and sells the Toyota, Lexus and Scion automobiles throughout the United States (Toyota Motor Corporation and Toyota Motor Sales, USA, Inc. collectively referred to as "Toyota"). Approximately two million Toyota vehicles are sold annually in the United States through over 1,500 dealerships.

8. Toyota prides itself on the safety of its vehicles. The website www.SafetyToyota.com, devoted exclusively to promoting the safety of Toyota vehicles, clams:

> "What can we do to realize an ideal vehicle, which is a goal we never cease pursuing? That is what we always have in mind. What technology can prevent an accident in any situation and minimize the damage in an accident? Toyota has been developing various safety technologies by using variant means..., in addition to the verification at the collision test center that can reproduce many different types of accidents. 'What causes accidents?' 'What can be done to prevent accidents?' 'What mitigates the damage of accidents that have occurred?' These are the questions to which we are constantly seeking answers. Our technologies will continue to advance toward the ultimate goal of making a vehicle that is safe for everybody."

9. Toyota automobile owners have been reporting incidents of sudden unintended acceleration of their vehicles since the 1990s. Sean Kane, a safety researcher, reported that his firm has documented thousands of reports of unintended acceleration. *See* "Toyota's Slow Awakening to a Deadly Problem" as Exhibit A, attached hereto.

10. The National Highway Traffic Safety Administration ("NHTSA"), which helps investigate consumer complaints of automotives, has, over the years, received far more sudden acceleration complaints for Toyota vehicles than for any other manufacturer. As a result of these complaints, NHTSA has launched more investigations into Toyota vehicles concerning this issue than all other automobile manufacturers combined. These investigations, relying on data provided by Toyota, had concluded that most of the accidents were caused by drivers accidentally hitting the accelerator pedal as opposed to the brakes.

11. Further, Toyota has downplayed or dismissed owner complaints, blaming it on driver error or other situation-specific reasons.

12. In 2007, due to an overwhelming number of customer complaints, Toyota conducted an investigation and determined that the floor mats were the cause of the accelerator problems, as it had the tendency to obstruct the accelerator pedal. Toyota further announced that the accelerator pedals were in no way a safety threat.

13. On August 28, 2009, California Highway Patrol Officer Mark Saylor, while

driving on the San Diego Freeway, could not slow down his 2009 Lexus ES 350 even after continuously applying the brakes, reaching speeds upwards of 130 miles per hour. While driving, he was on the phone with the police dispatcher and said: "We're in trouble...There's no brakes." Moments later, Officer Saylor, as well as three others on board, were dead.

14. A month after the Saylor tragedy, and after mounting pressure, Toyota recalled approximately four million vehicles from model years as far back as 2004 (the "September 2009 Recall").

15. Toyota, however, again claimed that the recall was due to improper installation of floor mats causing them to jam the accelerator pedal, and no defect with the accelerator existed. NHTSA, who believed there was an underlying problem with the accelerator pedals, criticized Toyota for making "inaccurate and misleading statements."

16. Shortly after the September 2009 Recall, the Los Angeles Times conducted an investigation into Toyota's safety issues over the past several years. *See* "Toyota Found To Keep Tight Lid On Potential Safety Problems" attached hereto as Exhibit B. The article found:

> " * 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. But it told regulators no recall was necessary in the U.S., despite having received dozens of complaints from drivers. Toyota said a subsequent investigation led it to order a U.S. recall in 2005.
>
> * Toyota has paid cash settlements to people who say their vehicles have raced out of control, sometimes causing serious accidents, according to consumers and their attorneys. Other motorists who complained of acceleration problems with their vehicles have received buybacks under lemon laws.
>
> * Although the sudden acceleration issue erupted publicly only in recent months, it has been festering for nearly a decade. A computerized search of NHTSA records by The Times has found Toyota issued eight previous recalls related to unintended acceleration since 2000, more than any other automaker.
>
> * A former Toyota lawyer who handled safety litigation has sued the automaker, accusing it of engaging in a "calculated conspiracy to prevent the disclosure of damaging evidence" as part of a scheme

> to "prevent evidence of its vehicles' structural shortcomings from becoming known" to plaintiffs lawyers, courts, NHTSA and the public."

17. On January 21, 2010, Toyota finally admitted that the accelerators were not entirely free from defects, as Toyota had stated time and time again, announcing in a press release that "Our investigation indicates that there is a possibility that certain accelerator pedal mechanisms may, in rare instances, mechanically stick in a partially depressed position or return slowly to the idle position."

18. In addition to the mechanical defect(s), the Electronic Throttle Control System with Intelligence ("ETCS-i") and/or Electronic Throttle Control System ("ETC") that is designed, manufactured, distributed and sold in certain vehicles by the Defendants is defective, in that it will allow sudden unintended acceleration of the vehicle engine. The Defendants' deny these defects; just as the Defendants' have previously denied any and all of the aforementioned defects. Another safety expert said that he does not believe Toyota's pedal fix addresses the core problem.

> "These are completely computer-guided systems, and we all know that electronics fail. They do fail, and they will fail. The problem with Toyota is they haven't built enough fail-safe devices into their cars to ensure that drivers get control of the vehicle when a failure happens." (US Headlines Examiner, Charisse Van Horn)

19. Following the announcement, Toyota announced an additional recall of 2.3 million U.S. built cars and trucks (the "January 2010 Recall") (all Toyota vehicles recalled for the sudden acceleration problem, and those not yet identified, referred to as "Vehicles in Question"). These models include but are not limited to the 2009-2010 RAV4, 2009-2010 Corolla, 2009-2010 Matrix, 2005-2010 Avalon, 2007-2010 Camry, 2010 Highlander, 2007-2010 Tundra, and the 2008-2010 Sequoia.

20. On January 30, 2010, the January 2010 Recall was broadened to include Toyota vehicles sold overseas, including a recall of 1.8 million units in Europe. As of the date of this recall, the total number of Toyota vehicles recalled is upwards of 7 million units.

21. Plaintiff John Harding, a resident of Autauga County, Alabama, is the owner of a

2009 Toyota Tundra.

22. Plaintiff contends that his 2009 Toyota vehicle is designed, manufactured and sold using Toyota's ETSC-i / or ETC.

23. Plaintiff's vehicle may no longer be safe to operate due to a potential sudden acceleration problem caused by a defective accelerator pedal and/or the ETC/ETSC-i system.

24. Plaintiff alleges upon information and belief, that the Defendants knew that this system was susceptible to malfunction that could result in unintended acceleration of the vehicles. The Defendants continued to manufacture vehicles with this system. The Defendants did not incorporate any failsafe or redundant equipment in their vehicles to mitigate this significant risk of injury or death, even knowing that similar systems are used by manufacturers throughout the industry.

25. Plaintiff contends upon information and belief, that the Defendants' actions have diminished or devalued Plaintiff's vehicle resulting in monetary loss.

CLASS ALLEGATIONS

26. Plaintiff repeats and realleges all preceding paragraphs, as if fully set forth herein.

27. Pursuant to F.R.C.P. 23, Plaintiff brings this action on behalf of himself and the Class comprised of all other consumers who purchased the Vehicles in Question during the relevant time period. Toyota's practices and omissions were applied uniformly to all members of the Class, so that the questions of law and fact are common to all members of the Class. All putative Class members were and are similarly affected by having purchased the Vehicles in Question for their intended and foreseeable purpose as promoted, marketed, advertised, packaged and labeled by Toyota as set forth in detail above, and the relief sought herein is for the benefit of the Plaintiff and members of the putative Class. Plaintiff alleges that the Class is so numerous that joinder of all members would be impractical.

28. Based on the annual sales of the Vehicles in Question and the popularity of the Vehicles in Question, it is apparent that the number of consumers of the Vehicles in Question would at least be in the many thousands, thereby making joinder impossible. Questions of law

and fact common to the Class exist and predominate over questions affecting only individual members, including, *inter alia*:

> (a) Whether Toyota designed, tested, manufactured, assembled, developed and sold defective Vehicles resulting in diminution of value and monetary loss to the Plaintiff and other Class members,
>
> (b) Whether Toyota breached express warranties in its sale of the Vehicles in Question, thereby causing harm to the Plaintiff and other Class members;
>
> (c) Whether Toyota breached implied warranties in its sale of the Vehicles in Question, thereby causing harm to the Plaintiff and other Class members;
>
> (d) Whether Toyota fraudulently concealed the risks associated with its design, testing, manufacture, assembly, development and sale of the Vehicles in Question; and
>
> (e) Whether Toyota's practices in connection with the promotion, marketing, advertising, packaging, labeling and sale of the Vehicles in Question unjustly enriched Toyota at the expense of, and to the detriment of, the Plaintiff and other Class members.

29. The claims asserted by the Plaintiff in this action are typical of the claims of other Class members as the claims arise from the same course of conduct by Toyota, and the relief sought is common.

30. The Plaintiff will fairly and adequately represent and protect the interests of the Class members. Plaintiff has retained counsel competent and experienced in both consumer protection and class action litigation.

31. Certification of this class action is appropriate under F.R.C.P. 23(b) because the questions of law or fact common to the respective Class members predominate over questions of law or fact affecting only individual members. This predominance makes class litigation superior to any other method available for the fair and efficient adjudication of these claims. Absent a class action remedy, it would be highly unlikely that the representative Plaintiff or any other Class member would be able to protect their own interests because the cost of litigation through individual lawsuits might exceed expected recovery. Certification is also appropriate

because Toyota acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief with respect to the Class as a whole. Further, given the large number of consumers of the Vehicles in Question, allowing individual actions to proceed in lieu of a class action would run the risk of yielding inconsistent and conflicting adjudications.

32. A class action is a fair and appropriate method for the adjudication of the controversy, in that it will permit a large number of claims to be resolved in a single forum simultaneously, efficiently, and without the unnecessary hardship that would result from the prosecution of numerous individual actions and the duplication of discovery, effort, expense and burden on the courts that such individual actions would engender. The benefits of proceeding as a class action, including providing a method for obtaining redress for claims that would not be practical to pursue individually, outweigh any difficulties that might be argued with regard to the management of this class action.

I. FIRST CAUSE OF ACTION

(BREACH OF EXPRESS WARRANTY)

33. Plaintiff repeats and realleges all preceding paragraphs, as if fully set forth herein.

34. Toyota provided the Plaintiff and other members of the Class with written express warranties including, but not limited to, that the Vehicles in Question were completely safe to operate. Specifically, Toyota's website promises that their ultimate goal is "making a vehicle that is safe for everybody."

35. Toyota breached these express warranties which resulted in damages to the Plaintiff and other members of the Class, who overpaid for the Vehicles in Question, as the Vehicles in Question were not safe as they may contain a defective accelerator pedal mechanism and/or the ETC/ETSC-i system causing sudden acceleration, potentially resulting in death, and as such, the Vehicles in Question were not safe to operate.

36. As a proximate result of the breach of warranties by Toyota, the Plaintiff and Class members have suffered damages in an amount to be determined at trial in that, among other things, they purchased and paid for a product that did not conform to what was promised as

promoted, marketed, advertised, packaged and labeled by Toyota, and they were deprived of the benefit of their bargain and spent money on a product that did not have any value or had less value than warranted or a product they would not have purchased and used had they known the true facts about it. The Plaintiff and other members of the class are further harmed in having to spend money on attaining other transportation while the Vehicles in Question are being fixed. Additionally, or in the alternative, the Plaintiff and other members of the class suffered actual damages, including a diminution of value of the subject vehicles (the difference in market value of the product in the condition in which it was delivered, and its market value in condition in which it should have been delivered according to contract of parties).

II. SECOND CAUSE OF ACTION

(BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY)

37. Plaintiff repeats and realleges all preceding paragraphs, as if fully set forth herein.

38. Plaintiff and other Class members purchased the Toyota's Vehicles in Question, which were promoted, marketed, advertised, packaged and labeled as being safe to operate. Pursuant to these sales, Toyota impliedly warranted that the Vehicles in Question would be merchantable, including that the Vehicles in Question would be fit for the ordinary purposes for which such goods are used and conform to the promises or affirmations of fact made in the Vehicles' in Question promotions, marketing, advertising, packaging and labels. In doing so, the Plaintiff and other Class members relied on Toyota's representations that the Vehicles in Question were safe to operate, and at or about that time, Toyota sold to the Plaintiff and other Class members the Vehicles in Question. By its representations regarding the reputable nature of its company and related entities, and by its promotion, marketing, advertising, packaging and labeling of the Vehicles in Question, Toyota warranted that the Vehicles in Question were safe to operate. The Plaintiff and Class members bought the Vehicles in Question from Toyota, relying on Toyota's representations that the Vehicles in Question were safe to operate; however, these vehicles may have contained a defective accelerator pedal mechanism and/or the ETC/ETSC-i

system causing sudden acceleration which could potentially result in death.

39. Toyota breached the warranty implied at the time of sale in that the Plaintiff and Class members did not receive a vehicle which was safe to operate and thus, the goods were not merchantable as fit for the ordinary purposes for which such goods are used or as promoted, marketed, advertised, packaged, labeled or sold.

40. As a proximate result of this breach of warranty by Toyota, the Plaintiff and Class members have suffered damages in an amount to be determined at trial in that, among other things, they purchased and paid for a product that did not conform to what was promised as promoted, marketed, advertised, packaged and labeled by Toyota, and they were deprived of the benefit of their bargain and spent money on a product that did not have any value or had less value than warranted or a product they would not have purchased and used had they known the true facts about it. The Plaintiff and other members of the class are further harmed in having to spend money on attaining other transportation while the Vehicles in Question are being fixed. Additionally, or in the alternative, the Plaintiff and other members of the class suffered actual damages, including a diminution of value of the subject vehicles (the difference in market value of the product in the condition in which it was delivered, and its market value in condition in which it should have been delivered according to contract of parties).

III. THIRD CAUSE OF ACTION

(BREACH OF IMPLIED WARRANTY OF FITNESS FOR PARTICULAR PURPOSE)

41. Plaintiff repeats and realleges all preceding paragraphs, as if fully set forth herein.

42. Plaintiff and other Class members purchased Toyota's Vehicles in Question, which were promoted, marketed, advertised, packaged and labeled as being safe to operate. Pursuant to these sales and by its representations regarding the reputable nature of its company and related entities, Toyota impliedly warranted by its promotion, marketing, advertising, packaging and labeling of the Vehicles in Question that they were safe to operate. The Plaintiff and Class members bought the Vehicles in Question from Toyota, relying on Toyota's skill and

judgment in furnishing suitable goods as well as Toyota's representations that the Vehicles in Question were safe to operate. However, Toyota's Vehicles in Question were not safe to operate as they may have contained a defective accelerator pedal mechanism and/or the ETC/ETSC-i system causing sudden acceleration potentially resulting in death.

43. Toyota breached the warranty implied at the time of sale in that Plaintiff and Class members did not receive products that were safe to operate as they possibly contained a defective accelerator pedal mechanism and/or the ETC/ETSC-i system potentially resulting in death, and thus the goods were not fit for the purpose as promoted, marketed, advertised, packaged, labeled or sold.

44. As a proximate result of this breach of warranty by Toyota, the Plaintiff and Class members have suffered damages in an amount to be determined at trial in that, among other things, they purchased and paid for a vehicle that did not conform to what was promised as promoted, marketed, advertised, packaged and labeled by Toyota, and they were deprived of the benefit of their bargain and spent money on a product that did not have any value or had less value than warranted or a product they would not have purchased and used had they known the true facts about it. The Plaintiff and other members of the class are further harmed in having to spend money on attaining other transportation while the Vehicles in Question are being fixed. Additionally, or in the alternative, the Plaintiff and other members of the class suffered actual damages, including a diminution of value of the subject vehicles (the difference in market value of the product in the condition in which it was delivered, and its market value in condition in which it should have been delivered according to contract of parties).

IV. FOURTH CAUSE OF ACTION

(FRAUDULENT CONCEALMENT)

45. Plaintiff repeats and realleges all preceding paragraphs, as if fully set forth herein.

46. Toyota had a duty to disclose the truth about risks associated with the design, testing, manufacture, assembly and development of the Vehicles in Question as set forth in detail above, but delayed and failed to do so.

47. Toyota concealed these facts relating to the accelerator pedal mechanism and/or the ETC/ETSC-i system of the Vehicles in Question when they knew, or had reason to know, the true and correct facts regarding the defectiveness of the Vehicles in Question, and that Toyota took steps to prevent these facts from becoming known to the general public in the marketing, promotion and sale of the vehicles.

48. The concealment of the true facts, from the Plaintiff and other members of the Class, was done with the intent to induce the Plaintiff and Class members to purchase the Vehicles in Question.

49. The reliance by the Plaintiff and Class members was reasonable and justified in that Toyota appeared to be, and represented itself to be, a reputable business. The Plaintiff and Class members would not have purchased the Vehicles in Question had they known the true facts about the Vehicles in Question that they may result in potential death.

50. As a direct and proximate result of the fraud and deceit alleged, the Plaintiff and Class members were induced to purchase the Vehicles in Question, who then used it for its intended and foreseeable purpose, and have suffered damages in an amount to be determined at trial.

51. Toyota knew, or should have known, that the design, testing, manufacture, assembly and development of the Vehicles in Question as set forth in detail above was defective before it issued a recall, and that Toyota intended that the customers should rely on Toyota's representations that it was a reputable and reliable business, as well as Toyota's suppression of the true facts about the Vehicles in Question, in purchasing such vehicles.

52. Plaintiff and other members of the Class, in purchasing and using the Vehicles in Question, did rely on Toyota's above representations and suppression of facts, all to their damage as hereinabove alleged. In doing these things, Toyota was guilty of malice, oppression and fraud, and the Plaintiff and Class members are, therefore, entitled to recover punitive damages.

53. Additionally, or in the alternative, the Plaintiff and other members of the class suffered actual damages, including a diminution of value of the subject vehicles (the difference

in market value of the product in the condition in which it was delivered, and its market value in condition in which it should have been delivered according to contract of parties).

V. FIFTH CAUSE OF ACTION

(UNJUST ENRICHMENT)

54. Plaintiff repeats and realleges all preceding paragraphs, as if fully set forth herein.

55. As a result of Toyota's deceptive, fraudulent and misleading labeling, advertising, marketing and sales of the Vehicles in Question, described in detail above, Toyota profited, at the expense of the Plaintiff and the Class, through the payment of the purchase price for Toyota's Vehicles in Question.

56. Under the circumstances, it would be against equity and good conscience to permit Toyota to retain the ill-gotten benefits that it received from the Plaintiff and other members of the Class in light of the fact that the Vehicles in Question were not what Toyota purported them to be. Thus, it would be unjust or inequitable for Toyota to retain the benefit without restitution to the Plaintiff and other members of the Class for the monies paid to Toyota for such Vehicles in Question.

VI. SIXTH CAUSE OF ACTION

(BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING)

57. Plaintiff realleges all prior paragraphs of this Complaint, as if set out forth herein in full an incorporated by reference.

58. Plaintiff's Agreement with the Defendant includes not only express written provisions, but also those terms and conditions, which although not formally expressed, are implied by the Law.

59. Such terms are as binding as the terms that are actually written into the agreement with the Plaintiff, and those who are similarly situated against the Defendants.

60. Inherent in all contracts and agreements is a covenant that the parties will act in

good faith and deal fairly with each other in the performance of their respective covenants and obligations under the Agreement and not take any action that will injure the other party or compromise the benefit of the Agreement.

61. The obligations of Defendants to abide by the covenant of good faith and fair dealing is heightened by the substantial imbalance of power between Defendants and the Plaintiff. This imbalance allows Defendants to implement the business scheme described in detail in this Complaint and incorporated by reference.

62. Through the actions and inactions of the Defendants as outlined above, Defendants have failed to abide by the covenant of good faith and have failed to deal fairly with the Plaintiff and others similarly situated.

63. As a proximate result of the aforesaid breach of the covenant of good faith and fair dealing by Toyota, the Plaintiff and Class members have suffered damages in an amount to be determined at trial in that, among other things, they purchased and paid for a vehicle that did not conform to what was promised as promoted, marketed, advertised, packaged and labeled by Toyota, and they were deprived of the benefit of their bargain and spent money on a product that did not have any value or had less value than warranted or a product they would not have purchased and used had they known the true facts about it. The Plaintiff and other members of the class are further harmed in having to spend money on attaining other transportation while the Vehicles in Question are being fixed. Additionally, or in the alternative, the Plaintiff and other members of the class suffered actual damages, including a diminution of value of the subject vehicles (the difference in market value of the product in the condition in which it was delivered, and its market value in condition in which it should have been delivered according to contract of parties).

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays for judgment as follows:

A. Certification of the Class, certifying Plaintiffs as representative of the Class, and designating their counsel as counsel for the Class;

B. An award of compensatory damages, and other damages, the amount of which is to be determined at trial;

C. For interest at the legal rate on the foregoing sums;

D. For costs of suit incurred; and

E. For such further relief as this Court may deem just and proper.

JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury.

Dated: February 5, 2010

Respectfully submitted,

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EXHIBIT "A"

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HEADLINE: Toyota's Slow Awakening to a Deadly Problem

BYLINE: By BILL VLASIC; Matt Richtel contributed reporting from San Francisco, Clifford Krauss from Houston and Matthew L. Wald from Washington.

DATELINE: DETROIT

BODY:

The 911 call came at 6:35 p.m. on Aug. 28 from a car that was speeding out of control on Highway 125 near San Diego.

The caller, a male voice, was panic-stricken: "We're in a Lexus ... we're going north on 125 and our accelerator is stuck ... we're in trouble ... there's no brakes ... we're approaching the intersection ... hold on ... hold on and pray ... pray ..."

The call ended with the sound of a crash.

The Lexus ES 350 sedan, made by Toyota, had hit a sport utility vehicle, careened through a fence, rolled over and burst into flames. All four people inside were killed: the driver, Mark Saylor, an off-duty California Highway Patrol officer, and his wife, daughter and brother-in-law.

It was the tragedy that forced Toyota, which had received more than 2,000 complaints of unintended acceleration, to step up its own inquiry, after going through multiple government investigations since 2002.

Yet only last week did the company finally appear to come to terms with the scope of the problem -- after expanding a series of recalls to cover millions of vehicles around the world, incalculable damage to its once-stellar reputation for quality and calls for Congressional hearings.

With prodding from the National Highway Traffic Safety Administration, Toyota halted production and sales of eight models, including its top-selling Camry sedan.

And late last week, the government allowed the company to go ahead to try yet another new fix for its vehicles, which it is expected to announce on Monday.

At almost every step that led to its current predicament, Toyota underestimated the severity of the sudden-acceleration problem affecting its most popular cars. It went from discounting early reports of problems to overconfidently announcing diagnoses and insufficient fixes.

As recently as the fall, Toyota was still saying it was confident that loose floor mats were the sole cause of any sudden acceleration, issuing an advisory to millions of Toyota owners to remove them. The company said on Nov. 2 that "there is no evidence to support" any other conclusion, and added that its claim was backed up by the federal traffic safety agency.

But, in fact, the agency had not signed on to the explanation, and it issued a sharp rebuke. Toyota's

statement was "misleading and inaccurate," the agency said. "This matter is not closed."

The effect on Toyota's business is already being felt. Its sales in the United States in January are expected to drop 11 percent from a year earlier, and its market share in the United States is likely to fall to its lowest point since 2006, according to Edmunds.com, an automotive research Web site.

The company has not yet projected the cost of its recalls and lost sales. But a prolonged slowdown in sales could substantially hurt a company that once minted profit.

Toyota's handling of the problem is a story of how a long-trusted carmaker lost sight of one of its bedrock principles.

In Toyota lore, the ultimate symbol of the company's attention to detail is the "andon cord," a rope that workers on the assembly line can pull if something is wrong, immediately shutting down the entire line. The point is to fix a small problem before it becomes a larger one.

But in the broadest sense, Toyota itself failed to pull the andon cord on this issue, and treated a growing safety issue as a minor glitch -- a point the company's executives are now acknowledging in a series of humbling apologies.

"Every day is a lesson and there is something to be learned," Yoshimi Inaba, Toyota's top executive in North America, said at the Detroit auto show in January. "This was a hard lesson."

In Davos, Switzerland, on Friday, Akio Toyoda, the grandson of Toyota's founder who now heads the company, told a Japanese broadcaster that he was "deeply sorry" for the problems.

Toyota's safety problems may prove to be a hard lesson for the N.H.T.S.A., as well. Six separate investigations were conducted by the agency into consumer complaints of unintended acceleration, and none of them found defects in Toyotas other than unsecured floor mats.

In at least three cases, the agency denied petitions for further investigative action because it did not see a pattern of defects and because of a "need to allocate and prioritize N.H.T.S.A.'s limited resources" elsewhere, according to agency documents.

The investigations, and Toyota's handling of the problem, will be the subject of Congressional hearings.

But the publicity surrounding the accident near San Diego, and Toyota's repeated inability to quell consumer concerns with a definitive solution, has also prompted a flood of lawsuits reminiscent of the litigation a decade ago arising out of the rollovers of Ford Explorers equipped with Firestone tires.

In addition to cases related to individual accidents, several class-action suits have been filed against Toyota. The cases are expected to focus on why the government and the carmaker were unable to identify problems beyond the floor mats, despite mounting instances of runaway cars.

David Ennis, a Washington lawyer, said he was working on three lawsuits that had been in the works for five months. "Over the last 24 hours, everybody's a Toyota lawyer now," he said last week.

Toyota now believes that the trouble with its cars is twofold -- a combination of loose floor mats that can interfere with accelerator pedals, and a pedal that itself can stick when a driver depresses it.

Toyota has told its dealers that it will announce its fix for the faulty accelerators on Monday, but has yet to release details. The CTS Corporation, the supplier of the pedals used in recalled models, is making replacement parts. But Toyota is also expected to try to repair or modify the pedals in some vehicles.

Before last August, Toyota had issued three limited recalls to replace floor mats and change an interior part that could catch on accelerator pedals.

But after the fatal crash near San Diego, and the public release of the 911 tape, Toyota was forced to, as it said in the fall, "take a closer look."

That crash, said Clarence M. Ditlow, executive director of the Center for Auto Safety in Washington, "was a watershed event."

"It captured on tape the deaths of four people in an uncontrolled acceleration where the driver was an experienced highway patrol officer," he said. "If he couldn't bring the car under control, who could?"

A lawyer for the Saylor family said he wished that the federal government had acted more quickly about concerns over the sudden acceleration.

"They're clearly starting to become more interested in the problem and more attentive to it," said the lawyer, John Gomez, of San Diego. "Do I wish they would have done more sooner? Obviously."

In one federal inquiry on Toyota models built from 2002 to 2005, investigators found that 20 percent of the 432 complaints studied involved "sudden or unintended acceleration."

But no defects were uncovered in any of the vehicles, and the rate of incidents was considered "unremarkable" in the context of the millions of cars on the road.

The petitioner in that case, Jordan Ziprin of Phoenix, said the regulators had focused exclusively on mechanical issues with his car, a 2002 Camry.

"I believe this is an electronic issue, but they have been avoiding that possibility entirely," Mr. Ziprin said in an interview.

Several lawsuits against Toyota also suggest that the company's electronic system could be at fault.

A Toyota spokesman said the company had looked extensively at its computerized electronic throttle system, which controls the speed of its cars, and had found no faults.

"If we found anything, we would take appropriate action," said the spokesman, Mike Michels. "But we continue to think it's entirely unlikely that an electronic malfunction is the cause."

A lawyer for a California man whose wife died in a 2007 crash of a Camry said the company was avoiding a potentially more pervasive problem by focusing on mats and stuck pedals, rather than its electronics.

"There are thousands of these complaints, and we're not seeing floor mats and we're not seeing stuck throttles," said the lawyer, Donald H. Slavik, of Milwaukee. The traffic safety agency "simply doesn't have the resources to analyze the electronic systems of these cars."

The agency, which is part of the Transportation Department, has stepped up its oversight of Toyota drastically since the fatal accident that involved the Saylor family.

Agency officials, who spoke on the condition of anonymity because the case was still being investigated, say their responsibility is to identify defects in autos, not to develop remedies to fix them. That responsibility, these officials said, rests with the automaker.

Many complaints by consumers were eliminated by the agency during its investigations because of possible driver error, or the lack of sufficient information about the circumstances of the incidents.

The agency separated braking problems from acceleration issues, further narrowing the number of complaints that could be linked to a faulty pedal or an electronic malfunction. Cases involving brief periods of acceleration were also considered separately from those that involved prolonged, high-speed incidents, many of which involved accidents.

Sean Kane, whose consulting firm, Safety Research and Strategies, counts plaintiffs' lawyers among its clients, contends that the agency did not push Toyota for more data, and too quickly accepted the company's explanations about floor-mat problems.

"The agency has not been very forceful with Toyota at all," Mr. Kane said. The agency "always took the low-hanging fruit for an explanation, which is the floor mat."

The discussions between federal officials and Toyota intensified in December, when the acting chief of the agency, Ronald Medford, flew to Japan to hold meetings with senior company executives, according to a government official with knowledge of the trip who was not authorized to speak publicly.

On Jan. 19, two days before the recall for the sudden-acceleration problem, Mr. Inaba of Toyota met in Washington with Mr. Medford and the new head of the agency, David Strickland.

The mounting number of complaints and accidents has led the agency to be more outspoken than it usually is during continuing investigations.

Last week, the transportation secretary, Ray LaHood, said in an interview with a Chicago radio station that Toyota had halted production of recalled vehicles "because we asked them to."

Indeed, Toyota had to be told by regulators to shut down production and suspend sales of the cars and trucks in the latest recall until it had the parts necessary to fix them. It was yet another example of a slow response from a company long known for its meticulous approach to building cars and servicing customers.

Mr. Michels, the Toyota spokesman, said the company never before had to halt production or stop selling millions of vehicles involved in a recall.

"It's not a typical case," he said. "Usually in a 'stop sale' it's a very small quantity."

