FILE START

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AO 440 (Rev. 8/01) Summons in a Civil Action

UNITED STATES DISTRICT COURT

District of

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

SUMMONS IN A CIVIL ACTION

CASE NUMBER: 7:10-281-RBH

TO: (Name and address of Defendant)

Toyota Motor Corporation - c/o South Carolina Secretary of State, Attn: Service of Process Division, Edgar Brown Building, 1205 Pendleton Street, Suite 525, Columbia, South Carolina 29201; 1 Toyota-Cho, Toyota City, Aichi Prefecture 471-8571, Japan
Toyota Motor Sales, U.S.A., Inc. - Registered Agent - CT Corporation System, 2 Office Park Court, Suite 103, Columbia, South Carolina 29223
Does 1 through 10 - Unknown

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

John B. White, Jr.
Donald C. Coggins, Jr.
Harrison, White, Smith, & Coggins, P.C.
178 West Main Street (29306)
Post Office Box 3547
Spartanburg, South Carolina 29304

an answer to the complaint which is served on you with this summons, within 21 days after service of this summons on 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.

Larry W. Propes
CLERK

s/Amanda Williams
(By) DEPUTY CLERK

UNITED STATES DISTRICT COURT ★ DISTRICT OF SOUTH CAROLINA ★

2/5/2010
DATE

✎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
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 $0.00

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
FOR THE DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

DALE ROBERTS, on behalf of himself and all others similarly situated, Plaintiffs, v. TOYOTA MOTOR CORPORATION, TOYOTA MOTOR SALES, U.S.A., INC., AND DOES 1 through 10 Defendants.	CIVIL ACTION No. 7:10-281-RBH **CLASS ACTION COMPLAINT**

PLAINTIFFS' ORIGINAL CLASS ACTION COMPLAINT

Plaintiff DALE ROBERTS brings this action on behalf of himself, as an individual (hereinafter, "Plaintiff"), and on behalf of all others similarly situated (hereinafter, the "Plaintiff Class") against Defendants TOYOTA MOTOR CORPORATION, TOYOTA MOTOR SALES, U.S.A., INC., and DOES 1-10 (collectively, "Defendants"), and alleges as follows:

I.
JURISDICTION & VENUE

1. This Court has subject-matter jurisdiction pursuant to 28 U.S.C. § 1332(d)(2) because the matter in controversy in this civil action exceeds the sum or value of $5,000,000, exclusive of interests and costs, and there is minimal diversity because certain members of the Plaintiff Class and Subclasses are citizens of a different state than any Defendant as required under 28 U.S.C. § 1332(d)(2)(A).

2. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and (c) because Defendants reside in this district and a substantial part of the events or omissions giving rise to

the claims herein occurred within this District. Defendants reside in this District for purposes of 28 U.S.C. § 1391 because they are subject to general personal jurisdiction in this District. Defendants have continuous and systematic contacts with South Carolina, including this District, through selling vehicles in South Carolina to South Carolina residents, including residents of this District. Defendants are also subject to specific personal jurisdiction in this District because their contacts with this District gave rise to the instant action.

3. Venue is also proper in this Court because Plaintiff Dale Roberts is a citizen of the County of Spartanburg, State of South Carolina who purchased a Toyota Camry in Spartanburg, South Carolina; and proposed Class members include citizens of South Carolina who reside in this District.

II.
PARTIES

4. Plaintiff Dale Roberts owns a 2007 Toyota Camry, which he purchased as a new vehicle from an authorized Toyota dealer in Spartanburg, South Carolina, and he is a resident of the County of Spartanburg, State of South Carolina.

5. Defendant TOYOTA MOTOR CORPORATION ("TMC") is a Japanese corporation with its principal place of business in Toyota City, Aichi, Japan and Tokyo, Japan. Service of process upon Defendant TMC shall be effectuated pursuant to Fed. R. Civ. P. 4(h).

6. Defendant TOYOTA MOTOR SALES, U.S.A., INC. ("Toyota U.S.A.") is a California corporation with its principal place of business in Torrance, Los Angeles County, California. Service of process upon Defendant Toyota U.S.A. shall be effectuated pursuant to Fed. R. Civ. P. 4(h).

7. The true names and capacities of Defendants sued herein as DOES 1 through 10 are currently unknown to Plaintiff, who therefore sues such Defendants by such fictitious names.

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Each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of Court to amend this Complaint to reflect the true names and capacities of the Defendants designated herein as DOES when such identities become known.

8. Upon information and belief, Plaintiff alleges that at all times mentioned herein, each and every Defendant was acting as an agent and/or employee of each of the other Defendants, and at all times mentioned was acting within the course and scope of each of the other Defendants. In addition, each of the acts and/or omissions of each Defendant alleged herein were made known to, and ratified by, each of the other Defendants.

III.
FACTUAL ALLEGATIONS

9. This action is brought as a class action pursuant to Federal Rule of Civil Procedure 23 on behalf of the Plaintiff Class, as well as subclasses, as defined below. Each Plaintiff and member of the Putative Plaintiff Class and Subclasses purchased or leased a vehicle manufactured and warranted by Defendants that is subject to uncontrolled and/or unintended and/or sudden acceleration of such vehicles because of Defendants' admittedly faulty Electronic Throttle Control System with Intelligence ("ETCS-i") coupled with the lack of Brake Override System technology ("BOS"), thereby creating a serious and life-threatening safety condition for drivers of and passengers in Defendants' vehicles, as well as other motorists, pedestrians, and bystanders. As a result of the absence of BOS in Defendants' vehicles, which Defendants failed to disclose to their customers, the vehicles are dangerously unsafe, inherently defective, and are worth less than the amount of money the customers who purchased them paid.

10. The vehicles subject to this action, which in the United States number in the millions, are all models bearing the "Toyota," "Lexus," and "Scion" nameplates, with ETCS-i

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installed, but without an attendant BOS installed, including but not limited to the following models:

Toyota Avalon
Toyota Camry & Camry HV
Toyota Corolla & Corolla Matrix
Toyota FJ Cruiser
Toyota Highlander & Highlander Hybrid
Toyota Land Cruiser
Toyota Prius
Toyota Sequoia
Toyota Sienna
Toyota Tacoma
Toyota Tundra
Toyota RAV4
Toyota Venza

Lexus ES series vehicles
Lexus IS series vehicles
Lexus GS series vehicles
Lexus LS series vehicles
Lexus RX series vehicles
Lexus SC series vehicles

11. The accelerators on such vehicles are controlled by a drive pedal sensor that is a component part of a so-called "drive-by-wire" throttle system (known on Defendants' vehicles as ETCS-i), in which the gas pedal has no direct connection to the engine through a cable or mechanical linkage. Instead, the connection between the pedal and the engine is made by electrical signals traveling through wires. Such systems are the outgrowth of new electronic engine controls in cars. The pedal sensor is intended to gauge how far the driver is pressing the gas pedal and signals the engine's control computer, which determines how much to open the engine throttle, unless the drive-by-wire system sends the wrong signals to the engine computer, or such signals are interfered with or otherwise in error.

12. As an effective means to combat wrong signals, interference, or computer errors, most automakers equip their "drive-by-wire" vehicles with BOS technology. Defendants,

however, failed install BOS technology on their vehicles equipped with ETCS-i. BOS allows a driver to stop a car with the footbrake even if the accelerator is depressed (or the car computer "thinks" the pedal is depressed) and the vehicle is running at full throttle. In other words, if the brakes and the accelerator are in conflict, the brakes win, but only *if* a BOS is installed. Chrysler, Volkswagen, Audi, BMW, Mercedes-Benz, and General Motors are among the manufacturers that began installing BOS in their vehicles, some as far back as ten years ago. However, Defendants have not installed such systems on any vehicle sold in the United States, and will not install any BOS until, reportedly, January 2010.

13. At the Detroit Auto Show in December 2009, Toyota North America President Yoshi Inaba said the company would begin equipping its vehicles with BOS beginning this year. However, in the meantime, Defendants made the unprecedented move of halting production and sale of eight popular models in January 2010 after numerous reports of unintended acceleration. In November 2009, Defendants initially blamed the unintended accelerations on faulty floor mats and their installation, stating that the floor mats caused the accelerator pedal to stick in the depressed position, issuing a recall for millions of "defective" floor mats. In January 2010, Defendants announced that the unintended acceleration problem was due to a faulty accelerator pedal mechanism, which wore down and became susceptible to sticking in the depressed position due to condensation from the cars' heaters on cold days.

14. But Defendants' vehicles had already been subjected to heightened scrutiny for acceleration-safety-related issues for almost a decade. According to a senior engineer at *Consumer Reports'* Auto Test Center, Toyota accounted for approximately 40% of all the unintended acceleration complaints reported to the National Highway Traffic & Safety Administration ("NHTSA") in 2008—as compared to ***all other vehicle manufacturers' models.***

And, as far back as 2004, United States government investigators have been investigating 2002-2003 Toyota and Lexus vehicles to determine whether they were defective, gathering information about owner complaints of sudden acceleration, according to the Center for Auto Safety. Automotive experts say that in at least some of those incidents, a BOS would have prevented harm.

15. As early as 2004, the NHTSA looked at reports of unintended acceleration in Defendants' best-selling model, the Toyota Camry. But the NHTSA limited its investigation to only those incidents lasting one second or less. Upon information and belief, that limit came after a former NHTSA official who went to work for Defendants before the investigation began was involved in discussions with former colleagues at NHTSA.

16. One Massachusetts consumer safety group has identified 2,274 incidents of sudden unintended acceleration in Toyota vehicles causing 275 crashes and at least 18 fatalities since 1999. In another 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"—one out of every five vehicles investigated.

17. In one incident that has, perhaps, drawn the most publicity, a 2009 Lexus ES 350 raced through San Diego, California, weaving at 120 miles per hour through rush-hour freeway traffic. Veteran California Highway Patrol officer Mark Saylor was at the wheel, with his wife, teenage daughter, and brother-in-law aboard. Calls to 911 emergency services recounted Saylor's brother-in-law exclaiming to a police dispatcher via cell phone, "We're in trouble . . . . There's no brakes!" As they approached an intersection, and the end of the road, the passengers can be heard urging each other to pray. All four died. Afterward, investigators said that it appeared the brakes had been applied for so long that the brake pads had melted, according to an

NHTSA report. Had BOS technology been installed, the engine would have depowered and slowed.

18. Similarly, on December 26, 2009, a 2008 Toyota Avalon crashed just outside of Dallas. A Southlake, Texas police officer 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 the driver attempted to hit the brake or slow down. Two weeks later, an NHTSA investigator visited Southlake to inspect the car, accompanied by a Toyota engineer. One factor the pair immediately ruled out was the floor mats, which were in the trunk—perhaps due to the decedent operator's awareness of Defendants' November 2009 floor mat-related recall.

19. A Minnesota owner of a new Toyota Camry was much luckier. The woman's Camry, which was new and had about 6,000 miles on it, kept accelerating after she passed a pick-up truck on the highway in May 2008, even after she took her foot off the gas pedal. The next 6 miles of her journey were terrifying. The car barely slowed down when she pressed the brake—she was only able to slow the car to 60 miles per hour. "The car wanted to go 80, or higher," the driver reported. Visualizing the remainder of her commute, which traversed winding roads with no shoulders, she decided to head for a major freeway, requiring a high-speed turn through an intersection. She hit the brake with both feet, squealing through the turn and managing to swerve onto the road without hitting anything. By the time she got the car stopped miles later—with the coaching of a 911 operator, she managed to turn the car off—smoke was filling the car. Her brakes were smoldering, and the tires had started to melt near the

wheel rims. A police officer at the scene of the incident said the Camry's floor mats were not near the accelerator pedal.

20. Notwithstanding such alarming incidents, on or about January 28, 2010, Defendants represented to consumers on their Toyota USA Newsroom website that the unintended sudden acceleration "condition is rare and ***does not occur suddenly***." Inferring that the problem only occurs in vehicles that have experienced some excessive degree of use, as opposed to brand new vehicles, Defendants added: "It 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." Yet, reports of unintended acceleration in Defendants' vehicles stem from vehicles with fewer than 1,000 miles on them, and others with more than 60,000 miles. Indeed, Defendants' spokesperson Brian Lyons has represented that there is "no common theme when it comes to how long the product has been out there." Defendants subsequently announced that they intend to replace the supposedly defective pedal mechanisms as part of a massive 2.3 million vehicle recall.

21. But, even Defendants' own supplier of the reportedly defective accelerator pedals says that Defendants are far from done in ending the problem of runaway cars—and that Defendants told it that none of the serious accidents or deaths linked to runaway cars was caused by "sticky" gas pedals. Instead, Defendants acknowledged to the parts supplier that the "rare set of conditions"—i.e., excessive wear caused by condensation build up, making the gas pedal slow to return to idle—did not cause *any* accidents or injuries. The pedal supplier also stated that it has "deep concern that there is widespread confusion and incorrect information about the role of CTS-manufactured gas pedals" in the recall, and that its pedals "should absolutely not be linked with any sudden unintended acceleration incidents."

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22. At almost every step, Defendants have underestimated the severity of the sudden-acceleration problem affecting its most popular cars. They moved from discounting early reports of problems to overconfidently announcing diagnoses and insufficient fixes. As recently as the fall of 2009, Defendants were still saying they were confident that loose floor mats were the *sole cause* of any sudden acceleration, issuing an advisory to millions of owners to remove the supposedly defective mats. The company said on November 2, 2009 that "there is no evidence to support" any other conclusion, and added that its claim was backed up by the NHTSA. But, in fact, the agency had not signed on to the explanation, and it issued a sharp rebuke. Defendants' statement was "misleading and inaccurate," the agency said. "This matter is not closed."

23. Such dangerous, quality and safety-related defects most certainly come as a surprise to loyal consumers of Defendants' vehicles like Plaintiff and members of the Plaintiff Class. Since first importing cars to the United States more than five decades ago, Defendants have in large part slowly and steadily built the Toyota and Lexus nameplates as having superior reputations for technical expertise and reliability. Consumers of Defendants' vehicles prized the automobiles for their quality and safety. As one auto industry analyst explained in a recent interview, "People don't buy [Toyotas] for their good looks. They don't buy it for the cash-back or financing offers. They buy them because they have a lot of confidence in the quality and safety of the vehicle."

24. However, in 2002, Defendants set an ambitious goal to own 15 percent of the global auto industry by 2010, intending to surpass General Motors as the world's largest automaker. To get there, Defendants had to grow the company by 50 percent. Defendants also had to build new plants in the United States, China, and elsewhere, and introduce dozens of new models. One significant resulting change was Defendants' decision to buy parts from companies

around the world, rather than from a small group of Japanese suppliers that had previously been longtime partners.

25. Defendants managed to win bragging rights as the world's biggest automaker in terms of global sales in 2006, four years ahead of schedule. But, the next year it lost its top quality ranking in the widely regarded and influential *Consumer Reports* magazine, a position it held in the United States for years, due to what the reviewers termed "bug-ridden designs." That year, *Consumer Reports* removed the Toyota Camry—which was then the best-selling car in the United States—from its list of recommended vehicles, the first time in 11 years that the Camry had not received a "recommended" rating. The magazine also boldly declared that it would no longer recommend any of Defendants' vehicles without data showing that past years' vehicles were reliable. In or about February 2010, the magazine announced it was suspending recommendations for any of Defendants' recalled models.

26. Now, with unintended acceleration problems plaguing Defendants' vehicles and after countless related accidents, injuries, and deaths, it has become apparent that consumers who purchased or leased Defendants' vehicles did not get the quality and safety they expected and paid for. As one putative member of the Plaintiff Class recently told the Los Angeles *Times*, "I thought Toyota was a very good company and built good products." But, "[n]ow I wouldn't even consider buying a Toyota in the future. This whole event tells me that they don't value my life, and that means I should never buy another car from them."

27. In a speech last year, Defendants' new president—the grandson of the founder—lamented that the drive for profits "may have stretched [the company] more than we should have, and that made us unable to capitalize on Toyota's traditional strengths"—quality, reliability, and safety. The company president declared in another speech last year that the company was one

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step away from "capitulation to irrelevance or death," having already gone through a phase of "undisciplined pursuit of more." Plainly, as Defendants gained sales throughout the 2000s, they moved away from the business practices of slow but steady growth based on a reputation for reliability and safety.

28. Industry analysts question whether Defendants' reputation for quality, reliability, and safety is irreparably tarnished. Declared one senior auto industry strategic advisor on or about January 27, 2010, Defendants' "reputation for long-term quality is finished. . . . . People aren't going to buy Toyotas, period. It doesn't matter which model. What's happened is sufficient to keep people out of the stores." Another analyst explained, "This [issue] is going to have severe ramifications for Toyota."

29. Defendants designed and manufactured defective vehicles by not installing BOS as standard, or even optional, equipment—even in the face of admittedly and dangerously faulty and/or unreliable and/or unsafe ETCS-i acceleration systems. As most other automobile manufacturers have recognized, BOS provides an additional, but crucial, failsafe mechanism for drivers, passengers, and bystanders that experience and/or are put in peril by dangerous, unintended and sudden acceleration. Indeed, whatever the source of Defendants' problems with their ETCS-i acceleration systems—be it floor mat-related, "sticky" pedal-related, or a more insidious computer "glitch" causing the vehicles to accelerate uncontrollably—it is without question that inclusion of BOS on Defendants' vehicles would have helped save lives and prevent injuries and accidents by providing a failsafe "cutout" for unintended acceleration.