In its attempts to play down the problem, Toyota may have raised more doubts among consumers.

"It thinks it can control this crisis, and in the process has thrown its own credibility out the window," said Mr. Kane, the safety consultant whose firm has documented thousands of reports of unintended acceleration.

Some owners of recalled Toyotas are now saying they are afraid to drive them. "I live only a half mile from the office and I drive there," said Elaine Byrnes, a Camry owner in Los Angeles. "If I had to go farther, I wouldn't consider it."

And the scrutiny of Toyotas will not end with its new plan to replace the pedals. Accidents are receiving swift attention from federal regulators.

On Dec. 26, a 2008 Toyota Avalon -- one of the cars under recall -- crashed just outside of Dallas. A police officer in Southlake, Tex., Roderick Page, said in an interview that "for undetermined reasons, the vehicle left the main roadway, and went through a metal pipe fence, striking a tree and causing the vehicle to flip and land upside down in a pond."

All four people in the car died. "There was no evidence that they attempted to hit the brake or slow down," he said. "Honestly, my reaction is, 'Wow.' "

Two weeks later, an investigator from the National Highway Traffic Safety Administration visited Southlake to inspect the car, accompanied by a Toyota engineer. Mr. Page said one factor they immediately ruled out was the floor mats, which were in the trunk.

URL: http://www.nytimes.com

GRAPHIC: PHOTOS: The wreckage of a Lexus ES 350 in which four people died in August after it accelerated out of control.(PHOTOGRAPH BY JOHN H. GOMEZ/GOMEZ LAW FIRM)(A1)
Jordan Ziprin of Phoenix said regulators had focused exclusively on mechanical issues. "I believe this is an electronic issue."(PHOTOGRAPH BY JOSHUA LOTT FOR THE NEW YORK TIMES)
Rescuers surrounding a 2008 Toyota Avalon that crashed into a pond on Dec. 26 in Southlake, Tex., killing four people.(PHOTOGRAPH BY WFAA.COM)(A11) TIMELINE: A Series of Warnings: Reports about uncontrolled acceleration in some Toyota vehicles first surfaced in 2002, but the company said the problem was caused either by driver errors or by floor mats and tried to minimize it. But late last year, after a crash near San Diego, the company issued the first of several recalls that culminated with the shutdown of many of its manufacturing plants.(Sources: Toyota
National Highway Traffic Safety Administration)
CHARTS: A Struggling Company: The problems with accelerator pedals affect more than half of Toyota's models at a time when the automaker is already struggling.
A Rival's Experience: **Toyota's problems** echo those of Ford a decade ago when rollover accidents in Explorers caused sales to fall.(Source: Motorintelligence.com)(A11)

LOAD-DATE: February 1, 2010

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EXHIBIT "B"

Toyota found to keep tight lid on potential safety problems

A Times investigation shows the world's largest automaker has delayed recalls and attempted to blame human error in cases where owners claimed vehicle defects.

December 23, 2009|By Ken Bensinger and Ralph Vartabedian

During a routine test on its Sienna minivan in April 2003, Toyota Motor Corp. engineers discovered that a plastic panel could come loose and cause the gas pedal to stick, potentially making the vehicle accelerate out of control.

The automaker redesigned the part and by that June every 2004 model year Sienna off the assembly line came with the new panel. Toyota did not notify tens of thousands of people who had already bought vans with the old panel, however.

It wasn't until U.S. safety officials opened an investigation last year that Toyota acknowledged in a letter to regulators that the part could come loose and "lead to unwanted or sudden acceleration."

In January, nearly six years after discovering the potential hazard, the automaker recalled 26,501 vans made with the old panel.

In a statement to The Times, Toyota said that there was no defect in the Sienna and that "a safety recall was not deemed necessary" when it discovered the problem in 2003. The company called the replacement part "an additional safety measure."

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 claimed vehicle defects.

The automaker's handling of safety issues has come under scrutiny in recent months because of incidents of sudden acceleration in Toyota and Lexus vehicles, which The Times has reported were involved in accidents causing 19 fatalities since 2001, more deaths from that problem than all other automakers combined.

After Toyota this fall announced its biggest recall to address the sudden-acceleration problem, it insisted publicly that no defect existed. That drew a rare public rebuke from the National Highway Traffic Safety Administration, which chastised the automaker for making "inaccurate and misleading statements."

In the wake of Toyota's announcement of the massive recall, The Times examined some of the ways the automaker has dealt with safety problems in recent years and found that:

* 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. But it told regulators no recall was necessary in the U.S., despite having received dozens of complaints from drivers. Toyota said a subsequent investigation led it to order a U.S. recall in 2005.

* Toyota has paid cash settlements to people who say their vehicles have raced out of control, sometimes causing serious accidents, according to consumers and their attorneys. Other motorists who complained of acceleration problems with their vehicles have received buybacks under lemon laws.

* Although the sudden acceleration issue erupted publicly only in recent months, it has been festering for nearly a decade. A computerized search of NHTSA records by The Times has found Toyota issued eight previous recalls related to unintended acceleration since 2000, more than any other automaker.

* A former Toyota lawyer who handled safety litigation has sued the automaker, accusing it of engaging in a "calculated conspiracy to prevent the disclosure of damaging evidence" as part of a scheme to "prevent evidence of its vehicles' structural shortcomings from becoming known" to plaintiffs lawyers, courts, NHTSA and the public.

As a result, plaintiffs attorneys are considering reopening dozens of product-liability suits against the automaker.

Toyota has called the allegations of the attorney, Dimitrios Biller, "both misleading and inaccurate" and noted that he is also suing another former employer. The company said it had "acted appropriately in product liability cases and in all reporting to federal safety regulators."

In a written statement to The Times, Toyota said that it strove to keep government officials and consumers informed about potential safety problems with its vehicles, which it says are tested to meet or exceed federal standards.

"Toyota has absolutely not minimized public awareness of any defect or issue with respect to its vehicles," the company said.

Currently, Toyota is a defendant in at least 10 lawsuits alleging unintended acceleration that caused five fatalities and four injuries. Two of those suits are seeking class-action status.

But few, if any, sudden-acceleration cases ever make it to trial, according to attorneys who handle such cases.

After a 2007 crash of a Camry that accelerated out of control for 20 miles before killing the driver of another car in San Jose, Toyota was sued by members of the victim's family. Their attorney, Louis Franecke, said the automaker "didn't want to go to trial," and paid them a seven-figure sum in exchange for dropping the case and signing a non-disclosure form.

In an interview, Guadalupe Gomez, the driver of the runaway Camry, said he also signed a confidentiality agreement and received a settlement from Toyota. He was initially arrested on suspicion of manslaughter for causing the crash, but charges were never filed.

By settling, Toyota has managed to keep potentially damaging information out of the public eye, said Raymond Paul Johnson, a Los Angeles attorney who said he had settled four sudden-acceleration cases with the automaker.

"It's just a matter of risk control for them," Johnson said.

Toyota said that although it does not comment on individual cases, it "has resolved and will continue to resolve matters with litigants through confidential settlement when it is in both parties' interests to do so."

The majority of unintended acceleration incidents don't end up in accidents. But even after minor incidents, some consumers have obtained deals under which their cars were repurchased on favorable terms.

Tim Marks, a small businessman in Camden, Ark., parked his daughter's 2006 Lexus IS 250 in front of the dealership last year and said his family would never drive it again after experiencing four sudden-acceleration events.

"They told my daughter she was texting while driving and wasn't paying attention," Marks recalled. "She is a 95-pound, little itty-bitty thing, but she was fixing to twist off on that man."

The vehicle was bought back and the title branded as a lemon, according to vehicle registration records. It was later registered in Florida, suggesting that the dealer resold it.

Much the same thing happened to Joan Marschall, a Visalia resident whose 2003 Camry accelerated on its own three times before she complained.

"I took it to the dealer and said I wouldn't drive it again," Marschall recalled. "I said I don't care if you tell me the computer says nothing happened. I know it did."

Marschall received a lemon buyback too. Registration records show the car was transferred to a new owner in Southern California.

Toyota said it had no policy to repurchase vehicles from customers complaining about sudden acceleration, though its dealers may act on their own to "preserve goodwill."

Some motorists who have confronted safety issues said the automaker has hidden information from them.

In January, Jeffrey Pepski, a financial consultant in suburban Minneapolis, took his 2007 Lexus ES 350 to the dealer after it accelerated out of control on a Twin Cities freeway, reaching 80 miles per hour.

Toyota sent an expert to examine the car Feb. 3 and download electronic data stored on the vehicle's computers. When Pepski asked for a copy of the data, he was refused.

"They said it was proprietary," Pepski recalled.

He filed a defect petition with NHTSA, and the dealer allowed Pepski to trade in the sedan for a sport utility vehicle. The Lexus ES was not branded a lemon and was resold in Minnesota, records show.

How Toyota handles requests like Pepski's has frustrated investigators and vehicle owners who want to get information contained on computers in their vehicles.

Nearly all new cars today contain an event data recorder, often called a black box, that can record several seconds of key information when accidents occur or in other circumstances.

According to Toyota, its black boxes can capture vehicle speed, engine speed, brake pedal application, accelerator pedal position and seat belt usage, among other things. That data, experts say, could be crucial to investigating causes of sudden acceleration.

Unlike manufacturers such as General Motors Co. and Ford Motor Co., Toyota's data recorders are extremely difficult for non-Toyota personnel to read, said W.R. "Rusty" Haight, a black-box expert who owns a San Diego collision investigation company.

Toyota says it has only one device in the U.S. that can read the data. An operating manual for the device, a copy of which was reviewed by The Times, indicates that it takes two passwords to operate.

On its website, Toyota says that it "will not honor EDR readout requests from private individuals or their attorneys," because its device is a prototype.

On some safety issues, Toyota has little choice but to go public.

Sudden acceleration didn't become a national issue for the automaker until this fall, when it announced its largest recall shortly after a 2009 Lexus ES accelerated out of control and crashed in San Diego County, killing an off-duty California Highway Patrol officer along with his wife, daughter and brother-in-law.

In a 5:30 a.m. conference call the day before Thanksgiving, Toyota detailed remedies to prevent acceleration problems it has blamed on gas pedals trapped by floor mats. Toyota will replace or modify pedals, replace floor mats, modify floor well padding and add new safety software to seven models, representing 4.26 million cars and trucks.

The campaign follows eight recalls in the U.S. over the last decade to fix problems that in the automaker's own words could cause sudden acceleration or faulty throttle system operation, Times research shows.

Two years ago, a NHTSA investigation found that the gas pedal in Camry and Lexus ES sedans could be trapped by rubber all-weather floor mats -- the same problem being addressed in the current recall. Toyota responded by recalling 55,000 of the vehicles, but only enlarged a warning label on the underside of the mat and on its packaging.

In 2005, Toyota recalled 3,567 Lexus IS 250 sedans because the gas pedal had a propensity to stick on a floor pad. In 2006, it recalled 367,594 Highlander and Lexus RX SUVs after receiving complaints that an interior cover could interfere with the accelerator pedal, keeping it depressed.

All those followed a 2003 recall in Canada of 408 Celicas, also for floor mat interference with the accelerator pedal.

In the ongoing Sienna recall, Toyota is replacing a hard-plastic trim panel over the center console. In its statement to The Times, the automaker said that pedal entrapment could only be caused in the event of a missing attachment clip, which might not be replaced after service work.

Toyota said it issued the recall voluntarily after a single complaint to NHTSA prompted an investigation by the agency. "In response to Toyota's voluntary campaign, regulators closed the investigation," the company said.

NHTSA officials did not respond to a written question about the recall and the agency's oversight of the matter.

The Sienna incident wasn't the only time that Toyota issued a recall long after discovering a problem.

In 1994, NHTSA slapped Toyota with a $250,000 fine, at the time the agency's second-largest, for providing misleading information about a fuel leak in Land Cruisers and waiting two years to undertake a recall to fix the problem. Toyota acknowledged that it failed to conduct a timely recall but denied withholding information from the agency.

A decade later, Toyota recalled about 330,000 vehicles in Japan after a 2004 crash there -- caused by a broken steering linkage -- seriously injured five people. The vehicle in the accident, a Hilux Surf, was sold in the U.S. as the 4Runner. Other truck models sold here, including the Toyota 4x4 and T100 pickups, also used the same linkage, a steering relay rod.

Despite that, the company told NHTSA in an October 2004 letter that it would not conduct a U.S. recall because it had not received information here indicating a problem with the part.

Documents entered in four lawsuits filed in Los Angeles this year, however, show that Toyota had received numerous consumer complaints dating from 2000 and had replaced dozens of the parts under warranty. The documents also show that 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.

In September 2005, Toyota recalled nearly 1 million vehicles in the U.S. to replace the part, its second-largest campaign.

It came too late for Zackary Audulewicz of Ila, Ga., relatives said. The 20-year-old was driving his Toyota 4x4 to work in August 2003 when the pickup lost control. A witness said she heard a pop and saw a spark just before the pickup careened off the road, flipped into the air and rolled on its roof. Audulewicz was killed instantly.

"I feel like they knew about the problem long before the recall," said Don Audulewicz, Zackary's father and one of the plaintiffs in the suits. "I can't understand why whoever was making decisions at Toyota would do that."

Toyota declined to discuss the case, citing its policy not to comment on pending litigation. In a written statement, Toyota explained that its own investigation of the defective steering component part led it to broaden the recall to include the T100 truck.

On several occasions in the last decade, Toyota has been admonished by judges for failing to provide evidence. In 2000, for example, a Missouri state judge sanctioned it for failing to disclose results of five rear-impact tests of Corollas "despite numerous discovery requests." He ordered a new trial.

In 2007, California's Court of Appeal found that "Toyota had intentionally violated two orders compelling discovery" of stability test results in a case involving a Toyota-made forklift that tipped over and killed a worker. The court slapped Toyota with a $138,984.33 sanction and ordered a new trial. Toyota, which denied wrongdoing, ultimately settled the case.

E. Todd Tracy, a Texas attorney with 22 years of experience litigating against automakers, believes that Toyota's issues with legal discovery run far deeper than a few sanctions.

Over the last three months, he has moved to reopen 17 lawsuits against the automaker related to vehicle rollovers because he now believes Toyota routinely hid information in those cases.

His argument rests on four boxes of documents submitted by Biller, the former Toyota attorney. The contents have not yet been revealed, but Tracy believes they prove that Toyota hid crucial information about rollovers in those lawsuits.

"This is clearly information that Toyota does not want the public to see," Tracy said. "For years, they were the gold standard, but right now they have more problems than they know what to do with."

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latimes.com

Times staff writers Doug Smith and Thomas Suh Lauder contributed to this report.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION

JOHN HARDING,

Plaintiff,

v.

TOYOTA MOTOR CORPORATION, et al.,

Defendants,

CASE NO. 2:10-CV-00100-MEF

CONFLICT DISCLOSURE STATEMENT

COMES NOW John Harding, a Plaintiff in the above-captioned matter, and in accordance with the order of this Court, making the following disclosure concerning parent companies, subsidiaries, partners, limited liability entity members and managers, trustees (but not trust beneficiaries), affiliates, or similar entities reportable under the provisions of the Middle District of Alabama's General Order No. 3047:

- [x] This party is an individual, or
- [ ] This party is a governmental entity, or
- [ ] There are no entities to be reported, or
- [ ] The following entities and their relationship to the party are hereby reported:

Reportable Entity	Relationship to Party
N/A	

2/9/2010
Date

/s/ W. Daniel "Dee" Miles, III
(Signature)

W. Daniel "Dee" Miles, III
(Counsel's Name)

Plaintiff, Richard Matthews
Counsel for (print names of all parties)

Post Office Box 4160
Montgomery, AL 36103-4160
Address, City, State Zip Code

334-269-2343
Telephone Number

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION

CERTIFICATE OF SERVICE

I, W. Daniel Miles, III, do hereby Certify that a true and correct copy of the foregoing has been furnished by certified mail (manner of service, i.e., U.S. Mail, electronic mail, etc.) on this 9th day of February 2010, to:

TOYOTA MOTOR SALES, U.S.A., INC. c/o The Corporation Company 2000 Interstate Park drive, Suite 204 Montgomery, Alabama 36104

TOYOTA MOTOR CORPORATION, 1 TOYOTA-CHO TOYOTA CITY, AICHI PREFECTURE 471-8571, JAPAN

2/9/2010
Date

/s/ W. Daniel "Dee" Miles, III
Signature

CT Corporation

Service of Process Transmittal

03/01/2010
CT Log Number 516226309

TO: Dorothy Sutton, Administrative Assistant
Toyota Motor Sales, U.S.A., Inc.
19001 S. Western Ave., HQ11
Torrance, CA 90501

RE: **Process Served in Alabama**

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:	John Harding, etc., Pltf. vs. Toyota Motor Corporation, etc. and Toyota Motor Sales, USA, Inc., Dfts. *Name discrepancy noted.*
DOCUMENT(S) SERVED:	Notice, Order
COURT/AGENCY:	US District Court Middle District, AL Case # 10 CV 100
NATURE OF ACTION:	Product Liability Litigation - Manufacturing Defect - Motion for Patrick J. Sheehan and Shujah Ahmad Awan is granted
ON WHOM PROCESS WAS SERVED:	The Corporation Company, Montgomery, AL
DATE AND HOUR OF SERVICE:	By Regular Mail on 03/01/2010 postmarked on 02/22/2010
APPEARANCE OR ANSWER DUE:	None Specified
ATTORNEY(S) / SENDER(S):	W. Daniel Miles, III Beasley, Allen, Crow & Methvin, Portis & Miles, P.C. 218 Commerce Street Montgomery, AL 36104 800-898-2034
ACTION ITEMS:	SOP Papers with Transmittal, via Fed Ex 2 Day , 790205288936 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:	The Corporation Company
ADDRESS:	2000 Interstate Park Drive Suite 204 Montgomery, AL 36109
TELEPHONE:	334-387-7680

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.

CT Corporation

Service of Process Transmittal

03/01/2010
CT Log Number516226309

TO: Dorothy Sutton, Administrative Assistant
Toyota Motor Sales, U.S.A., Inc.
19001 S. Western Ave., HQ11
Torrance, CA 90501

RE: **Process Served in Alabama**

FOR: Toyota Motor Sales, U.S.A., Inc. (Domestic State: CA)

DOCKET HISTORY:

DOCUMENT(S) SERVED:	DATE AND HOUR OF SERVICE:	TO:	CT LOG NUMBER:
Summons, Proof of Service Form, Complaint, Exhibits	By Certified Mail on 02/12/2010 postmarked on 02/05/2010	Dorothy Sutton, Administrative Assistant Toyota Motor Sales, U.S.A., Inc.	516152500

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.

Toyota Motor Sales, USA, Inc.
c/o The Corporation Company
2000 Interstate Park Dr.
Suite 204
Montgomery, AL 36109

IF YOU ARE NOT an attorney, this notice concerning registration DOES NOT APPLY TO YOU.

Should you have questions about your case, please call us on 334.954.3600.

NOTICE TO ATTORNEYS

IF YOU ARE AN ATTORNEY OF RECORD: Electronic Noticing is MANDATORY for all attorneys who practice in the District Court for the Middle District of Alabama.

By order of the court, (General order 04-3164) Electronic Noticing is mandatory for all attorneys who wish to practice in this district.

ATTORNEYS, If you have received this notice by mail, you have not yet complied with this order, according to our records. Please register IMMEDIATELY!

The mandatory registration form for attorneys can be accessed through our web site (www.almd.uscourts.gov, click on the CM/ECF icon. At the CM/ECF welcome page, click on the Registration button). The form can be completed and submitted on-line

If you need help with our on-line Case Management/Electronic Case Files (CM/ECF) system or want to schedule training, please call 334.954.3935 for our help desk.

For all questions not related to the electronic system, please all 334.954.3600.

Thank you!

Office of the Clerk
US District Court
Middle District of Alabama

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

JOHN HARDING, individually and on behalf of all others similarly situated,	)	
Plaintiff,	)	
v.	)	CASE NO. 2:10-cv-100-MEF
TOYOTA MOTOR CORPORATION, *et al.*,	)	
Defendants.	)	

ORDER

Upon consideration of the Motion for Patrick J. Sheehan to be Admitted *Pro Hac Vice* (Doc. # 6) and Motion for Shujah Ahmad Awan to be Admitted *Pro HaC Vice* (Doc. # 7), filed on February 18, 2010, it is hereby

ORDERED that the motions are GRANTED.

DONE this the 22nd day of February, 2010.

/s/ Mark E. Fuller
CHIEF UNITED STATES DISTRICT JUDGE

OFFICE OF THE CLERK
UNITED STATES DISTRICT COURT
P.O. BOX 711
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For: BEASLEY ALLEN CROW METHVIN
Case/Party: D-ALM-2-10-CV-000100-001
Amount: $350.00

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Check/Money Order Num: 203513
Amt Tendered: $350.00

Total Due: $350.00
Total Tendered: $350.00
Change Amt: $0.00

DALM 2:10CV100-MEF

HARDING V TOYOTA MOTOR CORP ET AL

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF ALABAMA

OFFICE OF THE CLERK

POST OFFICE BOX 711

MONTGOMERY, ALABAMA 36101-0711

DEBRA P. HACKETT, CLERK

TELEPHONE (334) 954-3600

February 9, 2010

NOTICE OF DEFICIENCY REGARDING CORPORATE/ CONFLICT STATEMENT

To: John Harding

From: Clerk's Office

Case Style: Harding v. Toyota Motor Corporation et al

Case Number: 2:10-cv-00100-MEF

Notice is hereby given that pursuant to the Federal Rules of Civil Procedure 7.1, and this Court's General Order Miscellaneous Case No. 00-3047 parties are required to file their Corporate/Conflict Disclosure Statement at their initial appearance.

No corporate/conflict disclosure statement has been filed by you in this action.

This deficiency must be corrected within ten (10) days from this date. Please refer to attachment.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

Civil Misc. No 00-3047

ORDER

CONFLICT DISCLOSURE STATEMENT

In compliance with Fed. R. App. P. 26.1, Fed. R. Bankr. P. 1007(a)(1) and 7007.1, Fed R. Civ. P. 7.1, and Fed. R. Crim. P. 12.4, and other considerations which require judges to avoid conflicts of interest with unnamed corporations, partnerships, limited liability entities, joint ventures, trust entities, and other entities which may be related to parties to actions in this court, it is

ORDERED that this court's order (Civ. Misc. No. 00-3047) (Doc. # 2) entered February 16, 2007, is hereby VACATED. It is further ORDERED as follows:

1. All parties (including individuals and governmental entities) shall file a statement identifying all parent companies, subsidiaries, partners, limited liability entity members and managers, trustees (but not trust beneficiaries), affiliates, or similar entities that could potentially pose a financial or professional conflict for a judge. The statement shall be filed with a party's first appearance. If there are no reportable relationships, that fact shall be certified in the filing.

2. In addition to this requirement which applies to all cases, all bankruptcy appeals shall be accompanied by a statement identifying the debtor, the members of creditors' committee, any entity which is an active participant in the proceedings, and other entities whose stock or equity value may be substantially affected by the outcome of the proceedings.

3. It is the responsibility of each party to a case to file a supplemental disclosure statement if, during the pendency of the case, additional reportable entities develop that would have been reportable initially.

4. This rule shall become effective on the date of filing, and shall apply to all cases pending in this court after that date.

DONE this 12th day of June, 2007

/s/ Mark E. Fuller
CHIEF UNITED STATES DISTRICT JUDGE

/s/ Myron H. Thompson
UNITED STATES DISTRICT JUDGE

/s/ W. Keith Watkins
UNITED STATES DISTRICT JUDGE

SAMPLE NOTICE FORMAT

Note: When E-Filing this pleading, please enter a separate docket entry. The event entry is located on CM/ECF by clicking: **CIVIL > OTHER DOCUMENTS > CORPORATE DISCLOSURE STATEMENT**
A **screen-fillable** Adobe Acrobat PDF form, which can be saved and E-Filed, is available on-line; it is available at http://www.almd.uscourts.gov/docs/CONFLICT_DISCLOSURE_STATEMENT_FILLABLE.pdf

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
_____ DIVISION

_____,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CASE NO. _____
	)	
_____,	)	
	)	
Defendants,	)	

CONFLICT DISCLOSURE STATEMENT

COMES NOW _____, a [Plaintiff/Defendant] in the above-captioned matter, and in accordance with the order of this Court, making the following disclosure concerning parent companies, subsidiaries, partners, limited liability entity members and managers, trustees (but not trust beneficiaries), affiliates, or similar entities reportable under the provisions of the Middle District of Alabama's General Order No. 3047:

☐ This party is an individual, or

☐ This party is a governmental entity, or

☐ There are no entities to be reported, or

☐ The following entities and their relationship to the party are hereby reported:

Reportable Entity	Relationship to Party
_____	_____
_____	_____
_____	_____
_____	_____

_____
Date

Signature _____
Counsel

_____
Counsel for (print names of all parties)

_____
Address, City, State Zip Code

_____
Telephone Number

Also requires a certificate of Service

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Middle District of Alabama

John Harding as an individual and on behalf of all others similarly situated,

Plaintiff

v.

TOYOTA MOTOR CORPORATION; TOYOTA MOTOR SALES, USA, INC.,

Defendant

Civil Action No. 2:10-CV-100-MEF-SRW

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* TOYOTA MOTOR SALES, U.S.A., INC.
c/o The Corporation Company
2000 Interstate Park drive, Suite 204
Montgomery, Alabama ~~36104~~ 36109

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: W. Daniel "Dee" Miles, III
BEASLEY, ALLEN, CROW
METHVIN, PORTIS, & MILES, P.C.
Post Office Box 4160
Montgomery, AL 36103-4160

If you fail to respond, 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 OF COURT

Date: 2/9/10

Signature of Clerk or Deputy Clerk

Civil Action No.

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____

was received by me on *(date)* _____ .

❒ I personally served the summons on the individual at *(place)* _____

_____ on *(date)* _____ ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)* _____

_____ , a person of suitable age and discretion who resides there,

on *(date)* _____ , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* _____ , who is

designated by law to accept service of process on behalf of *(name of organization)* _____

_____ on *(date)* _____ ; or

❒ I returned the summons unexecuted because _____ ; or

❒ Other *(specify)*:

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____

Server's signature

_____

Printed name and title

_____

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Middle ~~Southern~~ District of Alabama

John Harding as an individual and on behalf of all others similarly situated,

Plaintiff

v.

TOYOTA MOTOR CORPORATION; TOYOTA MOTOR SALES, USA, INC.,

Defendant

Civil Action No. 2:10-CV-100-MEF-SRW

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* TOYOTA MOTOR CORPORATION,
1 TOYOTA-CHO
TOYOTA CITY, AICHI PREFECTURE 471-8571, JAPAN

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

W. Daniel "Dee" Miles, III
BEASLEY, ALLEN, CROW
METHVIN, PORTIS, & MILES, P.C.
Post Office Box 4160
Montgomery, AL 36103-4160

If you fail to respond, 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 OF COURT

Date: 2/9/10

Signature of Clerk or Deputy Clerk

Civil Action No.

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____

was received by me on *(date)* _____ .

☐ I personally served the summons on the individual at *(place)* _____

_____ on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____

_____ , a person of suitable age and discretion who resides there,

on *(date)* _____ , and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____ , who is

designated by law to accept service of process on behalf of *(name of organization)* _____

_____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify):*

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____

Server's signature

_____

Printed name and title

_____

Server's address

Additional information regarding attempted service, etc:

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION

JOHN HARDING, individually and on behalf of all others similarly situated,	)	
Plaintiffs,	)	**Case No.: 2:10-cv-00100-MEF**
v.	)	
TOYOTA MOTOR CORPORATION, a foreign corporation, and **TOYOTA MOTOR SALES USA, INC.,** a California corporation,	)	
Defendants.	)	

MOTION FOR PATRICK J. SHEEHAN TO BE ADMITTED *PRO HAV VICE*

Pursuant to Local Rule 83.1, Joe R. Whatley, Jr., the undersigned counsel of record for Plaintiff John Harding, who is admitted to practice before the United States District Court for the Middle District of Alabama, respectfully moves for the admission *pro hac vice* of Patrick J. Sheehan as additional counsel for Plaintiff John Harding. Mr. Sheehan is admitted to practice in Commonwealth of Massachusetts; the United States District Court for the District of Massachusetts; the State of New York; the United States District Courts for the Southern and Eastern Districts of New York; and the First Circuit Court of Appeals. Mr. Sheehan's law firm is Whatley Drake & Kallas, LLP, located at 60 State Street, 7th floor, Boston, Massachusetts 02109. The law firm's telephone number is 617.573.5118 and the fax number is 617.573.5090. Mr. Sheehan's email address is psheehan@wdklaw.com.

A Certificate of Good Standing for Mr. Sheehan is attached hereto, and the requisite fee is also submitted herewith.

Dated: February 18, 2010

Respectfully submitted,

/s/ Joe R. Whatley, Jr.

WHATLEY DRAKE & KALLAS, LLP
Joe R. Whatley, Jr.,
2001 Park Place North, Suite 1000
Birmingham, AL 35203
Telephone: 205.328.9576
Facsimile: 205.328.9669

CERTIFICATE OF SERVICE

I hereby certify that on February 18, 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

/s/ Joe R. Whatley, Jr.
Of Counsel

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION

JOHN HARDING, individually and on behalf of all others similarly situated,	)	
Plaintiffs,	)	**Case No.: 2:10-cv-00100-MEF**
v.	)	
TOYOTA MOTOR CORPORATION, a foreign corporation, and **TOYOTA MOTOR SALES USA, INC.,** a California corporation,	)	
Defendants.	)	

MOTION FOR SHUJAH AHMAD AWAN TO BE ADMITTED *PRO HAV VICE*

Pursuant to Local Rule 83.1, Joe R. Whatley, Jr., the undersigned counsel of record for Plaintiff John Harding, who is admitted to practice before the United States District Court for the Middle District of Alabama, respectfully moves for the admission *pro hac vice* of Shujah Ahmad Awan as additional counsel for Plaintiff John Harding. Mr. Awan is admitted to practice in the State of New York; and United States District Court for the Southern and Eastern Districts of New York. Mr. Awan's law firm is Whatley Drake & Kallas, LLP, located at 1540 Broadway, 37th Floor, New York, New York 10036. The law firm's telephone number is 212.447.7070 and the fax number is 212.447.7077. Mr. Awan's email address is sawan@wdklaw.com.