30. To save production costs and increase profits, however, Defendants intentionally did not install BOS in their vehicles equipped with ETCS-i, despite knowledge that ETCS-i was prone to sudden acceleration. Defendants have also opted not to install BOS in already sold or

leased vehicles as part of any recall or otherwise, either because it is impossible to install or program BOS on an aftermarket basis, or because it is prohibitively expensive to do so. Defendants have instead created the dangerous illusion of affirmative, safety-related action by repairing or replacing accelerator pedals on some but not all the defective cars and trucks. Even with Defendants' attempts to remedy the runaway car problem through such efforts, Defendants' vehicles with ETCS-i, but without BOS installed, remain dangerously defective and unsafe, and have resulted in damages to Plaintiff and the Plaintiff Class and Subclasses. In fact, as of the filing of this Complaint, Kelley Blue Book announced it was downgrading the value estimates of Defendants' vehicles as much as five percent, and that "there may be further devaluation ahead."

31. Upon information and belief, each of Defendants' vehicles were sold and/or leased to Plaintiff and members of the Plaintiff Class and Subclasses with express warranties covering repair, replacement, and/or adjustment of all items on those vehicles defective in material, workmanship, or factory preparation, and/or similar express warranties.

IV.
CLASS ACTION ALLEGATIONS

32. Pursuant to Rules 23(b) and (c) of the Federal Rules of Civil Procedure, Plaintiff brings this action on his own behalf and on behalf of the proposed Class. Plaintiff seeks certification a Plaintiff Class that consists of:

> All persons or entities domiciled or residing in any of the 50 states of the United States of America or in the District of Columbia who purchased or leased at least one new Toyota, Lexus, or Scion vehicle equipped with Defendants' Electronic Throttle Control System with Intelligence, but not equipped with a Brake Override System.

Plaintiff also seeks certification of the following Plaintiff Subclasses:

> 1. All persons domiciles or residing in any of the 50 states of the United States of America or in the District of Columbia who

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purchased and normally used for personal, family, or household purposes at least one new Toyota, Lexus, or Scion vehicle equipped with Defendants' Electronic Throttle Control System with Intelligence, but not equipped with a Brake Override System.

2. All persons or entities domiciled or residing in Arkansas, Colorado, Connecticut, Florida, Kansas, Missouri, New Jersey, New Mexico, New York, Ohio, Vermont, or Washington who purchased at least one new Toyota, Lexus, or Scion vehicle equipped with Defendants' Electronic Throttle Control System with Intelligence, but not equipped with a Brake Override System.

Excluded from the Plaintiff Class and Subclass are: (a) Defendants, any entity in which they have a controlling interest, their legal representatives, officers, directors, assigns and successors, and any other entity related to or affiliated with Defendants; and (b) all claims for personal injury, wrongful death, or any incidental or consequential damages over and above those sought herein, except as authorized by law.

33. Plaintiff and the Plaintiff Class assert the causes of action in Counts I and II.

34. Plaintiff and Plaintiff Subclass One, defined above, also assert the cause of action in Count III.

35. Plaintiff and Plaintiff Subclass Two, defined above, also assert the cause of action in Count IV.

36. The Class is comprised of millions of purchasers of Defendants' vehicles throughout the United States, making joinder impracticable. The exact number of Class Members is unknown, but their identity can be ascertained through Defendant's records. The disposition of the numerous claims of the Plaintiff Class and Plaintiff Subclass in a single class action will provide substantial benefits to all parties and to the Court.

37. There is a well-defined community of interest in the questions of law and fact involved affecting the Plaintiff Class. The questions of law and fact common to the Class

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predominate over questions affecting only individual Class Members, and include, but are not limited to, the following:

(a) whether Defendants' vehicles purchased or leased by the members of the Plaintiff Class are inherently defective in that they are equipped with ETCS-i systems, but without the failsafe BOS installed;

(b) whether Defendants knew of the inherent defect in their vehicles with ETCS-i systems, but without the failsafe BOS installed;

(c) whether Defendants had a duty to members of the Plaintiff Class to disclose the defective nature of the vehicles with ETCS-i systems, but without the failsafe BOS installed;

(d) whether the facts concealed and/or otherwise not disclosed by Defendants to members of the Plaintiff Class are material facts;

(e) whether, as a result of Defendants' concealment and/or failure to disclose material facts, members of the Plaintiff Class acted to their detriment by purchasing vehicles containing the common defect described above;

(f) whether Defendants knew or should have known that Toyota, Lexus, and Scion vehicles with the common defect described above are inherently defective and, thus, that those vehicles are not suitable for the purposes for which they are intended to be used, and otherwise are not as warranted and represented by Defendants;

(g) whether Defendants' vehicles with the common defect described above are not as advertised and/or promoted by Defendant;

(h) whether Defendants expressly warranted to original purchasers and/or lessees of the subject vehicles that Defendants would repair, replace, or adjust all items on those vehicles defective in material, workmanship, or factory preparation;

(i) whether Defendants breached such express warranties because Defendants failed to successfully repair or otherwise remedy the common defect described above in vehicles owned or leased by members of the Plaintiff Class;

(j) whether Defendants breached their express warranties because members of the Plaintiff Class have been deprived of the value of the bargain;

(k) whether Defendants impliedly warranted to original purchasers and/or lessees of the subject vehicles that those vehicles were merchantable;

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(l) whether Defendants breached their implied warranty of merchantability by selling and/or leasing members of the Plaintiff Class vehicles with an inherent defect;

(m) whether members of the Plaintiff Class are entitled to compensatory damages for the diminution in the fair market value of the subject vehicles as a result of the common defect described above, and the amount of such damages; and

(n) whether Defendants should be declared financially responsible for notifying all members of the Plaintiff Class of the defective nature of the subject vehicles and the cost of the diminution in fair market value of said vehicles.

38. Plaintiff asserts claims that are typical of the Plaintiff Class, having purchased and/or leased a Toyota, Lexus, and/or Scion vehicle with ETCS-installed, but without BOS installed. Plaintiff and members of the Plaintiff Class and Subclasses have similarly suffered harm arising from Defendants' breaches of express and implied warranties.

39. Injuries sustained by Plaintiff and the Plaintiff Class in each instance form a common nucleus of operative facts—Defendants' breach of express and implied warranties as a result of the common defect in the subject vehicles, as described herein.

40. Plaintiff is an adequate representative of the Plaintiff Class because her interests do not conflict with and are not antagonistic to the interests of the Plaintiff Class members she seeks to represent. Plaintiff will fairly and adequately represent and protect the interests of the Plaintiff Class. Plaintiff has retained counsel who are competent and experienced in the prosecution of mass torts and class litigation.

41. Plaintiff and members of the Plaintiff Class have all suffered and will continue to suffer substantial harm and damages due to Defendants' breaches of express and implied warranties. A class action is superior to other methods for the fair and efficient adjudication of the subject controversy. Absent a class action, most Plaintiff Class members likely will find the

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cost of litigating their individual claims to be prohibitive, and will have no effective remedy at all. Because of the relatively small size of the individual claims of Plaintiff Class members, few members of the Plaintiff Class could likely afford to seek legal redress on their own. Absent a class action, members of the Plaintiff Class will continue to sustain damages, and Defendants' misconduct will proceed without remedy. The class treatment of common questions of law and fact is also superior to multiple individual actions or piecemeal litigation in that it conserves the resources of the courts and the litigants and promotes consistency and efficiency of adjudication. Additionally, Defendants have acted, and failed to act, on grounds generally applicable to Plaintiff and the Plaintiff Class, requiring Court imposition of uniform relief to insure compatible standards of conduct toward Plaintiff and the Plaintiff Class.

42. Notice can be provided to original purchasers and lessees of subject vehicles at Defendants' expense via internet publication and through the U.S. postal service.

V.
CAUSES OF ACTION

COUNT 1 – BREACH OF EXPRESS WARRANTY

43. Plaintiffs reallege and incorporate by reference each preceding paragraph as if fully set forth herein. Hereinafter, "Plaintiffs" shall refer to the Plaintiff and the Plaintiff Class collectively.

44. Through a written manufacturer's warranty, Defendants expressly warranted to Plaintiffs that they would repair, replace, or adjust items defective in material, workmanship, or factory preparation on all vehicles they originally sold and/or leased that were equipped with ETCS-i, but not equipped with BOS.

45. Defendants breached those express warranties because they either refused to or are unable to successfully repair or otherwise remedy the common defect in the vehicles, described above.

46. Defendants also breached those express warranties because Plaintiffs have been deprived of the value of the bargain with respect to the subject vehicles.

47. The warranty remedy of repair or replacement has failed of its essential purpose because, although Defendants have been given a reasonable chance to repair or otherwise remedy the common defect described above, all subject vehicles are still dangerously defective and fail to function properly in that the ETCS-i installed on the vehicles cannot be safely and reliably overridden in an emergency, unintended, and/or sudden acceleration incident or situation. As a result, the health, safety, and lives of drivers and passengers of Defendants' vehicles, together with bystanders, remain in peril.

48. Defendants efforts to repair or otherwise remedy the common defect in the vehicles have failed because the defect is permanent and/or prohibitively difficult or expensive for Defendants to remedy.

49. As alleged above, Defendants knew or should have known and intentionally concealed the defective nature of the vehicles equipped with ETCS-i, but without BOS. Defendants failed to warn Plaintiffs about the common defect in the subject vehicles.

50. Defendants were on notice of the common defect in the subject vehicles, which Defendants are unable and/or have refused to repair, replace, and/or adjust.

51. When Defendants made the express warranty described above, Defendants knew the purpose for which the subject vehicles were to be used, and warranted them to be in all respects safe and proper for that purpose.

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52. As a direct and proximate result of Defendants' breach of express warranty, Plaintiffs have suffered actual damages in the form of substantial diminution in the fair market value of their subject vehicles. The diminution in fair market value would not have occurred but for the inherent defect, described above.

53. Plaintiffs demand judgment against Defendants for compensatory damages in an amount to be determined at trial, together with reasonable attorneys' fees.

COUNT 2 – BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

54. Plaintiffs reallege and incorporate by reference each preceding paragraph as though fully set forth herein.

55. Defendants are merchants with respect to vehicles such as the subject Toyota, Lexus, and Scion vehicles.

56. As merchants with respect to those vehicles, Defendants impliedly warranted to Plaintiffs that Toyota, Lexus, and Scion vehicles equipped with ETCS-i, but not equipped with BOS, were merchantable, including that they passed without objection in the trade and were fit for the ordinary purposes for which such goods are used.

57. Due to their undisclosed defective nature, new Toyota, Lexus, and Scion vehicles equipped with ETCS-i, but not equipped with BOS, were unmerchantable when sold to Plaintiffs because they could not pass without objection in the trade and were unfit for the ordinary purposes for which such goods are used.

58. Defendants breached the implied warranty of merchantability with respect to the subject vehicles by selling unmerchantable vehicles to Plaintiffs.

59. As alleged above, Defendants actually knew or should have known of and intentionally concealed the defective nature of the subject vehicles from Plaintiffs. Defendants failed to warn Plaintiffs about the common defect in the vehicles.

60. Defendants were on notice of the common defect in the subject vehicles, which Defendants are unable and/or have refused to repair, replace, and/or adjust.

61. As a direct and proximate result of Defendants' breach of the implied warranty of merchantability, Plaintiffs have suffered actual damages in the form of substantial diminution in the fair market value of their subject vehicles. The diminution in fair market value would not have occurred but for the inherent defect in the vehicles.

62. Plaintiffs demand judgment against Defendants for compensatory damages in an amount to be determined at trial, together with reasonable attorneys' fees.

COUNT 3 – VIOLATION OF THE MAGNUSON-MOSS WARRANTY ACT

63. Each preceding paragraph is realleged and incorporated in full as though fully set forth herein.

64. Members of Plaintiff Subclass One, including representatives of the Subclass, are "consumers" as defined by 15 U.S.C. § 2301(3).

65. Defendants are "supplier[s]," "warrantor[s]," and "service contractor[s]" as defined by 15 U.S.C. §§ 2301(4), 2301(5), and 2301(8), respectively.

66. The Toyota, Lexus, and Scion vehicles equipped with ETCS-i, but without BPS installed, which were purchased by members of Plaintiff Subclass One and Subclass representatives, are "consumer products" as defined by 15 U.S.C. § 2301(1).

67. The Magnuson-Moss Warranty Act provides: "a consumer who is damaged by the failure of a supplier, warrantor, or service contractor to comply with any obligation under this

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title, or under a written warranty, implied warranty, or service contract . . . may bring suit for damages and other legal and equitable relief . . . in an appropriate district court of the United States." 15 U.S.C. § 2310(d)(1). The Magnuson-Moss Warranty Act also authorizes class actions and the award of attorney's fees. 15 U.S.C. § 2310(e).

68. Upon information and belief, Defendants knew or should have known at the time of sale to members of Plaintiff Subclass One and Subclass Representatives that an inherent defect existed in the subject vehicles, which rendered those vehicles unfit for their customary and usual purposes and for the particular purpose for which Defendants knew or should have known the vehicles were intended, as alleged more fully above.

69. Defendants' knowledge of the defect in the subject vehicles gave Defendants more than adequate opportunity to repair or otherwise remedy the defect. After a reasonable number of attempts, Defendants have failed to repair or otherwise remedy the ETCS-i and BOS defect because the defect is inherent and permanent.

70. As described above, Defendants have failed to comply with their obligations under written manufacturer's warranties issued to members of Plaintiff Subclass One and Subclass Representatives because Defendants cannot successfully repair or otherwise remedy the inherent and permanent defect in the ETCS-i and BOS. Those written warranties are "service contracts" as defined by 15 U.S.C. 2301(8).

71. Defendants impliedly warranted that the subject vehicles would be merchantable. Defendants breached that warranty in the manner described above in Count II.

72. As a direct and proximate result of Defendants breach of written warranties and service contracts, members of Plaintiff Subclass One and their Subclass Representatives sustained actual damages in the form of significant diminution in the fair market value of their

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subject vehicles. The diminution in fair market value would not have occurred but for the inherent defect in the subject vehicles. Members of Plaintiff Subclass One and their Subclass Representatives, demand judgment against Defendants for compensatory damages in an amount to be determined at trial, together with reasonable attorneys' fees.

COUNT 4 – VIOLATION OF CONSUMER PROTECTION STATUTES

73. Each preceding paragraph is realleged and incorporated in full as though fully set forth herein.

74. Defendants' advertising, marketing, distribution, and sales of Toyota, Lexus, and Scion vehicles equipped with ETCS-i, but without BOS installed, as well as its servicing of those vehicles after sale, constitute conduct and activities in the course of trade and commerce.

75. Defendants engaged in unfair, unconscionable, deceptive, and fraudulent trade practices and acts in violation of the state consumer protection statutes listed below by advertising, marketing, distributing, and selling the subject vehicles without informing them of the common defects relative to the ETCS-i and BOS.

76. As alleged above, Defendants had, and still have, superior knowledge of the inherent defect in the subject vehicles, and intentionally concealed the defects from members of Plaintiff Subclass Two and their Subclass Representatives in order to induce them into purchasing one or more of said vehicles.

77. At the very least, Defendants should have known of the defective nature of the subject vehicles, yet Defendants failed to warn or otherwise inform members of Plaintiff Subclass Two and their Subclass Representatives about the common defect in said vehicles. Members of Plaintiff Subclass Two and their Subclass Representatives did not know, and had no reason to know, of the defect prior to purchasing their subject vehicles.

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78. Members of Plaintiff Subclass Two and their Subclass Representatives could not have discovered the defect in the relative to the ETCS-i and absence of BOS through any reasonable inspection of the vehicles before purchase.

79. Members of Plaintiff Subclass Two and their Subclass Representatives were without access to the information concealed by Defendants regarding the inherent defects in the subject vehicles, and Plaintiff Subclass Two and their Subclass Representatives, therefore, reasonably relied on Defendants' warranties, promises, and representations regarding the quality, reliability, safety, and other material characteristics of Defendants' vehicles before and at the time of sale, together with reasonable reliance on and Defendants' ability to repair, replace, or adjust items on the subject vehicles that are defective in material, workmanship, or factory preparation.

80. Members of Plaintiff Subclass Two and their Subclass Representatives also reasonably relied on Defendants to disclose, and not conceal or fail to warn of, material information about the subject vehicles and defects.

81. Defendants concealment of the defects described herein from Plaintiff Subclass Two and their Subclass Representatives constitutes unfair competition and unfair, unconscionable, deceptive, and fraudulent trade practices and acts in violation of the state consumer protection statutes listed below. Alternatively, Defendants' failure to warn Plaintiff Subclass Two and their Subclass Representatives about the subject defects constitutes unfair competition and unfair, unconscionable, deceptive, and fraudulent trade practices and acts in violation of the state consumer protection statutes listed below.

82. Defendants also violated the state consumer protection statutes listed below by selling the subject vehicles when Defendants knew or should have known that the inherent

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defects in vehicles described herein cannot be remedied through repair, replacement, and/or adjustment, or such remedy is prohibitively difficult or expensive to accomplish.

83. Defendants engaged in unfair competition and unfair and deceptive trade practices and acts in violation of Ark. Code § 4-88-101, *et seq.*

84. Defendants engaged in unfair competition and unfair and deceptive trade practices and acts and has made false representations in violation of Colo. Rev. Stat. § 6-1-105, *et seq.*

85. Defendants engaged in unfair competition and unfair and deceptive trade practices and acts in violation of Conn. Gen. Stat. § 42-110b, *et seq.*

86. Defendants engaged in unfair competition and unfair and deceptive practices and acts in violation of Fla. Stat. § 501.201, *et seq.*

87. Defendants engaged in unfair competition and unfair and deceptive trade practices and acts in violation of Kan. Stat. § 50-623, *et seq.*

88. Defendants engaged in unfair competition and unfair and deceptive trade practices and acts in violation of Vernon's Missouri Stat. § 407.010, *et seq.*

89. Defendants engaged in unfair competition and unfair and deceptive trade practices and acts in violation of N.J. Rev. Stat. § 56:8-1, *et seq.*

90. Defendants engaged in unfair competition and unfair and deceptive trade a practices and acts in violation of N.M. Stat. § 57-12-1, *et seq.*

91. Defendants engaged in unfair competition and unfair and deceptive trade practices and acts in violation of N.Y. Gen. Bus. Law § 349, *et seq.*

92. Defendants engaged in unfair competition and unfair and deceptive trade practices and acts in violation of Ohio Rev. Stat. § 1345.01, *et seq.*

93. Defendants engaged in unfair competition and unfair and deceptive trade practices and acts in violation of 9 Vt. § 2451, *et seq.*

94. Defendants engaged in unfair competition and unfair and deceptive trade practices and acts in violation of Wash. Rev. Code. § 19.86.010, *et seq.*

95. Defendant's unfair competition and unfair and deceptive trade practices and acts have directly, foreseeably, and proximately caused damages and injury to Plaintiff Subclass Two and their Subclass Representatives in the form of significant diminution in the fair market value of their subject vehicles. The diminution in fair market value would not have occurred but for the inherent defect in the subject vehicles.

96. Had Plaintiff Subclass Two and their Subclass Representatives known of the inherent defects in the subject vehicles, they would have paid less for their vehicles than the amounts they actually paid, or they would not have purchased those vehicles.

97. Plaintiff Subclass Two and their Subclass Representatives demand judgment against Defendants for compensatory damages, and any other damages authorized by the above listed state consumer protection statutes, in an amount to be determined at trial, together with reasonable attorneys' fees.

VI.
DEMAND FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, pray for:

(a) An order certifying this matter as a class action with Plaintiffs as Class representatives and Subclass One Reprentatives as representatives of Plaintiff Subclass One and Subclass Two Representatives as representatives of Plaintiff Subclass Two, and designating Plaintiffs' counsel as Class Counsel and Subclass

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Counsel;

(b) Judgment in favor of Plaintiffs and the Class on Counts I and II;

(c) Judgment in favor of Subclass One Representatives and Plaintiff Subclass One on Count III;

(d) Judgment in favor of Subclass Two Representatives and Plaintiff Subclass Two on Count IV;

(e) Pre-judgment and post judgment interest on such monetary relief;

(f) An award of reasonable attorneys' fees and costs of Plaintiffs and the Plaintiff Subclasses; and

(g) Such other and further relief as the nature of the case may require or as may be determined to be just, equitable, and proper by this Court.

Respectfully submitted,

By: s/John B. White, Jr.
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(*pro hac* admission will be requested)

February 5, 2010

Spartanburg, South Carolina

TOY-RQ-05E-00009671

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

DALE ROBERTS, on behalf of himself and all others similarly situated, Plaintiffs, v. TOYOTA MOTOR CORPORATION, TOYOTA MOTOR SALES, U.S.A., INC., Defendant.	CIVIL ACTION No. 7:10-cv-00281-RBH **AFFIDAVIT OF SERVICE**

AFFIDAVIT OF SERVICE

See Affidavit of Service by Process Server upon Pam Johnson, Agent for C.T. Corporation as Registered Agent for Toyota Motor Sales, U.S.A., filed with this Court on February 16, 2010.

Respectfully submitted,

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February 18, 2010

Spartanburg, South Carolina

TOY-RQ-05E-00009673

Print Reset

AO 440 (Rev. 8/01) Summons in a Civil Action

UNITED STATES DISTRICT COURT

District of

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

SUMMONS IN A CIVIL ACTION

CASE NUMBER: 7:10-281-RBH

2/10 10:35

TO: (Name and address of Defendant)

Toyota Motor Corporation - c/o South Carolina Secretary of State, Attn: Service of Process Division, Edgar Brown Building, 1205 Pendleton Street, Suite 525, Columbia, South Carolina 29201; 1 Toyota-Cho, Toyota City, Aichi Prefecture 471-8571, Japan
Toyota Motor Sales, U.S.A., Inc. - Registered Agent - CT Corporation System, 2 Office Park Court, Suite 103, Columbia, South Carolina 29223
Does 1 through 10 - Unknown

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

John B. White, Jr.
Donald C. Coggins, Jr.
Harrison, White, Smith, & Coggins, P.C.
178 West Main Street (29306)
Post Office Box 3547
Spartanburg, South Carolina 29304

an answer to the complaint which is served on you with this summons, within 21 days after service of this summons on 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.

Larry W. Propes
CLERK

s/Amanda Williams
(By) DEPUTY CLERK

UNITED STATES DISTRICT COURT DISTRICT OF SOUTH CAROLINA

2/5/2010
DATE

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
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 $0.00

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
FOR THE DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

DALE ROBERTS, on behalf of himself and all others similarly situated, Plaintiffs, v. TOYOTA MOTOR CORPORATION, TOYOTA MOTOR SALES, U.S.A., INC., AND DOES 1 through 10 Defendants.	CIVIL ACTION No. 7:10-281-RBH **CLASS ACTION COMPLAINT**

PLAINTIFFS' ORIGINAL CLASS ACTION COMPLAINT

Plaintiff DALE ROBERTS brings this action on behalf of himself, as an individual (hereinafter, "Plaintiff"), and on behalf of all others similarly situated (hereinafter, the "Plaintiff Class") against Defendants TOYOTA MOTOR CORPORATION, TOYOTA MOTOR SALES, U.S.A., INC., and DOES 1-10 (collectively, "Defendants"), and alleges as follows:

I.
JURISDICTION & VENUE

1. This Court has subject-matter jurisdiction pursuant to 28 U.S.C. § 1332(d)(2) because the matter in controversy in this civil action exceeds the sum or value of $5,000,000, exclusive of interests and costs, and there is minimal diversity because certain members of the Plaintiff Class and Subclasses are citizens of a different state than any Defendant as required under 28 U.S.C. § 1332(d)(2)(A).

2. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and (c) because Defendants reside in this district and a substantial part of the events or omissions giving rise to

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the claims herein occurred within this District. Defendants reside in this District for purposes of 28 U.S.C. § 1391 because they are subject to general personal jurisdiction in this District. Defendants have continuous and systematic contacts with South Carolina, including this District, through selling vehicles in South Carolina to South Carolina residents, including residents of this District. Defendants are also subject to specific personal jurisdiction in this District because their contacts with this District gave rise to the instant action.

3. Venue is also proper in this Court because Plaintiff Dale Roberts is a citizen of the County of Spartanburg, State of South Carolina who purchased a Toyota Camry in Spartanburg, South Carolina; and proposed Class members include citizens of South Carolina who reside in this District.

II.
PARTIES

4. Plaintiff Dale Roberts owns a 2007 Toyota Camry, which he purchased as a new vehicle from an authorized Toyota dealer in Spartanburg, South Carolina, and he is a resident of the County of Spartanburg, State of South Carolina.

5. Defendant TOYOTA MOTOR CORPORATION ("TMC") is a Japanese corporation with its principal place of business in Toyota City, Aichi, Japan and Tokyo, Japan. Service of process upon Defendant TMC shall be effectuated pursuant to Fed. R. Civ. P. 4(h).

6. Defendant TOYOTA MOTOR SALES, U.S.A., INC. ("Toyota U.S.A.") is a California corporation with its principal place of business in Torrance, Los Angeles County, California. Service of process upon Defendant Toyota U.S.A. shall be effectuated pursuant to Fed. R. Civ. P. 4(h).

7. The true names and capacities of Defendants sued herein as DOES 1 through 10 are currently unknown to Plaintiff, who therefore sues such Defendants by such fictitious names.

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Each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of Court to amend this Complaint to reflect the true names and capacities of the Defendants designated herein as DOES when such identities become known.

8. Upon information and belief, Plaintiff alleges that at all times mentioned herein, each and every Defendant was acting as an agent and/or employee of each of the other Defendants, and at all times mentioned was acting within the course and scope of each of the other Defendants. In addition, each of the acts and/or omissions of each Defendant alleged herein were made known to, and ratified by, each of the other Defendants.

III.
FACTUAL ALLEGATIONS

9. This action is brought as a class action pursuant to Federal Rule of Civil Procedure 23 on behalf of the Plaintiff Class, as well as subclasses, as defined below. Each Plaintiff and member of the Putative Plaintiff Class and Subclasses purchased or leased a vehicle manufactured and warranted by Defendants that is subject to uncontrolled and/or unintended and/or sudden acceleration of such vehicles because of Defendants' admittedly faulty Electronic Throttle Control System with Intelligence ("ETCS-i") coupled with the lack of Brake Override System technology ("BOS"), thereby creating a serious and life-threatening safety condition for drivers of and passengers in Defendants' vehicles, as well as other motorists, pedestrians, and bystanders. As a result of the absence of BOS in Defendants' vehicles, which Defendants failed to disclose to their customers, the vehicles are dangerously unsafe, inherently defective, and are worth less than the amount of money the customers who purchased them paid.

10. The vehicles subject to this action, which in the United States number in the millions, are all models bearing the "Toyota," "Lexus," and "Scion" nameplates, with ETCS-i

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installed, but without an attendant BOS installed, including but not limited to the following models:

Toyota Avalon
Toyota Camry & Camry HV
Toyota Corolla & Corolla Matrix
Toyota FJ Cruiser
Toyota Highlander & Highlander Hybrid
Toyota Land Cruiser
Toyota Prius
Toyota Sequoia
Toyota Sienna
Toyota Tacoma
Toyota Tundra
Toyota RAV4
Toyota Venza

Lexus ES series vehicles
Lexus IS series vehicles
Lexus GS series vehicles
Lexus LS series vehicles
Lexus RX series vehicles
Lexus SC series vehicles

11. The accelerators on such vehicles are controlled by a drive pedal sensor that is a component part of a so-called "drive-by-wire" throttle system (known on Defendants' vehicles as ETCS-i), in which the gas pedal has no direct connection to the engine through a cable or mechanical linkage. Instead, the connection between the pedal and the engine is made by electrical signals traveling through wires. Such systems are the outgrowth of new electronic engine controls in cars. The pedal sensor is intended to gauge how far the driver is pressing the gas pedal and signals the engine's control computer, which determines how much to open the engine throttle, unless the drive-by-wire system sends the wrong signals to the engine computer, or such signals are interfered with or otherwise in error.

12. As an effective means to combat wrong signals, interference, or computer errors, most automakers equip their "drive-by-wire" vehicles with BOS technology. Defendants,

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however, failed install BOS technology on their vehicles equipped with ETCS-i. BOS allows a driver to stop a car with the footbrake even if the accelerator is depressed (or the car computer "thinks" the pedal is depressed) and the vehicle is running at full throttle. In other words, if the brakes and the accelerator are in conflict, the brakes win, but only *if* a BOS is installed. Chrysler, Volkswagen, Audi, BMW, Mercedes-Benz, and General Motors are among the manufacturers that began installing BOS in their vehicles, some as far back as ten years ago. However, Defendants have not installed such systems on any vehicle sold in the United States, and will not install any BOS until, reportedly, January 2010.

13. At the Detroit Auto Show in December 2009, Toyota North America President Yoshi Inaba said the company would begin equipping its vehicles with BOS beginning this year. However, in the meantime, Defendants made the unprecedented move of halting production and sale of eight popular models in January 2010 after numerous reports of unintended acceleration. In November 2009, Defendants initially blamed the unintended accelerations on faulty floor mats and their installation, stating that the floor mats caused the accelerator pedal to stick in the depressed position, issuing a recall for millions of "defective" floor mats. In January 2010, Defendants announced that the unintended acceleration problem was due to a faulty accelerator pedal mechanism, which wore down and became susceptible to sticking in the depressed position due to condensation from the cars' heaters on cold days.

14. But Defendants' vehicles had already been subjected to heightened scrutiny for acceleration-safety-related issues for almost a decade. According to a senior engineer at *Consumer Reports'* Auto Test Center, Toyota accounted for approximately 40% of all the unintended acceleration complaints reported to the National Highway Traffic & Safety Administration ("NHTSA") in 2008—as compared to ***all other vehicle manufacturers' models.***

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And, as far back as 2004, United States government investigators have been investigating 2002-2003 Toyota and Lexus vehicles to determine whether they were defective, gathering information about owner complaints of sudden acceleration, according to the Center for Auto Safety. Automotive experts say that in at least some of those incidents, a BOS would have prevented harm.

15. As early as 2004, the NHTSA looked at reports of unintended acceleration in Defendants' best-selling model, the Toyota Camry. But the NHTSA limited its investigation to only those incidents lasting one second or less. Upon information and belief, that limit came after a former NHTSA official who went to work for Defendants before the investigation began was involved in discussions with former colleagues at NHTSA.

16. One Massachusetts consumer safety group has identified 2,274 incidents of sudden unintended acceleration in Toyota vehicles causing 275 crashes and at least 18 fatalities since 1999. In another 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"—one out of every five vehicles investigated.

17. In one incident that has, perhaps, drawn the most publicity, a 2009 Lexus ES 350 raced through San Diego, California, weaving at 120 miles per hour through rush-hour freeway traffic. Veteran California Highway Patrol officer Mark Saylor was at the wheel, with his wife, teenage daughter, and brother-in-law aboard. Calls to 911 emergency services recounted Saylor's brother-in-law exclaiming to a police dispatcher via cell phone, "We're in trouble . . . . There's no brakes!" As they approached an intersection, and the end of the road, the passengers can be heard urging each other to pray. All four died. Afterward, investigators said that it appeared the brakes had been applied for so long that the brake pads had melted, according to an

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NHTSA report. Had BOS technology been installed, the engine would have depowered and slowed.

18. Similarly, on December 26, 2009, a 2008 Toyota Avalon crashed just outside of Dallas. A Southlake, Texas police officer 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 the driver attempted to hit the brake or slow down. Two weeks later, an NHTSA investigator visited Southlake to inspect the car, accompanied by a Toyota engineer. One factor the pair immediately ruled out was the floor mats, which were in the trunk—perhaps due to the decedent operator's awareness of Defendants' November 2009 floor mat-related recall.

19. A Minnesota owner of a new Toyota Camry was much luckier. The woman's Camry, which was new and had about 6,000 miles on it, kept accelerating after she passed a pick-up truck on the highway in May 2008, even after she took her foot off the gas pedal. The next 6 miles of her journey were terrifying. The car barely slowed down when she pressed the brake—she was only able to slow the car to 60 miles per hour. "The car wanted to go 80, or higher," the driver reported. Visualizing the remainder of her commute, which traversed winding roads with no shoulders, she decided to head for a major freeway, requiring a high-speed turn through an intersection. She hit the brake with both feet, squealing through the turn and managing to swerve onto the road without hitting anything. By the time she got the car stopped miles later—with the coaching of a 911 operator, she managed to turn the car off—smoke was filling the car. Her brakes were smoldering, and the tires had started to melt near the

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wheel rims. A police officer at the scene of the incident said the Camry's floor mats were not near the accelerator pedal.

20. Notwithstanding such alarming incidents, on or about January 28, 2010, Defendants represented to consumers on their Toyota USA Newsroom website that the unintended sudden acceleration "condition is rare and ***does not occur suddenly***." Inferring that the problem only occurs in vehicles that have experienced some excessive degree of use, as opposed to brand new vehicles, Defendants added: "It 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." Yet, reports of unintended acceleration in Defendants' vehicles stem from vehicles with fewer than 1,000 miles on them, and others with more than 60,000 miles. Indeed, Defendants' spokesperson Brian Lyons has represented that there is "no common theme when it comes to how long the product has been out there." Defendants subsequently announced that they intend to replace the supposedly defective pedal mechanisms as part of a massive 2.3 million vehicle recall.

21. But, even Defendants' own supplier of the reportedly defective accelerator pedals says that Defendants are far from done in ending the problem of runaway cars—and that Defendants told it that none of the serious accidents or deaths linked to runaway cars was caused by "sticky" gas pedals. Instead, Defendants acknowledged to the parts supplier that the "rare set of conditions"—i.e., excessive wear caused by condensation build up, making the gas pedal slow to return to idle—did not cause *any* accidents or injuries. The pedal supplier also stated that it has "deep concern that there is widespread confusion and incorrect information about the role of CTS-manufactured gas pedals" in the recall, and that its pedals "should absolutely not be linked with any sudden unintended acceleration incidents."

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22. At almost every step, Defendants have underestimated the severity of the sudden-acceleration problem affecting its most popular cars. They moved from discounting early reports of problems to overconfidently announcing diagnoses and insufficient fixes. As recently as the fall of 2009, Defendants were still saying they were confident that loose floor mats were the *sole cause* of any sudden acceleration, issuing an advisory to millions of owners to remove the supposedly defective mats. The company said on November 2, 2009 that "there is no evidence to support" any other conclusion, and added that its claim was backed up by the NHTSA. But, in fact, the agency had not signed on to the explanation, and it issued a sharp rebuke. Defendants' statement was "misleading and inaccurate," the agency said. "This matter is not closed."