A Certificate of Good Standing for Mr. Awan is attached hereto, and the requisite fee is also submitted herewith.

Dated: February 18, 2010

Respectfully submitted,

/s/ Joe R. Whatley, Jr.

WHATLEY DRAKE & KALLAS, LLP
Joe R. Whatley, Jr.,
2001 Park Place North, Suite 1000
Birmingham, AL 35203
Telephone: 205.328.9576
Facsimile: 205.328.9669

CERTIFICATE OF SERVICE

I hereby certify that on February 18, 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

/s/ Joe R. Whatley, Jr.
Of Counsel

United States District Court

Southern District of New York

Certificate of Good Standing

I, J. Michael McMahon, Clerk of this Court, certify that

PATRICK J. SHEEHAN, Bar # PS2490

was duly admitted to practice in this Court on

DECEMBER 19th, 2000, and is in good standing

as a member of the Bar of this Court.

Dated at 500 Pearl Street
New York, New York on FEBRUARY 17th, 2010

J. Michael McMahon
Clerk

by _____
Deputy Clerk

United States District Court

Southern District of New York

Certificate of Good Standing

I, J. Michael McMahon, Clerk of this Court, certify that

SHUJAN AHMAD AWAN, Bar # SA1627

was duly admitted to practice in this Court on

OCTOBER 27th, 2009, and is in good standing

as a member of the Bar of this Court.

Dated at 500 Pearl Street
New York, New York on FEBRUARY 17th, 2010

J. Michael McMahon
Clerk

by
Deputy Clerk

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF ALABAMA

OFFICE OF THE CLERK

POST OFFICE BOX 711

MONTGOMERY, ALABAMA 36101-0711

DEBRA P. HACKETT, CLERK

TELEPHONE (334) 954-3600

February 19, 2010

NOTICE OF CORRECTION

To: All Parties
From: Clerk's Office

Case Style: Harding v. Toyota Motor Corporation et al

Case Number: 2:10-cv-00100-MEF

This Notice of Correction is being filed this date to indicate the addition of a PDF document in this case.

Reference is made to documents #6 and #7 filed on February 18, 2010. Certificates of Good Standing were inadvertently omitted when the Motions were filed. A PDF document of each movant's certificate has been added to the record and each is attached to this Notice for review.

DUPLICATE

Court Name: U S DISTRICT COURT - AL/M
Division: 2
Receipt Number: 4602013071
Cashier ID: christin
Transaction Date: 02/19/2010
Payer Name: WHATLEY DRAKE AND KALLAS

PRO HAC VICE
For: WHATLEY DRAKE AND KALLAS
Case/Party: D-ALM-A-TT-YF-EEFUND-001
Amount: $50.00

PRO HAC VICE
For: WHATLEY DRAKE AND KALLAS
Case/Party: D-ALM-A-TT-YF-EEFUND-001
Amount: $50.00

CHECK
Check/Money Order Num: 024720
Amt Tendered: $100.00

Total Due: $100.00
Total Tendered: $100.00
Change Amt: $0.00

DALM210CV100-MEF

MOTPHV

PATRICK J SHEEHAN
SHUJAN AHMAD AWAN

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

JOHN HARDING, individually and on behalf of all others similarly situated,	)	
Plaintiff,	)	
v.	)	CASE NO. 2:10-cv-100-MEF
TOYOTA MOTOR CORPORATION, *et al.*,	)	
Defendants.	)	

ORDER

Upon consideration of the Motion for Patrick J. Sheehan to be Admitted *Pro Hac Vice* (Doc. # 6) and Motion for Shujah Ahmad Awan to be Admitted *Pro HaC Vice* (Doc. # 7), filed on February 18, 2010, it is hereby

ORDERED that the motions are GRANTED.

DONE this the 22nd day of February, 2010.

/s/ Mark E. Fuller
CHIEF UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION

JOHN HARDING, individually and on behalf of all others similarly situated,	)	
Plaintiffs,	)	**Case No.: 2:10-cv-00100-MEF**
v.	)	
TOYOTA MOTOR CORPORATION, a foreign corporation, and **TOYOTA MOTOR SALES USA, INC.,** a California corporation,	)	
Defendants.	)	

MOTION FOR EDITH M. KALLAS TO BE ADMITTED *PRO HAC VICE*

Pursuant to Local Rule 83.1, Joe R. Whatley, Jr., the undersigned counsel of record for Plaintiff John Harding, who is admitted to practice before the United States District Court for the Middle District of Alabama, respectfully moves for the admission *pro hac vice* of Edith M. Kallas as additional counsel for Plaintiff John Harding. Ms. Kallas is admitted to practice before the following Courts:

Title of Court	Date of Admission
New York State Supreme Court	May 2, 1988
U.S. District Court, Southern District of New York	May 23, 1989
U.S. District Court, Eastern District of New York	May 23, 1989
U.S. Court of Appeals, 2nd Circuit	April, 1992
U.S. Court of Appeals, 3rd Circuit	December, 1999

U.S. Court of Appeals 6th Circuit November, 1995

U.S. Court of Appeals, 9th Circuit September, 2009

Ms. Kallas's law firm is Whatley Drake & Kallas, LLP, located at 1540 Broadway, 37th Floor, New York, New York 10036. The law firm's telephone number is 212.447.7070 and the fax number is 212.447.7077. Ms. Kallas's email address is ekallas@wdklaw.com.

A Certificate of Good Standing for Ms. Kallas is attached hereto, and the requisite fee is also submitted herewith.

Dated: February 22, 2010

Respectfully submitted,

/s/ Joe. R. Whatley
WHATLEY DRAKE & KALLAS, LLP
Joe R. Whatley, Jr.,
2001 Park Place North, Suite 1000
Birmingham, AL 35203
Telephone: 205.328.9576
Facsimile: 205.328.9669

CERTIFICATE OF SERVICE

I hereby certify that on February 22, 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

/s/ Joe R. Whatley
Of Counsel

United States District Court

Southern District of New York

Certificate of Good Standing

I, J. Michael McMahon, Clerk of this Court, certify that

EDITH M. KALLAS, Bar # EK0841

was duly admitted to practice in this Court on

MAY 23rd, 1989, and is in good standing

as a member of the Bar of this Court.

Dated at 500 Pearl Street
New York, New York on FEBRUARY 17th, 2010

J. Michael McMahon
Clerk

by
Deputy Clerk

DUPLICATE

Court Name: U S DISTRICT COURT - AL/M
Division: 2
Receipt Number: 4602013110
Cashier ID: christin
Transaction Date: 02/23/2010
Payer Name: WHATLEY DRAKE AND KALLAS

PRO HAC VICE
For: EDITH M KALLAS
Case/Party: D-ALM-A-IT-YF-EEFUND-001
Amount: $50.00

CHECK
Check/Money Order Num: 24779
Amt Tendered: $50.00

Total Due: $50.00
Total Tendered: $50.00
Change Amt: $0.00

DALM210CV100-MEF

MOTPHV
EDITH M KALLAS

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION

JOHN HARDING, individually and on behalf of all others similarly situated, Plaintiff, v. **TOYOTA MOTOR CORPORATION**, a foreign corporation, and **TOYOTA MOTOR SALES, USA, INC.**, a California corporation, Defendants.	CASE NO. 2:10-CV-00100-MEF

BRIEF IN SUPPORT OF DEFENDANT
TOYOTA MOTOR SALES, USA, INC.'S MOTION TO STAY PENDING ACTION
BY THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

INTRODUCTION

Defendant Toyota Motor Sales, USA, Inc. ("Toyota") moves to stay this case pending a ruling by the Judicial Panel on Multidistrict Litigation ("JPML") concerning the transfer of this action for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407. The JPML's ruling will, in all likelihood, result in the transfer of this action to a consolidated Multidistrict Litigation ("MDL") proceeding. This case is one of more than seventy-five similar actions, the vast majority of which are duplicative and/or overlapping putative class actions, pending in federal courts throughout the country.[1] The actions, including this case, are premised upon the same basic set of alleged facts and assert similar claims against the defendants. Plaintiffs in all of these actions claim to be owners or lessees of Toyota and Lexus automobiles

[1] Actions have been filed to date in California, Florida, Louisiana, Texas, South Carolina, Kentucky, Colorado, New Jersey, Puerto Rico, Indiana, Missouri, Ohio, Michigan, Kansas, Pennsylvania, New York, Oklahoma, Alabama, Mississippi, Illinois, West Virginia, Arkansas, Massachusetts, Connecticut, Wyoming, New Mexico, and Georgia.

subject to voluntary safety recalls related to the potential unintended acceleration of their vehicles.[2]

To date, at least two motions for coordinated treatment of these cases and numerous responses have been filed with the JPML. *See In re Toyota Motor Corp. Unintended Acceleration Prods. Liab. Litig.*, MDL Docket No. 2151. Toyota filed its response with the JPML on February 26, 2010 and joined in the requests for consolidated treatment. *See* Toyota Defendants' Response in Support of Transfer of Actions to the Central District of California for Coordinated Pretrial Proceedings Pursuant to 28 U.S.C. § 1407, attached hereto as Exhibit A. Given that Toyota's U.S. headquarters are in the Central District of California, the most cases had been filed in that district at that time, and the first-filed class action was filed in that district, Toyota requested transfer to the Central District of California. The JPML has set a hearing to consider consolidation of these cases for March 25, 2010.

The need for coordination of these actions is compelling: the various proposed classes, as well as the individual actions, are overlapping and involve potentially millions of vehicle owners; the complaints contain similar allegations arising from the same recalls; similar pretrial matters will be presented in each case; and numerous groups of plaintiffs' counsel have requested consolidation. Given the strong likelihood that these cases will be transferred into a MDL, the need for a stay of this action to promote the purposes of coordinated MDL treatment is equally compelling. Any action by this Court prior to such transfer would be wasteful of the Court's valuable judicial resources and would create the possibility of inconsistencies in the

[2] Toyota acknowledges that there are some differences in the theories of liability and claims regarding the alleged defect(s) in the various actions. Although the theories of these lawsuits may differ, all relate to the issue of unintended acceleration. Moreover, the transferee court is vested with discretion to consolidate some complaints, but not others, and to permit multiple consolidated complaints for differing types of claims or plaintiffs. Accordingly, the MDL proceeding can accommodate the various complaints and will eliminate duplicative discovery, avoid inconsistent pretrial rulings, and conserve the resources of the parties, their counsel, and the judiciary.

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adjudication of dozens of overlapping class actions. Toyota, therefore, requests that this Court stay all proceedings in the present case until the JPML has ruled on the transfer of this case for consolidated or coordinated pretrial proceedings. Indeed, Courts have already stayed at least eight related actions on this basis. *See* Orders Granting Stays, attached hereto as Exhibit B.

ARGUMENT AND AUTHORITY

The principle purposes of multidistrict coordination are to further judicial economy, minimize duplicative discovery activity, and eliminate the potential for conflicting pretrial rulings. *See, e.g., In re N.Y. City Mun. Sec. Litig.*, 572 F.2d 49, 51-52 (2d Cir. 1978). These objectives obviously would not be served if, notwithstanding a motion for multidistrict coordination of these cases, courts allowed the matters to proceed, inviting precisely the sorts of waste and inconsistencies that the multidistrict litigation process is designed to prevent. Not surprisingly, "[a] majority of courts have concluded that it is often appropriate to stay preliminary pretrial proceedings while a motion to transfer and consolidate is pending with the MDL Panel because of the judicial resources that are conserved."[3] *Rivers v. Walt Disney Co.*, 980 F. Supp. 1358, 1362 (C.D. Cal. 1997); *see also Maiben v. CSX Transp., Inc.*, No. 09-0125-WS-B, 2009 WL 1211186, at *1 (S.D. Ala. May 1, 2009) (staying litigation pending a JPML ruling); *Gordillo v. Bank of Am., N.A.*, No. 1:09-cv-01954, 2010 WL 148699, at *2 (E.D. Cal. Jan. 14, 2010) (same); *Dittman v. DJO, LLC*, No. 08-cv-02791, 2010 WL 174555, at *1 (D. Colo. Jan. 13, 2010) (same); *Lerch v. Davol Inc.*, No. 5:09-cv-130, 2009 WL 5217063, at *1 (W.D.N.C. Dec. 30, 2009) (same); *Jackson v. Merck & Co.*, No. 06-1004, 2006 WL 448695, at *1 (W.D. Tenn. Feb. 19, 2006) (same); *Bledsoe v. Pharm.*, No. 4:05CV02330, 2006 WL 335450, at *1 (E.D. Mo. Feb. 13, 2006) (same); *Hertz Corp. v. The Gator Corp.*, 250 F. Supp. 2d 421,

[3] A district court's authority to stay proceedings is well established. It is "incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936).

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427-29 (D.N.J. 2003) (same); *Weinke v. Microsoft Corp.*, 84 F. Supp. 2d 989 (E.D. Wis. 2000) (same); *Falgoust v. Microsoft Corp.*, No. 00-0779, 2000 WL 462919 (E.D. La. Apr. 19, 2000) (same); *Aetna U.S. Healthcare, Inc. v. Hoechst Akiengesellschaft*, 48 F. Supp. 2d 37, 43 (D.D.C. 1999) (same); *Tench v. Jackson Nat'l Life Ins. Co.*, No. 99-C-5182, 1999 WL 1044923 (N.D. Ill. Nov. 12, 1999) (same); *Good v. Prudential Ins. Co. of Am.*, 5 F. Supp. 2d 804, 809 (N.D. Cal. 1998) (same); *Boudreaux v. Metro. Life Ins. Co.*, No. 95-138, 1995 WL 83788 (E.D. La. Feb. 24, 1995) (same); *Arthur-Magna, Inc. v. Del-Val Fin. Corp.*, No. 2:90cv04378, 1991 WL 13725, at *1 (D.N.J. Feb. 1, 1991) (granting stay because it fosters the purpose of the multidistrict litigation statute to coordinate related litigation).

Where a motion for transfer or notice of tag-along actions has been filed with the JPML, district courts have typically reviewed three factors to decide whether to stay pending proceedings until the JPML can rule. These factors are: (1) potential prejudice to the non-moving party if the stay is granted; (2) hardship to the moving party if the stay is not granted; and (3) the economical use of judicial resources. *See Betts v. Eli Lilly & Co.*, 435 F. Supp.2d 1180, 1182 (S.D. Ala. 2006); *Jackson*, 2006 WL 448695, at *1; *Bledsoe*, 2006 WL 335450, at *1; *The Gator Corp.*, 250 F. Supp. 2d. at 426, 428; *Nekritz v. Canary Capital Partners, LLC*, No. 2:03-cv-05081, 2004 WL 1462035, at *1 (D.N.J. Oct. 27, 2003); *Bd. of Trustees of Teachers' Ret. Sys. of State of Ill. v. WorldCom, Inc.*, 244 F. Supp. 2d 900 (N.D. Ill. 2002); *U.S. Bank, N.A. v. Royal Indem. Co.*, No. 3:02-CV-0853-P, 2002 WL 31114069, at *2 (N.D. Tex. Sept. 23, 2002); *Falgoust*, 2000 WL 462919, at *2; *Rivers*, 980 F. Supp. at 1360; *Boudreaux*, 1995 WL 83788, at *1. Even where a non-moving party claims that a stay will cause delay and prejudice, "there are considerations of judicial economy and hardship to defendants that are compelling enough to warrant such a delay." *Arthur-Magna, Inc.*, 1991 WL 13725, at *1. *See also Krieger v.*

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Merck & Co., 2005 WL 2921640, at *2 (W.D.N.Y. Nov. 4, 2005) (noting that "the risk of hardship to [the defendant] of engaging in duplicative motion practice and discovery proceedings outweighs any prejudice that could potentially inure to [the plaintiff]").

In the present case, all three considerations weigh heavily in favor of granting Toyota's motion for a stay. First, a finite, temporary stay of action in this case is unlikely to result in harm to Plaintiff. This lawsuit is in its infancy, and any delay in the preliminary proceedings would be brief. For example, following its last hearing on January 27, 2010, the JPML decided all nine requests for consolidation within sixteen days of the hearing (and decided seven of them within nine days). Accordingly, a finite stay of this action pending the JPML's decision, following the March 25, 2010 hearing, will be brief. Indeed, if the stay is only in effect until the JPML issues a decision on transfer, courts have recognized that "there will be no extended delay in the commencement of discovery" and "[t]he plaintiffs will not be substantially prejudiced." *Am. Seafood, Inc. v. Magnolia Processing, Inc.*, Nos. 2:92-cv-01086 and 2:92-cv-01030, 1992 WL 102762, at *1 (E.D. Pa. May 7, 1992). *See also Bledsoe*, 2006 WL 335450, at *1 (commenting that "any delay [pending JPML action] is likely to be relatively short"); *Falgoust*, 2000 WL 462919, at *2 (noting that a plaintiff is not typically prejudiced by a "slight delay pending the JPML decision").

With respect to the second factor, even if Plaintiff could somehow demonstrate prejudice to his case due to this minimal delay, the very real hardship on Toyota in the absence of a stay substantially outweighs any alleged prejudice to Plaintiff. If no stays issue, Toyota will be forced to continue litigating these suits in dozens of separate courts throughout the country, thereby imposing an enormous burden in terms of both time and resources on Toyota. Such effort would be particularly wasteful in a situation such as this one in which eventual

TOY-RQ-05E-00009502

consolidated treatment is almost certain. Even if waste of resources were no issue, by simultaneously litigating these cases, Toyota is subject to possibly conflicting substantive rulings on multiple aspects of these cases, including Toyota's motions to dismiss. In addition, any discovery in which Plaintiff would engage pending transfer will be duplicative of the discovery engaged in by the plaintiffs in all other cases pending against Toyota. Accordingly, district courts have recognized that the risks and hardships now looming over Toyota are sufficient to warrant issuance of a stay. *See Maiben*, 2009 WL 1211186, at *1; *Jackson*, 2006 WL 448695, at *1; *The Gator Corp.*, 250 F. Supp. 2d at 428; *Nekritz,* 2004 WL 1462035, at *4; *U.S. Bank*, 2002 WL 31114069, at *2; *Falgoust*, 2000 WL 462919, at *1.

Third, this Court's interest in judicial economy, not to mention that of the transferee court, militates in favor of a stay. If no stay issues before the JPML rules on coordination of these cases, this Court risks burdening its docket with a case that will require time, energy, and attention, but which ultimately may not remain with this Court's caseload. *See U.S. Bank*, 2002 WL 31114069, at *2 ("If the MDL Motion is granted, all of the Court's time, energy, and acquired knowledge regarding this action and its pretrial procedures will be wasted."). With respect to the impact of this Court's actions on the transferee court, any efforts by this Court at case management will very likely have to be repeated by the judge to whom the multidistrict litigation is assigned. Not surprisingly, courts have often recognized that these concerns of judicial economy weigh in favor of a stay when a motion for transfer is pending before the JPML. *See Maiben*, 2009 WL 1211186, at *1; *Jackson*, 2006 WL 448695, at *1; *Bledsoe*, 2006 WL 335450, at *1; *The Gator Corp.*, 250 F. Supp. 2d at 428; *Arthur-Magna, Inc.*, 1991 WL 13725, at *1.

TOY-RQ-05E-00009503

CONCLUSION

The issuance of a stay of proceedings in this Court pending the JPML's ruling on petitions for coordinated treatment will operate to the benefit of all – the plaintiffs, the defendants, and the respective courts in the more than seventy-five federal actions. Given the likelihood of the transfer of these cases for multidistrict coordination, the lack of prejudice to Plaintiff, the great risk of harm to Toyota, and the demands of judicial economy, Toyota respectfully urges this Court to stay all proceedings in this matter until the JPML rules on the transfer of this case for consolidated or coordinated pretrial proceedings pursuant 28 U.S.C. § 1407. For the convenience of the Court, a proposed Order is attached hereto.

Respectfully submitted this 1st day of March, 2010.

/s/ De Martenson
De Martenson
ASB-7317-N69E

/s/ Walter J. Price, III
Walter J. Price, III
ASB-0127-C66W

HUIE, FERNAMBUCQ & STEWART, LLP
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DM@hfsllp.com
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Attorneys for Defendant
Toyota Motor Sales, U.S.A., Inc.

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Derin B. Dickerson
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ALSTON & BIRD
1201 West Peachtree Street
Atlanta, Georgia 30309
Telephone: (404) 881-7000
Facsimile: (404) 881-7777

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

TOY-RQ-05E-00009505

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION

JOHN HARDING, individually and on behalf of all others similarly situated,	)	
Plaintiff,	)	
v.	)	CASE NO. 2:10-CV-00100-MEF
TOYOTA MOTOR CORPORATION, a foreign corporation, and **TOYOTA MOTOR SALES, USA, INC.**, a California corporation,	)	
Defendants.	)	

CERTIFICATE OF SERVICE

This is to certify that I have this day served upon all Parties' counsel of record, or upon the Party if no counsel of record appears, a copy of the within and foregoing "**BRIEF IN SUPPORT OF DEFENDANT TOYOTA MOTOR SALES, USA, INC.'S MOTION TO STAY PENDING ACTION BY THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION**" by electronically filing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following:

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This 1st day of March, 2010.

/s/ De Martenson
De Martenson
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JUDICIAL PANEL ON
MULTIDISTRICT
LITIGATION

BEFORE THE JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION

IN RE: TOYOTA MOTOR CORP. DEFECTIVE GAS PEDAL PRODUCTS LIABILITY LITIGATION	: : :	MDL No. 2151

TOYOTA DEFENDANTS' RESPONSE IN SUPPORT OF TRANSFER OF ACTIONS TO THE CENTRAL DISTRICT OF CALIFORNIA FOR COORDINATED PRETRIAL PROCEEDINGS PURSUANT TO 28 U.S.C. § 1407

Pursuant to Rule 7.2(c) of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation ("JPML"), Defendants Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Inc., Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Manufacturing, California, Inc., Toyota Motor Manufacturing, Indiana, Inc., Toyota Motor Manufacturing, Kentucky, Inc., Toyota Motor Manufacturing, Texas, Inc., Toyota Motor Manufacturing, West Virginia, Inc., Toyota de Puerto Rico Corporation, and New United Motor Manufacturing, Inc. (collectively "Toyota" or the "Toyota Defendants") hereby submit their response to the pending Motions to Transfer and Consolidate Pretrial Proceedings Pursuant to 28 U.S.C. § 1407.[1] Toyota agrees that transfer and consolidation of these cases is appropriate

[1] According to the JPML Docket, as of February 23, 2010, two motions for transfer and eight responses have been filed. On February 4, 2010, Plaintiff Heather A. Lane (*Lane v. Toyota Motor Sales, USA, Inc.*, No. 2:09-cv-09158, C.D. Cal.), filed her Motion for Transfer to the Central District of California. On February 5, 2010, Plaintiffs Daniel

EXHIBIT "A"

under Section 1407 and respectfully requests that the JPML transfer all cases identified by Toyota on Schedule A (attached hereto as Exhibit 1)[2] to the Central District of California before the Honorable Judge Matz. The Central District of California is the most appropriate transferee court for a number of reasons: (i) the primary defendant in this litigation is headquartered there; (ii) the largest number of cases has been filed in that district; (iii) numerous individual plaintiffs have requested transfer to the Central District of California in separate filings with this Panel; (iv) the first-filed case, *Choi*, was filed in that district, and substantive motion practice is already underway in *Choi*; (v) the judge assigned to *Choi*, Judge Matz, has prior MDL experience, and eleven cases already have been assigned to Judge Matz as related actions; and (vi) the Central

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Weimer, Jr., Colby Wenck, and Ann Cavalier (*Weimer v. Toyota North America, Inc.*, No. 10-219, E.D. La.) filed a "motion" for transfer to the Eastern District of Louisiana, which, pursuant to Panel Rule 7.2(h), is deemed a response to the Lane motion. Plaintiff Jonathan Gellman (*Gellman v. Toyota Motor Sales, USA, Inc.*, No. 1:2010-cv-20006, S.D. Fla.) filed a response on February 18, 2019 seeking transfer to the Southern District of Florida. Plaintiffs Eric Kmetz and Joseph Morris (*Kmetz v. Toyota Motor Sales, USA, Inc.*, No. *Toyota Motor Corp.*, No. 2:09-cv-08478, C.D. Cal.) and Joseph Hauter and Frank Palomares (*Hauter v. Toyota Motor Sales, USA, Inc.*, No. 2:10-cv-00105, C.D. Cal.) filed their response on February 19, 2010 seeking transfer to the Central District of California. Plaintiff Troy Menssen (*Menssen v. Toyota Motor Sales, U.S.A., Inc.*, No. 1:10-cv-00260, N.D. Ohio) filed a response on February 19, 2010 seeking consolidation, but did not specify a proposed transferee district. Plaintiff Al Viviano (*Viviano v. Toyota Motor Engineering & Manufacturing North America, Inc.*, No. 2:10-cv-00024, E.D. Ky.) filed a response on February 22, 2010 seeking transfer to the Eastern District of Kentucky. Plaintiffs Zahira Crespo-Bithorn and Milagros Rodriguez Cruz (*Crespo-Bithornv. Toyota Motor North America, Inc.*, No. 3:10-cv-01083, D.P.R.) also filed a response on February 22, 2010 seeking transfer to the District of Puerto Rico. On February 23, 2010, Plaintiff Fred Sander (*Sander v. Toyota Motor Sales, U.S.A., Inc.*, No. 1:10-cv-01111, S.D.N.Y.) filed a response requesting transfer to the Southern District of New York; Plaintiff Christine Mitchell (*Mitchell v. Toyota Motor North America, Inc.*, No. 3:10-cv-000104, S.D. Miss.) filed a response requesting transfer to the Southern District of Mississippi; Plaintiff Robyn Horn (*Horn v. Toyota Motor Sales U.S.A., Inc.*, No 4:10-cv-00090, E.D. Ark.) and Plaintiff Ani Garzaryan (*Garzaryan v. Toyota Motor Sales, U.S.A., Inc.*, No. 2:10-cv-00849, C.D. Cal.) both filed responses seeking transfer, but did not specify a transferee court; and Plaintiffs Michael Graves and Jeff Mullins (*Graves v. Toyota Motor Manufacturing, West Virginia, Inc.*, No. 2:09-cv-01247, S.D.W. Va.) filed a response seeking transfer to the Southern District of West Virginia.

In addition to these motions and responses, two motions have been filed and withdrawn. On February 19, 2010, Plaintiff Maureen Colaberdino (*Colaberdino v. Toyota Motor North America, Inc.*, No. 3:10-cv-00672, D.N.J.) filed a response seeking transfer to the District of New Jersey that was later withdrawn. Plaintiffs Seong Bae Choi, Chris Chan Park, Sandra Reech, Donald Pritchett, Un Jin Choi, and Mary Ann Parker (*Choi v. Toyota Motor Corp.*, No. 2:09-08143, C.D. Cal.) have filed a motion for transfer to the Central District of California that was later withdrawn.

Toyota has also received a service copy of a "motion" that does not appear on the JPML CM-MDL Docket. Specifically, it appears that Plaintiff Dale Roberts (*Roberts v. Toyota Motor Corp.*, No. 7:10-cv-00281, D.S.C.) will seek to have these cases transferred to the District of South Carolina.

Toyota's Response addresses all of these pending transfer requests.

[2] Schedule A includes (1) actions previously identified in the pending transfer motions and (2) additional actions not already before the Panel and for which Toyota has filed a Notice of Related Actions contemporaneously herewith.

District of California is significantly better suited geographically for cases anticipated to involve witnesses and evidence from Japan, the location of Toyota's parent corporation.

I. Background[3]

On September 29, 2009, Toyota issued a safety advisory related to the risk of floor mat entrapment of accelerator pedals in certain Toyota models. Toyota determined that an unsecured or incompatible driver's floor mat has the potential to interfere with, or entrap, the accelerator pedal, which may make the vehicle difficult to control or stop. Shortly after issuing the safety advisory, Toyota instituted a voluntary recall of all affected Toyota vehicles (the "Floor Mat Recall"). In January 2010, as part of Toyota's ongoing investigation into possible causes of unintended acceleration, Toyota determined that there is a possibility that certain accelerator pedal mechanisms may mechanically stick in a partially depressed position or return slowly to the idle position, and issued a second voluntary recall related to accelerator pedals (the "Pedal Recall").

Numerous cases stemming from these voluntary recalls have been filed against Toyota. Although the specific theories advanced in these lawsuits may differ, all of the cases relate to the issue of unintended acceleration and are appropriate for consolidation. For example, some actions assert that unintended acceleration is caused by alleged defects in Toyota's floor mats or accelerator pedals, while others claim that unintended acceleration is caused by an alleged defect in Toyota's electronic throttle control systems ("ETCS-i"),[4] and many cases assert all three

[3] J.P.M.L. Rule 7.1(b) requires responses to averments in motions to be made in numbered paragraphs that correspond to the number of paragraphs of the motion to which the responsive paragraph is directed. Plaintiff Lane, however, did not, as required by J.P.M.L. Rule 7.1(a), make averments in numbered paragraphs in her motion or accompanying brief. Therefore, Toyota is unable to comply with J.P.M.L. Rule 7.1(b).

[4] In vehicles with ETCS-i, electrical sensors detect the position of the accelerator pedal and relay this information to a central computer that regulates the engine's functions (the "Engine Control Module" or "ECM"). The ECM uses this information to determine how much to open the throttle, which, in turn, causes the vehicle to accelerate. Some plaintiffs have alleged that electro-magnetic radiation can interfere with ETCS-i causing the vehicle to suddenly

theories.[5] Through February 23, 2010,[6] Toyota had been served with thirty-nine federal lawsuits related to the issue of unintended acceleration. Thirty-eight of these have been brought as class actions; one of these cases was brought by a plaintiff suing in his individual capacity. In addition, Toyota is aware of thirty-eight related federal lawsuits that have been filed but not yet served, as well as at least forty-two similar state court cases, many of which Toyota expects will be removed to federal court (all suits referred to collectively as the "Unintended Acceleration Cases"). Toyota seeks consolidation of all seventy-seven Federal Unintended Acceleration Cases of which Toyota is currently aware and which are listed on the attached Schedule A.[7]

II. Consolidation and Coordination of Pretrial Proceedings Is Proper.

Pursuant to 28 U.S.C. § 1407, the transfer of actions to a single jurisdiction for coordinated or consolidated pretrial proceedings is proper when the civil actions pending in various districts involve one or more common questions of fact, and transfer and consolidation "will be for the convenience of parties and witnesses and will promote the just and efficient conduct of such actions." 28 U.S.C. § 1407(a). These statutory requirements are met in this case.

Although there are certain legal and factual differences among the cases that have been filed, all of these cases relate to the issue of unintended acceleration. Accordingly, despite

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accelerate even when the accelerator pedal is not depressed. Toyota denies that its ETCS-i is defective or that it could cause vehicles to accelerate unintentionally.

[5] *Compare Gellman v. Toyota Motor Sales U.S.A., Inc.*, No. 1:10-cv-20006 (alleging defective floor mats) *with Weimer v. Toyota North America, Inc.*, No. 2:10-cv-00219 (alleging defective pedal) *with Choi v. Toyota Motor Corp.*, No. 2:09-08143 (alleging defective ETCS-i) *with Hauter v. Toyota Motor Sales, USA, Inc.*, No. 2:10-cv-00105 (combination defect theory).

[6] Throughout this Response, references to the number of cases filed or served reflect those that Toyota is aware of through February 23, 2010. The number of cases filed and served, however, changes on a daily basis.

[7] The JPML has held that it has authority to transfer and consolidate cases that have not yet been served on defendants. *In re Multidistrict Private Civil Treble Damage Litigation Involving Library Editions of Children's Books*, 299 F. Supp 1139, 1142 (J.P.M.L. 1969) ("Restricting transfers to those cases in which all defendants have been served would frustrate the salutory purposes of 1407 without meaningfully advancing any other interest.").

certain differences among these cases, there are common questions of fact[8] relevant to all of the Unintended Acceleration Cases, including the alleged defects in Toyota vehicles subject to the recent recalls and Toyota's handling of the Floor Mat and Pedal Recalls. Consolidation will therefore "eliminate duplicative discovery, avoid inconsistent pretrial rulings, and conserve the resources of the parties, their counsel, and the judiciary." *In re Vioxx Prods. Liab. Litig.*, 360 F. Supp. 2d 1352, 1354 (J.P.M.L. 2005).

Moreover, the vast majority (72 out of 77) of the Unintended Acceleration Cases filed in federal courts are class actions. This Panel has long recognized that overlapping and parallel class actions asserting similar claims for recovery are particularly well-suited for consolidation. *See, e.g., In re Chrysler Corp. Vehicle Prods. Liab. Litig.*, MDL No. 1239, 1998 LEXIS 15675, at *2 (J.P.M.L. Oct. 2, 1998) (ordering transfer where "the actions in this litigation involve common questions of fact concerning allegations by overlapping classes of defects in the paint of certain Chrysler vehicles that result in chipping, peeling and discoloration of the paint finish."); *In re Sugar Indus. Antitrust Litig.*, 395 F. Supp. 1271, 1273 (J.P.M.L. 1975) ("[T]ransfer of actions under § 1407 is appropriate, if not necessary, where the possibility of inconsistent class determinations exists."); *In re Hawaiian Hotel Room Rate Antitrust Litig.*, 438 F. Supp. 935, 936 (J.P.M.L. 1977) ("Section 1407 centralization is especially important to ensure consistent treatment of the class action issues."); *In re Plumbing Fixture Cases*, 298 F. Supp. 484, 493

[8] For example, while some plaintiffs claim to have experienced an episode of unintended acceleration, many of the plaintiffs do not claim to have experienced any manifestation of the alleged defect. The cases also differ in the type of damages sought: some plaintiffs seek damages for personal injury, but many allege only economic harm. Moreover, the governing law and underlying legal theories of these cases differ to varying degrees as well. Accordingly, while these cases are undoubtedly appropriate for coordinated treatment to promote the efficient resolution of this litigation and to minimize the potential for inconsistent rulings, Toyota disputes any contention that these cases are maintainable as class actions under Fed. R. Civ. P. 23, and nothing in this motion should be interpreted as an indication to the contrary or as an admission on Toyota's part that commonality or any criteria under Rule 23 has been satisfied.

(J.P.M.L. 1968) (holding that transfer was necessary to avoid "pretrial chaos in conflicting class action determinations.").

III. The Central District of California is the Most Appropriate Venue for the Transfer of These Actions.

In deciding the appropriate transferee court, this Panel has often considered (i) where the majority of cases are pending; (ii) where the first-filed and most advanced cases are pending; (iii) where a defendant's headquarters is located; (iv) where relevant documents and witnesses are located; (iv) whether the transferee district is easily accessible to parties and witnesses; and (v) whether the transferee court has the capacity to devote sufficient resources to complex consolidated proceedings. All of these factors decidedly favor the Central District of California.

A. More Cases Have Been Filed in the Central District of California Than In Any Other District, and The California Actions Are Further Advanced Than Cases In Other Districts.

This Panel has repeatedly found that the most appropriate transferee court is the district in which the greatest number of actions is pending. *See, e.g., In re WellPoint, Inc., Out-of-Network UCR Rates Litig.*, 652 F. Supp. 2d 1375, 1376 (J.P.M.L. 2009) (transferring to district where three actions already pending); *In re Conseco Life Ins. Co. Cost of Ins. Litig.*, 323 F. Supp. 2d 1381, 1383 (J.P.M.L. 2004) (noting that "a plurality of the actions is pending in the Central District of California"); *In re Phonometrics, Inc.*, 1996 LEXIS 21909 (J.P.M.L. Dec. 11, 1996) (transferring to district where majority of actions were pending); *In re Dow Chemical Co. Sarabond Prods. Liab. Litig.*, 650 F. Supp. 187, 189 (J.P.M.L. 1986) (transferring to district where six of fourteen actions already pending). Here, more than a third of the cases in which Toyota has been served are pending in the Central District of California (14 out of 39). Additionally, looking at the total number of cases filed (including those in which Toyota has yet to be served), nearly one third of the currently pending actions were filed in the Central District

of California (21 out of 77). The rest of the fifty-six cases, by contrast, are fairly evenly distributed across thirty-six other districts, with no other district presiding over more than four related actions. Accordingly, Section 1407's convenience requirement would be well served by transferring these cases to the district where the greatest number of parties is found. *See In re Napster, Inc.*, 2000 LEXIS 15493 (J.P.M.L. Oct. 11, 1996) (transferring to the district with majority of the parties).

Not only are significantly more actions pending in the Central District of California than in any other district, but the California cases were the also the first to be filed. As a result, litigation in several of the California cases has progressed much further than in the other actions. For example, Toyota has already submitted Motions to Dismiss in *Choi v. Toyota Motor Corp.*, No. 2:09-cv-08143, *Baldiserri v. Toyota Motor Sales, USA, Inc.*, 2:09-cv-09386, *Kmetz v. Toyota Motor Sales, USA, Inc.*, 2:09-cv-08478, and *Lane v. Toyota Motor Sales, USA, Inc.*, 2:09-cv-09158. Moreover, in *Choi*, the first-filed case, plaintiffs have already submitted briefing in support of their motion for preliminary injunction and class certification. In addition to briefing, a number of hearings have been scheduled in the California cases. Judge Matz is scheduled to hear oral argument on Toyota's Motion to Dismiss in the *Kmetz* case on March 15, 2010, and will hear oral argument on the pending class certification motion and motion to dismiss in the *Choi* action on March 22, 2010. Judge Feess is scheduled to hear oral argument on Toyota's Motion to Dismiss in the *Baldiserri* case on March 8, 2010, and Judge Feess will hear oral argument on Toyota's Motion to Dismiss in the *Lane* case on March 29, 2010.

Because the judges presiding over cases in the Central District of California have had the benefit of reviewing the parties' briefs, they are already familiar with both the basic facts of these cases and the legal issues that will be raised during the consolidated pretrial proceedings.

These judges' familiarity with these cases makes the Central District a particularly appropriate transferee district. *See In re Land Rover LR3 Tire Wear Prods. Liab. Litig.*, 598 F. Supp. 2d 1384, 1386 (J.P.M.L. 2009) ("The Central District of California is an appropriate transferee forum because the first-filed and most procedurally advanced actions are pending there."); *In re Pet Food Prods. Liab. Litig.*, 499 F. Supp. 2d 1346, 1347 (J.P.M.L. 2007) (ordering transfer to a particular venue where "[p]retrial proceedings are advancing well there and about one-third of all pending actions are already in this district."); *In re Mirapex Prods. Liab. Litig.*, 493 F. Supp. 2d 1376 (J.P.M.L. 2007) (transferring cases to the district where litigation had become the most advanced and the judge had the opportunity to become familiar with the litigation).

B. More Relevant Documents and Witnesses Will Likely Be Located in the Central District of California Than in Any Other Proposed Transferee District.

The presence of a defendant's corporate headquarters or other principal place of business in a forum militates strongly in favor of transfer to that forum because it "implies that relevant witnesses and documents are likely to be found there." *In re UICI "Association-Group" Ins. Litig.*, 305 F. Supp. 1360, 1362 (J.P.M.L. 2004); *see also In re Aftermarket Automotive Lighting Prods. Antitrust Litig.*, 598 F. Supp. 2d 1366, 1368 (J.P.M.L. 2009) (transferring to the Central District of California where "several defendants are headquartered within the Central District of California and accordingly pertinent documents and witnesses are likely located there"); *In re DirectTV, Inc. Early Cancellation Fee Marketing and Sales Pracs. Litig.*, 655 F. Supp. 2d 1369, 1370-71 (J.P.M.L. 2009) ("DirecTV, Inc., is headquartered in that district and, therefore, relevant documents and witnesses are likely located there."); *In re European Rail Pass Antitrust Litig.*, MDL No. 1386, 2001 WL 587855 (J.P.M.L. 2001); *In re Baldwin-United Corp. Litig.*, 581 F. Supp. 739, 741 (J.P.M.L. 1984); *In re California Armored Car Antitrust Litig.*, 476 F. Supp. 452,

454 (J.P.M.L. 1979) ('[S]ince Armored Transport's principal place of business is located in the Central District of California, it is likely that other relevant documents as well as key witnesses will also be located in that district.").[9]

Toyota Motor Sales, USA, Inc. ("TMS"), the primary defendant in these cases, is a California corporation with its headquarters located in the Central District of California. TMS serves as Toyota's U.S. sales and marketing headquarters. TMS is also the U.S. entity with primary responsibility for implementing recalls and communicating with customers and dealers concerning recall campaigns.[10] The Corporate Accessory Department of TMS was also a central player in the purchase and procurement of the all weather floor mats that are the subject of the Floor Mat Recall and worked closely with Toyota Motor Corporation on the redesign of the floor mats. Accordingly, TMS is likely to be in possession of a significant number of relevant documents, including but not limited to advertising and marketing materials, warranty data, owner's manuals, service manuals, technical service bulletins, and field contact reports, as well as information on customer complaints and lawsuits, and guidelines, correspondence, drawings and approvals for the all weather floor mats at issue. In addition to documents, individuals with relevant information regarding engineering, manufacturing, and design issues as well as the safety recalls and remedies are also located at TMS. Indeed, it appears that TMS was named as a defendant in 75 out of 77 of the Federal Unintended Acceleration Cases precisely because relevant witnesses and documents are likely to be located there. In addition to TMS's location in California, defendants Toyota Motor Manufacturing, California, Inc. and New United Motor Manufacturing, Inc. are also both located in California. The location of Toyota's U.S.

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[9] *See also In re Upjohn Co. Antibiotic Cleocin Prods. Liab. Litig.*, 450 F. Supp. 1168, 1170-71 (J.P.M.L. 1978); *In re Penn Cent. Sec. Litig.*, 322 F. Supp. 1021, 1023 & n.4 (J.P.M.L. 1971).

[10] With respect to recalls, Toyota Motor North America, Inc., which has headquarters in New York and Washington, D.C., acts as the liaison for the Toyota entities with the federal government.

headquarters and the anticipated evidence located in the Central District of California are additional factors strongly favoring transfer to that district. *In re Air Crash off Long Island, New York on July 17, 1996*, 965 F. Supp. 5 (S.D.N.Y. 1997); *In re Caesar's Palace Secs. Litig.*, 385 F. Supp. 1256, 1258 (J.P.M.L. 1974).

C. The Central District of California Is A Convenient Location For the Parties and Witnesses.

This Panel has repeatedly recognized the benefits of transferring cases to districts in large metropolitan areas. *See, e.g., In re Trasylol Prods. Liab. Litig.*, 545 F. Supp. 2d 1357, 1358 (J.P.M.L. 2008) (transferring to a district that "offers an accessible metropolitan location"). "[A] litigation of this scope will benefit from centralization in a major metropolitan center that is well served by major airlines, provides ample hotel and office accommodations, and offers a well-developed support system for legal services." *In re Worldcom, Inc. Sec. & ERISA Litig.*, 226 F. Supp. 2d 1352, 1355 (J.P.M.L. 2002). Los Angeles is such a city and is easily accessible to parties and witnesses nationwide.

Moreover, although there are a number of major U.S. cities that can be easily and quickly reached by air travel from anywhere within the United States, Los Angeles has the added benefit of facilitating transportation to and from Japan. In the Unintended Acceleration Cases, one of the other defendants is Toyota Motor Corporation ("TMC"), the ultimate parent company of all of the other named Toyota Defendants. TMC is the entity primarily responsible for the development and design of many of the vehicles at issue in the Unintended Acceleration Cases. In addition, TMC conducts much of Toyota's pre-production development testing and compliance testing for the vehicles involved in the recalls at issue. TMC is also responsible for making recall decisions. As a result, it is likely that relevant design, engineering and testing documents will be located in Japan. Additionally, business persons and engineers from TMC

will likely be witnesses in these cases and will need to travel back and forth to the United States throughout these consolidated pretrial proceedings. TMC employees are accustomed to traveling to Los Angeles because Toyota Motor Sales, USA, Inc. is headquartered there. Furthermore, there are significantly more direct flights between Japan and Los Angeles than between Japan and any of the other proposed transferee districts, and the flights between Japan and Los Angeles are also less expensive. Thus, although it may be equally burdensome for parties in Los Angeles to travel to Miami (or New Orleans or Lexington) as it is for parties in those districts to travel to Los Angles, the frequency and convenience of flights between Los Angeles and Japan weigh heavily in favor of transfer to the Central District of California.

D. The Central District of California Can Efficiently Handle Large Consolidated Proceedings.

In addition to being a convenient transferee district for parties and witnesses and being the district most familiar with the pending cases, the Central District of California also has the capacity to accommodate these proceedings. *See In re Columbia Univ. Patent Litig.*, 313 F. Supp. 2d 1383, 1385 (J.P.M.L. 2004) (deciding to "assign the litigation to a district i) in which half of the actions are pending; and ii) that is presently equipped with the resources likely required by the complex docket."). With a median time from filing to disposition of only 6.9 months, transferring these cases to the Central District of California will ensure that the consolidated pretrial proceedings are resolved in a timely and expeditious manner. *See* http://www.uscourts.gov/judbus2008/appendices/C05Sep08.pdf, attached as Exhibit 2.

E. Judge Matz Is Eminently Qualified to Preside Over These Actions.

The experience and knowledge of a particular judge is one of the factors that may be considered in determining the appropriate transferee forum. *See, e.g., In re Factor VIII or IX Concentrate Blood Prod. Liab. Litig.*, 853 F. Supp. 454, 455 (J.P.M.L. 1993); *In re Silicone Gel*

Breast Implants Prods. Liab. Litig., 793 F. Supp. 1098, 1101 (J.P.M.L. 1992); *In re Data Gen. Corp. Antitrust Litig.*, 470 F. Supp. 855, 859 (J.P.M.L. 1979); *In re Hawaiian Hotel Room Rate Antitrust Litig.*, 438 F. Supp. 935, 936 (J.P.M.L. 1977); *In re Sugar Indus. Antitrust Litig.*, 437 F. Supp. 1204, 1208 (J.P.M.L. 1975); *In re Ampicillin Antitrust Litig.*, 315 F. Supp. 317, 319 (J.P.M.L. 1970). Judge Matz, who is currently presiding over eleven of the Unintended Acceleration Cases, including the first filed action, is eminently qualified to preside over this litigation.

Judge Matz has served the Central District of California as a federal judge for over twelve years. During that time, he has presided over some of the Central District of California's most influential and publicized cases[11] and has handled numerous cases involving complex legal and factual issues,[12] including complex product liability actions. *See, e.g., In re Silicon Gel Breast Implants Products Liability Litigation*, 318 F. Supp. 2d 879 (C.D. Cal. 2004). Moreover, Judge Matz has successfully presided over consolidated litigation pursuant to a Transfer Order of this Panel in *In re Conseco Life Ins. Co. Cost of Ins. Litig.*, 323 F. Supp. 2d 1381, 1383 (J.P.M.L. 2004). Accordingly, Judge Matz has demonstrated the "time and experience to steer this complex litigation on a prudent course." *In re Vioxx Prods. Liab. Litig.*, 360 F. Supp. 2d 1352, 1354 (J.P.M.L. 2005); *see also In re Trasylol Prods. Liab. Litig.*, 545 F. Supp. 2d 1357, 1358 (J.P.M.L. 2008) (transferring to a district "where a constituent action is pending" and "assigning this litigation to a jurist who has the experience to steer this litigation on a prudent course."); *In*

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[11] *See, e.g., Bryant v. Oxxford Exp. Inc.*, 181 F. Supp. 2d 1045 (C.D. Cal. 2000) (enjoining a licensee from pursuing claim in New Jersey against NBA basketball star Kobe Bryant based on the first-to-file rule), *Burkow v. City of Los Angeles*, 119 F. Supp. 2d 1076 (C.D. 2000) (enjoining on First Amendment grounds enforcement of a city ordinance making it criminal to display for sale signs), and *Coalition of Clergy v. Bush*, 189 F. Supp. 2d 1036 (C.D. Cal. 2002), *aff'd in part and rev'd in part*, 310 F.3d 1153 (9th Cir. 2002) (dismissing lawsuit brought on behalf of detainees held in Guantanamo Bay due to lack of standing).

[12] *See, e.g., Directors Guild of America v. Harmony Pictures, Inc.*, 32 F. Supp. 2d 1184 (C.D. Cal. 1998) (holding in case of first impression that creditor's endorsement and cashing of check effectuates an accord and satisfaction that discharges debtor from further liability); and *Castaic Lake Water Agency v. Whittake Corp.*, 272 F. Supp. 2d 1053 (C.D. Cal. 2003) (holding that passive migration of a contaminant constitutes a release under CERCLA).

re Commerical Money Ctr., Inc. Equip. Lease Litig., 229 F. Supp. 2d 1379, 1380 (J.P.M.L. 2002) (transferring to an "available transferee judge with prior, successful experience in the management of Section 1407 litigation").

In addition to Judge Matz's experience handling complex cases, Judge Matz is perhaps the judge most familiar with these cases. As an initial matter, eleven of the cases filed in the Central District have already been consolidated before Judge Matz and Toyota anticipates that the rest of the California cases will likewise be transferred to Judge Matz. Accordingly, Judge Matz is currently presiding over more Unintended Acceleration Cases than any other judge in the Central District of California or elsewhere. In addition to the number of Unintended Acceleration Cases already before Judge Matz, two of the most procedurally advanced cases are assigned to him: *Choi v. Toyota Motor Corp.*, No. 2:09-cv-08143, and *Kmetz v. Toyota Motor Sales, USA, Inc.*, 2:09-cv-08478. Toyota has filed motions to dismiss in both *Choi* and *Kmetz*. Additionally, plaintiffs in the *Choi* case have also filed motions and accompanying briefs for preliminary injunctive relief and for class certification. As noted above, Judge Matz will hear oral argument on all of these pending motions in March. The fact that Judge Matz has had the opportunity to familiarize himself with the factual and legal issues of these cases makes him an ideal transferee judge. *See In re Land Rover LR3 Tire Wear Prods. Liab. Litig.*, 598 F. Supp. 2d 1384, 1386 (J.P.M.L. 2009) ("[S]ubstantial benefits arise by assigning the litigation to [a judge] who has gained familiarity with this litigation by presiding over some of the actions."); *In re Mirapex Prods. Liab. Litig.*, 493 F. Supp. 2d 1376 (J.P.M.L. 2007) (transferring to the judge that had the opportunity to become familiar with the litigation). Moreover, Judge Matz is not currently handling any MDL actions. *See In re WellPoint, Inc., Out-of-Network UCR Rates*

Litig., 652 F. Supp. 2d 1375, 1376 (J.P.M.L. 2009) (transferring cases to "an experienced MDL transferee judge who does not currently have an MDL assignment.").

IV. The Central District of California Is a More Appropriate Venue Than the Other Requested Transferee Courts.

Eleven individual plaintiffs in three separate filings have requested transfer to the Central District of California.[13] Other plaintiffs, however, have requested transfer to the Eastern District of Louisiana, the Southern District of Florida, the Eastern District of Kentucky, and the Southern District of West Virginia.[14] The Central District of California is a better venue for these cases for several reasons.

First, as discussed above, there are significantly more Unintended Acceleration Cases pending in the Central District of California and those cases are procedurally further along. Of the twenty-one cases that have been filed in the Central District of California, Toyota has been served in fourteen cases and has filed dispositive motions in four of them. By contrast, in the Eastern District of Louisiana, three cases have been filed and served (all by the same law firms and all containing nearly identical allegations),[15] but Toyota's responses to those complaints are not yet due. Toyota is aware of three cases that have been filed in the Southern District of

[13] *See supra* at note 2.

[14] As discussed in note 2 *supra*, Plaintiff Colaberdino filed a motion seeking transfer to the District of New Jersey, but that motion has since been withdrawn. Additionally, Plaintiff Sander filed a response seeking transfer to the Southern District of New York, Plaintiff Mitchell filed a response seeking transfer to Southern District of Mississippi, Plaintiff Bilthorn filed a response seeking transfer to the District of Puerto Rico, and Plaintiff Roberts seeks transfer to the district of South Carolina. Transfer to the Central District of California, however, would be more appropriate than any of these. The Southern District of New York, Southern District of Mississippi, District of Puerto Rico, and District of South Carolina do not have any of the qualities that the Panel typically considers in making a venue decision. Indeed, there are very few cases pending in these jurisdictions (one in the Southern District of Mississippi, one in the District of Puerto Rico, two in the District of South Carolina, and three in the Southern District of New York), and all of the cases pending in these districts are in their infancy (Toyota has only been served in one of these six cases). Additionally, it is highly unlikely that any significant quantity of documents or witnesses would be located in any of these four jurisdictions. Moreover, South Carolina has no connection with the Toyota Defendants' headquarters or operations, and the lack of direct flights between Los Angeles and Spartanburg will be burdensome for many plaintiffs and defendants in this case, particularly witnesses traveling from Japan. These responses appear merely to be attempts by Plaintiffs' counsel to secure transfer to a district that will be convenient for them at the expense of the multitude of other parties involved in these cases.

[15] *Weimer v. Toyota North America, Inc.*, No. 2:10-cv-00219; *Maillho v. Toyota North America, Inc.*, No. 2:10-cv-00279, and *Brock v. Toyota North America, Inc.*, No. 2:10-cv-00281.

Florida.[16] Only one of those complaints, however, has been served on Toyota,[17] and Toyota's response to that complaint is not yet due. In the Eastern District of Kentucky, Toyota is aware of four cases that have been filed. One of these cases has yet to be served on Toyota.[18] Toyota was not served with the other three eastern District of Kentucky cases until this week.[19] Finally, Toyota is aware of only one case pending in the Southern District of West Virginia, but it is not as far along as some of the California cases.[20] As a result, the judges assigned to Unintended Acceleration Cases in the Central District of California have more familiarity with these cases than the judges proposed by Plaintiffs Weimer, Gellman, Viviano, or Graves.

Second, the Central District of California has a much stronger connection to the underlying cases than any of the other proposed transferee districts. Toyota Motor Sales, USA, Inc. ("TMS"), Toyota Motor Manufacturing, California, Inc., and New United Motor Manufacturing, Inc., all defendants in these cases, are all headquartered in California. With respect to the other proposed transferee districts, Toyota Motor Engineering & Manufacturing North America, Inc. ("TEMA") and Toyota Motor Manufacturing, Kentucky, Inc. ("TMMK") are both Kentucky corporations, but TEMA is named as a defendant in just over half of the actions that have been filed, and TMMK has only been named in seven of the currently pending seventy-seven lawsuits. Similarly, Toyota Manufacturing, West Virginia, Inc. ("TMMWV"), which is headquartered in West Virginia, has only been named as a defendant in a single case brought by the plaintiffs seeking transfer to West Virginia. By contrast, TMS has been named in

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[16] *Gellman v. Toyota Motor Sales U.S.A., Inc.*, No. 1:10-cv-20006, *Heilbrunn v. Toyota Motor Corporation*, No. 9:10-cv-80208, and *Rivas-Vigil v. Toyota Motor North America, Inc.*, No. 0:10-cv-60183.

[17] *Gellman v. Toyota Motor Sales U.S.A., Inc.*, No. 1:10-cv-20006.

[18] *Viviano v. Toyota Motor Engineering and Manufacturing North America, Inc.*, No. 2:10-cv-00024.

[19] *Poynter v. Toyota Motor North America Inc.*, No. 2:10-cv-00021; *Miller v. Toyota Motor Sales U.S.A., Inc.*, No. 2:10-cv-00031; and *Leaverton v. Toyota Motor Engineering and Manufacturing North America, Inc.*, No. 2:10-cv-00032.

[20] *Graves v. Toyota Motor Manufacturing, West Virginia, Inc.*, No. 2:09-cv-01247.

75 out of 77 cases and TMC (the Japanese parent company of all of the Toyota Defendants) has been named in 48 out of 77 cases.

In addition, despite the fact that certain Toyota manufacturing facilities (and therefore certain manufacturing subsidiaries) are located in Kentucky and West Virginia, a majority of the relevant documents and witnesses are likely to be located outside of those states. The Unintended Acceleration Cases generally involve allegations of design defects. Both TMMK and TMMWV, however, are primarily involved with manufacturing (as opposed to design) and will likely have fewer documents relating design and/or testing. In addition, TMMWV manufactures components not directly relevant to these lawsuits. Likewise, many of TEMA's relevant documents are likely to be located outside of Kentucky.

As explained above, TMC is the Toyota entity primarily responsible for the design and testing of many of the vehicles involved in this litigation. Though TEMA has design responsibilities for certain Toyota models, it does not have responsibility for many of the vehicles that are subject to the recalls. And with respect to those models for which TEMA has design responsibility, most of TEMA's design documents are likely to be located outside of Kentucky because TEMA's research and development operations are located outside of Kentucky. Moreover, there is an additional nexus to California, in that TEMA maintains a quality control group in its Los Angeles, California office, where other potentially relevant documents are located. By contrast, TEMA's Erlanger, Kentucky office is primarily responsible for procurement, quality control, and administrative issues. Therefore, although some documents or witnesses may be located in Kentucky, a substantial portion of TEMA's relevant documents, particularly those relating to design and testing, are likely to be found in TEMA offices outside of Kentucky. Accordingly, Toyota anticipates that a significant quantity of the

relevant documents in these cases will be located in Los Angeles, with a considerable number of documents and witnesses also potentially located in Japan. In short, the Central District of California is the district with the most significant connection to this litigation in terms of the location of potential evidence.

The Central District of California is also significantly more convenient than the Eastern District of Kentucky or the Southern District of West Virginia for parties and witnesses, particularly Defendant TMC which is located in Japan. This is particularly true for the Southern District of West Virginia, because there are no direct flights from Charleston, West Virginia to California. Given the number of California-based plaintiffs and defendants, as well TMC's location in Japan, the lack of direct flights between Los Angeles and these districts will be inconvenient for many of the parties involved.

Finally, there are significantly more active judges in the Central District of California than in any of the other proposed transferee districts, which will assist in ensuring that the judge assigned to these cases is able to devote sufficient time to case management. The Central District of California has twenty-five active judges, and only eleven currently pending Section 1407 proceedings. The Eastern District of Louisiana, by contrast, has only twelve active judges, but six pending MDL actions. Although the Southern District of Florida has seventeen active judges, it also has ten pending MDLs. Accordingly, the Central District of California is a more appropriate venue. *See In re Teflon Prods. Liab. Litig.*, 416 F. Supp. 2d 1364 (J.P.M.L. 2006) (taking into consideration other MDL dockets already pending in that jurisdiction); *In re Serzone Prods. Liab. Litig.*, 217 F. Supp. 2d 1372, 1374 (J.P.M.L. 2002) (transferring to a district "that is not currently overtaxed with other multidistrict dockets"); *In re Bayol Prods. Liab. Litig.*, 180 F. Supp. 2d 1378 (J.P.M.L. 2001) (same). Additionally, although there are fewer MDL actions

currently pending in the Eastern District of Kentucky or the Southern District of West Virginia, that is not necessarily an indication that this litigation would move more quickly in those districts than in the Central District of California. In fact, the median time from filing to disposition in the Central District of California is only 6.9 months compared to 9.4 months in the Eastern District of Kentucky and 9.2 months in the Southern District of West Virginia. Thus, there is no basis to conclude that an experienced judge in the Central District of California cannot oversee this litigation in an effective and efficient manner.