23. Such dangerous, quality and safety-related defects most certainly come as a surprise to loyal consumers of Defendants' vehicles like Plaintiff and members of the Plaintiff Class. Since first importing cars to the United States more than five decades ago, Defendants have in large part slowly and steadily built the Toyota and Lexus nameplates as having superior reputations for technical expertise and reliability. Consumers of Defendants' vehicles prized the automobiles for their quality and safety. As one auto industry analyst explained in a recent interview, "People don't buy [Toyotas] for their good looks. They don't buy it for the cash-back or financing offers. They buy them because they have a lot of confidence in the quality and safety of the vehicle."

24. However, in 2002, Defendants set an ambitious goal to own 15 percent of the global auto industry by 2010, intending to surpass General Motors as the world's largest automaker. To get there, Defendants had to grow the company by 50 percent. Defendants also had to build new plants in the United States, China, and elsewhere, and introduce dozens of new models. One significant resulting change was Defendants' decision to buy parts from companies

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around the world, rather than from a small group of Japanese suppliers that had previously been longtime partners.

25. Defendants managed to win bragging rights as the world's biggest automaker in terms of global sales in 2006, four years ahead of schedule. But, the next year it lost its top quality ranking in the widely regarded and influential *Consumer Reports* magazine, a position it held in the United States for years, due to what the reviewers termed "bug-ridden designs." That year, *Consumer Reports* removed the Toyota Camry—which was then the best-selling car in the United States—from its list of recommended vehicles, the first time in 11 years that the Camry had not received a "recommended" rating. The magazine also boldly declared that it would no longer recommend any of Defendants' vehicles without data showing that past years' vehicles were reliable. In or about February 2010, the magazine announced it was suspending recommendations for any of Defendants' recalled models.

26. Now, with unintended acceleration problems plaguing Defendants' vehicles and after countless related accidents, injuries, and deaths, it has become apparent that consumers who purchased or leased Defendants' vehicles did not get the quality and safety they expected and paid for. As one putative member of the Plaintiff Class recently told the Los Angeles *Times*, "I thought Toyota was a very good company and built good products." But, "[n]ow I wouldn't even consider buying a Toyota in the future. This whole event tells me that they don't value my life, and that means I should never buy another car from them."

27. In a speech last year, Defendants' new president—the grandson of the founder—lamented that the drive for profits "may have stretched [the company] more than we should have, and that made us unable to capitalize on Toyota's traditional strengths"—quality, reliability, and safety. The company president declared in another speech last year that the company was one

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step away from "capitulation to irrelevance or death," having already gone through a phase of "undisciplined pursuit of more." Plainly, as Defendants gained sales throughout the 2000s, they moved away from the business practices of slow but steady growth based on a reputation for reliability and safety.

28. Industry analysts question whether Defendants' reputation for quality, reliability, and safety is irreparably tarnished. Declared one senior auto industry strategic advisor on or about January 27, 2010, Defendants' "reputation for long-term quality is finished. . . . . People aren't going to buy Toyotas, period. It doesn't matter which model. What's happened is sufficient to keep people out of the stores." Another analyst explained, "This [issue] is going to have severe ramifications for Toyota."

29. Defendants designed and manufactured defective vehicles by not installing BOS as standard, or even optional, equipment—even in the face of admittedly and dangerously faulty and/or unreliable and/or unsafe ETCS-i acceleration systems. As most other automobile manufacturers have recognized, BOS provides an additional, but crucial, failsafe mechanism for drivers, passengers, and bystanders that experience and/or are put in peril by dangerous, unintended and sudden acceleration. Indeed, whatever the source of Defendants' problems with their ETCS-i acceleration systems—be it floor mat-related, "sticky" pedal-related, or a more insidious computer "glitch" causing the vehicles to accelerate uncontrollably—it is without question that inclusion of BOS on Defendants' vehicles would have helped save lives and prevent injuries and accidents by providing a failsafe "cutout" for unintended acceleration.

30. To save production costs and increase profits, however, Defendants intentionally did not install BOS in their vehicles equipped with ETCS-i, despite knowledge that ETCS-i was prone to sudden acceleration. Defendants have also opted not to install BOS in already sold or

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leased vehicles as part of any recall or otherwise, either because it is impossible to install or program BOS on an aftermarket basis, or because it is prohibitively expensive to do so. Defendants have instead created the dangerous illusion of affirmative, safety-related action by repairing or replacing accelerator pedals on some but not all the defective cars and trucks. Even with Defendants' attempts to remedy the runaway car problem through such efforts, Defendants' vehicles with ETCS-i, but without BOS installed, remain dangerously defective and unsafe, and have resulted in damages to Plaintiff and the Plaintiff Class and Subclasses. In fact, as of the filing of this Complaint, Kelley Blue Book announced it was downgrading the value estimates of Defendants' vehicles as much as five percent, and that "there may be further devaluation ahead."

31. Upon information and belief, each of Defendants' vehicles were sold and/or leased to Plaintiff and members of the Plaintiff Class and Subclasses with express warranties covering repair, replacement, and/or adjustment of all items on those vehicles defective in material, workmanship, or factory preparation, and/or similar express warranties.

IV.
CLASS ACTION ALLEGATIONS

32. Pursuant to Rules 23(b) and (c) of the Federal Rules of Civil Procedure, Plaintiff brings this action on his own behalf and on behalf of the proposed Class. Plaintiff seeks certification a Plaintiff Class that consists of:

> All persons or entities domiciled or residing in any of the 50 states of the United States of America or in the District of Columbia who purchased or leased at least one new Toyota, Lexus, or Scion vehicle equipped with Defendants' Electronic Throttle Control System with Intelligence, but not equipped with a Brake Override System.

Plaintiff also seeks certification of the following Plaintiff Subclasses:

> 1. All persons domiciles or residing in any of the 50 states of the United States of America or in the District of Columbia who

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purchased and normally used for personal, family, or household purposes at least one new Toyota, Lexus, or Scion vehicle equipped with Defendants' Electronic Throttle Control System with Intelligence, but not equipped with a Brake Override System.

2. All persons or entities domiciled or residing in Arkansas, Colorado, Connecticut, Florida, Kansas, Missouri, New Jersey, New Mexico, New York, Ohio, Vermont, or Washington who purchased at least one new Toyota, Lexus, or Scion vehicle equipped with Defendants' Electronic Throttle Control System with Intelligence, but not equipped with a Brake Override System.

Excluded from the Plaintiff Class and Subclass are: (a) Defendants, any entity in which they have a controlling interest, their legal representatives, officers, directors, assigns and successors, and any other entity related to or affiliated with Defendants; and (b) all claims for personal injury, wrongful death, or any incidental or consequential damages over and above those sought herein, except as authorized by law.

33. Plaintiff and the Plaintiff Class assert the causes of action in Counts I and II.

34. Plaintiff and Plaintiff Subclass One, defined above, also assert the cause of action in Count III.

35. Plaintiff and Plaintiff Subclass Two, defined above, also assert the cause of action in Count IV.

36. The Class is comprised of millions of purchasers of Defendants' vehicles throughout the United States, making joinder impracticable. The exact number of Class Members is unknown, but their identity can be ascertained through Defendant's records. The disposition of the numerous claims of the Plaintiff Class and Plaintiff Subclass in a single class action will provide substantial benefits to all parties and to the Court.

37. There is a well-defined community of interest in the questions of law and fact involved affecting the Plaintiff Class. The questions of law and fact common to the Class

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predominate over questions affecting only individual Class Members, and include, but are not limited to, the following:

(a) whether Defendants' vehicles purchased or leased by the members of the Plaintiff Class are inherently defective in that they are equipped with ETCS-i systems, but without the failsafe BOS installed;

(b) whether Defendants knew of the inherent defect in their vehicles with ETCS-i systems, but without the failsafe BOS installed;

(c) whether Defendants had a duty to members of the Plaintiff Class to disclose the defective nature of the vehicles with ETCS-i systems, but without the failsafe BOS installed;

(d) whether the facts concealed and/or otherwise not disclosed by Defendants to members of the Plaintiff Class are material facts;

(e) whether, as a result of Defendants' concealment and/or failure to disclose material facts, members of the Plaintiff Class acted to their detriment by purchasing vehicles containing the common defect described above;

(f) whether Defendants knew or should have known that Toyota, Lexus, and Scion vehicles with the common defect described above are inherently defective and, thus, that those vehicles are not suitable for the purposes for which they are intended to be used, and otherwise are not as warranted and represented by Defendants;

(g) whether Defendants' vehicles with the common defect described above are not as advertised and/or promoted by Defendant;

(h) whether Defendants expressly warranted to original purchasers and/or lessees of the subject vehicles that Defendants would repair, replace, or adjust all items on those vehicles defective in material, workmanship, or factory preparation;

(i) whether Defendants breached such express warranties because Defendants failed to successfully repair or otherwise remedy the common defect described above in vehicles owned or leased by members of the Plaintiff Class;

(j) whether Defendants breached their express warranties because members of the Plaintiff Class have been deprived of the value of the bargain;

(k) whether Defendants impliedly warranted to original purchasers and/or lessees of the subject vehicles that those vehicles were merchantable;

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(l) whether Defendants breached their implied warranty of merchantability by selling and/or leasing members of the Plaintiff Class vehicles with an inherent defect;

(m) whether members of the Plaintiff Class are entitled to compensatory damages for the diminution in the fair market value of the subject vehicles as a result of the common defect described above, and the amount of such damages; and

(n) whether Defendants should be declared financially responsible for notifying all members of the Plaintiff Class of the defective nature of the subject vehicles and the cost of the diminution in fair market value of said vehicles.

38. Plaintiff asserts claims that are typical of the Plaintiff Class, having purchased and/or leased a Toyota, Lexus, and/or Scion vehicle with ETCS-installed, but without BOS installed. Plaintiff and members of the Plaintiff Class and Subclasses have similarly suffered harm arising from Defendants' breaches of express and implied warranties.

39. Injuries sustained by Plaintiff and the Plaintiff Class in each instance form a common nucleus of operative facts—Defendants' breach of express and implied warranties as a result of the common defect in the subject vehicles, as described herein.

40. Plaintiff is an adequate representative of the Plaintiff Class because her interests do not conflict with and are not antagonistic to the interests of the Plaintiff Class members she seeks to represent. Plaintiff will fairly and adequately represent and protect the interests of the Plaintiff Class. Plaintiff has retained counsel who are competent and experienced in the prosecution of mass torts and class litigation.

41. Plaintiff and members of the Plaintiff Class have all suffered and will continue to suffer substantial harm and damages due to Defendants' breaches of express and implied warranties. A class action is superior to other methods for the fair and efficient adjudication of the subject controversy. Absent a class action, most Plaintiff Class members likely will find the

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cost of litigating their individual claims to be prohibitive, and will have no effective remedy at all. Because of the relatively small size of the individual claims of Plaintiff Class members, few members of the Plaintiff Class could likely afford to seek legal redress on their own. Absent a class action, members of the Plaintiff Class will continue to sustain damages, and Defendants' misconduct will proceed without remedy. The class treatment of common questions of law and fact is also superior to multiple individual actions or piecemeal litigation in that it conserves the resources of the courts and the litigants and promotes consistency and efficiency of adjudication. Additionally, Defendants have acted, and failed to act, on grounds generally applicable to Plaintiff and the Plaintiff Class, requiring Court imposition of uniform relief to insure compatible standards of conduct toward Plaintiff and the Plaintiff Class.

42. Notice can be provided to original purchasers and lessees of subject vehicles at Defendants' expense via internet publication and through the U.S. postal service.

V.
CAUSES OF ACTION

COUNT 1 – BREACH OF EXPRESS WARRANTY

43. Plaintiffs reallege and incorporate by reference each preceding paragraph as if fully set forth herein. Hereinafter, "Plaintiffs" shall refer to the Plaintiff and the Plaintiff Class collectively.

44. Through a written manufacturer's warranty, Defendants expressly warranted to Plaintiffs that they would repair, replace, or adjust items defective in material, workmanship, or factory preparation on all vehicles they originally sold and/or leased that were equipped with ETCS-i, but not equipped with BOS.

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45. Defendants breached those express warranties because they either refused to or are unable to successfully repair or otherwise remedy the common defect in the vehicles, described above.

46. Defendants also breached those express warranties because Plaintiffs have been deprived of the value of the bargain with respect to the subject vehicles.

47. The warranty remedy of repair or replacement has failed of its essential purpose because, although Defendants have been given a reasonable chance to repair or otherwise remedy the common defect described above, all subject vehicles are still dangerously defective and fail to function properly in that the ETCS-i installed on the vehicles cannot be safely and reliably overridden in an emergency, unintended, and/or sudden acceleration incident or situation. As a result, the health, safety, and lives of drivers and passengers of Defendants' vehicles, together with bystanders, remain in peril.

48. Defendants efforts to repair or otherwise remedy the common defect in the vehicles have failed because the defect is permanent and/or prohibitively difficult or expensive for Defendants to remedy.

49. As alleged above, Defendants knew or should have known and intentionally concealed the defective nature of the vehicles equipped with ETCS-i, but without BOS. Defendants failed to warn Plaintiffs about the common defect in the subject vehicles.

50. Defendants were on notice of the common defect in the subject vehicles, which Defendants are unable and/or have refused to repair, replace, and/or adjust.

51. When Defendants made the express warranty described above, Defendants knew the purpose for which the subject vehicles were to be used, and warranted them to be in all respects safe and proper for that purpose.

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52. As a direct and proximate result of Defendants' breach of express warranty, Plaintiffs have suffered actual damages in the form of substantial diminution in the fair market value of their subject vehicles. The diminution in fair market value would not have occurred but for the inherent defect, described above.

53. Plaintiffs demand judgment against Defendants for compensatory damages in an amount to be determined at trial, together with reasonable attorneys' fees.

COUNT 2 – BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

54. Plaintiffs reallege and incorporate by reference each preceding paragraph as though fully set forth herein.

55. Defendants are merchants with respect to vehicles such as the subject Toyota, Lexus, and Scion vehicles.

56. As merchants with respect to those vehicles, Defendants impliedly warranted to Plaintiffs that Toyota, Lexus, and Scion vehicles equipped with ETCS-i, but not equipped with BOS, were merchantable, including that they passed without objection in the trade and were fit for the ordinary purposes for which such goods are used.

57. Due to their undisclosed defective nature, new Toyota, Lexus, and Scion vehicles equipped with ETCS-i, but not equipped with BOS, were unmerchantable when sold to Plaintiffs because they could not pass without objection in the trade and were unfit for the ordinary purposes for which such goods are used.

58. Defendants breached the implied warranty of merchantability with respect to the subject vehicles by selling unmerchantable vehicles to Plaintiffs.

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59. As alleged above, Defendants actually knew or should have known of and intentionally concealed the defective nature of the subject vehicles from Plaintiffs. Defendants failed to warn Plaintiffs about the common defect in the vehicles.

60. Defendants were on notice of the common defect in the subject vehicles, which Defendants are unable and/or have refused to repair, replace, and/or adjust.

61. As a direct and proximate result of Defendants' breach of the implied warranty of merchantability, Plaintiffs have suffered actual damages in the form of substantial diminution in the fair market value of their subject vehicles. The diminution in fair market value would not have occurred but for the inherent defect in the vehicles.

62. Plaintiffs demand judgment against Defendants for compensatory damages in an amount to be determined at trial, together with reasonable attorneys' fees.

COUNT 3 – VIOLATION OF THE MAGNUSON-MOSS WARRANTY ACT

63. Each preceding paragraph is realleged and incorporated in full as though fully set forth herein.

64. Members of Plaintiff Subclass One, including representatives of the Subclass, are "consumers" as defined by 15 U.S.C. § 2301(3).

65. Defendants are "supplier[s]," "warrantor[s]," and "service contractor[s]" as defined by 15 U.S.C. §§ 2301(4), 2301(5), and 2301(8), respectively.

66. The Toyota, Lexus, and Scion vehicles equipped with ETCS-i, but without BPS installed, which were purchased by members of Plaintiff Subclass One and Subclass representatives, are "consumer products" as defined by 15 U.S.C. § 2301(1).

67. The Magnuson-Moss Warranty Act provides: "a consumer who is damaged by the failure of a supplier, warrantor, or service contractor to comply with any obligation under this

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title, or under a written warranty, implied warranty, or service contract . . . may bring suit for damages and other legal and equitable relief . . . in an appropriate district court of the United States." 15 U.S.C. § 2310(d)(1). The Magnuson-Moss Warranty Act also authorizes class actions and the award of attorney's fees. 15 U.S.C. § 2310(e).

68. Upon information and belief, Defendants knew or should have known at the time of sale to members of Plaintiff Subclass One and Subclass Representatives that an inherent defect existed in the subject vehicles, which rendered those vehicles unfit for their customary and usual purposes and for the particular purpose for which Defendants knew or should have known the vehicles were intended, as alleged more fully above.

69. Defendants' knowledge of the defect in the subject vehicles gave Defendants more than adequate opportunity to repair or otherwise remedy the defect. After a reasonable number of attempts, Defendants have failed to repair or otherwise remedy the ETCS-i and BOS defect because the defect is inherent and permanent.