V. Conclusion

Pursuant to Section 1407, centralization of the Unintended Acceleration Cases is appropriate because these cases raise similar factual and legal issues, and because consolidation will result in convenience to the parties and increased judicial efficiency and avoid duplicative discovery and inconsistent pretrial rulings.

The Toyota Defendants join in the request that this Panel transfer these cases to the Central District of California for coordinated pretrial proceedings before the Honorable Judge Matz. On balance, the Central District of California will be the most convenient for all parties and is well equipped to handle litigation of this magnitude. Moreover, the Central District of California is the district where many of the defendants are headquartered and where a significant number of documents and witnesses will likely be located. Furthermore, because significantly more Unintended Acceleration Cases have been filed in the Central District of California than in any other district and because these cases have progressed further than the cases in the other proposed transferee districts, the judges in the Central District of California, and in particular Judge Matz, have had the greatest opportunity to familiarize themselves with these cases.

Respectfully submitted, this 26th day of February.

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EXHIBIT 1

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

IN RE: TOYOTA MOTOR CORP. DEFECTIVE GAS PEDAL PRODUCTS LIABILITY LITIGATION
MDL DOCKET NO. 2151

SCHEDULE A: All Unintended Acceleration Cases[1]

No.	Full Case Name	Civ. Action No.	District	Division	Judge
1.	Joseph Hauter and Frank Palomares, on behalf of themselves and all others similarly situated, v. Toyota Motor Sales, U.S.A., Inc., Toyota Motor Corporation, and Doe Defendants 1-10	8:10-cv-00105	C.D. Cal.	Western (Los Angeles)	Matz
2.	T. Leigh Beard, Catherine Nguyen, and Valina Salvador, in their individual capacities, and on behalf of all others similarly situated, v. Toyota Motor Corporation and Toyota Motor Sales, U.S.A., Inc.	8:10-cv-00183	C.D. Cal.	Southern (Santa Anna)	Selna
3.	Adilia Aviles on behalf of herself and all others similarly situated, v. Toyota Motor Corporation and Toyota Motor Sales U.S.A., Inc.	2:10-cv-00706	C.D. Cal.	Western (Los Angeles)	Matz
4.	Roz Schwartz on behalf of herself and all others similarly situated, v. Toyota Motor Sales, U.S.A., Inc., Toyota Motor Corp., and Doe Defendants 1-10	2:10-cv-00710	C.D. Cal.	Western (Los Angeles)	Matz

[1] The Toyota Defendants have not been served in many of the cases identified in this Schedule A. Toyota's identification of these cases for purposes of transfer and consolidation pursuant to 28 U.S.C. § 1407 does not constitute an appearance by Toyota or imply that Toyota has waived service in any of these constituent cases.

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SCHEDULE A: All Unintended Acceleration Cases

No.	Full Case Name	Civ. Action No.	District	Division	Judge
5.	Matthew Marr, Luis Fernandez, Sylvia Fernandez, individually and on behalf of all others similarly situated v. Toyota Motor Sales, U.S.A., Inc., and Toyota Motor Corp.	2:10-cv-00799	C.D. Cal.	Western (Los Angeles)	Matz
6.	Ani Gazaryan, an individual; Svetlana Abajyan, an individual; Elza Dzhivalegy, and individual; Tamara Harutyunyan, an individual; Nerses Mazmanyan, an individual; Hrayr Okkasian an individual, Christine Aznavour, an individual; Akop Galadzhyan; and individual; Plaintiffs, on Behalf of Themselves and All Others Similarly Situated as Well as on Behalf of the General Public and Acting in the Public Interest, v. Toyota Motor sales U.S.A., Inc., a California corporation; Toyota Motor Engineering & Manufacturing North America, Inc. a foreign corporation; and Does 1-10: Inclusive.	2:10-cv-00849	C.D. Cal.	Western (Los Angeles)	Matz
7.	Peter Wisner v. Toyota Motor Corporation and Toyota Motor Sales, U.S.A., Inc.	2:10-cv-00942	C.D. Cal.	Western (Los Angeles)	Otero
8.	Elaine Byrnes, individually and on behalf of all others similarly situated v. Toyota Motor North America Inc. a California corporation; Toyota Motor Engineering & Manufacturing North America, Inc. a Kentucky corporation; Toyota Motor Sales, U.S.A., Inc., a California corporation; Toyota Motor Corporation, a Japanese corporation	2:10-cv-00947	C.D. Cal.	Western (Los Angeles)	Matz

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SCHEDULE A: All Unintended Acceleration Cases

No.	Full Case Name	Civ. Action No.	District	Division	Judge
9.	Lacey Laudicina and Kevin Funez, individually and on behalf of all other similarly situated, v. Toyota Motor Corporation and Toyota Motor Sales, U.S.A., Inc.	2:10-cv-01030	C.D. Cal.	Western (Los Angeles)	Marshall
10.	Rhonda Talbot, on behalf of herself and all other similarly situated v. Toyota Motor North America, Inc., Toyota Motor Engineering & manufacturing North America, Inc., and Toyota Motor Sales, U.S.A., Inc.	2:10-cv-01039	C.D. Cal.	Western (Los Angeles)	Matz
11.	Jacquelyn Donoghue, individually and on behalf of the Estate of John Donoghue, deceased, v. Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Manufacturing California, Inc., Toyota Motor Sales, U.S.A., Inc., Toyota Motor Corporation, CTS Corporation, and Does 1 through 10	2:10-cv-01057	C.D. Cal.	Western (Los Angeles)	Otero
12.	Max L. Lieberman, and Phyllis C. Lieberman, individually and on behalf of all others similarly situated, v. Toyota Motor Corporation and Toyota Motor Sales, U.S.A., Inc.	2:10-cv-01073	C.D. Cal.	Western (Los Angeles)	Klausner

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SCHEDULE A: All Unintended Acceleration Cases

No.	Full Case Name	Civ. Action No.	District	Division	Judge
13.	Teresa B. Myers, individually and on behalf of the Estate of Steffan David Myers, deceased, and William C. Myers, v. Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Manufacturing, California, Inc., Toyota Motor Sales, U.S.A. Inc., Toyota Motor Corporation, CTS Corporation, and Does 1 through 10 inclusive	2:10-cv-01078	C.D. Cal.	Western (Los Angeles)	Matz
14.	Karen Bush Gertz v. Toyota Motor Corporation and Toyota Motor Sales, U.S.A., Inc.	2:10-cv-01089	C.D. Cal.	Southern (Santa Anna)	Gee
15.	Kerri Madden, on behalf of herself and all others similarly situated, v. Toyota Motor Sales, U.S.A., Inc., Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Manufacturing, California, Inc., Toyota Motor Corporation, and Does 1 through 10	2:10-cv-01094	C.D. Cal.	Western (Los Angeles)	Feess
16.	Katy Boyask, on behalf of herself and all others similarly situated, v. Toyota Motor Sales, U.S.A., Inc., Toyota Motor Corp., and Doe Defendants 1-10	2:10-cv-01153	C.D. Cal.	Western (Los Angeles)	Wu
17.	Stuart Grant, an individual, v. Toyota Motor Sales, U.S.A., Inc., a CA Corp.; and Does One through Twenty	2:10-cv-01234	C.D. Cal.	Western (Los Angeles)	Matz

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SCHEDULE A: All Unintended Acceleration Cases

No.	Full Case Name	Civ. Action No.	District	Division	Judge
18.	Seong Bae Choi, Chris Chan Park, Sandra Reech, Donald Pritchett, Un Jin Choi, and Mary Ann Parker, as individuals, and on behalf of themselves and all others similarly situated, v. Toyota Motor Corp., Toyota Motor Sales, U.S.A., Inc., and Does 1 through 10	2:09-cv-08143	C.D. Cal.	Western (Los Angeles)	Matz
19.	Eric Kmetz, and Joe Morris, on behalf of themselves and all others similarly situated, v. Toyota Motor Sales, U.S.A., Inc., Toyota Motor Corporation, and Doe Defendants 1-10	2:09-cv-08478	C.D. Cal.	Western (Los Angeles)	Matz
20.	Heather A. Lane, individually and on behalf of all others similarly situated, v. Toyota Motor Sales, U.S.A., Inc. a California corporation	2:09-cv-09158	C.D. Cal.	Western (Los Angeles)	Feess
21.	Dale Baldisseri, on behalf of himself and all others similarly situated, v. Toyota Motor Sales, U.S.A., Inc., Toyota Motor North America, Inc., Toyota Motor Manufacturing, California, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., and Does 1 through 20	2:09-cv-09386	C.D. Cal.	Western (Los Angeles)	Feess

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TOY-RQ-05E-00009532

SCHEDULE A: All Unintended Acceleration Cases

No.	Full Case Name	Civ. Action No.	District	Division	Judge
22.	Ryan Scharrel, Susan Kruschke, and Enrique Moreno, v. Toyota Motor North America, Inc, a California corporation, Toyota Motor Engineering & Manufacturing North America, Inc., a Kentucky corporation, and Toyota Motor Sales, U.S.A., Inc., a California corporation	1:10-cv-00227	D. Colo.	Denver	Brimmer
23.	Nimishabahen Patel, individually, and on behalf of all persons similarly situated, v. Toyota Motor North America, Inc., a foreign corporation, Toyota Motor Sales, U.S.A., Inc., a foreign corporation, and General Motors LLC, a foreign corporation.	3:10-cv-00210	D. Conn.	New Haven	Underhill
24.	S. Firgon, on behalf of himself and all others similarly situated, v. Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Inc., Toyota Motor Engineering & Manufacturing North America, Inc., and Toyota Motor North America, Inc.	2:10-cv-02075	D. Kan.	Kansas City	Murguia
25.	Darshak Shah, v. Toyota Motor North America, Inc., a CA Corp.; Toyota Motor Sales, U.S.A., Inc., a CA Corp.; and General Motors, LLC	1:10-cv-10263	D. Mass.	Boston	Tauro
26.	Don Gureski and Carol Gureski, v. Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., and Toyota Motor Sales, U.S.A., Inc.	1:10-cv-00031	D. Wyo.	Casper	Johnson

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TOY-RQ-05E-00009533

SCHEDULE A: All Unintended Acceleration Cases

No.	Full Case Name	Civ. Action No.	District	Division	Judge
27.	Margaret Gonzalez, on her own behalf and on behalf of all others similarly situated v. Toyota Motor Sales, U.S.A., Inc.; Toyota Motor North America, Inc.; and Toyota Motor Engineering & Manufacturing North America, Inc.	3:10-cv-00595	D.N.J.	Trenton	Cooper
28.	Maureen Colaberdino, on behalf of herself and all others similarly situated, v. Toyota Motor North America, Inc., Toyota Motor Sales, U.S.A., Inc., and Toyota Motor Corporation	3:10-cv-00672	D.N.J.	Trenton	Cooper
29.	Cheryl Abken and Sandra Valdez, individually and on behalf of all persons similarly situated, v. Toyota motor North America, Inc., Toyota Motor Sales, U.S.A., Inc., and General Motors LLC	3:10-cv-00763	D.N.J.	Trenton	Cooper
30.	Francine Goukas, on behalf of herself and all others similarly situated, v. Toyota Motor Corporation, Toyota Motor Engineering & Manufacturing, North America, Inc., and Toyota Motor Sales, U.S.A., Inc.	3:10-cv-00778	D.N.J.	Trenton	Cooper

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SCHEDULE A: All Unintended Acceleration Cases

No.	Full Case Name	Civ. Action No.	District	Division	Judge
31.	Zahira Crespo-Bithorn and Milagros Rodriguez Cruz et al., on behalf of themselves and all others similarly situated v. Toyota Motor North America, Inc.; Toyota Motor Engineering & Manufacturing North America, Inc.; Toyota Motor Sales, U.S.A., Inc. and Toyota De Puerto Rico, Corp	3:10-cv-01083	D.P.R.	San Juan	Besosa
32.	Linda Alford Wooten, v. Toyota Motor North America Inc., a California corporation; Toyota Motor Engineering & Manufacturing North America, Inc., a Kentucky corporation; Toyota Motor Manufacturing Kentucky, Inc., a Kentucky corporation; Toyota Motor Sales U.S.A., Inc., a California corporation; Toyota Motor Corporation, a Japanese corporation; and Denso Manufacturing Tennessee, Inc., a Tennessee corporation	3:10-cv-00229	D.S.C.	Columbia	Perry, Jr.
33.	Dale Roberts, on behalf of himself and all others similarly situated, v. Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Inc., and does 1 through 10.	7:10-cv-00281	D.S.C.	Spartanburg	Harwell
34.	Robyn Horn, class representative, on behalf of herself and all others similarly situated, v. Toyota Motor Sales U.S.A., Inc., a California corporation, Toyota Motor Engineering & Manufacturing, North America, Inc., a foreign corporation, Toyota Motor Corporation, a foreign corporation, and Does 1-10.	4:10-cv-00090	E.D. Ark.	Little Rock	Holmes

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TOY-RQ-05E-00009535

SCHEDULE A: All Unintended Acceleration Cases

No.	Full Case Name	Civ. Action No.	District	Division	Judge
35.	Julie Rainwater, individually and on behalf of all others similarly situated, v. Toyota Motor Sales, U.S.A., Inc.	4:10-cv-00116	E.D. Ark.	Western	Wilson
36.	Al and Jo Anna Viviano, Paul Turner, Kyle Briggs, Shalini Ignatenkov, Charles and Karen Gibbens, Lori S. and Thomas A. Trahan, Erica Thomas, Holly Boyd, Connie and Thomas Kamphaus, Brena and Lee Shonfield, and Alan L. Weller, v. Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Manufacturing Kentucky, Inc., Toyota Motor Sales, U.S.A., Inc., and Toyota Lease Trust.	2:10-cv-00024	E.D. Ky	Northern (Covington)	Bertlesman
37.	Debra and Ron Poynter, Tina and Fran Preedom, Krystal Eggerding, Angela Boles, Laurie Chambers, Amy Smith Roth, and Lucero and Mark Davidson, v. Toyota Motor North America Inc., a California corporation; Toyota Motor Sales U.S.A., Inc., a California corporation; Toyota Motor Corporation, a Japanese corporation; Toyota Motor Engineering & Manufacturing North America, Inc., a Kentucky corporation; and Toyota Motor Manufacturing Kentucky, Inc., a Kentucky corporation.	2:10-cv-00021	E.D. Ky.	Northern (Covington)	Bertelsman

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TOY-RQ-05E-00009536

SCHEDULE A: All Unintended Acceleration Cases

No.	Full Case Name	Civ. Action No.	District	Division	Judge
38.	Michael & Cathy Miller, Steve Clemons, Sonya Gray, Wayne & Betty Tomlin, Patrick Kwiatkowski, Edward & Joan Skillman, and Melissa Arnzen Moeddel, individually and on behalf of others similarly situated, v. Toyota Motor Sales, U.S.A., Inc., Toyota Motor Corporation, Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Manufacturing, Kentucky, Inc., and Toyota Motor Manufacturing, Northern Kentucky, Inc.	2:10-cv-00031	E.D. Ky.	Northern (Covington)	Bertelsman
39.	Christopher L. Leaverton, individually and on behalf of all others similarly situated, v. Toyota Motor Engineering & Manufacturing North America, Inc. and Toyota Motor Sales, U.S.A., Inc.	2:10-cv-00032	E.D. Ky.	Northern (Covington)	Bertelsman
40.	Daniel Weimer, Jr., Colby Wenck, and Ann Cavalier, all individually and on behalf of all other similarly situated Plaintiffs v. Toyota Motor North America, Inc.; Toyota Motor Engineering & Manufacturing North America, Inc.; and Toyota Motor Sales, U.S.A., Inc.	2:10-cv-00219	E.D. La.	New Orleans	Lemelle
41.	Amanda R. Maillho, v. Toyota Motor North America, Inc.; Toyota Motor Engineering & Manufacturing North America, Inc.; and Toyota Motor Sales, U.S.A., Inc.	2:10-cv-00279	E.D. La.	New Orleans	Lemmon

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TOY-RQ-05E-00009537

SCHEDULE A: All Unintended Acceleration Cases

No.	Full Case Name	Civ. Action No.	District	Division	Judge
42.	Gary T. Brock v. Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., and Toyota Motor Sales, U.S.A., Inc.	2:10-cv-00281	E.D. La.	New Orleans	Lemelle
43.	Deborah Baumkel, on behalf of herself and all others situated, v. Toyota Motor North America, Inc., a foreign corporation and Toyota Motor Sales, U.S.A., Inc., a foreign corporation.	2:10-cv-10525	E.D. Mich.	Detroit	Edmunds
44.	Diane Gumble, on behalf of herself and all others similarly situated, v. Toyota Motor Corporation, Toyota Motor Engineering & Manufacturing North America, Inc. and Toyota Motor Sales U.S.A., Inc.	5:10-cv-00521	E.D. Pa.	Allentown	Golden
45.	Frederick Greisiger, individually and on behalf of all persons similarly situated, v. Toyota Motor North America, Inc., a foreign corporation, Toyota Motor Sales, U.S.A., Inc., a foreign corporation, and General Motors, LLC, a foreign corporation.	5:10-cv-00554	E.D. Pa.	Allentown	Slomsky
46.	William Fitts and Phyllis Fitts, individually; Billy C. Fitts and Freida Fitts individually v. Toyota Motor Corporation	2:10-cv-00052	E.D. Tex.	Marshall	Ward

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TOY-RQ-05E-00009538

SCHEDULE A: All Unintended Acceleration Cases

No.	Full Case Name	Civ. Action No.	District	Division	Judge
47.	Frank Whiddon, as an individual and on behalf of all others similarly situated, v. Toyota Motor Corporation, a foreign corporation, and Toyota Motor Sales, USA, Inc., a California corporation	1:10-cv-00080	E.D. Tex.	Beaumont	Clark
48.	Kevin P. Fogarty, Barbara Jackson, and Alex Farrugia, individually and on behalf of all others similarly situated v. Toyota Motor North America, Inc. a California corporation; Toyota Motor Engineering & Manufacturing North America, Inc., a Kentucky corporation, Toyota Motor Sales U.S.A., Inc., a California corporation, and Toyota Motor Corporation, a Japanese corporation	1:10-cv-00542	E.D.N.Y	Brooklyn	Gleeson
49.	Peter Phaneuf, on his own behalf and on behalf of all others similarly situated, v. Toyota Motor Sales, U.S.A., Inc.; Toyota Motor North America, Inc.; and Toyota Motor Engineering & Manufacturing North America, Inc.	2:10-cv-00487	E.D.N.Y.	Central Islip	Bianco
50.	John Harding, individually and on behalf of all others similarly situated, v. Toyota Motor Corporation, a foreign corporation, and Toyota Motor Sales, U.S.A., Inc., a California corporation.	2:10-cv-00100	M.D. Ala.	Montgomery	Fuller
51.	Michelle Lynch on behalf of herself and all others similarly situated, v. Toyota Motor Corporation and Toyota Motor Sales U.S.A., Inc.	8:10-cv-00326	M.D. Fla.	Tampa	Merryday

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SCHEDULE A: All Unintended Acceleration Cases

No.	Full Case Name	Civ. Action No.	District	Division	Judge
52.	Renita Cipriani, as an individual and on behalf of all others similarly situated, v. Toyota Motor Corporation, a Japanese Corp.; and Toyota Motor Sales, U.S.A., Inc., a CA Corp.	8:10-cv-00427	M.D. Fla.	Tampa	Bucklew
53.	Viviane Stoller, individually and on behalf of a class of similarly situated citizens in Georgia, v. Toyota Motor Corp. and Toyota Motor Sales, USA, Inc.	4:10-cv-00024	M.D. Ga.	Columbus	Land
54.	Roshawn Donahue, individually and on behalf of all other similarly situated Plaintiffs, v. Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing, North America, Inc., and Toyota Motor Sales, U.S.A., Inc.	3:10-cv-00108	M.D. La.	Baton Rouge	Parker
55.	Justin Johnson, on behalf of himself and all others similarly situated, v. Toyota Motor Corporation and Toyota Motor Sales U.S.A., Inc.	5:10-cv-00026	N.D. Fla.	Panama City	Smoak
56.	Jim Heidenreich, individually, and on behalf of all persons similarly situated, v. Toyota Motor North America, Inc., a foreign corporation, and Toyota Motor Sales, U.S.A., Inc., a foreign corporation	4:10-cv-00035	N.D. Fla.	Tallahassee	Hinkle

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SCHEDULE A: All Unintended Acceleration Cases

No.	Full Case Name	Civ. Action No.	District	Division	Judge
57.	Christina Ochs, on behalf of herself and all others similarly situated, v. Toyota Motor Corporation, and Toyota Motor Sales, U.S.A., Inc.	1:10-cv-00918	N.D. Ill.	Chicago	Coar
58.	Belva Simmons, as an individual and on behalf of all others similarly situated, v. Toyota Motor Corporation, a foreign corporation, Toyota Motor Sales, USA, Inc., a California corporation, and Toyota North America, Inc., a California corporation.	3:10-cv-00009	N.D. Miss.	Western	Mills
59.	Troy Menssen, on behalf of himself and all other similarly situated individuals v. Toyota Motor Sales, U.S.A., Inc., Toyota Motor Engineering & Manufacturing North America, Inc., and Toyota Motor Corporation	1:10-cv-00260	N.D. Ohio	Cleveland	Oliver
60.	Daniel D. Lee, individually and on behalf of others similarly situated v. Toyota Motor North America, Inc., a California corporation; Toyota Motor Engineering & Manufacturing North America, Inc., a Kentucky corporation; Toyota Motor Manufacturing Kentucky, Inc., a Kentucky corporation; Toyota Motor Sales U.S.A., Inc., a California corporation; New United Motor Manufacturing, Inc., a California Joint Venture, and Toyota Motor Corporation, a Japanese corporation.	3:10-cv-00280	N.D. Ohio	Toledo	Carr

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SCHEDULE A: All Unintended Acceleration Cases

No.	Full Case Name	Civ. Action No.	District	Division	Judge
61.	Roxanne Early and Edward Ransom, individually and as legal heirs to the estate of Sharon Ransom, deceased, v. Toyota Motor Corporation, Toyota Motor Engineering & Manufacturing North America, Inc., and Toyota Motor Manufacturing, Kentucky, Inc.	3:10-cv-00332	N.D. Tex	Dallas	Lindsay
62.	James R. Haustein, v. Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Inc., and Toyota Motor Engineering & Manufacturing, North America, Inc.	5:10-cv-00178	N.D.N.Y.	Syracuse	McCurn
63.	Humberto Rivas-Vigil, individually and on behalf of all others similarly situated, v. Toyota Motor North America, Inc.; Toyota Motor Engineering & Manufacturing North America, Inc.; and Toyota Motor Sales, U.S.A., Inc.	0:10-cv-01183	S.D. Fla.	Fort Lauderdale	Cohn
64.	Jonathan Gellman, an individual, on behalf of himself and all others similarly situated, v. Toyota Motor Sales, USA, Inc., a California corporation	1:10-cv-20006	S.D. Fla.	Miami	Cooke
65.	Arlene S. Heilbrunn, as an individual and on behalf of all others similarly situated, v. Toyota Motor Corporation, a foreign corporation, and Toyota Motor Sales, USA, Inc., a California corporation	9:10-cv-80208	S.D. Fla.	Miami	Zloch

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SCHEDULE A: All Unintended Acceleration Cases

No.	Full Case Name	Civ. Action No.	District	Division	Judge
66.	Judith M. Enderle, on behalf of herself all others similarly situated v. Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., and Toyota Motor Sales, U.S.A., Inc.	1:10-cv-00142	S.D. Ind.	Indianapolis	Barker
67.	Christine Mitchell, v. Toyota Motor North America, Inc.; Toyota Motor Engineering & Manufacturing, North America, Inc.; and Toyota Motor Sales, U.S.A., Inc.	3:10-cv-00104	S.D. Miss.	Jackson	Wingate
68.	Rebecca S. Shumaker v. Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Sales, U.S.A., Inc., and Toyota Motor Corporation	3:10-cv-00061	S.D. Ohio	Western (Dayton)	Rice
69.	Sylvia Pena and Albert A. Pena, III, as individuals and on behalf of themselves and all others similarly situated, v. Toyota Motor Corporation and Toyota Motor Sales, U.S.A., Inc.	2:10-cv-00037	S.D. Tex.	Corpus Christi	Rainey
70.	Thomas Davis, on behalf of himself and all other similarly situated individuals, v. Toyota Motor Sales, U.S.A., Inc., and Toyota Motor Corporation	1:10-cv-00900	S.D.N.Y.	Foley Square	Buchwald

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SCHEDULE A: All Unintended Acceleration Cases

No.	Full Case Name	Civ. Action No.	District	Division	Judge
71.	Barbara Iglesias, Individually and On Behalf Of All Others Similarly Situated, v. Toyota Motor Corporation, a Japanese Corp.; Toyota Motor Sales, U.S.A., Inc., a CA Corp.; Toyota Motor North America, Inc., a CA Corp.; Toyota Motor Engineering & Manufacturing, N.A., Inc., a Kentucky Corp.; Lexus; Toyota Motor Manufacturing, Indiana, Inc.; Toyota Motor Manufacturing, Texas, Inc.; Toyota Motor Manufacturing, Kentucky, Inc.; New United Motor Manufacturing, Inc., Subaru of Indiana Automotive, Inc.; CTS Corporation and Doe Defendants 1 through 10	1:10-cv-1014	S.D.N.Y.	Foley Square	Castel
72.	Fred Sander v. Toyota Motor Sales, U.S.A., Inc., Toyota North America Inc., and Toyota Engineering & Manufacturing North America, Inc.	1:10-cv-01111	S.D.N.Y.	Foley Square	Hellerstein
73.	Michael Graves and Michael C. Graves, and Jeff Mullins, individually, and on behalf of all others similarly situated, v. Toyota Motor Manufacturing, West Virginia, Inc., a West Virginia Corporation; Toyota Motor North America, Inc., a California corporation; Toyota Motor Engineering & Manufacturing North America, Inc., a Kentucky corporation; Toyota Motor Sales U.S.A., Inc., a California corporation; and Toyota Motor Corporation, a Japanese corporation.	2:09-cv-01247	S.D.W. Va.	Charleston	Goodwin

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SCHEDULE A: All Unintended Acceleration Cases

No.	Full Case Name	Civ. Action No.	District	Division	Judge
74.	Mark Adkinson, individually and on behalf of all others similarly situated, v. Toyota Motor Sales, U.S.A., Inc.	6:10-cv-06013	W.D. Ark.	Hot Springs	Dawson
75.	David Hulsen, Patrick Mann, and Tyson Markham, on behalf of themselves and all others similarly situated v. Toyota Motor Corporation and Toyota Motor Sales, U.S.A., Inc.	4:10-cv-00103	W.D. Mo.	Kansas City	Sachs
76.	Jerry Baker Auto Sales, LLC, individually and on behalf of others similarly situated, v. Toyota Motor Sales, U.S.A., Inc., Toyota Motor Engineering & Manufacturing North America, Inc., and Toyota Motor Corporation	2:10-cv-04025	W.D. Mo.	Central	Laughrey
77.	Carol D. Sill, individually, and on behalf of all others similarly situated, v. Toyota Motor Sales U.S.A., Inc., Toyota Motor North America, Inc., Toyota Motor Manufacturing, Inc., and Toyota Motor Engineering & Manufacturing North America, Inc.	5:10-cv-00117	W.D. Okla.	Oklahoma City	Russell

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EXHIBIT 2

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 September 30, 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	175,091	8.1	43,257	5.0	105,421	7.8	22,017	13.6	4,396	32.9
DC	1,801	8.5	643	6.2	1,090	9.4	43	11.7	25	36.5
1ST	4,809	8.9	1,922	6.5	2,056	8.5	661	16.6	170	25.9
ME	361	7.0	170	4.6	162	8.8	14	12.1	15	16.9
MA	2,424	8.6	1,267	6.6	784	8.3	292	18.4	81	27.1
NH	335	7.9	78	3.0	109	5.0	142	15.4	6	-
RI	405	8.8	148	7.6	181	8.3	63	11.9	13	28.4
PR	1,284	10.5	259	8.6	820	9.2	150	22.8	55	28.2
2ND	19,205	10.3	3,898	6.6	12,106	10.2	2,902	14.2	299	29.5
CT	1,855	10.1	1,166	7.8	574	13.1	66	22.9	49	31.8
NY,N	1,115	13.5	207	4.9	581	15.1	301	16.0	26	29.0
NY,E	5,672	12.6	866	8.7	3,582	13.0	1,126	14.9	98	29.4
NY,S	9,277	8.4	1,502	5.5	6,352	8.0	1,312	12.5	111	27.8
NY,W	1,059	11.9	137	5.1	820	12.1	93	24.4	9	-
VT	227	8.4	20	2.6	197	8.5	4	-	6	-
3RD	16,674	6.6	3,386	4.3	10,027	5.5	2,995	12.3	266	26.6
DE	746	11.2	163	5.4	538	12.2	16	31.1	29	31.5
NJ	5,288	7.6	1,562	5.3	2,179	5.1	1,479	14.9	68	33.7
PA,E	6,872	4.8	574	2.3	4,972	3.4	1,221	9.6	105	17.5
PA,M	1,439	7.6	416	4.4	928	8.3	61	17.5	34	31.2
PA,W	1,936	6.9	531	4.1	1,348	7.9	31	24.0	26	33.9
VI	393	19.5	140	18.2	62	25.7	187	18.7	4	-
4TH	10,852	7.1	2,743	5.8	6,938	7.0	1,005	8.6	166	20.0
MD	2,423	7.0	902	6.9	1,273	6.0	208	12.8	40	23.0
NC,E	828	8.8	337	8.1	469	9.3	13	11.0	9	-
NC,M	597	8.5	309	6.5	255	11.6	30	12.3	3	-
NC,W	841	7.6	230	7.9	523	5.9	80	14.4	8	-
SC	2,146	8.2	316	3.4	1,669	8.4	115	11.1	46	22.0
VA,E	2,199	4.8	279	2.2	1,363	4.3	520	6.5	37	10.1
VA,W	620	8.7	147	5.5	442	9.5	15	11.1	16	20.5
WV,N	430	10.0	188	8.4	225	10.2	15	23.2	2	-
WV,S	768	9.2	35	3.2	719	9.4	9	-	5	-

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Table C-5. (September 30, 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	25,552	9.5	4,500	6.8	15,751	7.6	3,452	15.4	1,849	166.4
LA,E	8,715	8.8	74	3.5	6,119	6.0	2,443	14.9	79	18.9
LA,M	2,148	166.4	294	4.9	393	11.9	25	28.2	1,436	166.4
LA,W	1,600	12.0	400	8.0	1,115	12.5	47	21.2	38	22.3
MS,N	968	16.6	217	8.5	338	10.8	385	48.7	28	27.0
MS,S	1,940	10.6	1,260	10.1	600	10.7	47	21.5	33	21.7
TX,N	2,396	7.4	310	6.6	2,022	7.2	3	-	61	24.0
TX,E	1,842	9.2	260	7.1	1,472	9.0	58	18.5	52	21.1
TX,S	3,883	6.2	1,109	3.0	2,335	6.8	371	9.8	68	20.8
TX,W	2,060	8.3	576	6.8	1,357	8.2	73	14.0	54	18.3
6TH	17,144	9.6	4,105	5.1	8,907	9.4	3,889	14.0	243	25.2
KY,E	1,349	9.4	177	5.4	1,133	9.5	31	17.3	8	-
KY,W	1,067	9.2	281	7.3	694	9.2	77	19.0	15	25.9
MI,E	4,242	9.7	999	4.5	1,275	5.8	1,910	14.9	58	25.8
MI,W	919	8.4	117	3.0	769	9.3	14	19.8	19	22.3
OH,N	4,089	8.9	884	3.5	2,293	12.1	874	9.5	38	20.7
OH,S	2,570	10.3	946	6.5	975	10.3	616	14.2	33	27.8
TN,E	980	11.6	187	6.3	442	9.9	324	16.2	27	23.6
TN,M	1,087	9.2	216	5.9	838	9.6	10	16.9	23	18.4
TN,W	841	11.8	298	9.2	488	11.9	33	24.4	22	27.4
7TH	12,012	7.3	3,587	4.6	6,498	7.3	1,708	12.0	219	25.8
IL,N	6,625	6.2	2,337	4.8	3,574	6.3	601	11.5	113	25.9
IL,C	611	9.3	222	6.8	374	9.7	6	-	9	-
IL,S	672	9.4	147	4.3	483	9.5	27	31.5	15	23.1
IN,N	1,054	11.0	224	4.3	336	8.7	472	14.5	22	30.0
IN,S	1,748	9.2	462	4.6	853	9.6	407	11.6	26	23.7
WI,E	877	8.0	131	3.2	666	8.3	56	15.6	24	31.9
WI,W	425	4.6	64	2.1	212	3.9	139	6.8	10	12.0
8TH	13,226	6.3	5,050	2.7	6,805	9.2	1,170	17.0	201	21.4
AR,E	996	10.9	203	9.5	750	10.8	9	-	34	21.5
AR,W	573	10.0	16	2.2	534	10.0	4	-	19	15.2
IA,N	393	8.9	71	8.2	307	8.7	4	-	11	20.7
IA,S	548	10.6	151	7.4	271	9.5	115	15.9	11	26.3
MN	6,688	3.0	3,058	2.4	2,614	7.6	987	17.0	29	19.4
MO,E	1,586	7.6	675	5.8	874	8.3	8	-	29	20.7
MO,W	1,467	8.1	688	6.7	738	8.9	8	-	33	25.7
NE	541	9.1	20	1.7	482	8.7	22	18.9	17	17.7
ND	220	7.5	97	3.7	116	8.8	3	-	4	-
SD	214	12.5	71	10.8	119	11.0	10	21.0	14	31.1

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Table C-5. (September 30, 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	**26,365**	**8.0**	**8,557**	**5.9**	**15,524**	**8.3**	**1,803**	**13.5**	**481**	**23.5**
AK	310	9.9	114	6.4	190	10.7	-	-	6	-
AZ	1,899	9.0	681	7.5	1,163	9.3	15	36.2	40	33.4
CA,N	4,082	7.7	890	4.2	2,054	6.0	1,083	12.4	55	26.2
CA,E	1,920	9.6	678	6.8	1,170	10.7	37	25.9	35	26.3
CA,C	8,889	7.0	3,637	6.0	4,998	7.5	106	18.5	148	21.2
CA,S	1,685	6.2	160	3.2	1,195	5.8	306	10.4	24	28.9
HI	544	11.4	318	9.3	171	12.4	37	21.4	18	26.9
ID	380	11.0	30	4.9	334	11.2	6	-	10	29.6
MT	503	10.6	196	7.1	190	10.0	100	16.4	17	24.5
NV	1,589	9.5	581	7.8	930	9.9	52	13.7	26	29.5
OR	1,708	10.4	491	8.0	1,159	11.2	16	23.9	42	18.6
WA,E	455	8.1	136	4.1	286	8.7	25	17.9	8	-
WA,W	2,338	7.1	616	3.9	1,658	8.1	16	15.8	48	17.4
GUAM	27	17.4	9	-	15	19.2	2	-	1	-
NMI	36	14.0	20	14.2	11	12.9	2	-	3	-
10TH	**7,282**	**8.2**	**1,398**	**4.7**	**4,542**	**8.0**	**1,177**	**11.5**	**165**	**21.3**
CO	2,001	6.9	139	3.0	1,733	6.8	88	15.7	41	25.4
KS	1,096	9.1	364	6.4	610	9.4	100	17.5	22	24.6
NM	971	9.0	195	3.6	351	8.7	399	11.0	26	20.2
OK,N	594	8.9	77	3.1	489	9.6	14	14.9	14	16.4
OK,E	368	8.6	255	9.0	96	6.6	5	-	12	15.3
OK,W	1,089	8.3	287	3.5	358	8.1	422	9.9	22	15.3
UT	934	8.5	56	2.7	822	8.9	38	14.4	18	28.4
WY	229	7.8	25	3.2	83	8.2	111	10.5	10	15.8
11TH	**20,169**	**6.9**	**3,468**	**4.3**	**15,177**	**7.0**	**1,212**	**13.8**	**312**	**19.3**
AL,N	1,979	8.8	491	8.2	1,436	8.7	25	17.6	27	19.5
AL,M	772	8.7	201	7.2	491	8.0	68	17.9	12	19.0
AL,S	616	7.7	124	7.4	460	7.4	17	15.1	15	15.2
FL,N	876	7.7	169	6.4	668	7.9	17	8.0	22	17.6
FL,M	5,781	8.7	365	4.7	5,249	8.8	85	17.0	82	22.4
FL,S	6,142	4.6	1,445	3.7	4,554	4.8	58	14.8	85	14.5
GA,N	2,965	6.7	475	2.5	1,533	5.2	910	12.3	47	24.1
GA,M	631	11.2	136	6.4	474	11.9	9	-	12	25.4
GA,S	407	10.3	62	6.9	312	10.3	23	14.7	10	20.9

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.

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BEFORE THE JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION

IN RE: TOYOTA MOTOR CORP.	:	
DEFECTIVE GAS PEDAL PRODUCTS	:	MDL No. 2151
LIABILITY LITIGATION	:	

CERTIFICATE OF SERVICE

I hereby certify that on February 26, 2010, I caused a true and correct copy of the foregoing TOYOTA DEFENDANTS' RESPONSE IN SUPPORT OF TRANSFER OF ACTIONS TO THE CENTRAL DISTRICT OF CALIFORNIA FOR COORDINATED PRETRIAL PROCEEDINGS PURSUANT TO 28 U.S.C. § 1407 to be served upon all Parties and Counsel identified in the attached service list via U.S. Mail.

This 26th day of February, 2010.

Cari K. Dawson

CARI K. DAWSON

Judicial Panel On Multidistrict Litigation - Panel Service List

Docket: 2151 - IN RE: Toyota Motor Corp. Defective Gas Pedal Products Liability Litigation
Status: Pending On / /
Transferee District:
Judge:
Transferee District Master Docket No.:

Report key: * Signifies that an appearance was made on behalf of the party by the representing attorney.
Specified party was dismissed in some, but not all, of the actions in which it was named as a party.
All counsel and parties no longer active in this litigation have been suppressed.

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION

ADILIA AVILES on behalf of herself and all others similarly situated,

Plaintiff(s),

v.

TOYOTA MOTOR CORPORATION and TOYOTA MOTOR SALES U.S.A., Inc.,

Defendants.

Case No.: CV10-00706 AHM (FMOx)

CLASS ACTION

[Honorable A. Howard Matz]

ORDER GRANTING STAY

[SUBMITTED CONCURRENTLY WITH STIPULATION TO STAY PROCEEDINGS]

EXHIBIT "B"

Having considered the Parties' Stipulation to Stay Proceedings pending a ruling by the Judicial Panel on Multidistrict Litigation ("JPML") concerning the transfer of this action for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407, and for good cause shown, the Court hereby GRANTS the Parties' request to stay the proceedings.

IT IS HEREBY ORDERED that the proceedings in this case are stayed in their entirety, including but not limited to (1) all scheduling deadlines pursuant to the Federal Rules of Civil Procedure, Local Rules of the USDC for the Central District of California, and this Honorable Court, (2) discovery, and (3) the deadline to answer or otherwise respond to Plaintiffs' Complaint pending a ruling by the Judicial Panel on Multidistrict Litigation ("JPML") concerning the transfer of this action for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407.

SO ORDERED.

DATED: February 22, 2010

Judge of the United States District Court

TOY-RQ-05E-00009559

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION

ANI GAZARYAN, an individual; SVETLANA ABAJYAN, an individual; ELZA DZHIVALEGYAN, an individual; TAMARA HARUTYUNYAN, an individual; NERSES MAZMANYAN, an individual; KARINE MAZMANYAN, an individual; HRAYR OKKASIAN, an individual; CHRISTINE AZNAVOU, an individual; AKOP GALADZHYAN; an individual;

Plaintiffs, on Behalf of Themselves and All Others Similarly Situated as Well as on Behalf of the General Public and Acting in the Public Interest,

v.

TOYOTA MOTOR SALES U.S.A., INC, a California corporation; TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC. a foreign corporation; TOYOTA MOTOR CORPORATION, a foreign corporation; and DOES 1-10; Inclusive,

Defendants.

Case No.: CV10-00849 AHM (FMOx)

CLASS ACTION

[Honorable A. Howard Matz]

ORDER GRANTING STAY

Having considered the Parties' Stipulation to Stay Proceedings pending a ruling by the Judicial Panel on Multidistrict Litigation ("JPML") concerning the transfer of this action for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407, and for good cause shown, the Court hereby GRANTS the Parties' request to stay the proceedings.

IT IS HEREBY ORDERED that the proceedings in this case are stayed in their entirety, including but not limited to (1) all scheduling deadlines pursuant to the Federal Rules of Civil Procedure, Local Rules of the USDC for the Central District of California, and this Honorable Court, (2) discovery, and (3) the deadline to answer or otherwise respond to Plaintiffs' Complaint pending a ruling by the Judicial Panel on Multidistrict Litigation ("JPML") concerning the transfer of this action for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407.

SO ORDERED.

DATED: February 22, 2010

Judge of the United States District Court

TOY-RQ-05E-00009561

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Attorneys for Defendant TOYOTA MOTOR SALES U.S.A., INC.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION

ROZ SCHWARTZ, on Behalf of Herself and All Others Similarly Situated,

Plaintiff,

v.

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

Defendants.

Case No.: CV10-00710 AHM (FMOx)

PUTATIVE CLASS ACTION

[Honorable A. Howard Matz]

ORDER RE DEFENDANT TOYOTOA MOTOR SALES, U.S.A., INC.'S EX PARTE APPLICATION TO STAY ALL PROCEEDINGS PENDING ACTION BY THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

[Filed concurrently with Ex Parte Application and Declaration of Lisa Gilford]

On February 23, 2010, Defendant Toyota Motor Sales, U.S.A., Inc. ("Toyota") appeared before this Court, on an *ex parte* basis for an Application to Stay All Proceedings Pending Action by the Judicial Panel on Multidistrict Litigation.

The Court, having considered the application, points and authorities, evidence, and arguments offered by counsel, and any opposition thereto filed, and good cause appearing therefore,

HEREBY ORDERS AND ADJUDGES THAT:

(1) Toyota's *ex parte* application for an immediate stay of all proceedings in the action is **GRANTED**; and

(2) No further proceedings in this matter shall take place until the Court issues a further Order lifting this stay or the matter is transferred by the Judicial Panel on Multi-District Litigation.

IT IS SO ORDERED.

DATED: February 25, 2010

A. Howard Matz
Judge of the United States District Court

TOY-RQ-05E-00009563

O

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 09-8478 AHM (FMOx)	Date	February 25, 2010
Title	ERIC KMETZ *et al.* v. TOYOTA MOTOR SALES U.S.A. INC., *et al.*		

Present: The Honorable	A. HOWARD MATZ, U.S. DISTRICT JUDGE	
Stephen Montes	Not Reported	
Deputy Clerk	Court Reporter / Recorder	Tape No.

Attorneys **NOT** Present for Plaintiffs: Attorneys **NOT** Present for Defendants:

Proceedings: IN CHAMBERS (No Proceedings Held)

The Court, on its own motion, STAYS all proceedings in this action until the Court issues an Order lifting this stay or until the matter is transferred by the Judicial Panel on Multi-District Litigation, whichever comes first.

The Court also VACATES the hearing on and TAKES OFF CALENDAR Defendants' Motion to Dismiss the First Amended Complaint[1] and Defendants' Motion to Strike all Class Allegations.[2]

Initials of Preparer SMO

[1] Docket No. 18.

[2] Docket No. 22.

TOY-RQ-05E-00009565

O

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV 09-8143 AHM (FMOx) Date February 25, 2010

Title SEONG BAE CHOI, *et al.* v. TOYOTA MOTOR CORPORATION, *et al.*

Present: The Honorable A. HOWARD MATZ, U.S. DISTRICT JUDGE

Stephen Montes	Not Reported	
Deputy Clerk	Court Reporter / Recorder	Tape No.

Attorneys **NOT** Present for Plaintiffs: Attorneys **NOT** Present for Defendants:

Proceedings: IN CHAMBERS (No Proceedings Held)

The Court, on its own motion, STAYS all proceedings in this action until the Court issues an Order lifting this stay or until the matter is transferred by the Judicial Panel on Multi-District Litigation, whichever comes first.

The Court also VACATES the hearing on and TAKES OFF CALENDAR Plaintiffs' Motion for a Preliminary Injunction,[1] Plaintiffs' Motion to Certify the Class,[2] Defendants' Motion to Dismiss,[3] and Defendants' Motion to Strike all Class Allegations.[4]

Initials of Preparer SMO

[1] Docket No. 22.

[2] Docket No. 39.

[3] Docket No. 41.

[4] Docket No. 45.

TOY-RQ-05E-00009566

LINK: 12, 13

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 09-9158 GAF (FMOx)	Date	February 26, 2010
Title	Heather A. Lane v. Toyota Motor Sales, U.S.A., Inc.		

Present: The Honorable	**GARY ALLEN FEESS**	
Renee Fisher	None	N/A
Deputy Clerk	Court Reporter / Recorder	Tape No.

Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
None	None

Proceedings: **(In Chambers)**

ORDER RE: MOTION TO DISMISS & MOTION TO STRIKE ALLEGATIONS FROM PLAINTIFF'S COMPLAINT

The Court has received Defendants' Motion to Dismiss and Motion to Strike Allegations from Plaintiff's Complaint. (Docket Nos. 12, 13.) Because the present action is the subject of, or is related to, an action before the Judicial Panel on Multidistrict Litigation, all matters in this case are hereby **STAYED**.

Accordingly, the hearing regarding Defendants' motions presently scheduled for March 29, 2010, is hereby **VACATED**.

IT IS SO ORDERED.

LINK: 20, 21

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 09-9386 GAF (FMOx)	Date	February 26, 2010
Title	Dale Baldiseeri v. Toyota Motor Sales, U.S.A., Inc. et al		

Present: The Honorable	**GARY ALLEN FEESS**	
Renee Fisher	None	N/A
Deputy Clerk	Court Reporter / Recorder	Tape No.

Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
None	None

Proceedings: **(In Chambers)**

ORDER RE: MOTION TO DISMISS & MOTION TO STRIKE ALLEGATIONS FROM FIRST AMENDED COMPLAINT

The Court has received Defendants' Motion to Dismiss and Motion to Strike Allegations from First Amended Complaint. (Docket Nos. 20, 21.) Because the present action is the subject of, or is related to, an action before the Judicial Panel on Multidistrict Litigation, all matters in this case are hereby **STAYED**.

Accordingly, the hearing regarding Defendants' motions presently scheduled for March 8, 2010, is hereby **VACATED**.

IT IS SO ORDERED.

TOY-RQ-05E-00009568

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 10-20006-CIV-COOKE/BANDSTRA

JONATHAN GELLMAN, and all others similarly situated,

Plaintiffs,

v.

TOYOTA MOTOR SALES, USA, INC.,

Defendant.
_____/

ORDER STAYING AND ADMINISTRATIVELY CLOSING CASE PENDING RULING BY THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

THIS CASE is before me on Defendant's Unopposed Motion to Stay Pending Ruling by the Judicial Panel on Multidistrict Litigation [D.E. 12]. I have reviewed and considered the motion, the record, and the relevant legal authorities. It is **ORDERED and ADJUDGED** as follows:

1. Defendants' Unopposed Motion to Stay Pending Ruling by the Judicial Panel on Multidistrict Litigation [D.E. 12] is **GRANTED**. This case shall be **STAYED** pending a determination by the Judicial Panel on Multidistrict Litigation.

2. Within fourteen days of the Judicial Panel on Multidistrict Litigation releasing its decision, Defendant shall file a notice with this Court informing the Court as to the Panel's decision. The Court will reopen and recommence proceedings if the Panel determines that the actions are inappropriate for coordinated treatment or that this case is inappropriate for transfer.

3. The Clerk shall ***administratively*** **CLOSE** this case.

DONE and ORDERED in chambers at Miami, Florida, this 25th day of February 2010.

Marcia G. Cooke
MARCIA G. COOKE
United States District Judge

Copies furnished to:
All Counsel of record

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION

JOHN HARDING, individually and on behalf of all others similarly situated,	)	
Plaintiff,	)	CIVIL ACTION
v.	)	NO. 2:10-CV-00100-MEF
TOYOTA MOTOR CORPORATION, a foreign corporation, and **TOYOTA MOTOR SALES, USA, INC.**, a California corporation,	)	
Defendants.	)	

CONFLICT DISCLOSURE STATEMENT

COMES NOW Toyota Motor Sales, U.S.A., Inc., a Defendant in the above-captioned matter, and in accordance with the order of this Court, making the following disclosure concerning parent companies, subsidiaries, partners, limited liability entity members and managers, trustees (but no trust beneficiaries), affiliates, or similar entities reportable under the provisions of the Middle District of Alabama's General Order No. 3047:

The following entities and their relationship to the party are hereby reported:

Reportable Entity	Relationship to Party
Toyota Motor Corporation	Toyota Motor Corporation is the publicly traded parent company of Toyota Motor North America, Inc. ("TMA"). TMA is the parent company of Toyota Motor Sales, U.S.A., Inc.

This 1st day of March, 2010.

/s/ De Martenson
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ASB-7317-N69E

/s/ Walter J. Price, III
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TOY-RQ-05E-00009571

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION

JOHN HARDING, individually and on behalf of all others similarly situated,	)	
Plaintiff,	)	CIVIL ACTION
v.	)	NO. 2:10-CV-00100-MEF
TOYOTA MOTOR CORPORATION, a foreign corporation, and **TOYOTA MOTOR SALES, USA, INC.**, a California corporation,	)	
Defendants.	)	

CERTIFICATE OF SERVICE

This is to certify that I have this day served upon all Parties' counsel of record, or upon the Party if no counsel of record appears, a copy of the within and foregoing "**CONFLICT DISCLOSURE STATEMENT**" by electronically filing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following:

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TOY-RQ-05E-00009572

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This 1st day of March, 2010.

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TOY-RQ-05E-00009573

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION

JOHN HARDING, individually and on behalf of all others similarly situated, Plaintiff, v. **TOYOTA MOTOR CORPORATION**, a foreign corporation, and **TOYOTA MOTOR SALES, USA, INC.**, a California corporation, Defendants.	CASE NO. 2:10-CV-00100-MEF

DEFENDANT TOYOTA MOTOR SALES, USA, INC.'S MOTION TO STAY PENDING ACTION BY THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

Defendant Toyota Motor Sales, USA, Inc. ("Toyota") respectfully moves this Honorable Court to stay this matter in its entirety, including but not limited to (1) all scheduling deadlines pursuant to the Federal Rules of Civil Procedure, Local Rules of the United States District Court for the Middle District of Alabama, and this Honorable Court; (2) discovery; and (3) the deadline to answer or otherwise respond to Plaintiff's Class Action Complaint pending a ruling by the Judicial Panel on Multidistrict Litigation ("JPML") concerning the transfer of this action for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407. This action is one of more than seventy-five similar actions pending in various federal courts around the country, and at least two motions and numerous responses seeking consolidation of these actions have been filed with the JPML. *See In re Toyota Motor Corp. Unintended Acceleration Prods. Liab. Litig.*, MDL Docket No. 2151. The JPML has scheduled a hearing on consolidation of these actions for March 25, 2010. Because consolidation into a Multidistrict Litigation appears

highly likely, Toyota moves to stay this action in its entirety pending a ruling by the JPML concerning the transfer of this action for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407. As discussed in the attached Brief in Support, a stay will promote the efficient resolution of this litigation, preserve judicial resources, and limit the potential for inconsistent decisions.

Respectfully submitted, this 1st day of March, 2010.

/s/ De Martenson
De Martenson
ASB-7317-N69E

/s/ Walter J. Price, III
Walter J. Price, III
ASB-0127-C66W

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TOY-RQ-05E-00009575

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TOY-RQ-05E-00009576

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION

JOHN HARDING, individually and on behalf of all others similarly situated,	)	
Plaintiff,	)	
v.	)	CASE NO. 2:10-CV-00100-MEF
TOYOTA MOTOR CORPORATION, a foreign corporation, and **TOYOTA MOTOR SALES, USA, INC.**, a California corporation,	)	
Defendants.	)	

CERTIFICATE OF SERVICE

This is to certify that I have this day served upon all Parties' counsel of record, or upon the Party if no counsel of record appears, a copy of the within and foregoing "**DEFENDANT TOYOTA MOTOR SALES, USA, INC.'S MOTION TO STAY PENDING ACTION BY THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION**" by electronically filing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following:

Brian Williams Smith Smith & Vanture, LLP 1615 Forum Place, Suite 4C 561-684-6330 Fax: 561-668-0639 *(Attorney for Plaintiff)*	**Edith M. Kallas** **Shujah A. Awan** Whatley Drake Kallas 1540 Broadway, 37th Floor New York, NY 10036 212-447-7070 *(Attorneys for Plaintiff)*
Howard Weil Rubinstein Attorney at Law P.O. Box 4839 914 Waters Avenue, Suite 20 Aspen, CO 81611 832-715-2788 *(Attorney for Plaintiff)*	**Joe Ramon Whatley, Jr.** Whatley Drake & Kallas, LLC 2001 Park Place North, Suite 1000 Birmingham, AL 35203 205-328-9576 Fax: 205-328-9669 Email: jwhatley@wdklaw.com *(Attorney for Plaintiff)*

TOY-RQ-05E-00009577

Patrick J. Sheehan Whatley Drake & Kallas, LLP 60 State Street, 7th Floor Boston, MA 21090 617-573-5118 Fax: 617-573-5090 Email: psheehan@wdklaw.com *(Attorney for Plaintiff)*	**Wilson Daniel Miles, III** Beasley Allen Crown Methvin Portis & Miles PC P.O. Box 4160 Montgomery, AL 36103 334-269-2343 Fax: 334-954-7555 Email: dee.miles@beasleyallen.com *(Attorney for Plaintiff)*

This 1st day of March, 2010.

/s/ De Martenson
De Martenson
ASB-7317-N69E

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

TOY-RQ-05E-00009578

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

JOHN HARDING, individually and on behalf of all others similarly situated,	)	
Plaintiff,	)	
v.	)	CASE NO. 2:10-cv-100-MEF
TOYOTA MOTOR CORPORATION, *et al.*,	)	
Defendants.	)	

ORDER

Upon consideration of the Motion for Edith M. Kallas to be Admitted *Pro Hac Vice* (Doc. # 11), filed on February 22, 2010, it is hereby

ORDERED that the motion is GRANTED.

DONE this the 1st day of March, 2010.

/s/ Mark E. Fuller
CHIEF UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION

JOHN HARDING, individually and on behalf of all others similarly situated, Plaintiff, v. **TOYOTA MOTOR CORPORATION**, a foreign corporation, and **TOYOTA MOTOR SALES, USA, INC.**, a California corporation, Defendants.	)	CASE NO. 2:10-CV-00100-MEF

(PROPOSED) ORDER STAYING PROCEEDINGS

Having considered the Defendant Toyota Motor Sales, U.S.A., Inc.'s ("Toyota") Motion to Stay Proceedings pending a ruling by the Judicial Panel on Multidistrict Litigation ("JPML") concerning the transfer of this action for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407, and for good cause shown, the Court hereby GRANTS Toyota's request to stay these proceedings.

IT IS HEREBY ORDERED that the proceedings in this case are stayed in their entirety, including but not limited to (1) all scheduling deadlines pursuant to the Federal Rules of Civil Procedure, Local Rules of the USDC for the Middle District of Alabama, and this Honorable Court, (2) discovery, and (3) the deadline to answer or otherwise respond to Plaintiff's Class Action Complaint pending a ruling by the Judicial Panel on Multidistrict Litigation ("JPML") concerning the transfer of this action for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407.

SO ORDERED, this ___ day of _____, 2010.

_____
United States District Court Chief Judge Mark E. Fuller

Submitted by:

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

TOY-RQ-05E-00009581

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA

RECEIVED
2010 MAR -2 P 4:41
P. HACKETT, CLK
DISTRICT COURT

JOHN HARDING, individually and on behalf of all others similarly situated,	*	
Plaintiff,	*	
v.	*	Civil Action No. 2:10-cv-100-MEF
TOYOTA MOTOR CORPORATION, a foreign corporation, **and TOYOTA MOTOR SALES, USA, INC.,** a California corporation,	*	**JURY TRIAL REQUESTED**
Defendants,	*	

MOTION FOR ADMISSION *PRO HAC VICE*

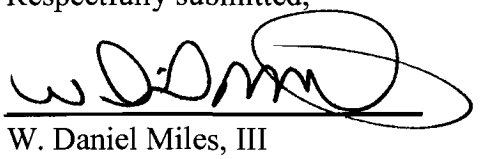
The undersigned, W. Daniel "Dee" Miles, III, is a member in good standing of the bar of Alabama and admitted to practice before this Court, and respectfully moves this Court to permit the admission *pro hac vice* of Brian W. Smith, of the law firm Smith & Vanture, LLP, of 1615 Forum Place, Suite 4C, West Palm Beach, Florida 33401. The undersigned states as follows:

1. Brian W. Smith is associated in this action with W. Daniel Miles, III, who is a member, in good standing of the Alabama Bar and this Court.

2. In support of this Motion, movant respectfully refers the Court to the Affidavit of Brian W. Smith, attached hereto as Exhibit "A", demonstrating that he is licensed to practice law before the federal and state courts in the State of Florida.

Dated: March 1, 2010

Respectfully submitted,



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Pro Hac Vice pending)

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(Co-Counsel for the Plaintiff –
Pro Hac Vice pending)

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA

JOHN HARDING, individually and on behalf of all others similarly situated,	*	
Plaintiff,	*	
v.	*	Civil Action No. 2:10-cv-100-MEF
TOYOTA MOTOR CORPORATION, a foreign corporation, **and TOYOTA MOTOR SALES, USA, INC.,** a California corporation,	*	**JURY TRIAL REQUESTED**
Defendants,	*	

AFFIDAVIT

STATE OF FLORIDA }

COUNTY OF PALM BEACH }

After first being duly sworn, Brian W. Smith testifies as follows:

1. I am counsel for Plaintiff, John Harding, and I have personal knowledge of all fact set forth herein.

2. I am a member in good standing of the bar of the United States District Court for the Southern District of Florida. See Attached, Exhibit 1: Certificate of Good Standing from the Clerk of the United States District Court for the Southern District of Florida.

3. I have read and am familiar with the Local Rules for the United States District Court for the Middle District of Alabama, and I agree to be bound by them.

Brian W. Smith

Sworn to and subscribe before me this 16 day of Feb, 2010.

Notary Public

12/6/2013
My Commission Expires

CHIKEENA T. HARRELL
Notary Public - State of Florida
My Comm. Expires Dec 6, 2013
Commission # DD 934718
Bonded Through National Notary Assn.