70. As described above, Defendants have failed to comply with their obligations under written manufacturer's warranties issued to members of Plaintiff Subclass One and Subclass Representatives because Defendants cannot successfully repair or otherwise remedy the inherent and permanent defect in the ETCS-i and BOS. Those written warranties are "service contracts" as defined by 15 U.S.C. 2301(8).

71. Defendants impliedly warranted that the subject vehicles would be merchantable. Defendants breached that warranty in the manner described above in Count II.

72. As a direct and proximate result of Defendants breach of written warranties and service contracts, members of Plaintiff Subclass One and their Subclass Representatives sustained actual damages in the form of significant diminution in the fair market value of their

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subject vehicles. The diminution in fair market value would not have occurred but for the inherent defect in the subject vehicles. Members of Plaintiff Subclass One and their Subclass Representatives, demand judgment against Defendants for compensatory damages in an amount to be determined at trial, together with reasonable attorneys' fees.

COUNT 4 – VIOLATION OF CONSUMER PROTECTION STATUTES

73. Each preceding paragraph is realleged and incorporated in full as though fully set forth herein.

74. Defendants' advertising, marketing, distribution, and sales of Toyota, Lexus, and Scion vehicles equipped with ETCS-i, but without BOS installed, as well as its servicing of those vehicles after sale, constitute conduct and activities in the course of trade and commerce.

75. Defendants engaged in unfair, unconscionable, deceptive, and fraudulent trade practices and acts in violation of the state consumer protection statutes listed below by advertising, marketing, distributing, and selling the subject vehicles without informing them of the common defects relative to the ETCS-i and BOS.

76. As alleged above, Defendants had, and still have, superior knowledge of the inherent defect in the subject vehicles, and intentionally concealed the defects from members of Plaintiff Subclass Two and their Subclass Representatives in order to induce them into purchasing one or more of said vehicles.

77. At the very least, Defendants should have known of the defective nature of the subject vehicles, yet Defendants failed to warn or otherwise inform members of Plaintiff Subclass Two and their Subclass Representatives about the common defect in said vehicles. Members of Plaintiff Subclass Two and their Subclass Representatives did not know, and had no reason to know, of the defect prior to purchasing their subject vehicles.

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78. Members of Plaintiff Subclass Two and their Subclass Representatives could not have discovered the defect in the relative to the ETCS-i and absence of BOS through any reasonable inspection of the vehicles before purchase.

79. Members of Plaintiff Subclass Two and their Subclass Representatives were without access to the information concealed by Defendants regarding the inherent defects in the subject vehicles, and Plaintiff Subclass Two and their Subclass Representatives, therefore, reasonably relied on Defendants' warranties, promises, and representations regarding the quality, reliability, safety, and other material characteristics of Defendants' vehicles before and at the time of sale, together with reasonable reliance on and Defendants' ability to repair, replace, or adjust items on the subject vehicles that are defective in material, workmanship, or factory preparation.

80. Members of Plaintiff Subclass Two and their Subclass Representatives also reasonably relied on Defendants to disclose, and not conceal or fail to warn of, material information about the subject vehicles and defects.

81. Defendants concealment of the defects described herein from Plaintiff Subclass Two and their Subclass Representatives constitutes unfair competition and unfair, unconscionable, deceptive, and fraudulent trade practices and acts in violation of the state consumer protection statutes listed below. Alternatively, Defendants' failure to warn Plaintiff Subclass Two and their Subclass Representatives about the subject defects constitutes unfair competition and unfair, unconscionable, deceptive, and fraudulent trade practices and acts in violation of the state consumer protection statutes listed below.

82. Defendants also violated the state consumer protection statutes listed below by selling the subject vehicles when Defendants knew or should have known that the inherent

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defects in vehicles described herein cannot be remedied through repair, replacement, and/or adjustment, or such remedy is prohibitively difficult or expensive to accomplish.

83. Defendants engaged in unfair competition and unfair and deceptive trade practices and acts in violation of Ark. Code § 4-88-101, *et seq.*

84. Defendants engaged in unfair competition and unfair and deceptive trade practices and acts and has made false representations in violation of Colo. Rev. Stat. § 6-1-105, *et seq.*

85. Defendants engaged in unfair competition and unfair and deceptive trade practices and acts in violation of Conn. Gen. Stat. § 42-110b, *et seq.*

86. Defendants engaged in unfair competition and unfair and deceptive practices and acts in violation of Fla. Stat. § 501.201, *et seq.*

87. Defendants engaged in unfair competition and unfair and deceptive trade practices and acts in violation of Kan. Stat. § 50-623, *et seq.*

88. Defendants engaged in unfair competition and unfair and deceptive trade practices and acts in violation of Vernon's Missouri Stat. § 407.010, *et seq.*

89. Defendants engaged in unfair competition and unfair and deceptive trade practices and acts in violation of N.J. Rev. Stat. § 56:8-1, *et seq.*

90. Defendants engaged in unfair competition and unfair and deceptive trade a practices and acts in violation of N.M. Stat. § 57-12-1, *et seq.*

91. Defendants engaged in unfair competition and unfair and deceptive trade practices and acts in violation of N.Y. Gen. Bus. Law § 349, *et seq.*

92. Defendants engaged in unfair competition and unfair and deceptive trade practices and acts in violation of Ohio Rev. Stat. § 1345.01, *et seq.*

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93. Defendants engaged in unfair competition and unfair and deceptive trade practices and acts in violation of 9 Vt. § 2451, *et seq.*

94. Defendants engaged in unfair competition and unfair and deceptive trade practices and acts in violation of Wash. Rev. Code. § 19.86.010, *et seq.*

95. Defendant's unfair competition and unfair and deceptive trade practices and acts have directly, foreseeably, and proximately caused damages and injury to Plaintiff Subclass Two and their Subclass Representatives in the form of significant diminution in the fair market value of their subject vehicles. The diminution in fair market value would not have occurred but for the inherent defect in the subject vehicles.

96. Had Plaintiff Subclass Two and their Subclass Representatives known of the inherent defects in the subject vehicles, they would have paid less for their vehicles than the amounts they actually paid, or they would not have purchased those vehicles.

97. Plaintiff Subclass Two and their Subclass Representatives demand judgment against Defendants for compensatory damages, and any other damages authorized by the above listed state consumer protection statutes, in an amount to be determined at trial, together with reasonable attorneys' fees.

VI.
DEMAND FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, pray for:

(a) An order certifying this matter as a class action with Plaintiffs as Class representatives and Subclass One Reprentatives as representatives of Plaintiff Subclass One and Subclass Two Representatives as representatives of Plaintiff Subclass Two, and designating Plaintiffs' counsel as Class Counsel and Subclass

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Counsel;

(b) Judgment in favor of Plaintiffs and the Class on Counts I and II;

(c) Judgment in favor of Subclass One Representatives and Plaintiff Subclass One on Count III;

(d) Judgment in favor of Subclass Two Representatives and Plaintiff Subclass Two on Count IV;

(e) Pre-judgment and post judgment interest on such monetary relief;

(f) An award of reasonable attorneys' fees and costs of Plaintiffs and the Plaintiff Subclasses; and

(g) Such other and further relief as the nature of the case may require or as may be determined to be just, equitable, and proper by this Court.

Respectfully submitted,

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February 5, 2010

Spartanburg, South Carolina

TOY-RQ-05E-00009701

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

DALE ROBERTS, on behalf of himself and all others similarly situated, Plaintiffs, v. TOYOTA MOTOR CORPORATION, TOYOTA MOTOR SALES, U.S.A., INC., AND DOES 1 through 10 Defendants.	CIVIL ACTION No. 7:10-281-RBH **CLASS ACTION COMPLAINT**

PLAINTIFFS' ORIGINAL CLASS ACTION COMPLAINT

Plaintiff DALE ROBERTS brings this action on behalf of himself, as an individual (hereinafter, "Plaintiff"), and on behalf of all others similarly situated (hereinafter, the "Plaintiff Class") against Defendants TOYOTA MOTOR CORPORATION, TOYOTA MOTOR SALES, U.S.A., INC., and DOES 1-10 (collectively, "Defendants"), and alleges as follows:

I.
JURISDICTION & VENUE

1. This Court has subject-matter jurisdiction pursuant to 28 U.S.C. § 1332(d)(2) because the matter in controversy in this civil action exceeds the sum or value of $5,000,000, exclusive of interests and costs, and there is minimal diversity because certain members of the Plaintiff Class and Subclasses are citizens of a different state than any Defendant as required under 28 U.S.C. § 1332(d)(2)(A).

2. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and (c) because Defendants reside in this district and a substantial part of the events or omissions giving rise to

the claims herein occurred within this District. Defendants reside in this District for purposes of 28 U.S.C. § 1391 because they are subject to general personal jurisdiction in this District. Defendants have continuous and systematic contacts with South Carolina, including this District, through selling vehicles in South Carolina to South Carolina residents, including residents of this District. Defendants are also subject to specific personal jurisdiction in this District because their contacts with this District gave rise to the instant action.

3. Venue is also proper in this Court because Plaintiff Dale Roberts is a citizen of the County of Spartanburg, State of South Carolina who purchased a Toyota Camry in Spartanburg, South Carolina; and proposed Class members include citizens of South Carolina who reside in this District.

II.
PARTIES

4. Plaintiff Dale Roberts owns a 2007 Toyota Camry, which he purchased as a new vehicle from an authorized Toyota dealer in Spartanburg, South Carolina, and he is a resident of the County of Spartanburg, State of South Carolina.

5. Defendant TOYOTA MOTOR CORPORATION ("TMC") is a Japanese corporation with its principal place of business in Toyota City, Aichi, Japan and Tokyo, Japan. Service of process upon Defendant TMC shall be effectuated pursuant to Fed. R. Civ. P. 4(h).

6. Defendant TOYOTA MOTOR SALES, U.S.A., INC. ("Toyota U.S.A.") is a California corporation with its principal place of business in Torrance, Los Angeles County, California. Service of process upon Defendant Toyota U.S.A. shall be effectuated pursuant to Fed. R. Civ. P. 4(h).

7. The true names and capacities of Defendants sued herein as DOES 1 through 10 are currently unknown to Plaintiff, who therefore sues such Defendants by such fictitious names.

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Each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of Court to amend this Complaint to reflect the true names and capacities of the Defendants designated herein as DOES when such identities become known.

8. Upon information and belief, Plaintiff alleges that at all times mentioned herein, each and every Defendant was acting as an agent and/or employee of each of the other Defendants, and at all times mentioned was acting within the course and scope of each of the other Defendants. In addition, each of the acts and/or omissions of each Defendant alleged herein were made known to, and ratified by, each of the other Defendants.

III.
FACTUAL ALLEGATIONS

9. This action is brought as a class action pursuant to Federal Rule of Civil Procedure 23 on behalf of the Plaintiff Class, as well as subclasses, as defined below. Each Plaintiff and member of the Putative Plaintiff Class and Subclasses purchased or leased a vehicle manufactured and warranted by Defendants that is subject to uncontrolled and/or unintended and/or sudden acceleration of such vehicles because of Defendants' admittedly faulty Electronic Throttle Control System with Intelligence ("ETCS-i") coupled with the lack of Brake Override System technology ("BOS"), thereby creating a serious and life-threatening safety condition for drivers of and passengers in Defendants' vehicles, as well as other motorists, pedestrians, and bystanders. As a result of the absence of BOS in Defendants' vehicles, which Defendants failed to disclose to their customers, the vehicles are dangerously unsafe, inherently defective, and are worth less than the amount of money the customers who purchased them paid.

10. The vehicles subject to this action, which in the United States number in the millions, are all models bearing the "Toyota," "Lexus," and "Scion" nameplates, with ETCS-i

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installed, but without an attendant BOS installed, including but not limited to the following models:

Toyota Avalon
Toyota Camry & Camry HV
Toyota Corolla & Corolla Matrix
Toyota FJ Cruiser
Toyota Highlander & Highlander Hybrid
Toyota Land Cruiser
Toyota Prius
Toyota Sequoia
Toyota Sienna
Toyota Tacoma
Toyota Tundra
Toyota RAV4
Toyota Venza

Lexus ES series vehicles
Lexus IS series vehicles
Lexus GS series vehicles
Lexus LS series vehicles
Lexus RX series vehicles
Lexus SC series vehicles

11. The accelerators on such vehicles are controlled by a drive pedal sensor that is a component part of a so-called "drive-by-wire" throttle system (known on Defendants' vehicles as ETCS-i), in which the gas pedal has no direct connection to the engine through a cable or mechanical linkage. Instead, the connection between the pedal and the engine is made by electrical signals traveling through wires. Such systems are the outgrowth of new electronic engine controls in cars. The pedal sensor is intended to gauge how far the driver is pressing the gas pedal and signals the engine's control computer, which determines how much to open the engine throttle, unless the drive-by-wire system sends the wrong signals to the engine computer, or such signals are interfered with or otherwise in error.

12. As an effective means to combat wrong signals, interference, or computer errors, most automakers equip their "drive-by-wire" vehicles with BOS technology. Defendants,

however, failed install BOS technology on their vehicles equipped with ETCS-i. BOS allows a driver to stop a car with the footbrake even if the accelerator is depressed (or the car computer "thinks" the pedal is depressed) and the vehicle is running at full throttle. In other words, if the brakes and the accelerator are in conflict, the brakes win, but only *if* a BOS is installed. Chrysler, Volkswagen, Audi, BMW, Mercedes-Benz, and General Motors are among the manufacturers that began installing BOS in their vehicles, some as far back as ten years ago. However, Defendants have not installed such systems on any vehicle sold in the United States, and will not install any BOS until, reportedly, January 2010.

13. At the Detroit Auto Show in December 2009, Toyota North America President Yoshi Inaba said the company would begin equipping its vehicles with BOS beginning this year. However, in the meantime, Defendants made the unprecedented move of halting production and sale of eight popular models in January 2010 after numerous reports of unintended acceleration. In November 2009, Defendants initially blamed the unintended accelerations on faulty floor mats and their installation, stating that the floor mats caused the accelerator pedal to stick in the depressed position, issuing a recall for millions of "defective" floor mats. In January 2010, Defendants announced that the unintended acceleration problem was due to a faulty accelerator pedal mechanism, which wore down and became susceptible to sticking in the depressed position due to condensation from the cars' heaters on cold days.

14. But Defendants' vehicles had already been subjected to heightened scrutiny for acceleration-safety-related issues for almost a decade. According to a senior engineer at *Consumer Reports'* Auto Test Center, Toyota accounted for approximately 40% of all the unintended acceleration complaints reported to the National Highway Traffic & Safety Administration ("NHTSA") in 2008—as compared to ***all other vehicle manufacturers' models.***

And, as far back as 2004, United States government investigators have been investigating 2002-2003 Toyota and Lexus vehicles to determine whether they were defective, gathering information about owner complaints of sudden acceleration, according to the Center for Auto Safety. Automotive experts say that in at least some of those incidents, a BOS would have prevented harm.

15. As early as 2004, the NHTSA looked at reports of unintended acceleration in Defendants' best-selling model, the Toyota Camry. But the NHTSA limited its investigation to only those incidents lasting one second or less. Upon information and belief, that limit came after a former NHTSA official who went to work for Defendants before the investigation began was involved in discussions with former colleagues at NHTSA.

16. One Massachusetts consumer safety group has identified 2,274 incidents of sudden unintended acceleration in Toyota vehicles causing 275 crashes and at least 18 fatalities since 1999. In another 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"—one out of every five vehicles investigated.

17. In one incident that has, perhaps, drawn the most publicity, a 2009 Lexus ES 350 raced through San Diego, California, weaving at 120 miles per hour through rush-hour freeway traffic. Veteran California Highway Patrol officer Mark Saylor was at the wheel, with his wife, teenage daughter, and brother-in-law aboard. Calls to 911 emergency services recounted Saylor's brother-in-law exclaiming to a police dispatcher via cell phone, "We're in trouble . . . . There's no brakes!" As they approached an intersection, and the end of the road, the passengers can be heard urging each other to pray. All four died. Afterward, investigators said that it appeared the brakes had been applied for so long that the brake pads had melted, according to an

NHTSA report. Had BOS technology been installed, the engine would have depowered and slowed.

18. Similarly, on December 26, 2009, a 2008 Toyota Avalon crashed just outside of Dallas. A Southlake, Texas police officer 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 the driver attempted to hit the brake or slow down. Two weeks later, an NHTSA investigator visited Southlake to inspect the car, accompanied by a Toyota engineer. One factor the pair immediately ruled out was the floor mats, which were in the trunk—perhaps due to the decedent operator's awareness of Defendants' November 2009 floor mat-related recall.

19. A Minnesota owner of a new Toyota Camry was much luckier. The woman's Camry, which was new and had about 6,000 miles on it, kept accelerating after she passed a pick-up truck on the highway in May 2008, even after she took her foot off the gas pedal. The next 6 miles of her journey were terrifying. The car barely slowed down when she pressed the brake—she was only able to slow the car to 60 miles per hour. "The car wanted to go 80, or higher," the driver reported. Visualizing the remainder of her commute, which traversed winding roads with no shoulders, she decided to head for a major freeway, requiring a high-speed turn through an intersection. She hit the brake with both feet, squealing through the turn and managing to swerve onto the road without hitting anything. By the time she got the car stopped miles later—with the coaching of a 911 operator, she managed to turn the car off—smoke was filling the car. Her brakes were smoldering, and the tires had started to melt near the

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wheel rims. A police officer at the scene of the incident said the Camry's floor mats were not near the accelerator pedal.