AO 136
(Rev. 6/82)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF FLORIDA

CERTIFICATE OF GOOD STANDING

UNITED STATES OF AMERICA

SOUTHERN DISTRICT OF FLORIDA

Fla. Bar. # **470510**

I, **STEVEN M. LARIMORE**, Clerk of the United States District Court for the Southern District of Florida,

DO HEREBY CERTIFY that ***Brian William Smith*** was duly admitted to practice in said Court on **1/19/1998**, and is in good standing as a member of the bar of this Court.

Dated at: **Miami, Florida**, this February 23, 2010.

STEVEN M. LARIMORE
Court Administrator •Clerk of Court

By R.Blanchard
Deputy Clerk

DUPLICATE

Court Name: U S DISTRICT COURT - AL/M
Division: 2
Receipt Number: 4602013229
Cashier ID: khaynes
Transaction Date: 03/03/2010
Payer Name: BRIAN W SMITH PA

PRO HAC VICE
For: BRIAN WILLIAM SMITH
Case/Party: D-ALM-A-TT-YF-EEFUND-001
Amount: $50.00

CHECK
Check/Money Order Num: 6481
Amt Tendered: $50.00

Total Due: $50.00
Total Tendered: $50.00
Change Amt: $0.00

2:10-cv-00100-MEF-SRW

Harding v. Toyota Motor Corporation
et al

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION

JOHN HARDING, individually and on behalf of all others similarly situated,	)	
Plaintiff,	)	
vs.	)	**CASE NO.: 2:10-CV-00100-MEF**
TOYOTA MOTOR CORPORATION, a foreign corporation, and TOYOTA MOTOR SALES, USA, INC., a California corporation,	)	
Defendants.	)	

DEFENDANT TOYOTA MOTOR SALES, USA, INC.'S MOTION FOR EXTENSION

Comes now Defendant, Toyota Motor Sales, USA, Inc. ("Toyota"), and respectfully moves that this Court enter an Order extending the time for Toyota to answer or otherwise respond to the Complaint of the Plaintiff. As grounds for said Motion, Defendant states as follows:

1. Plaintiff filed this class action lawsuit on February 5, 2010. As outlined in Defendant's Motion to Stay Pending Action by the Judicial Panel on Multidistrict Litigation (Document #14) and its supporting Brief (Document #15), this is one of more than seventy-five similar actions pending in various federal courts around the country. The Judicial Panel on Multidistrict Litigation has scheduled a hearing on consolidation of these actions for March 25, 2010.

2. As indicated above, Defendant has requested that this Court stay this matter pending action by the JPML.[1] As set forth in that filing, Defendant believes that the transfer of such cases

[1] An Order granting the relief sought in Defendant's Motion to Stay will moot this Motion.

for multidistrict coordination is quite likely. Given such prospect, Defendant requests that this Court extend the time for Toyota's responsive filing until thirty days after the scheduled JPML hearing, or April 26, 2010.

3. In light of the nature of this matter, the expected transfer for consolidated or coordinated pre-trial procedures, and the recent filing, no party will be prejudiced, nor will proceedings in this case be delayed by such extension.

WHEREFORE, PREMISES CONSIDERED, Defendant, Toyota Motor Sales, USA, Inc., respectfully requests that this Court extend the deadline for answer or other response to Plaintiff's Complaint to April 26, 2010.

/s/ De Martenson
De Martenson
ASB-7317-N69E

/s/ Walter J. Price, III
Walter J. Price, III
ASB-0127-C66W

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Of Counsel:

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

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION

JOHN HARDING, individually and on behalf of all others similarly situated,	)	
Plaintiff,	)	
vs.	)	**CASE NO.: 2:10-CV-00100-MEF**
TOYOTA MOTOR CORPORATION, a foreign corporation, and TOYOTA MOTOR SALES, USA, INC., a California corporation,	)	
Defendants.	)	

CERTIFICATE OF SERVICE

This is to certify that I have this day served upon Parties' counsel of record, or upon the Party if no counsel of record appears, a copy of the within and foregoing"**DEFENDANT TOYOTA MOTOR SALES, USA, INC.'S MOTION FOR EXTENSION**" by electronically filing with the Clerk of Court using the DM/ECF system, which will send notification of such filing to the following:

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(Attorney for Plaintiff)

This 2nd day of March, 2010.

/s/ De Martenson
De Martenson
ASB-7317-N69E

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

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF ALABAMA

OFFICE OF THE CLERK

POST OFFICE BOX 711

MONTGOMERY, ALABAMA 36101-0711

DEBRA P. HACKETT, CLERK

TELEPHONE (334) 954-3600

March 2, 2010

NOTICE OF DOCKETING ERROR

To: All Counsel of Record

Case Style: Harding v. Toyota Motor Corporation et al

Case Number: 2:10-cv-00100-MEF

Referenced Pleading: Motion for Order
Docket Entry Number: 17

The referenced document filed on March 1, 2010 in this case is hereby STRICKEN as erroneous. The document attached to this entry is not a motion but rather a proposed order for another Motion, Document 14. The proposed order has been attached to docket entry 14.

Parties are instructed to disregard docket entry 17 which has been stricken from the record as a docketing error.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

JOHN HARDING, individually and on behalf of all others similarly situated,	)	
Plaintiff(s),	)	
v.	)	CASE NO. 2:10-cv-100-MEF
TOYOTA MOTOR CORPORATION, *et al.*,	)	
Defendants.	)	

ORDER

Having considered Defendant Toyota Motor Sales, U.S.A., Inc.'s ("Toyota") Motion to Stay Pending Action by the Judicial Panel on Multidistrict Litigation (Doc. # 14), filed on March 1, 2010, it is hereby

ORDERED that the motion is GRANTED.

This action is STAYED in its entirety pending a decision by the Judicial Panel on Multidistrict Litigation ("JPML") concerning the transfer of this action for coordinated or consolidated pretrial proceedings under 28 U.S.C. § 1407.

It is further ORDERED that Toyota must notify this Court of the JPML's decision within fourteen days of the release of the decision.

DONE this the 2nd day of March, 2010.

/s/ Mark E. Fuller
CHIEF UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

JOHN HARDING, individually and on behalf of all others similarly situated,	)	
Plaintiff(s),	)	
v.	)	CASE NO. 2:10-cv-100-MEF
TOYOTA MOTOR CORPORATION, *et al.*,	)	
Defendants.	)	

ORDER

Having considered Defendant Toyota Motor Sales, U.S.A., Inc.'s ("Toyota") Motion to Stay Pending Action by the Judicial Panel on Multidistrict Litigation (Doc. # 14), filed on March 1, 2010, it is hereby

ORDERED that the motion is GRANTED.

This action is STAYED in its entirety pending a decision by the Judicial Panel on Multidistrict Litigation ("JPML") concerning the transfer of this action for coordinated or consolidated pretrial proceedings under 28 U.S.C. § 1407.

It is further ORDERED that Toyota must notify this Court of the JPML's decision within fourteen days of the release of the decision.

DONE this the 2nd day of March, 2010.

/s/ Mark E. Fuller
CHIEF UNITED STATES DISTRICT JUDGE

Kelli Ryan - Activity in Case 2:10-cv-00100-MEF-SRW Harding v. Toyota Motor Corporation et al Add and Terminate Attorneys

From: <efile_notice@almd.uscourts.gov>
To: <almd_mailout@almd.uscourts.gov>
Date: 3/2/2010 11:18 AM
Subject: Activity in Case 2:10-cv-00100-MEF-SRW Harding v. Toyota Motor Corporation et al Add and Terminate Attorneys

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.
*****NOTE TO PUBLIC ACCESS USERS*** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.**

U.S. District Court

Alabama Middle District

Notice of Electronic Filing

The following transaction was entered on 3/2/2010 at 11:17 AM CST and filed on 3/1/2010
Case Name: Harding v. Toyota Motor Corporation et al
Case Number: 2:10-cv-100
Filer:
Document Number: No document attached

Docket Text:
*****Attorneys Cari K. Dawson, Lisa M. Gilford, Scott A. Elder, and Derin B. Dickerson added for Toyota Motor Sales, USA, Inc. per [14] Motion. (br,)**

2:10-cv-100 Notice has been electronically mailed to:

Eugene D. Martenson dm@hfsllp.com, kwr@hfsllp.com

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Patrick J Sheehan psheehan@wdklaw.com, ecf@wdklaw.com

Shujah A Awan sawan@wdklaw.com, ecf@wdklaw.com

Walter Jasper Price , III wjp@hfsllp.com, tcb@hfsllp.com

Wilson Daniel Miles , III dee.miles@beasleyallen.com

2:10-cv-100 Notice has been delivered by other means to:

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TOY-RQ-05E-00009599

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

JOHN HARDING, individually and on behalf of all others similarly situated,	)	
Plaintiff,	)	
v.	)	CASE NO. 2:10-cv-100-MEF
TOYOTA MOTOR CORPORATION, *et al.*,	)	
Defendants.	)	

ORDER

Upon consideration of the Motion for Brian W. Smith to be Admitted *Pro Hac Vice* (Doc. # 20), filed on March 2, 2010, it is hereby

ORDERED that the motion is GRANTED.

DONE this the 4th day of March, 2010.

/s/ Mark E. Fuller
CHIEF UNITED STATES DISTRICT JUDGE

STAYED

U.S. District Court
Alabama Middle District (Montgomery)
CIVIL DOCKET FOR CASE #: 2:10-cv-00100-MEF-SRW

Harding v. Toyota Motor Corporation et al
Assigned to: Hon. Chief Judge Mark E. Fuller
Referred to: Honorable Susan Russ Walker
Cause: 28:1332 Diversity-Breach of Contract

Date Filed: 02/05/2010
Jury Demand: Plaintiff
Nature of Suit: 190 Contract: Other
Jurisdiction: Diversity

Plaintiff

John Harding
individually and on behalf of all others similarly situated

represented by **Brian William Smith**
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V.

Defendant

Toyota Motor Corporation
a foreign corporation

Defendant

Toyota Motor Sales, USA, Inc.
a California corporation

represented by

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Date Filed	#	Docket Text
02/05/2010	1	CLASS ACTION COMPLAINT against Toyota Motor Sales, USA, Inc., Toyota Motor Corporation (Filing fee $350.00 receipt number 4602012907.), filed by John Harding. (Attachments: #1 Exhibit A, #2 Exhibit B, #3 Receipt)(br,) (Entered: 02/09/2010)
02/09/2010	2	Notice of Deficiency requiring filing of Corporate Disclosure/Conflict Statement sent to John Harding. Corporate Disclosures due by 2/19/2010. (Attachments: #1 Corporate Conflict Standing Order)(br,) (Entered: 02/09/2010)
02/09/2010	3	Summons Issued; summons and complaint mailed by CMRRR to Toyota Motor Sales, USA, Inc; summons and complaint returned to counsel for service of Toyota Motor Corporation. (br,) (Entered: 02/09/2010)
02/09/2010	4	Corporate/Conflict Disclosure Statement by John Harding re 2 Notice of Deficiency requiring filing of Corporate Disclosure/Conflict Statement. (Miles, Wilson) (Entered: 02/09/2010)
02/16/2010	5	Return Receipt Card showing service of summons and complaint signed by The Corporation Company for Toyota Motor Sales, USA, Inc. served on 2/12/2010, answer due 3/5/2010. (br,) (Entered: 02/16/2010)
02/18/2010	6	Motion for Patrick J. Sheehan to Appear Pro Hac Vice by John Harding. (Whatley, Joe) (Additional attachment(s) added on 2/19/2010: #1 Certificate of Good Standing) (br,). Modified on 2/19/2010 to indicate the movant's name (br,). (Entered: 02/18/2010)
02/18/2010	7	Motion by Shujah Ahmad Awan to Appear Pro Hac Vice by John Harding. (Whatley, Joe) (Additional attachment(s) added on 2/19/2010: #1 Certificate of Good Standing) (br,). Modified on 2/19/2010 to include movant's name (br,). (Entered: 02/18/2010)
02/19/2010	8	NOTICE of Correction re 6 and 7 Motions to Appear Pro Hac Vice: certificates of good standing have been added to each Motion. (Attachments: #1 Certificate of Good Standing − Awan, #2 Certificate of Good Standing − Sheehan)(br,) (Entered: 02/19/2010)
02/19/2010	9	Filing fee received: $100.00 pro hac vice admission fees for Patrick J. Sheehan and Shujah A Awan, receipt number 4602013071 (br,) (Entered: 02/22/2010)
02/22/2010	10	ORDER granting 6 7 Motions for Patrick J. Sheehan and Shujah Ahmad Awan to Appear Pro Hac Vice. Signed by Hon. Chief Judge Mark E. Fuller on 2/22/2010. (br,) (Entered: 02/22/2010)

02/22/2010	11	Motion for Edith M. Kallas to Appear Pro Hac Vice by John Harding. (Whatley, Joe) Modified on 2/23/2010 to include movant's name (br,). (Entered: 02/22/2010)
02/23/2010	12	Pro hac admission fee received for Edith M. Kallas: $ 50.00, receipt number 4602013110 (br,) (Entered: 02/23/2010)
03/01/2010	13	ORDER granting 11 Motion for Edith M. Kallas to Appear Pro Hac Vice. Signed by Hon. Chief Judge Mark E. Fuller on 3/1/2010. (br,) (Entered: 03/01/2010)
03/01/2010	14	MOTION to Stay *Pending Action by the Judicial Panel on Multidistrict Litigation* by Toyota Motor Sales, USA, Inc.. (Martenson, Eugene) (Additional attachment(s) added on 3/2/2010: # 1 Proposed Order) (br,). (Entered: 03/01/2010)
03/01/2010	15	BRIEF/MEMORANDUM in Support re 14 MOTION to Stay *Pending Action by the Judicial Panel on Multidistrict Litigation* filed by Toyota Motor Sales, USA, Inc.. (Attachments: # 1 Exhibit A to Brief in Support of Motion to Stay, # 2 Exhibit B to Brief in Support of Motion to Stay)(Martenson, Eugene) (Entered: 03/01/2010)
03/01/2010	16	Corporate/Conflict Disclosure Statement by Toyota Motor Sales, USA, Inc.. (Martenson, Eugene) (Entered: 03/01/2010)
03/01/2010	17	STRICKEN ON 3/2/2010 AS DOCKETING ERROR: MOTION for Order re 14 MOTION to Stay *Pending Action by the Judicial Panel on Multidistrict Litigation*, 15 BRIEF/MEMORANDUM in Support, *(Proposed "Order Staying Proceedings")* by Toyota Motor Sales, USA, Inc.. (Martenson, Eugene) Modified on 3/2/2010 (br,). (Entered: 03/01/2010)
03/01/2010		***Attorney Walter Jasper Price, III added for Toyota Motor Sales, USA, Inc per 14 Motion. (br,) (Entered: 03/02/2010)
03/01/2010		***Attorneys Cari K. Dawson, Lisa M. Gilford, Scott A. Elder, and Derin B. Dickerson added for Toyota Motor Sales, USA, Inc. per 14 Motion. (br,) (Entered: 03/02/2010)
03/02/2010	18	NOTICE of Docketing Error: 17 MOTION for Order has been STRICKEN from the record as an erroneous docket entry. The document attached to the entry was not a motion for order, but rather a proposed order relating to the 14 Motion to Stay; the proposed order has been attached to the correct docket entry 14 . (br,) (Entered: 03/02/2010)
03/02/2010	19	ORDER granting 14 MOTION to Stay Pending Action by the Judicial Panel on Multidistrict Litigation; This action is STAYED in its entirety pending a decision by the Judicial Panel on Multidistrict Litigation (JPML) concerning the transfer of this action for coordinated or consolidated pretrial proceedings under 28 U.S.C. § 1407. It is further ORDERED that Toyota must notify this Court of the JPML's decision within fourteen days of the release of the decision. Signed by Hon. Chief Judge Mark E. Fuller on 3/2/2010. (br,) (Entered: 03/02/2010)
03/02/2010	20	Motion for Brian W. Smith to Appear Pro Hac Vice (Filing fee $ 50.00 receipt number 4602013229.) by John Harding. (Attachments: # 1 Affidavit, # 2 Certificate of Good Standing, # 3 Receipt)(br,) (Entered: 03/04/2010)
03/04/2010	21	ORDER granting 20 Motion for Brian W. Smith to Appear Pro Hac Vice. Signed by Hon. Chief Judge Mark E. Fuller on 3/4/2010. (br,) (Entered: 03/04/2010)

2. Article Number

7160 3901 9848 1123 9686

3. Service Type **CERTIFIED MAIL**

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

1. Article Addressed to:

10 CV
100
SM+
CMP

TOYOTA MOTOR SALES, USA, INC.
THE CORPORATION COMPANY
2000 INTERSTATE PARK DRIVE, SUITE 204
MONTGOMERY, AL 36109

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) The Corporation Company

B. Date of Delivery

C. Signature

X The Corporation Company ☐ Agent ☐ Addressee

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

PS Form 3811, July 2001 Domestic Return Receipt

FILE START

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PANAMA CITY DIVISION

JUSTIN JOHNSON, on behalf of himself and all others similarly situated, Plaintiff, v. TOYOTA MOTOR CORPORATION and TOYOTA MOTOR SALES U.S.A., Inc. Defendants.	)	Case No. 5:10-CV-26 CLASS ACTION JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Justin Johnson hereby sues Defendants Toyota Motor Corporation and Toyota Motor Sales, U.S.A., Inc. individually and on behalf of the class identified below. Accordingly, this is a complaint for individual damages as well as a request for class certification.

NATURE OF CASE

1. This is a class action arising from the Defendants' manufacture and sale of defective automobiles which can suddenly and without warning accelerate out of control. In the last four months, the Defendants have instituted at least three voluntary recalls of these defective automobiles in the United States. The first recall occurred on September 29, 2009, with the Defendants claiming that the sudden unintended acceleration problem was caused by defective floor mats. The second recall occurred in early January 2010 and was an expansion of the first, including additional models within the scope of the first recall and once again attributing the risk of sudden unintended acceleration to a problem with

floor mats in the automobiles. The third recall was announced on January 21, 2010, and included a different set of automobiles, some within the scope of the first two recalls but others not. This third recall attributed the risk of sudden unintended acceleration to the "possibility that certain accelerator pedal mechanisms may, in rare instances, mechanically stick in a partially depressed position or return slowly to the idle position." In total, these three recalls encompass well over 4 million vehicles (the "Recalled Vehicles").

2. In conjunction with the third voluntary recall, the Defendants publicly announced on January 26, 2010, that they would cease sales of eight models falling within the scope of the January 21, 2010, recall. The Defendants did not indicate in their announcement when sales of these eight models would resume, instead stating "[t]his action is necessary until a remedy is finalized."

3. Finally, the Defendants have announced suggested actions consumers owning a Recalled Vehicle should take to ameliorate the risk of sudden unintended acceleration. With respect to vehicles falling within the floor mat recall of September 2009 and January 2010, Toyota has suggested consumers remove the floor mats and place them in the trunk pending the Defendants developing a permanent fix. With respect to vehicles falling within the most recent January 21, 2010 recall, Toyota has suggested to consumers that "no action is required unless you feel you are experiencing this condition." Toyota suggests that consumers would have reason to believe their vehicle is experiencing "this condition," if the consumer has "noticed that [the] accelerator pedal is hard to depress, slow to return or is unsmooth during operation." Finally, Toyota has told consumers that if they experience any of these symptoms, "the vehicle should be driven to the nearest safe location, the engine shut off, and a Toyota dealer contacted for assistance."

4. The Defendants have made no effort to provide affected consumers with any alternative means of transportation while a permanent fix is being developed or during the time it takes for any repairs recommended by the Defendants to be completed.

THE PARTIES

5. Plaintiff is an individual currently residing in this district who purchased a defective Toyota truck that experiences unintended acceleration.

6. Toyota Motor Corporation is, and at all relevant times was, a Japanese corporation with its headquarters in Toyota City, Aichi Prefecture, Japan, which conducts and transacts business within this district.

7. Toyota Motor Sales, U.S.A. is, and at all relevant times was, a California corporation with its principal place of business in Torrance, California, which conducts and transacts business within this district.

JURISDICTION AND VENUE

8. This Court has jurisdiction pursuant to 28 U.S.C. § 1332(d) ("CAFA jurisdiction"). There is minimal diversity of citizenship, the case is filed as a class action, the matter in controversy exceeds $5,000,000, exclusive of interest and costs, and more than two-thirds of the members of the proposed class are citizens of a state different than the Defendants.

9. Jurisdiction also lies under 28 U.S.C. § 1332(a) (the "general diversity statute"). The amount in controversy exceeds $75,000.00, exclusive of interest and costs, and there is complete diversity—both of the Defendants are incorporated and have their principal place of business in a state or nation other than the state in which the Plaintiff resides.

10. Venue lies in this district, pursuant to 28 U.S.C. § 1391(b)(1) and (2) and § 1391(c), because the Defendants are subject to personal jurisdiction in this district and because a substantial part of the events giving rise to Plaintiff's claims occurred in this district.

SUMMARY OF FACTS COMMON TO ALL CLAIMS

11. Defendant Toyota Motor Corporation is one of the world's largest manufacturers of automobiles sold throughout the United States and the world.

12. Defendant Toyota Motor Sales, U.S.A, is a wholly-owned subsidiary of Toyota Motor Corporation and is responsible for the sales, marketing, and distribution of motor vehicles manufactured by Toyota Motor Corporation throughout the United States.

13. For many years, automobiles manufactured and sold by the Defendants have had a good reputation among consumers for safety and quality. Indeed, a December 23, 2009, newspaper article published by the *Los Angeles Times*, recognized that "[a] peerless reputation for quality and safety has helped Toyota become the world's largest automaker."

14. In recent years, however, the Defendants have maintained this good reputation through a pattern and practice of deceiving consumers about safety problems it has had with many of its automobiles. Rather than being forthcoming about the nature and severity of manufacturing defects in their products, the Defendants have intentionally failed to disclose and have made numerous false statements to consumers to hide known manufacturing defects in its automobiles.

15. For instance, as reported by the *Los Angeles Times* on December 23, 2009:

> 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 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."

16. The National Highway Traffic Safety Administration ("NHTSA") did, in fact, issue a statement on November 4, 2009, "correcting inaccurate and misleading information put out by Toyota concerning a safety recall involving 3.8 million Toyota and Lexus vehicles." This statement indicated that:

> A press release put out by Toyota earlier this week about their recall of 3.8 million Toyota and Lexus vehicles inaccurately stated NHTSA had reached a conclusion "that no defect exists in vehicles in which the driver's floor mat is compatible with the vehicle and properly secured." NHTSA has told Toyota and consumers that removing the recalled floor mats is the most immediate way to address the safety risk and avoid the possibility of the accelerator becoming stuck. But it is simply an interim measure. This remedy does not correct the underlying defect in the vehicles involving the potential for entrapment of the accelerator by floor mats, which is related to accelerator and floor pan design. Safety is the number one priority for NHTSA and this is why officials are working with Toyota to find the right way to fix this very dangerous problem. This matter is not closed until Toyota has effectively addressed the defect by providing a suitable vehicle based solution.

17. The Defendants failed to fully and accurately inform consumers of the true magnitude of the risk of sudden unintended acceleration with the Recalled Vehicles. Prior to September 2009, the Defendants completely failed to warn consumers of the sudden unintended acceleration risks it knew existed with the Recalled Vehicles. In conjunction with the September 2009 recall, the Defendants also falsely indicated to consumers that the sole source of the risk of sudden unintended acceleration arose from potentially faulty floor mats when in fact Toyota knew of other potential risk factors, including but not limited to, mechanical design defects, problems with the electronic throttle control, the absence of a safety mechanism to cut fuel flow to the engine when the throttle is in the full open position but the brake pedal is fully depressed, or the "possibility that certain accelerator pedal

mechanisms may, in rare instances, mechanically stick." Finally, in this final January 21, 2010 recall, the Defendants have once again failed to fully inform consumers of the magnitude of the risk and its potential causes.

18. In addition, the Defendants failed to adequately inform consumers of the risk of sudden unintended acceleration during the time period between the September 2009 recall and the January 2010 recall such that many consumers were duped into buying Toyota vehicles now within the scope of the Recalled Vehicles without having been told of the risk of sudden unintended acceleration inherent in those vehicles.

NAMED PLAINTIFF'S FACTUAL ALLEGATIONS

19. Plaintiff Justin Johnson purchased a new truck manufactured by Toyota Motor Corporation and distributed by Toyota Motor Sales U.S.A., Inc., in May 2008. The truck was a 2008 Toyota Tacoma.

20. Shortly thereafter, Plaintiff's wife Shonda Johnson was driving the truck when the accelerator pedal became stuck. She was unable to control the acceleration and the truck ended up in a ditch. The police who responded to the accident had trouble towing the truck because the engine was "screaming."

21. Mrs. Johnson took the truck to the Toyota dealership where she bought it and was told there was nothing wrong with the truck.

22. The same day she left the dealership, the race condition occurred again.

23. In July 2008, Mr. Johnson took the truck back to the dealership and demanded a replacement truck that did not have the defect. Because the truck had been wrecked, the dealer refused to replace it. Mr. Johnson was forced to trade in his new

Tacoma on another new Tacoma. This transaction cost him several thousand dollars because of the greatly diminished value of a truck that is considered "used."

24. Plaintiff and his family live deep in the woods. Plaintiff does not want to continue driving the Tacoma until a permanent fix is made, but the Johnson family cannot afford alternative transportation, and walking and public transit are not options where they live.

25. Plaintiff's truck is one of the Recalled Vehicles. It is subject to the Defendants' "floor mat" recalls but not the "sticking accelerator pedal" recalls. Mrs. Johnson is confident that the floor mats did not have anything to do with the accident she had in the first Tacoma. Plaintiff is concerned that Toyota's floor mat fix will not address the problem and that a mechanical, electrical, or other physical problem is the cause.

26. Plaintiff's truck, whether or not it is now or in the future a subject of any recall by Toyota, is defective and unreasonably dangerous for its intended use.

SUMMARY OF CLASS ALLEGATIONS

Numerosity of the Class

27. Plaintiff brings this action as a class action on behalf of himself and all others similarly situated for the purpose of asserting claims alleged in this complaint on a common basis.

28. Plaintiff proposes to act as a representative of the following class composed of:

> **All persons in the United States who own a Toyota vehicle subject to unintended acceleration.**

Excluded from the class are the Defendants, officers, directors, board members or employees of the Defendants; any entity in which the Defendants have a controlling interest; affiliates, legal representatives, attorneys, heirs or assigns of the Defendants; any

federal, state or local governmental entity, any judge, justice, or judicial officer presiding over this matter and the members of their immediate families and judicial staffs.

29. In addition to or in the alternative to the above, Plaintiff may propose subclasses so as to ameliorate any choice of law concerns or as required by Federal Rule of Civil Procedure 23 by proposing subclasses based upon the fifty states and the Commonwealth of Puerto Rico and the District of Columbia.

30. While Plaintiff and the proposed class may seek subclasses as set forth above, this will be the subject of an appropriate Rule 23 class certification motion. Until such time, Plaintiff and the proposed class alternatively propose an initial subclass defined as:

All persons in Florida who own a Toyota vehicle subject to unintended acceleration.

Excluded from the class are the Defendants, officers, directors, board members or employees of the Defendants; any entity in which the Defendants have a controlling interest; affliates, legal representatives, attorneys, heirs or assigns of the Defendants; any federal, state or local governmental entity, any judge, justice, or judicial officer presiding over this matter and the members of their immediate families and judicial staffs.

31. The class is so numerous that joinder of all issues is impractical. Similarly, the class is so numerous that joinder of all members is impractical.

32. Plaintiff is unable to state the exact number of class members without discovery of the Defendants' records. However, according to the Defendants' own press releases, as well as statements made by officials of the federal government, over four million vehicles with the defect were sold, so over four million persons fall within the proposed class definition. News reports continue to emerge with new and startling information about Toyota vehicles. The number of vehicles with unintended acceleration problems may rise further.

33. Plaintiff and the class are claiming damages and injunctive relief based upon the misconduct alleged herein including the Defendants' manufacture and sale of vehicles with a risk of sudden unintended acceleration and the Defendants' deceptive and misleading conduct in failing to inform consumers of the scope and causes of that risk.

34. Additionally, no attorney would have the financial resources to litigate this case where the potential recovery for each class member is relatively small. Therefore, joinder of all similarly situated individuals is appropriate.

Predominance of Common Questions of Law and Fact

35. The claims asserted by Plaintiff on behalf of himself and all class members present questions of fact or law common to the class. These questions of law or fact predominate over questions affecting individual members, and they include the following:

Questions of Fact:

a) Whether the Defendants have manufactured and sold vehicles with a risk of sudden unintended acceleration;

b) Whether the Defendants knew of the risk of sudden unintended acceleration present in their vehicles and whether the Defendants concealed that risk from consumers; and,

c) Whether the Defendants concealed information regarding the scope and cause of the risk of unintended sudden acceleration in their vehicles.

Questions of Law:

a) Whether the Defendants engaged in unfair or deceptive trade or business practices in connection with the manufacture, sale, and marketing of their vehicles;

b) Whether the Defendants concealed, suppressed, or omitted material facts when they failed to reveal to consumers that any of their vehicles had a risk of sudden unintended acceleration or when they made statements to consumers regarding the potential causes of the risk of sudden unintended acceleration;

c) What steps the Defendants have taken to remedy the risk of sudden unintended acceleration in their vehicles;

d) To what extent, and in what amounts, were Plaintiff and the class damaged by Defendants' unlawful actions; and,

e) Whether Defendants have any affirmative defenses and if so, whether those defenses are common to all class members and are valid.

Typicality

36. The claims asserted by Plaintiff on behalf of himself are typical of the other class members' claims in that the other class members are also owners of a defective vehicle and have also been deceived or mislead by received similar misrepresentations about the risk of sudden unintended acceleration in Recalled Vehicles, and have all similarly suffered harm as a result of Defendants' violations of law, as alleged herein.