20. Notwithstanding such alarming incidents, on or about January 28, 2010, Defendants represented to consumers on their Toyota USA Newsroom website that the unintended sudden acceleration "condition is rare and ***does not occur suddenly***." Inferring that the problem only occurs in vehicles that have experienced some excessive degree of use, as opposed to brand new vehicles, Defendants added: "It 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." Yet, reports of unintended acceleration in Defendants' vehicles stem from vehicles with fewer than 1,000 miles on them, and others with more than 60,000 miles. Indeed, Defendants' spokesperson Brian Lyons has represented that there is "no common theme when it comes to how long the product has been out there." Defendants subsequently announced that they intend to replace the supposedly defective pedal mechanisms as part of a massive 2.3 million vehicle recall.

21. But, even Defendants' own supplier of the reportedly defective accelerator pedals says that Defendants are far from done in ending the problem of runaway cars—and that Defendants told it that none of the serious accidents or deaths linked to runaway cars was caused by "sticky" gas pedals. Instead, Defendants acknowledged to the parts supplier that the "rare set of conditions"—i.e., excessive wear caused by condensation build up, making the gas pedal slow to return to idle—did not cause *any* accidents or injuries. The pedal supplier also stated that it has "deep concern that there is widespread confusion and incorrect information about the role of CTS-manufactured gas pedals" in the recall, and that its pedals "should absolutely not be linked with any sudden unintended acceleration incidents."

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22. At almost every step, Defendants have underestimated the severity of the sudden-acceleration problem affecting its most popular cars. They moved from discounting early reports of problems to overconfidently announcing diagnoses and insufficient fixes. As recently as the fall of 2009, Defendants were still saying they were confident that loose floor mats were the *sole cause* of any sudden acceleration, issuing an advisory to millions of owners to remove the supposedly defective mats. The company said on November 2, 2009 that "there is no evidence to support" any other conclusion, and added that its claim was backed up by the NHTSA. But, in fact, the agency had not signed on to the explanation, and it issued a sharp rebuke. Defendants' statement was "misleading and inaccurate," the agency said. "This matter is not closed."

23. Such dangerous, quality and safety-related defects most certainly come as a surprise to loyal consumers of Defendants' vehicles like Plaintiff and members of the Plaintiff Class. Since first importing cars to the United States more than five decades ago, Defendants have in large part slowly and steadily built the Toyota and Lexus nameplates as having superior reputations for technical expertise and reliability. Consumers of Defendants' vehicles prized the automobiles for their quality and safety. As one auto industry analyst explained in a recent interview, "People don't buy [Toyotas] for their good looks. They don't buy it for the cash-back or financing offers. They buy them because they have a lot of confidence in the quality and safety of the vehicle."

24. However, in 2002, Defendants set an ambitious goal to own 15 percent of the global auto industry by 2010, intending to surpass General Motors as the world's largest automaker. To get there, Defendants had to grow the company by 50 percent. Defendants also had to build new plants in the United States, China, and elsewhere, and introduce dozens of new models. One significant resulting change was Defendants' decision to buy parts from companies

around the world, rather than from a small group of Japanese suppliers that had previously been longtime partners.

25. Defendants managed to win bragging rights as the world's biggest automaker in terms of global sales in 2006, four years ahead of schedule. But, the next year it lost its top quality ranking in the widely regarded and influential *Consumer Reports* magazine, a position it held in the United States for years, due to what the reviewers termed "bug-ridden designs." That year, *Consumer Reports* removed the Toyota Camry—which was then the best-selling car in the United States—from its list of recommended vehicles, the first time in 11 years that the Camry had not received a "recommended" rating. The magazine also boldly declared that it would no longer recommend any of Defendants' vehicles without data showing that past years' vehicles were reliable. In or about February 2010, the magazine announced it was suspending recommendations for any of Defendants' recalled models.

26. Now, with unintended acceleration problems plaguing Defendants' vehicles and after countless related accidents, injuries, and deaths, it has become apparent that consumers who purchased or leased Defendants' vehicles did not get the quality and safety they expected and paid for. As one putative member of the Plaintiff Class recently told the Los Angeles *Times*, "I thought Toyota was a very good company and built good products." But, "[n]ow I wouldn't even consider buying a Toyota in the future. This whole event tells me that they don't value my life, and that means I should never buy another car from them."

27. In a speech last year, Defendants' new president—the grandson of the founder—lamented that the drive for profits "may have stretched [the company] more than we should have, and that made us unable to capitalize on Toyota's traditional strengths"—quality, reliability, and safety. The company president declared in another speech last year that the company was one

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step away from "capitulation to irrelevance or death," having already gone through a phase of "undisciplined pursuit of more." Plainly, as Defendants gained sales throughout the 2000s, they moved away from the business practices of slow but steady growth based on a reputation for reliability and safety.

28. Industry analysts question whether Defendants' reputation for quality, reliability, and safety is irreparably tarnished. Declared one senior auto industry strategic advisor on or about January 27, 2010, Defendants' "reputation for long-term quality is finished. . . . . People aren't going to buy Toyotas, period. It doesn't matter which model. What's happened is sufficient to keep people out of the stores." Another analyst explained, "This [issue] is going to have severe ramifications for Toyota."

29. Defendants designed and manufactured defective vehicles by not installing BOS as standard, or even optional, equipment—even in the face of admittedly and dangerously faulty and/or unreliable and/or unsafe ETCS-i acceleration systems. As most other automobile manufacturers have recognized, BOS provides an additional, but crucial, failsafe mechanism for drivers, passengers, and bystanders that experience and/or are put in peril by dangerous, unintended and sudden acceleration. Indeed, whatever the source of Defendants' problems with their ETCS-i acceleration systems—be it floor mat-related, "sticky" pedal-related, or a more insidious computer "glitch" causing the vehicles to accelerate uncontrollably—it is without question that inclusion of BOS on Defendants' vehicles would have helped save lives and prevent injuries and accidents by providing a failsafe "cutout" for unintended acceleration.

30. To save production costs and increase profits, however, Defendants intentionally did not install BOS in their vehicles equipped with ETCS-i, despite knowledge that ETCS-i was prone to sudden acceleration. Defendants have also opted not to install BOS in already sold or

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leased vehicles as part of any recall or otherwise, either because it is impossible to install or program BOS on an aftermarket basis, or because it is prohibitively expensive to do so. Defendants have instead created the dangerous illusion of affirmative, safety-related action by repairing or replacing accelerator pedals on some but not all the defective cars and trucks. Even with Defendants' attempts to remedy the runaway car problem through such efforts, Defendants' vehicles with ETCS-i, but without BOS installed, remain dangerously defective and unsafe, and have resulted in damages to Plaintiff and the Plaintiff Class and Subclasses. In fact, as of the filing of this Complaint, Kelley Blue Book announced it was downgrading the value estimates of Defendants' vehicles as much as five percent, and that "there may be further devaluation ahead."

31. Upon information and belief, each of Defendants' vehicles were sold and/or leased to Plaintiff and members of the Plaintiff Class and Subclasses with express warranties covering repair, replacement, and/or adjustment of all items on those vehicles defective in material, workmanship, or factory preparation, and/or similar express warranties.

IV.
CLASS ACTION ALLEGATIONS

32. Pursuant to Rules 23(b) and (c) of the Federal Rules of Civil Procedure, Plaintiff brings this action on his own behalf and on behalf of the proposed Class. Plaintiff seeks certification a Plaintiff Class that consists of:

> All persons or entities domiciled or residing in any of the 50 states of the United States of America or in the District of Columbia who purchased or leased at least one new Toyota, Lexus, or Scion vehicle equipped with Defendants' Electronic Throttle Control System with Intelligence, but not equipped with a Brake Override System.

Plaintiff also seeks certification of the following Plaintiff Subclasses:

> 1. All persons domiciles or residing in any of the 50 states of the United States of America or in the District of Columbia who

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purchased and normally used for personal, family, or household purposes at least one new Toyota, Lexus, or Scion vehicle equipped with Defendants' Electronic Throttle Control System with Intelligence, but not equipped with a Brake Override System.

2. All persons or entities domiciled or residing in Arkansas, Colorado, Connecticut, Florida, Kansas, Missouri, New Jersey, New Mexico, New York, Ohio, Vermont, or Washington who purchased at least one new Toyota, Lexus, or Scion vehicle equipped with Defendants' Electronic Throttle Control System with Intelligence, but not equipped with a Brake Override System.

Excluded from the Plaintiff Class and Subclass are: (a) Defendants, any entity in which they have a controlling interest, their legal representatives, officers, directors, assigns and successors, and any other entity related to or affiliated with Defendants; and (b) all claims for personal injury, wrongful death, or any incidental or consequential damages over and above those sought herein, except as authorized by law.

33. Plaintiff and the Plaintiff Class assert the causes of action in Counts I and II.

34. Plaintiff and Plaintiff Subclass One, defined above, also assert the cause of action in Count III.

35. Plaintiff and Plaintiff Subclass Two, defined above, also assert the cause of action in Count IV.

36. The Class is comprised of millions of purchasers of Defendants' vehicles throughout the United States, making joinder impracticable. The exact number of Class Members is unknown, but their identity can be ascertained through Defendant's records. The disposition of the numerous claims of the Plaintiff Class and Plaintiff Subclass in a single class action will provide substantial benefits to all parties and to the Court.

37. There is a well-defined community of interest in the questions of law and fact involved affecting the Plaintiff Class. The questions of law and fact common to the Class

predominate over questions affecting only individual Class Members, and include, but are not limited to, the following:

(a) whether Defendants' vehicles purchased or leased by the members of the Plaintiff Class are inherently defective in that they are equipped with ETCS-i systems, but without the failsafe BOS installed;

(b) whether Defendants knew of the inherent defect in their vehicles with ETCS-i systems, but without the failsafe BOS installed;

(c) whether Defendants had a duty to members of the Plaintiff Class to disclose the defective nature of the vehicles with ETCS-i systems, but without the failsafe BOS installed;

(d) whether the facts concealed and/or otherwise not disclosed by Defendants to members of the Plaintiff Class are material facts;

(e) whether, as a result of Defendants' concealment and/or failure to disclose material facts, members of the Plaintiff Class acted to their detriment by purchasing vehicles containing the common defect described above;

(f) whether Defendants knew or should have known that Toyota, Lexus, and Scion vehicles with the common defect described above are inherently defective and, thus, that those vehicles are not suitable for the purposes for which they are intended to be used, and otherwise are not as warranted and represented by Defendants;

(g) whether Defendants' vehicles with the common defect described above are not as advertised and/or promoted by Defendant;

(h) whether Defendants expressly warranted to original purchasers and/or lessees of the subject vehicles that Defendants would repair, replace, or adjust all items on those vehicles defective in material, workmanship, or factory preparation;

(i) whether Defendants breached such express warranties because Defendants failed to successfully repair or otherwise remedy the common defect described above in vehicles owned or leased by members of the Plaintiff Class;

(j) whether Defendants breached their express warranties because members of the Plaintiff Class have been deprived of the value of the bargain;

(k) whether Defendants impliedly warranted to original purchasers and/or lessees of the subject vehicles that those vehicles were merchantable;

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(l) whether Defendants breached their implied warranty of merchantability by selling and/or leasing members of the Plaintiff Class vehicles with an inherent defect;

(m) whether members of the Plaintiff Class are entitled to compensatory damages for the diminution in the fair market value of the subject vehicles as a result of the common defect described above, and the amount of such damages; and

(n) whether Defendants should be declared financially responsible for notifying all members of the Plaintiff Class of the defective nature of the subject vehicles and the cost of the diminution in fair market value of said vehicles.

38. Plaintiff asserts claims that are typical of the Plaintiff Class, having purchased and/or leased a Toyota, Lexus, and/or Scion vehicle with ETCS-installed, but without BOS installed. Plaintiff and members of the Plaintiff Class and Subclasses have similarly suffered harm arising from Defendants' breaches of express and implied warranties.

39. Injuries sustained by Plaintiff and the Plaintiff Class in each instance form a common nucleus of operative facts—Defendants' breach of express and implied warranties as a result of the common defect in the subject vehicles, as described herein.

40. Plaintiff is an adequate representative of the Plaintiff Class because her interests do not conflict with and are not antagonistic to the interests of the Plaintiff Class members she seeks to represent. Plaintiff will fairly and adequately represent and protect the interests of the Plaintiff Class. Plaintiff has retained counsel who are competent and experienced in the prosecution of mass torts and class litigation.

41. Plaintiff and members of the Plaintiff Class have all suffered and will continue to suffer substantial harm and damages due to Defendants' breaches of express and implied warranties. A class action is superior to other methods for the fair and efficient adjudication of the subject controversy. Absent a class action, most Plaintiff Class members likely will find the

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cost of litigating their individual claims to be prohibitive, and will have no effective remedy at all. Because of the relatively small size of the individual claims of Plaintiff Class members, few members of the Plaintiff Class could likely afford to seek legal redress on their own. Absent a class action, members of the Plaintiff Class will continue to sustain damages, and Defendants' misconduct will proceed without remedy. The class treatment of common questions of law and fact is also superior to multiple individual actions or piecemeal litigation in that it conserves the resources of the courts and the litigants and promotes consistency and efficiency of adjudication. Additionally, Defendants have acted, and failed to act, on grounds generally applicable to Plaintiff and the Plaintiff Class, requiring Court imposition of uniform relief to insure compatible standards of conduct toward Plaintiff and the Plaintiff Class.

42. Notice can be provided to original purchasers and lessees of subject vehicles at Defendants' expense via internet publication and through the U.S. postal service.

V.
CAUSES OF ACTION

COUNT 1 – BREACH OF EXPRESS WARRANTY

43. Plaintiffs reallege and incorporate by reference each preceding paragraph as if fully set forth herein. Hereinafter, "Plaintiffs" shall refer to the Plaintiff and the Plaintiff Class collectively.

44. Through a written manufacturer's warranty, Defendants expressly warranted to Plaintiffs that they would repair, replace, or adjust items defective in material, workmanship, or factory preparation on all vehicles they originally sold and/or leased that were equipped with ETCS-i, but not equipped with BOS.

45. Defendants breached those express warranties because they either refused to or are unable to successfully repair or otherwise remedy the common defect in the vehicles, described above.

46. Defendants also breached those express warranties because Plaintiffs have been deprived of the value of the bargain with respect to the subject vehicles.

47. The warranty remedy of repair or replacement has failed of its essential purpose because, although Defendants have been given a reasonable chance to repair or otherwise remedy the common defect described above, all subject vehicles are still dangerously defective and fail to function properly in that the ETCS-i installed on the vehicles cannot be safely and reliably overridden in an emergency, unintended, and/or sudden acceleration incident or situation. As a result, the health, safety, and lives of drivers and passengers of Defendants' vehicles, together with bystanders, remain in peril.

48. Defendants efforts to repair or otherwise remedy the common defect in the vehicles have failed because the defect is permanent and/or prohibitively difficult or expensive for Defendants to remedy.

49. As alleged above, Defendants knew or should have known and intentionally concealed the defective nature of the vehicles equipped with ETCS-i, but without BOS. Defendants failed to warn Plaintiffs about the common defect in the subject vehicles.

50. Defendants were on notice of the common defect in the subject vehicles, which Defendants are unable and/or have refused to repair, replace, and/or adjust.

51. When Defendants made the express warranty described above, Defendants knew the purpose for which the subject vehicles were to be used, and warranted them to be in all respects safe and proper for that purpose.

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52. As a direct and proximate result of Defendants' breach of express warranty, Plaintiffs have suffered actual damages in the form of substantial diminution in the fair market value of their subject vehicles. The diminution in fair market value would not have occurred but for the inherent defect, described above.

53. Plaintiffs demand judgment against Defendants for compensatory damages in an amount to be determined at trial, together with reasonable attorneys' fees.

COUNT 2 – BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

54. Plaintiffs reallege and incorporate by reference each preceding paragraph as though fully set forth herein.

55. Defendants are merchants with respect to vehicles such as the subject Toyota, Lexus, and Scion vehicles.

56. As merchants with respect to those vehicles, Defendants impliedly warranted to Plaintiffs that Toyota, Lexus, and Scion vehicles equipped with ETCS-i, but not equipped with BOS, were merchantable, including that they passed without objection in the trade and were fit for the ordinary purposes for which such goods are used.

57. Due to their undisclosed defective nature, new Toyota, Lexus, and Scion vehicles equipped with ETCS-i, but not equipped with BOS, were unmerchantable when sold to Plaintiffs because they could not pass without objection in the trade and were unfit for the ordinary purposes for which such goods are used.

58. Defendants breached the implied warranty of merchantability with respect to the subject vehicles by selling unmerchantable vehicles to Plaintiffs.

59. As alleged above, Defendants actually knew or should have known of and intentionally concealed the defective nature of the subject vehicles from Plaintiffs. Defendants failed to warn Plaintiffs about the common defect in the vehicles.

60. Defendants were on notice of the common defect in the subject vehicles, which Defendants are unable and/or have refused to repair, replace, and/or adjust.

61. As a direct and proximate result of Defendants' breach of the implied warranty of merchantability, Plaintiffs have suffered actual damages in the form of substantial diminution in the fair market value of their subject vehicles. The diminution in fair market value would not have occurred but for the inherent defect in the vehicles.

62. Plaintiffs demand judgment against Defendants for compensatory damages in an amount to be determined at trial, together with reasonable attorneys' fees.

COUNT 3 – VIOLATION OF THE MAGNUSON-MOSS WARRANTY ACT

63. Each preceding paragraph is realleged and incorporated in full as though fully set forth herein.

64. Members of Plaintiff Subclass One, including representatives of the Subclass, are "consumers" as defined by 15 U.S.C. § 2301(3).

65. Defendants are "supplier[s]," "warrantor[s]," and "service contractor[s]" as defined by 15 U.S.C. §§ 2301(4), 2301(5), and 2301(8), respectively.

66. The Toyota, Lexus, and Scion vehicles equipped with ETCS-i, but without BPS installed, which were purchased by members of Plaintiff Subclass One and Subclass representatives, are "consumer products" as defined by 15 U.S.C. § 2301(1).

67. The Magnuson-Moss Warranty Act provides: "a consumer who is damaged by the failure of a supplier, warrantor, or service contractor to comply with any obligation under this

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title, or under a written warranty, implied warranty, or service contract . . . may bring suit for damages and other legal and equitable relief . . . in an appropriate district court of the United States." 15 U.S.C. § 2310(d)(1). The Magnuson-Moss Warranty Act also authorizes class actions and the award of attorney's fees. 15 U.S.C. § 2310(e).

68. Upon information and belief, Defendants knew or should have known at the time of sale to members of Plaintiff Subclass One and Subclass Representatives that an inherent defect existed in the subject vehicles, which rendered those vehicles unfit for their customary and usual purposes and for the particular purpose for which Defendants knew or should have known the vehicles were intended, as alleged more fully above.

69. Defendants' knowledge of the defect in the subject vehicles gave Defendants more than adequate opportunity to repair or otherwise remedy the defect. After a reasonable number of attempts, Defendants have failed to repair or otherwise remedy the ETCS-i and BOS defect because the defect is inherent and permanent.

70. As described above, Defendants have failed to comply with their obligations under written manufacturer's warranties issued to members of Plaintiff Subclass One and Subclass Representatives because Defendants cannot successfully repair or otherwise remedy the inherent and permanent defect in the ETCS-i and BOS. Those written warranties are "service contracts" as defined by 15 U.S.C. 2301(8).

71. Defendants impliedly warranted that the subject vehicles would be merchantable. Defendants breached that warranty in the manner described above in Count II.

72. As a direct and proximate result of Defendants breach of written warranties and service contracts, members of Plaintiff Subclass One and their Subclass Representatives sustained actual damages in the form of significant diminution in the fair market value of their

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subject vehicles. The diminution in fair market value would not have occurred but for the inherent defect in the subject vehicles. Members of Plaintiff Subclass One and their Subclass Representatives, demand judgment against Defendants for compensatory damages in an amount to be determined at trial, together with reasonable attorneys' fees.

COUNT 4 – VIOLATION OF CONSUMER PROTECTION STATUTES

73. Each preceding paragraph is realleged and incorporated in full as though fully set forth herein.

74. Defendants' advertising, marketing, distribution, and sales of Toyota, Lexus, and Scion vehicles equipped with ETCS-i, but without BOS installed, as well as its servicing of those vehicles after sale, constitute conduct and activities in the course of trade and commerce.

75. Defendants engaged in unfair, unconscionable, deceptive, and fraudulent trade practices and acts in violation of the state consumer protection statutes listed below by advertising, marketing, distributing, and selling the subject vehicles without informing them of the common defects relative to the ETCS-i and BOS.

76. As alleged above, Defendants had, and still have, superior knowledge of the inherent defect in the subject vehicles, and intentionally concealed the defects from members of Plaintiff Subclass Two and their Subclass Representatives in order to induce them into purchasing one or more of said vehicles.

77. At the very least, Defendants should have known of the defective nature of the subject vehicles, yet Defendants failed to warn or otherwise inform members of Plaintiff Subclass Two and their Subclass Representatives about the common defect in said vehicles. Members of Plaintiff Subclass Two and their Subclass Representatives did not know, and had no reason to know, of the defect prior to purchasing their subject vehicles.

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78. Members of Plaintiff Subclass Two and their Subclass Representatives could not have discovered the defect in the relative to the ETCS-i and absence of BOS through any reasonable inspection of the vehicles before purchase.

79. Members of Plaintiff Subclass Two and their Subclass Representatives were without access to the information concealed by Defendants regarding the inherent defects in the subject vehicles, and Plaintiff Subclass Two and their Subclass Representatives, therefore, reasonably relied on Defendants' warranties, promises, and representations regarding the quality, reliability, safety, and other material characteristics of Defendants' vehicles before and at the time of sale, together with reasonable reliance on and Defendants' ability to repair, replace, or adjust items on the subject vehicles that are defective in material, workmanship, or factory preparation.

80. Members of Plaintiff Subclass Two and their Subclass Representatives also reasonably relied on Defendants to disclose, and not conceal or fail to warn of, material information about the subject vehicles and defects.

81. Defendants concealment of the defects described herein from Plaintiff Subclass Two and their Subclass Representatives constitutes unfair competition and unfair, unconscionable, deceptive, and fraudulent trade practices and acts in violation of the state consumer protection statutes listed below. Alternatively, Defendants' failure to warn Plaintiff Subclass Two and their Subclass Representatives about the subject defects constitutes unfair competition and unfair, unconscionable, deceptive, and fraudulent trade practices and acts in violation of the state consumer protection statutes listed below.

82. Defendants also violated the state consumer protection statutes listed below by selling the subject vehicles when Defendants knew or should have known that the inherent

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defects in vehicles described herein cannot be remedied through repair, replacement, and/or adjustment, or such remedy is prohibitively difficult or expensive to accomplish.

83. Defendants engaged in unfair competition and unfair and deceptive trade practices and acts in violation of Ark. Code § 4-88-101, *et seq.*

84. Defendants engaged in unfair competition and unfair and deceptive trade practices and acts and has made false representations in violation of Colo. Rev. Stat. § 6-1-105, *et seq.*

85. Defendants engaged in unfair competition and unfair and deceptive trade practices and acts in violation of Conn. Gen. Stat. § 42-110b, *et seq.*

86. Defendants engaged in unfair competition and unfair and deceptive practices and acts in violation of Fla. Stat. § 501.201, *et seq.*

87. Defendants engaged in unfair competition and unfair and deceptive trade practices and acts in violation of Kan. Stat. § 50-623, *et seq.*

88. Defendants engaged in unfair competition and unfair and deceptive trade practices and acts in violation of Vernon's Missouri Stat. § 407.010, *et seq.*

89. Defendants engaged in unfair competition and unfair and deceptive trade practices and acts in violation of N.J. Rev. Stat. § 56:8-1, *et seq.*

90. Defendants engaged in unfair competition and unfair and deceptive trade a practices and acts in violation of N.M. Stat. § 57-12-1, *et seq.*

91. Defendants engaged in unfair competition and unfair and deceptive trade practices and acts in violation of N.Y. Gen. Bus. Law § 349, *et seq.*

92. Defendants engaged in unfair competition and unfair and deceptive trade practices and acts in violation of Ohio Rev. Stat. § 1345.01, *et seq.*

93. Defendants engaged in unfair competition and unfair and deceptive trade practices and acts in violation of 9 Vt. § 2451, *et seq.*

94. Defendants engaged in unfair competition and unfair and deceptive trade practices and acts in violation of Wash. Rev. Code. § 19.86.010, *et seq.*

95. Defendant's unfair competition and unfair and deceptive trade practices and acts have directly, foreseeably, and proximately caused damages and injury to Plaintiff Subclass Two and their Subclass Representatives in the form of significant diminution in the fair market value of their subject vehicles. The diminution in fair market value would not have occurred but for the inherent defect in the subject vehicles.

96. Had Plaintiff Subclass Two and their Subclass Representatives known of the inherent defects in the subject vehicles, they would have paid less for their vehicles than the amounts they actually paid, or they would not have purchased those vehicles.

97. Plaintiff Subclass Two and their Subclass Representatives demand judgment against Defendants for compensatory damages, and any other damages authorized by the above listed state consumer protection statutes, in an amount to be determined at trial, together with reasonable attorneys' fees.

VI.
DEMAND FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, pray for:

(a) An order certifying this matter as a class action with Plaintiffs as Class representatives and Subclass One Reprentatives as representatives of Plaintiff Subclass One and Subclass Two Representatives as representatives of Plaintiff Subclass Two, and designating Plaintiffs' counsel as Class Counsel and Subclass

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Counsel;

(b) Judgment in favor of Plaintiffs and the Class on Counts I and II;

(c) Judgment in favor of Subclass One Representatives and Plaintiff Subclass One on Count III;

(d) Judgment in favor of Subclass Two Representatives and Plaintiff Subclass Two on Count IV;

(e) Pre-judgment and post judgment interest on such monetary relief;

(f) An award of reasonable attorneys' fees and costs of Plaintiffs and the Plaintiff Subclasses; and

(g) Such other and further relief as the nature of the case may require or as may be determined to be just, equitable, and proper by this Court.

Respectfully submitted,

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February 5, 2010

Spartanburg, South Carolina

TOY-RQ-05E-00009727

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

DALE ROBERTS, on behalf of himself and all others similarly situated, Plaintiff, v. TOYOTA MOTOR CORPORATION, TOYOTA MOTOR SALES, U.S.A., INC., AND DOES 1 through 10 Defendants.	CIVIL ACTION No. 7:10-281-RBH **PLAINTIFF'S ANSWERS TO RULE 26.01 INTERROGATORIES**

COME NOW, Plaintiffs, by and through their undersigned attorneys, pursuant to Local Rule 26.01 of the Local Rules of this Court, and hereby file their Answers to Rule 26.01 Interrogatories in the above-captioned action as follows:

INTERROGATORY A:

State the full name, address and telephone number of all persons or legal entities who may have a subrogation interest in each claim and state the basis and extent of said interest.

ANSWER:

Plaintiffs are not aware of any other persons or legal entities at this time who may have a subrogated interest in this claim.

INTERROGATORY B:

As to each Claim, state whether it should be tried jury or non-jury and why.

ANSWER:

Plaintiffs are informed and believe that the claims should be tried non-jury because they will involve multiple complex legal issues related to the existence of a common defect or common defects in Defendants' vehicles that are the subject of this action.

INTERROGATORY C:

State whether the party submitting these responses is a publicly owned company and separately identify: (1) each publicly owned company of which it is a parent subsidiary, partner, or affiliate; (2) each publicly owned company which owns ten percent or more of the outstanding shares or other indicia of ownership of the party; and (3) each publicly owned company in which the party owns ten percent or more of the outstanding shares.

ANSWER:

Plaintiffs are not publicly owned companies.

INTERROGATORY D:

State the basis for asserting the claim in the division in which it was filed (or the basis of any challenge to the appropriateness of the division).

ANSWER:

Plaintiff's claims are properly asserted in this division because Plaintiff Roberts purchased a Toyota Camry in Spartanburg, South Carolina and resides in Spartanburg, South Carolina; more than one member of the proposed class lives in this division; and Defendant resides in this division given that it is subject to personal jurisdiction in this division; and a substantial part of the events or omissions giving rise to the claims occurred in this division.

INTERROGATORY E:

Is this action related in whole or in part to any other matter filed in this District, whether civil or criminal? If so, provide: (1) a short caption and the full case number of the related action; (2) an explanation of how the matters are related; and (3) a statement of the status of the related action. Counsel should disclose any cases which may be related regardless of whether they are still pending.

ANSWER:

This action, upon information and belief, is not related in whole or in part to any other matter filed in this District.

INTERROGATORY F:

If the Defendant is improperly identified, give the proper identification and state whether counsel will accept service of an amended summons and pleading reflecting the correct identification.

ANSWER:

Not applicable to these parties.

INTERROGATORY G:

If you contend that some other person or legal entity is, in whole or in part, liable to you or the party asserting a claim against you in this matter, identify such person or entity and describe the basis of said liability.

ANSWER:

Not applicable to these parties.

Respectfully submitted,

By: s/John B. White, Jr.
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(*pro hac* admission will be requested)

February 5, 2010

Spartanburg, South Carolina

TOY-RQ-05E-00009731

U. S. DISTRICT COURT
STATE OF SOUTH CAROLINA
COUNTY SPARTANBURG

AFFIDAVIT OF SERVICE
DOCKET# 7:10-281-RBH

DALE ROBERTS, ON BEHALF OF HIMSELF
AND ALL OTHERS SIMILARILY SITUATED

Plaintiff (S)

TOYOTA MOTOR CORP., ET.AL.

Defendant (S)
The undersigned, **Claude O. Gillion, III,** being duly sworn, says he served the
SUMMONS AND COMPLAINT;
ANSWERS TO 26.01 INTERROGATORIES Docket# **7:1-=281-RBH**

in this action on the person of: **C.T. CORP., AS REG. AGENT FOR TOYOTA MOTOR SALES, USA**

By delivering same to: ( ) Served personally _____

( ) _____, A person of age and
discretion residing at address of person to be served

XXX PAM JOHNSON **AGENT FOR C. T. CORPORATION AS REGISTERED AGENT FOR the TOYOTA MOTOR SALES, USA**
(person served, if corporate or business, at it's place of business)

And leaving with them one copy of same at **C. T. CORP., 2 OFFICE PARK COURT**

COLUMBIA, SOUTH CAROLINA 29223 on the **16th** Day of **FEBRUARY**

A.D. 20 **10** at **10:25** **A.M.** / P.M. and the deponent knows the person so served to be the person mentioned and described in the pleadings served, and the deponent is not a party to, nor interested in the action.

Claude O. Gillion III

Claude O. Gillion, III Process Server
Gillion's Process Service, Inc.
P.O. Box 25292
Columbia, South Carolina 29224

Sworn to before me this

16th Day of **FEBRUARY** A.D. 20 **10**

Loraine P. Reeves (L.S.)
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires November 3, 2018

BEFORE THE JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION

IN RE TOYOTA MOTOR CORP. DEFECTIVE GAS PEDAL PRODUCTS LIABILITY LITIGATION	No. MDL DOCKET NO. 2151

PLAINTIFF'S MOTION FOR TRANSFER OF RELATED ACTIONS TO THE DISTRICT OF SOUTH CAROLINA FOR COORDINATED OR CONSOLIDATED PRETRIAL PROCEEDINGS PURSUANT TO 28 U.S.C. § 1407

Dale Roberts, Plaintiff and proposed class representative in the action entitled *Roberts v. Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Inc., and Does 1 through 10*, No. 7:10-cv-281-RBH (the "*Roberts* Action"), currently pending before the Honorable R. Bryan Harwell in the United States District Court for the District of South Carolina, Spartanburg Division, by and through his undersigned counsel, respectfully moves the Judicial Panel on Multidistrict Litigation (the "Panel") for entry of an Order pursuant to 28 U.S.C. § 1407 transferring the related actions listed in the Schedule of Actions attached hereto as Exhibit A (the "Related Actions") to the United States District Court for the District of South Carolina (the "South Carolina District Court") for coordinated or consolidated pretrial proceedings with the *Roberts* Action before Judge Harwell.

As set forth more fully in the accompanying Brief in Support, each of the actions listed in the Schedule of Actions is based on sudden, unintended acceleration in motor vehicles designed, manufactured, marketed, and sold by Defendants Toyota Motor Corporation and/or Toyota Motor Sales, U.S.A., Inc. (collectively, "Toyota") and Toyota's conduct regarding that acceleration defect. Transfer of the actions to one forum for coordinated or consolidated pretrial proceedings will be for the convenience of parties and witnesses because the actions share many factual questions and involve parties, witnesses, and evidence spread across the country.

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Coordinated or consolidated pretrial proceedings will promote the just and efficient conduct of the actions by preventing duplicative discovery and conflicting pretrial rulings on common factual questions. The South Carolina District Court, where one of the Related Actions is currently pending, is well-suited for coordinated or consolidated pretrial proceedings in this litigation due to its geographic location and its experience with multidistrict litigation, and Judge Harwell's ability and experience with class actions and complex litigation qualify him to handle those proceedings.

For the reasons set forth above and in the accompanying Brief in Support, the Panel should transfer the Related Actions to the South Carolina District Court for coordinated or consolidated pretrial proceedings with the *Roberts* Action before Judge Harwell pursuant to § 1407.

DATED: February 18, 2010

Respectfully submitted,

By: _____

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TOY-RQ-05E-00009735

BEFORE THE JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION

IN RE TOYOTA MOTOR CORP. DEFECTIVE GAS PEDAL PRODUCTS LIABILITY LITIGATION	No. MDL DOCKET NO. 2151

BRIEF IN SUPPORT OF PLAINTIFF'S MOTION FOR TRANSFER OF RELATED ACTIONS TO THE DISTRICT OF SOUTH CAROLINA FOR COORDINATED OR CONSOLIDATED PRETRIAL PROCEEDINGS PURSUANT TO 28 U.S.C. § 1407

Plaintiff Dale Roberts, individually and on behalf of all others similarly situated, in the action entitled *Roberts v. Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Inc., and Does 1 through 10*, No. 7:10-cv-281-RBH (the "*Roberts* Action"), currently pending before the Honorable R. Bryan Harwell in the United States District Court for the District of South Carolina, Spartanburg Division, by and through his undersigned counsel, respectfully submits this Brief in Support of Plaintiff's Motion for Transfer and Consolidation of Related Actions to the District of South Carolina for Coordinated or Consolidated Pretrial Proceedings Pursuant to 28 U.S.C. § 1407.