Adequacy of Representation

37. Plaintiff will fairly and adequately represent and protect the interests of the class because (i) Plaintiff has retained counsel experienced in the prosecution of such litigation and counsel will adequately represent the interests of the class, (ii) Plaintiff and his counsel are aware of no conflicts of interest between Plaintiff and absent class members

or otherwise; and (iii) Plaintiff is knowledgeable concerning the subject matter of this action and will assist counsel in the prosecution of this litigation.

Superiority

38. A class action provides a fair and efficient method for adjudicating this controversy and is superior to the other available methods of adjudication in that (i) neither the size of the class, nor any other factor, make it likely that difficulties will be encountered in the management of this class as a class action; (ii) the prosecution of separate actions by individual class members, or the individual joinders of all class members in this action is impracticable and would create a massive and unnecessary burden on the resources of Courts and could result in inconsistent adjudications, while a single class action can determine, with judicial economy, the rights of each member of the class, (iii) because of the disparity of resources available to Defendants versus those available to individual class members, prosecution of separate actions would work a financial hardship on may class members, and (iv) the conduct of this action as a class action conserves the resources of the parties and the Court system and protects the rights of each member of the class and meets all due process requirements as to fairness to all parties. A class action is also superior to maintenance of these claims on a claim by claim basis when all actions arise out of the same circumstances and course of conduct.

COUNT I:
VIOLATION OF CONSUMER PROTECTION STATUTES

39. Plaintiff adopts and incorporates by reference all allegations contained in paragraphs 1 through 38 as if fully set forth separately herein.

40. Plaintiff and all class members are consumers and the transactions at issue in this are protected by state consumer protection statutes with respect to their purchase of their vehicles.

41. The Defendants engaged in commercial conduct by selling vehicles to the class.

42. The Defendants misrepresented and omitted material information regarding the risk of sudden unintended acceleration in their vehicles by failing to disclose known risks. Had Plaintiff and the class known of such risks, they would not have purchased their vehicles or have paid the same price for the vehicles that they did pay.

43. The Defendants' misrepresentations and concealment of material facts constitute unconscionable commercial practices, deception, fraud, false pretenses, misrepresentation or the knowing concealment, suppression or omission of material facts with the intent that others rely on such concealment, suppression or omission in connection with the sale and marketing of their vehicles in violation of state consumer protection statutes, including but not limited to Florida's Deceptive and Unfair Trade Practices Act.

44. As a result of the wrongful conduct described herein, Plaintiff and members of the class suffered damages.

45. Plaintiff and the class are entitled to compensatory damages, equitable and declaratory relief, costs, and reasonable attorneys' fees.

COUNT II:
BREACH OF IMPLIED WARRANTY

Plaintiff adopts and incorporates by reference all allegations contained in paragraphs 1 through 38 as if fully set forth separately herein.

At the times Toyota marketed, sold, and distributed automobiles for use by Plaintiff and the class, Toyota knew of the use for which their vehicles were intended and impliedly warranted them to be of a certain quality.

Toyota embarked on and carried out a common scheme of marketing and selling automobiles by a falsely and deceptively representing that the vehicles were safe and without defects, specifically, that the accelerator pedal of the Recalled Vehicles was fit for its intended use.

Said representations and warranties aforementioned are false, misleading, and inaccurate in that the recalled automobiles are unsafe and unreasonably dangerous due to the defective accelerator pedals.

The vehicles sold to the class were defective, unmerchantable, and unfit for ordinary use when sold, and unfit for the particular use for which they were sold.

The vehicles sold to the class contain a vice or defect which renders them either absolutely useless or renders their use inconvenient and imperfect such that Plaintiff and the proposed class members would not have purchased their vehicles had they known of the vice or defect.

The damages in question arose from the reasonably anticipated use of the product in question.

Toyota breached the implied warranties of merchantability and fitness for a particular purpose when its recalled automobiles were sold to Plaintiff and the proposed class, in that the accelerator pedals are defective and have otherwise failed to function as represented and intended.

As a direct and proximate cause of Toyota's breach of the implied warranties of

merchantability and fitness for a particular purpose, Plaintiff and the proposed class have sustained and will continue to sustain the loss of use of their vehicles, severe emotional distress, economic losses and consequential damages, and are therefore entitled to compensatory damages and equitable and declaratory relief.

COUNT III:
UNJUST ENRICHMENT

46. Plaintiff adopts and incorporates by reference all allegations contained in paragraphs 1 through 38 as if fully set forth separately herein.

47. Defendants have received benefits from Plaintiff and the proposed class when each plaintiff purchased a Recalled Vehicle.

48. By failing to disclose true scope and cause of the risk of sudden unintended acceleration in Recalled Vehicles, Defendants have been unjustly enriched.

49. As a direct and proximate result of the foregoing, Plaintiff and the class have suffered damages. Plaintiff and the class members are entitled to compensatory damages, equitable and declaratory relief, punitive damages, costs, and reasonable attorneys' fees.

COUNT IV:
PRODUCTS LIABILITY

50. Plaintiff adopts and incorporates by reference all allegations contained in paragraphs 1 through 38 as if fully set forth separately herein.

51. Because of the defective acceleration problem, the vehicles sold to the class are unreasonably dangerous for their intended purpose.

52. Toyota could have employed a reasonable alternative design for its vehicles that would not have been defective.

53. Therefore, the vehicles at issue are defective under the product liability statutes and caselaw of Florida, as well as the other jurisdictions where class members live.

54. The Defendants are liable to Plaintiff and the class under all theories of products liability law. These include negligence, strict liability in tort for defective product, express warranty, implied warranty, or strict liability for ultrahazardous instrumentality.

PRAYER FOR RELIEF

Plaintiff, individually and on behalf of the class, prays for the Court to:

A. Enter an order certifying a class action pursuant to Fed. R. Civ. P. 23 (a), (b)(2) and (b)(3) consisting of the class defined herein and directing that appropriate notice to class members be delivered;

B. Designate Plaintiff as representative of the proposed class and designate his counsel as class counsel;

C. Enter judgment in favor of Plaintiff and the class and against Defendants Toyota Motor Company and Toyota Motor Sales, U.S.A., Inc.;

D. Award Plaintiffs and the class restitution; disgorgement; actual, statutory and punitive damages; and attorneys' fees and costs, including pre-judgment and post-judgment interest thereon;

E. Enter a temporary, preliminary, and permanent order for injunctive relief enjoining Defendants from continuing to engage in the business practices complained of herein;

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F. Provide such further relief as the Court deems just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury.

Dated: February 5, 2010

Respectfully submitted,

Fredric G. Levin (Fla. Bar 46840)
M. Robert Blanchard (Fla. Bar 370975)
William F. Cash III (Fla. Bar 68443)
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TOY-RQ-05E-00009622

CIVIL COVER SHEET

The 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, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

JUSTIN JOHNSON on behalf of a proposed class

(b) County of Residence of First Listed Plaintiff BAY
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
ROBERT BLANCHARD, LEVIN PAPANTONIO, 316 S. BAYLEN ST. STE 600, PENSACOLA FL 32502 850-435-7000

DEFENDANTS

TOYOTA MOTOR CORPORATION
TOYOTA MOTOR SALES U.S.A., INC.

County of Residence of First Listed Defendant JAPAN
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

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 (Place an "X" in One Box for Plaintiff and One Box for Defendant)
(For Diversity Cases Only)

	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. NATURE OF SUIT (Place an "X" in One Box Only)

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 Loans (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 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury

PERSONAL INJURY
- ☐ 362 Personal Injury - Med. Malpractice
- ☐ 365 Personal Injury - Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☒ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 444 Welfare
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/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

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 463 Habeas Corpus - Alien Detainee
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

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

OTHER STATUTES
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 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 Acts
- ☐ 892 Economic Stabilization Act
- ☐ 893 Environmental Matters
- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Information Act
- ☐ 900Appeal of Fee Determination Under Equal Access to Justice
- ☐ 950 Constitutionality of State Statutes

V. 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 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing **(Do not cite jurisdictional statutes unless diversity)**:
28 USC 1332

Brief description of cause:
PRODUCTS LIABILITY CLASS ACTION FOR DEFECTIVE TOYOTA VEHICLES

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A **CLASS ACTION** UNDER F.R.C.P. 23

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE UNKNOWN DOCKET NUMBER MDL 2131

DATE 02/05/2010

SIGNATURE OF ATTORNEY OF RECORD /S/ M. ROBERT BLANCHARD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

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INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity**. Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PANAMA CITY DIVISION

JUSTIN JOHNSON, on behalf of himself and all others similarly situated, Plaintiff, v. TOYOTA MOTOR CORPORATION and TOYOTA MOTOR SALES U.S.A., Inc. Defendants.	)	Case No. 5:10-CV-26 CLASS ACTION JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Justin Johnson hereby sues Defendants Toyota Motor Corporation and Toyota Motor Sales, U.S.A., Inc. individually and on behalf of the class identified below. Accordingly, this is a complaint for individual damages as well as a request for class certification.

NATURE OF CASE

1. This is a class action arising from the Defendants' manufacture and sale of defective automobiles which can suddenly and without warning accelerate out of control. In the last four months, the Defendants have instituted at least three voluntary recalls of these defective automobiles in the United States. The first recall occurred on September 29, 2009, with the Defendants claiming that the sudden unintended acceleration problem was caused by defective floor mats. The second recall occurred in early January 2010 and was an expansion of the first, including additional models within the scope of the first recall and once again attributing the risk of sudden unintended acceleration to a problem with

floor mats in the automobiles. The third recall was announced on January 21, 2010, and included a different set of automobiles, some within the scope of the first two recalls but others not. This third recall attributed the risk of sudden unintended acceleration to the "possibility that certain accelerator pedal mechanisms may, in rare instances, mechanically stick in a partially depressed position or return slowly to the idle position." In total, these three recalls encompass well over 4 million vehicles (the "Recalled Vehicles").

2. In conjunction with the third voluntary recall, the Defendants publicly announced on January 26, 2010, that they would cease sales of eight models falling within the scope of the January 21, 2010, recall. The Defendants did not indicate in their announcement when sales of these eight models would resume, instead stating "[t]his action is necessary until a remedy is finalized."

3. Finally, the Defendants have announced suggested actions consumers owning a Recalled Vehicle should take to ameliorate the risk of sudden unintended acceleration. With respect to vehicles falling within the floor mat recall of September 2009 and January 2010, Toyota has suggested consumers remove the floor mats and place them in the trunk pending the Defendants developing a permanent fix. With respect to vehicles falling within the most recent January 21, 2010 recall, Toyota has suggested to consumers that "no action is required unless you feel you are experiencing this condition." Toyota suggests that consumers would have reason to believe their vehicle is experiencing "this condition," if the consumer has "noticed that [the] accelerator pedal is hard to depress, slow to return or is unsmooth during operation." Finally, Toyota has told consumers that if they experience any of these symptoms, "the vehicle should be driven to the nearest safe location, the engine shut off, and a Toyota dealer contacted for assistance."

4. The Defendants have made no effort to provide affected consumers with any alternative means of transportation while a permanent fix is being developed or during the time it takes for any repairs recommended by the Defendants to be completed.

THE PARTIES

5. Plaintiff is an individual currently residing in this district who purchased a defective Toyota truck that experiences unintended acceleration.

6. Toyota Motor Corporation is, and at all relevant times was, a Japanese corporation with its headquarters in Toyota City, Aichi Prefecture, Japan, which conducts and transacts business within this district.

7. Toyota Motor Sales, U.S.A. is, and at all relevant times was, a California corporation with its principal place of business in Torrance, California, which conducts and transacts business within this district.

JURISDICTION AND VENUE

8. This Court has jurisdiction pursuant to 28 U.S.C. § 1332(d) ("CAFA jurisdiction"). There is minimal diversity of citizenship, the case is filed as a class action, the matter in controversy exceeds $5,000,000, exclusive of interest and costs, and more than two-thirds of the members of the proposed class are citizens of a state different than the Defendants.

9. Jurisdiction also lies under 28 U.S.C. § 1332(a) (the "general diversity statute"). The amount in controversy exceeds $75,000.00, exclusive of interest and costs, and there is complete diversity—both of the Defendants are incorporated and have their principal place of business in a state or nation other than the state in which the Plaintiff resides.

10. Venue lies in this district, pursuant to 28 U.S.C. § 1391(b)(1) and (2) and § 1391(c), because the Defendants are subject to personal jurisdiction in this district and because a substantial part of the events giving rise to Plaintiff's claims occurred in this district.

SUMMARY OF FACTS COMMON TO ALL CLAIMS

11. Defendant Toyota Motor Corporation is one of the world's largest manufacturers of automobiles sold throughout the United States and the world.

12. Defendant Toyota Motor Sales, U.S.A, is a wholly-owned subsidiary of Toyota Motor Corporation and is responsible for the sales, marketing, and distribution of motor vehicles manufactured by Toyota Motor Corporation throughout the United States.

13. For many years, automobiles manufactured and sold by the Defendants have had a good reputation among consumers for safety and quality. Indeed, a December 23, 2009, newspaper article published by the *Los Angeles Times*, recognized that "[a] peerless reputation for quality and safety has helped Toyota become the world's largest automaker."

14. In recent years, however, the Defendants have maintained this good reputation through a pattern and practice of deceiving consumers about safety problems it has had with many of its automobiles. Rather than being forthcoming about the nature and severity of manufacturing defects in their products, the Defendants have intentionally failed to disclose and have made numerous false statements to consumers to hide known manufacturing defects in its automobiles.

15. For instance, as reported by the *Los Angeles Times* on December 23, 2009:

> 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 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."

16. The National Highway Traffic Safety Administration ("NHTSA") did, in fact, issue a statement on November 4, 2009, "correcting inaccurate and misleading information put out by Toyota concerning a safety recall involving 3.8 million Toyota and Lexus vehicles." This statement indicated that:

> A press release put out by Toyota earlier this week about their recall of 3.8 million Toyota and Lexus vehicles inaccurately stated NHTSA had reached a conclusion "that no defect exists in vehicles in which the driver's floor mat is compatible with the vehicle and properly secured." NHTSA has told Toyota and consumers that removing the recalled floor mats is the most immediate way to address the safety risk and avoid the possibility of the accelerator becoming stuck. But it is simply an interim measure. This remedy does not correct the underlying defect in the vehicles involving the potential for entrapment of the accelerator by floor mats, which is related to accelerator and floor pan design. Safety is the number one priority for NHTSA and this is why officials are working with Toyota to find the right way to fix this very dangerous problem. This matter is not closed until Toyota has effectively addressed the defect by providing a suitable vehicle based solution.

17. The Defendants failed to fully and accurately inform consumers of the true magnitude of the risk of sudden unintended acceleration with the Recalled Vehicles. Prior to September 2009, the Defendants completely failed to warn consumers of the sudden unintended acceleration risks it knew existed with the Recalled Vehicles. In conjunction with the September 2009 recall, the Defendants also falsely indicated to consumers that the sole source of the risk of sudden unintended acceleration arose from potentially faulty floor mats when in fact Toyota knew of other potential risk factors, including but not limited to, mechanical design defects, problems with the electronic throttle control, the absence of a safety mechanism to cut fuel flow to the engine when the throttle is in the full open position but the brake pedal is fully depressed, or the "possibility that certain accelerator pedal

mechanisms may, in rare instances, mechanically stick." Finally, in this final January 21, 2010 recall, the Defendants have once again failed to fully inform consumers of the magnitude of the risk and its potential causes.

18. In addition, the Defendants failed to adequately inform consumers of the risk of sudden unintended acceleration during the time period between the September 2009 recall and the January 2010 recall such that many consumers were duped into buying Toyota vehicles now within the scope of the Recalled Vehicles without having been told of the risk of sudden unintended acceleration inherent in those vehicles.

NAMED PLAINTIFF'S FACTUAL ALLEGATIONS

19. Plaintiff Justin Johnson purchased a new truck manufactured by Toyota Motor Corporation and distributed by Toyota Motor Sales U.S.A., Inc., in May 2008. The truck was a 2008 Toyota Tacoma.

20. Shortly thereafter, Plaintiff's wife Shonda Johnson was driving the truck when the accelerator pedal became stuck. She was unable to control the acceleration and the truck ended up in a ditch. The police who responded to the accident had trouble towing the truck because the engine was "screaming."

21. Mrs. Johnson took the truck to the Toyota dealership where she bought it and was told there was nothing wrong with the truck.

22. The same day she left the dealership, the race condition occurred again.

23. In July 2008, Mr. Johnson took the truck back to the dealership and demanded a replacement truck that did not have the defect. Because the truck had been wrecked, the dealer refused to replace it. Mr. Johnson was forced to trade in his new

Tacoma on another new Tacoma. This transaction cost him several thousand dollars because of the greatly diminished value of a truck that is considered "used."

24. Plaintiff and his family live deep in the woods. Plaintiff does not want to continue driving the Tacoma until a permanent fix is made, but the Johnson family cannot afford alternative transportation, and walking and public transit are not options where they live.

25. Plaintiff's truck is one of the Recalled Vehicles. It is subject to the Defendants' "floor mat" recalls but not the "sticking accelerator pedal" recalls. Mrs. Johnson is confident that the floor mats did not have anything to do with the accident she had in the first Tacoma. Plaintiff is concerned that Toyota's floor mat fix will not address the problem and that a mechanical, electrical, or other physical problem is the cause.

26. Plaintiff's truck, whether or not it is now or in the future a subject of any recall by Toyota, is defective and unreasonably dangerous for its intended use.

SUMMARY OF CLASS ALLEGATIONS

Numerosity of the Class

27. Plaintiff brings this action as a class action on behalf of himself and all others similarly situated for the purpose of asserting claims alleged in this complaint on a common basis.

28. Plaintiff proposes to act as a representative of the following class composed of:

> **All persons in the United States who own a Toyota vehicle subject to unintended acceleration.**

Excluded from the class are the Defendants, officers, directors, board members or employees of the Defendants; any entity in which the Defendants have a controlling interest; affiliates, legal representatives, attorneys, heirs or assigns of the Defendants; any

federal, state or local governmental entity, any judge, justice, or judicial officer presiding over this matter and the members of their immediate families and judicial staffs.

29. In addition to or in the alternative to the above, Plaintiff may propose subclasses so as to ameliorate any choice of law concerns or as required by Federal Rule of Civil Procedure 23 by proposing subclasses based upon the fifty states and the Commonwealth of Puerto Rico and the District of Columbia.

30. While Plaintiff and the proposed class may seek subclasses as set forth above, this will be the subject of an appropriate Rule 23 class certification motion. Until such time, Plaintiff and the proposed class alternatively propose an initial subclass defined as:

All persons in Florida who own a Toyota vehicle subject to unintended acceleration.

Excluded from the class are the Defendants, officers, directors, board members or employees of the Defendants; any entity in which the Defendants have a controlling interest; affliates, legal representatives, attorneys, heirs or assigns of the Defendants; any federal, state or local governmental entity, any judge, justice, or judicial officer presiding over this matter and the members of their immediate families and judicial staffs.

31. The class is so numerous that joinder of all issues is impractical. Similarly, the class is so numerous that joinder of all members is impractical.

32. Plaintiff is unable to state the exact number of class members without discovery of the Defendants' records. However, according to the Defendants' own press releases, as well as statements made by officials of the federal government, over four million vehicles with the defect were sold, so over four million persons fall within the proposed class definition. News reports continue to emerge with new and startling information about Toyota vehicles. The number of vehicles with unintended acceleration problems may rise further.

33. Plaintiff and the class are claiming damages and injunctive relief based upon the misconduct alleged herein including the Defendants' manufacture and sale of vehicles with a risk of sudden unintended acceleration and the Defendants' deceptive and misleading conduct in failing to inform consumers of the scope and causes of that risk.

34. Additionally, no attorney would have the financial resources to litigate this case where the potential recovery for each class member is relatively small. Therefore, joinder of all similarly situated individuals is appropriate.

Predominance of Common Questions of Law and Fact

35. The claims asserted by Plaintiff on behalf of himself and all class members present questions of fact or law common to the class. These questions of law or fact predominate over questions affecting individual members, and they include the following:

Questions of Fact:

a) Whether the Defendants have manufactured and sold vehicles with a risk of sudden unintended acceleration;

b) Whether the Defendants knew of the risk of sudden unintended acceleration present in their vehicles and whether the Defendants concealed that risk from consumers; and,

c) Whether the Defendants concealed information regarding the scope and cause of the risk of unintended sudden acceleration in their vehicles.

Questions of Law:

a) Whether the Defendants engaged in unfair or deceptive trade or business practices in connection with the manufacture, sale, and marketing of their vehicles;

b) Whether the Defendants concealed, suppressed, or omitted material facts when they failed to reveal to consumers that any of their vehicles had a risk of sudden unintended acceleration or when they made statements to consumers regarding the potential causes of the risk of sudden unintended acceleration;

c) What steps the Defendants have taken to remedy the risk of sudden unintended acceleration in their vehicles;

d) To what extent, and in what amounts, were Plaintiff and the class damaged by Defendants' unlawful actions; and,

e) Whether Defendants have any affirmative defenses and if so, whether those defenses are common to all class members and are valid.

Typicality

36. The claims asserted by Plaintiff on behalf of himself are typical of the other class members' claims in that the other class members are also owners of a defective vehicle and have also been deceived or mislead by received similar misrepresentations about the risk of sudden unintended acceleration in Recalled Vehicles, and have all similarly suffered harm as a result of Defendants' violations of law, as alleged herein.

Adequacy of Representation

37. Plaintiff will fairly and adequately represent and protect the interests of the class because (i) Plaintiff has retained counsel experienced in the prosecution of such litigation and counsel will adequately represent the interests of the class, (ii) Plaintiff and his counsel are aware of no conflicts of interest between Plaintiff and absent class members

or otherwise; and (iii) Plaintiff is knowledgeable concerning the subject matter of this action and will assist counsel in the prosecution of this litigation.

Superiority

38. A class action provides a fair and efficient method for adjudicating this controversy and is superior to the other available methods of adjudication in that (i) neither the size of the class, nor any other factor, make it likely that difficulties will be encountered in the management of this class as a class action; (ii) the prosecution of separate actions by individual class members, or the individual joinders of all class members in this action is impracticable and would create a massive and unnecessary burden on the resources of Courts and could result in inconsistent adjudications, while a single class action can determine, with judicial economy, the rights of each member of the class, (iii) because of the disparity of resources available to Defendants versus those available to individual class members, prosecution of separate actions would work a financial hardship on may class members, and (iv) the conduct of this action as a class action conserves the resources of the parties and the Court system and protects the rights of each member of the class and meets all due process requirements as to fairness to all parties. A class action is also superior to maintenance of these claims on a claim by claim basis when all actions arise out of the same circumstances and course of conduct.

COUNT I:
VIOLATION OF CONSUMER PROTECTION STATUTES

39. Plaintiff adopts and incorporates by reference all allegations contained in paragraphs 1 through 38 as if fully set forth separately herein.

40. Plaintiff and all class members are consumers and the transactions at issue in this are protected by state consumer protection statutes with respect to their purchase of their vehicles.

41. The Defendants engaged in commercial conduct by selling vehicles to the class.

42. The Defendants misrepresented and omitted material information regarding the risk of sudden unintended acceleration in their vehicles by failing to disclose known risks. Had Plaintiff and the class known of such risks, they would not have purchased their vehicles or have paid the same price for the vehicles that they did pay.

43. The Defendants' misrepresentations and concealment of material facts constitute unconscionable commercial practices, deception, fraud, false pretenses, misrepresentation or the knowing concealment, suppression or omission of material facts with the intent that others rely on such concealment, suppression or omission in connection with the sale and marketing of their vehicles in violation of state consumer protection statutes, including but not limited to Florida's Deceptive and Unfair Trade Practices Act.

44. As a result of the wrongful conduct described herein, Plaintiff and members of the class suffered damages.

45. Plaintiff and the class are entitled to compensatory damages, equitable and declaratory relief, costs, and reasonable attorneys' fees.

COUNT II:
BREACH OF IMPLIED WARRANTY

Plaintiff adopts and incorporates by reference all allegations contained in paragraphs 1 through 38 as if fully set forth separately herein.

At the times Toyota marketed, sold, and distributed automobiles for use by Plaintiff and the class, Toyota knew of the use for which their vehicles were intended and impliedly warranted them to be of a certain quality.

Toyota embarked on and carried out a common scheme of marketing and selling automobiles by a falsely and deceptively representing that the vehicles were safe and without defects, specifically, that the accelerator pedal of the Recalled Vehicles was fit for its intended use.

Said representations and warranties aforementioned are false, misleading, and inaccurate in that the recalled automobiles are unsafe and unreasonably dangerous due to the defective accelerator pedals.

The vehicles sold to the class were defective, unmerchantable, and unfit for ordinary use when sold, and unfit for the particular use for which they were sold.

The vehicles sold to the class contain a vice or defect which renders them either absolutely useless or renders their use inconvenient and imperfect such that Plaintiff and the proposed class members would not have purchased their vehicles had they known of the vice or defect.

The damages in question arose from the reasonably anticipated use of the product in question.

Toyota breached the implied warranties of merchantability and fitness for a particular purpose when its recalled automobiles were sold to Plaintiff and the proposed class, in that the accelerator pedals are defective and have otherwise failed to function as represented and intended.

As a direct and proximate cause of Toyota's breach of the implied warranties of

merchantability and fitness for a particular purpose, Plaintiff and the proposed class have sustained and will continue to sustain the loss of use of their vehicles, severe emotional distress, economic losses and consequential damages, and are therefore entitled to compensatory damages and equitable and declaratory relief.

COUNT III:
UNJUST ENRICHMENT

46. Plaintiff adopts and incorporates by reference all allegations contained in paragraphs 1 through 38 as if fully set forth separately herein.

47. Defendants have received benefits from Plaintiff and the proposed class when each plaintiff purchased a Recalled Vehicle.

48. By failing to disclose true scope and cause of the risk of sudden unintended acceleration in Recalled Vehicles, Defendants have been unjustly enriched.

49. As a direct and proximate result of the foregoing, Plaintiff and the class have suffered damages. Plaintiff and the class members are entitled to compensatory damages, equitable and declaratory relief, punitive damages, costs, and reasonable attorneys' fees.

COUNT IV:
PRODUCTS LIABILITY

50. Plaintiff adopts and incorporates by reference all allegations contained in paragraphs 1 through 38 as if fully set forth separately herein.

51. Because of the defective acceleration problem, the vehicles sold to the class are unreasonably dangerous for their intended purpose.

52. Toyota could have employed a reasonable alternative design for its vehicles that would not have been defective.

53. Therefore, the vehicles at issue are defective under the product liability statutes and caselaw of Florida, as well as the other jurisdictions where class members live.

54. The Defendants are liable to Plaintiff and the class under all theories of products liability law. These include negligence, strict liability in tort for defective product, express warranty, implied warranty, or strict liability for ultrahazardous instrumentality.

PRAYER FOR RELIEF

Plaintiff, individually and on behalf of the class, prays for the Court to:

A. Enter an order certifying a class action pursuant to Fed. R. Civ. P. 23 (a), (b)(2) and (b)(3) consisting of the class defined herein and directing that appropriate notice to class members be delivered;

B. Designate Plaintiff as representative of the proposed class and designate his counsel as class counsel;

C. Enter judgment in favor of Plaintiff and the class and against Defendants Toyota Motor Company and Toyota Motor Sales, U.S.A., Inc.;

D. Award Plaintiffs and the class restitution; disgorgement; actual, statutory and punitive damages; and attorneys' fees and costs, including pre-judgment and post-judgment interest thereon;

E. Enter a temporary, preliminary, and permanent order for injunctive relief enjoining Defendants from continuing to engage in the business practices complained of herein;

TOY-RQ-05E-00009639

F. Provide such further relief as the Court deems just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury.

Dated: February 5, 2010

Respectfully submitted,

Fredric G. Levin (Fla. Bar 46840)
M. Robert Blanchard (Fla. Bar 370975)
William F. Cash III (Fla. Bar 68443)
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Attorneys for the Plaintiff and the Class

TOY-RQ-05E-00009640

U.S. District Court
Northern District of Florida (Panama City)
CIVIL DOCKET FOR CASE #: 5:10-cv-00026-RS-MD

JOHNSON v. TOYOTA MOTOR CORPORATION et al
Assigned to: JUDGE RICHARD SMOAK
Referred to: MAGISTRATE JUDGE MILES DAVIS
Demand: $75,000
Cause: 28:1332 Diversity-Product Liability

Date Filed: 02/05/2010
Jury Demand: Plaintiff
Nature of Suit: 385 Prop. Damage Prod. Liability
Jurisdiction: Diversity

Plaintiff

JUSTIN K JOHNSON
ON BEHALF OF HIMSELF AND ALL OTHERS SIMILARLY SITUATED

represented by **WILLIAM FRANKLIN CASH , III**
LEVIN PAPANTONIO ET AL - PENSACOLA FL
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V.

Defendant

TOYOTA MOTOR CORPORATION

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ATTORNEY TO BE NOTICED

Defendant

TOYOTA MOTOR SALES USA INC

represented by **FREDERIC GERSON LEVIN**
(See above for address)
ATTORNEY TO BE NOTICED

MICHAEL ROBERT BLANCHARD
(See above for address)
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
02/05/2010	1	COMPLAINT against TOYOTA MOTOR CORPORATION, TOYOTA MOTOR SALES USA INC (Filing fee $ 350 receipt number 1129-1495971.), filed by JUSTIN K JOHNSON. (CASH, WILLIAM) (Entered: 02/05/2010)
02/05/2010	2	CIVIL COVER SHEET. (CASH, WILLIAM) (Entered: 02/05/2010)

02/11/2010	4	Summons Issued as to TOYOTA MOTOR CORPORATION, TOYOTA MOTOR SALES USA INC. (jcw) (Entered: 02/11/2010)