I. INTRODUCTION

The Judicial Panel on Multidistrict Panel (the "Panel") should transfer the related actions listed in the Schedule of Actions attached hereto as Exhibit A (the "Related Actions") to the United States District Court for the District of South Carolina ("South Carolina District Court"), for coordinated or consolidated pretrial proceedings with the *Roberts* Action before the Honorable R. Bryan Harwell. These actions satisfy § 1407's criteria for coordination or consolidation because they involve common questions of fact and centralization will be for the convenience of the parties and witness, and will promote the just and efficient conduct of these actions. Absent coordination or consolidation, duplicative discovery and pretrial hearings and

conflicting pretrial rulings regarding common questions of fact will result.

The South Carolina District Court, Spartanburg Division, is an appropriate venue for coordinated or consolidated pretrial proceedings due to its geographic proximity to Kentucky and Washington, D.C., which may likely be the two largest repositories of witnesses and evidence in this litigation, and its ability to handle multidistrict litigation. Moreover, Judge Harwell is well-qualified to preside over coordinated or consolidated pretrial proceedings.

II.
BACKGROUND OF LITIGATION

Plaintiff Roberts filed a Class Action Complaint against Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Inc., and parties whose true names and capacities are currently unknown to Plaintiff Roberts (collectively, "Defendants") on February 5, 2010 on behalf of himself and a Plaintiff Class consisting of all persons or entities domiciled or residing in the United States who purchased or leased at least one new Toyota, Lexus, or Scion vehicle equipped with Defendants' Electronic Throttle Control System with Intelligence ("ETCS-i"), but not equipped with Brake Override System technology ("BOS"). (Compl. ¶ 32 (Exhibit B).) Plaintiff alleges that subject vehicles are defective because they are subject to uncontrolled, unintended, and/or sudden acceleration as a result of Defendants' admittedly faulty ETCS-i coupled with the lack of BOS. (*Id.* ¶ 9.) Plaintiff contends that Defendants knew or should have about the acceleration defect in the subject vehicles, but concealed or failed to warn the Plaintiff Class about the defect. (*See, e.g., id.* ¶¶ 76-77.)

Plaintiff seeks compensatory damages for the Plaintiff Class for the diminution in the fair market value of the subject vehicles that resulted from Defendants' breach of express and implied warranties. (*Id.* ¶¶ 52-53, 61-62, 72.) Plaintiff also seeks compensatory damages for a Plaintiff Subclass consisting of persons or entities domiciled or residing in the United States who

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purchased at least one of the subject vehicles and normally used it for personal, family, or household purposes for the diminution in the fair market value of those vehicles sustained as a result of Defendants' violation of the Magnuson-Moss Warranty Act. (*Id.* ¶¶ 32, 63-72.) In addition, Plaintiff seeks compensatory and any other authorized damages for a Subclass consisting of persons or entities domiciled or residing in Arkansas, Colorado, Connecticut, Florida, Kansas, Missouri, New Jersey, New Mexico, New York, Ohio, Vermont, and Washington for economic loss that resulted from Defendants' violation of those states' consumer protection statutes. (*Id.* ¶¶ 32, 73-97.)

As a result of the acceleration defect, Defendants began recalling vehicles in September 2009. To date, Defendants have issued approximately 10 million recall notices for problems related to unintended acceleration in their vehicles, about 2 million of which are involved in more than one recall. Defendants' recalls of and conduct regarding the subject vehicles have given rise to class actions filed across the country seeking economic damages caused by the acceleration defect in Defendants' vehicles. (*See* Schedule of Actions (Ex. A).) Plaintiff Roberts expects additional related class and individual actions to be filed in the near future.

III.
ARGUMENT & AUTHORITIES

A. The *Roberts* Action and the Related Actions Are Appropriate for Transfer and Pretrial Coordination or Consolidation Under 28 U.S.C. § 1407.

Title 28, § 1407(a) of the United States Code provides: "When civil actions involving one or more common questions of fact are pending in different districts, such actions may be transferred to any district for coordinated or consolidated pretrial proceedings." 28 U.S.C. § 1407(a). The Panel "shall" make such transfers when they will further "the convenience of the parties and witnesses and will promote the just and efficient conduct of such actions." *Id.* As

explained below, the *Roberts* Action and the Related Actions meet these criteria.

1. These Actions Involve Common Questions of Fact.

The *Roberts* Action and the Related Actions satisfy the first criterion of § 1407(a) because they involve many common questions of fact. Each action arises from the diminished value of Toyota vehicles as a result of product defects related to unintended acceleration, and also relates to Defendants' conduct regarding those defects, as can be seen from a comparison of the Complaints filed in those actions. *See In re Air West, Inc. Sec. Litig.*, 384 F. Supp. 609, 611 (J.P.M.L. 1974) ("Indeed, when two or more complaints assert comparable allegations against identical defendants based on similar transactions or events, common factual questions are presumed.").[1] The common questions derive from, but are not limited to, the unknown cause of uncontrolled, unintended, and/or sudden acceleration in the subject vehicles, Defendants' knowledge about the acceleration defect, and when Defendants' acquired or should have acquired that knowledge, and Defendants' conduct after learning of the unintended acceleration defects.

2. Coordination or Consolidation of These Actions Will Be for the Convenience of the Parties and Witnesses.

Coordination or consolidation of these actions will satisfy the second criterion under § 1407(a) by eliminating party and witness inconvenience and unnecessary expenses that would result from the production of the same documents and evidence and the depositions of the same

---

[1] Although the defendants in the *Roberts* Action and the Related Actions are not identical, transfer and consolidation is appropriate because all of the named defendants are Toyota entities that participated in the design, manufacture, marketing, distribution, or sale of vehicles with the acceleration defect. *See In re Phenylpropanolamine (PPA) Prods. Liab. Litig.*, 173 F. Sup. 2d 1377, 379 (J.P.M.L. 2001) ("Notwithstanding differences among the actions in terms of named defendants, specific products involved, legal theories of recovery, status as class actions, and/or types of injury alleged, all actions remain rooted in complex core questions concerning the safety of [the defective product].'); *see also In re Silicone Breast Implant Litig.*, 793 F. Supp. 1098, 1100 (J.P.M.L. 1992) (finding that common questions of fact existed where different manufacturers designed similar defective products).

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witnesses in each of the Related Actions and future consumer actions based on the acceleration defect in Defendants' vehicles. *See In re Cuisinart Food Processor Antitrust Litig.*, 506 F. Supp. 651, 655 (J.P.M.L. 1981) (stating that transfer under § 1407 would "effectuate a significant overall savings of cost and a minimum of inconvenience to all concerned with the pretrial activities"). Coordination or consolidation will eliminate the possibility of duplicative discovery by enabling a single judge to formulate a pretrial program to coordinate discovery in these actions. *See In re A.H. Robins Co., Inc., "Dalkon Shield" IUD Prods. Liab. Litig.*, 406 F. Supp. 540, 542 (J.P.M.L. 1975) (stating that transfer under § 1407 was "necessary in order to prevent duplication of discovery"); *In re Nat'l Airlines, Inc. Maternity Leave Practices & Flight Attendant Weight Program Litig.*, 399 F. Supp. 1405, 1406-07 (J.P.M.L. 1975) (stating that "transfer under § 1407 is clearly necessary in order to prevent duplicative discovery" that would result from common factual issues).

3. Coordination or Consolidation of These Actions Will Promote the Just and Efficient Conduct of These Actions.

The various pretrial disputes likely to arise in these overlapping and parallel actions will be virtually identical, including issues concerning the sufficiency of the pleadings, the nature and scope of discovery, and questions regarding privilege. The Panel has long recognized that overlapping and parallel actions asserting similar claims and based upon similar complex factual questions are particularly well-suited for consolidation or coordination pursuant to § 1407 due to the potential for conflicting pretrial rulings on common questions of fact and duplicative pretrial proceedings in the absence of consolidation or coordination. *See, e.g., In re First Nat'l Bank, Havener, Okla. (First Mortgage Revenue Bonds) Sec. Litig.*, 451 F. Supp. 995, 997 (J.P.M.L. 1978) (holding that transfer under § 1407 was "necessary, even though only two actions [were] involved, in order to prevent duplicative pretrial proceedings and eliminate the possibility of

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inconsistent pretrial rulings" where actions arose from same factual situation and shared complex questions of fact). Accordingly, the Panel has repeatedly consolidated or coordinated actions arising from defective motor vehicle parts. *See, e.g., In re Land Rover LR3 Tire Wear Prods. Liab. Litig.*, 598 F. Supp. 2d 1384, 1386 (holding that centralization under § 1407 was warranted with respect to actions alleging that a design defect in certain of manufacturer's vehicles resulted in uneven and premature tire wear); *In re Multi-Piece Rim Prods. Liab. Litig.*, 464 F. Supp. 969, 974 (J.P.M.L. 1979) (holding that centralization under § 1407 was "necessary in order to prevent duplication of discovery and eliminate the possibility of conflicting pretrial rulings" in litigation arising from defective truck wheel).

Coordination or consolidation is especially warranted where, as here, more than one class action is based on the same underlying factual questions because of the danger of conflicting class certification decisions if the class actions are not coordinated or consolidated. The panel has "consistently held that transfer of actions under §1407 is appropriate, if not necessary, where the possibility of inconsistent class determinations exist." *In re Sugar Indus. Antitrust Litig.*, 395 F. Supp. 1271, 1273 (J.P.M.L. 1975); *see also In re Phenylpropanolamine (PPA) Prods. Liab. Litig.*, 173 F. Supp. 2d 1377, 1379 (J.P.M.L. 2001) ("Centralization under Section 1407 is necessary in order to eliminate duplicative discovery, prevent inconsistent pretrial rulings (especially with respect to questions of privilege issues, confidentiality issues and class certification), and conserve the resources of the parties, their counsel and the judiciary."); *In re S. Pac. Transp. Co. Employment Practices Litig.*, 429 F. Supp. 529, 531 (J.P.M.L. 1977) (concluding that transfer under § 1407 was necessary due in part to the "possibility of conflicting class determinations"). In addition, following coordination or consolidation under § 1407, pretrial proceedings regarding the relatively small number of non-common questions of fact can

be conducted along with pretrial proceedings involving common questions of fact. *See In re Land Rover LR3 Tire Wear Prods. Liab. Litig.*, 598 F. Supp. 2d at 1386 (stating that "pretrial proceedings with respect to non-common issues [can] proceed concurrently with pretrial proceedings on common issues") (citing *In re Multi-Piece Rim Prods. Liab. Litig.*, 464 F. Supp. at 974).

In sum, the pending nationwide class actions present complex factual issues such that transfer and consolidation are particularly desirable. *See* C. Wright & A. Miller, *Federal Practice & Procedure* § 3863 (3d ed. 1998) ("In particular large complex multidistrict class actions, it has been argued that it is especially important to order pretrial consolidation; this will enable a singe judge to restrict 'disjoined 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.") (alteration in original). Therefore, for the sake of the parties and witnesses' convenience and judicial efficiency and consistency, the Panel should coordinate or consolidate the Related Actions and the *Roberts* Action for pretrial proceedings in one forum.

B. The Panel Should Transfer the Related Actions to the District of South Carolina for Coordinated or Consolidated Pretrial Proceedings with the *Roberts* Action.

1. The South Carolina District Court's Spartanburg Division Is An Appropriate Venue for Coordination or Consolidation.

In terms of scale and logistics, these actions are similar to those involved in the Phenylpropanolamine Products Liability Litigation. In granting a motion for transfer and centralization in that litigation, the Panel explained:

> Given the range of locations of parties and witnesses in this docket, the geographic dispersal of current and anticipated constituent actions, and the wide array already of suggested transferee districts, it is clear that any one of a large number of districts would qualify as an appropriate transferee forum for this litigation nationwide in scope.

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In re Phenylpropanolamine (PPA) Prods. Liab. Litig., 173 F. Supp. 2d 1377, 1379-80 (J.P.M.L. 2001). Notwithstanding that a number of districts qualify as an appropriate transferee forum for the nationwide litigation at issue here, the District of South Carolina is particularly well-suited for coordinated or consolidated pretrial proceedings given the convenience and efficiency that would result from centralization there.

Although Defendant Toyota Motor Sales, U.S.A., Inc. is headquartered in Torrance, California, Toyota Motor Engineering & Manufacturing North America, Inc. ("TEMA"), a subsidiary of Defendant Toyota Motor Corporation, is located in Erlanger, Kentucky. TEMA is responsible for the engineering design, development, research and development, and manufacture of Toyota vehicles in the United States, Canada, and Mexico. TEMA operates 14 parts and vehicles manufacturing plants across North America. Upon information and belief, a considerable amount of evidence and number of witness with on-the-ground knowledge about the acceleration defect in the subject vehicles are likely to be located in Kentucky.

Additionally, Toyota Motor North America, Inc. ("TMA"), Defendant Toyota Motor Corporation's holding company for its sales and manufacturing companies in the United States, has offices in Washington, D.C., New York, and Miami. TMA's functions include government and regulatory affairs, corporate advertising, and corporate communications. TMA's Washington, D.C. office has the most responsibility over government and regulatory affairs and is thus, upon information and belief, the likely location of much evidence and many witnesses with knowledge of Defendant's conduct regarding the acceleration defect in the subject vehicles.

Therefore, Kentucky and Washington, D.C. may likely be the two largest repositories of witnesses and evidence in these actions, making the nearby District of South Carolina a more convenient forum for parties and witnesses and discovery activities than the Central District of

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California or the Eastern District of Louisiana, the two other proposed forums for coordinated or consolidated pretrial proceedings. Moreover, while the average number of pending cases per district judge in the District of South Carolina and the Central District of California was approximately 425 cases as of September 30, 2008, the average number of pending cases per district judge in the Eastern District of Louisiana was 1,305 cases as of that date. (*See* Judicial Caseload Profiles (Exhibit C).)

Furthermore, the Panel has previously found the District of South Carolina to be an appropriate venue for multidistrict litigation. *See, e.g., In re Household Goods Movers Antitrust Litig.*, MDL Docket No. 1865, 502 F. Supp. 2d 1356 (J.P.M.L. 2007); *In re Bausch & Lomb Contact Lens Solution Prods. Liab. Litig.*, MDL Docket No. 1785, 444 F. Supp. 2d 1336 (J.P.M.L. 2006); *In re Thaxton Group, Inc. Sec. Litig.*, MDL Docket No. 1612, 323 F. Supp. 2d 1374 (J.P.M.L. 2004); *In re Elec. Receptacle Prods. Liab. Litig.*, MDL Docket No. 1595, 313 F. Supp. 2d 1378 (J.P.M.L. 2004); *In re Am. Gen. Life & Accident Ins. Co. Indus. Life Ins. Litig.*, MDL Docket No. 1429, 175 F. Supp. 2d 1380 (J.P.M.L. 2001); *In re Air Crash at Charlotte, N.C., on July 2, 1994*, MDL Docket No. 1041.

The Spartanburg Division of the South Carolina District Court is located in Spartanburg, South Carolina. Spartanburg is part of the Greenville-Spartanburg-Anderson Combined Statistical area, which had an estimated population of 1,203,795 in 2006. The nearby Greenville-Spartanburg International Airport serves more than 1.5 million passengers per year and offers direct flights to and from Atlanta, Charlotte, Chicago, Cleveland, Cincinnati, Dallas/Ft. Worth, Detroit, Ft. Lauderdale, Houston, New York, Newark, Orlando, Philadelphia, Tampa/St. Petersburg, and Washington, D.C. The Spartanburg-Greenville International Airport is served by 16 airlines, including Continental Airlines, Delta Air Lines, Northwest Airlines, Northwest

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Air Link, United Express Airlines, U.S. Airways, and U.S. Airways Express. Furthermore, the Federal Courthouse in Spartanburg is approximately 55 minutes by car from Charlotte/Douglas International Airport, the ninth busiest airport in the world and a major airline hub and international gateway, with direct flights to all major American cities. Charlotte/Douglas International Airport serves the Greenville-Spartanburg metropolitan area and upstate South Carolina, in addition to the 1.7 million residents of the Charlotte, North Carolina metropolitan area. In addition, Hartsfield-Jackson Atlanta International Airport, the world's busiest, is one hour away from Greenville-Spartanburg International Airport by air and offers direct flights to and from all major American and international cities.

Spartanburg has ample hotel and office accommodations and offers established legal service support systems. Additional hotel, office, and legal support systems are also available in nearby Greenville, which is 25 minutes away by car. Therefore, the Related Actions and any future tag-along actions would benefit from coordination or consolidation in the Spartanburg Division of the South Carolina District Court. *See In re Worldcom, Inc. Sec. & "ERISA" Litig.*, 226 F. Supp. 2d 1352, 1355 (J.P.M.L. 2002) (observing that a nationwide litigation would benefit from centralization in city that is "well served by major airlines, provides ample hotel and office accommodations, and offers a well-developed support system for legal services").

2. The Honorable R. Bryan Harwell Is Well-Qualified to Conduct Coordinated or Consolidated Pretrial Proceedings.

The Honorable R. Bryan Harwell, the judge before whom the Roberts Action is pending in the District of South Carolina, is a very capable jurist with considerable experience in presiding over complex litigation. In particular, Judge Harwell has conducted pretrial proceedings in three class actions and one mass tort litigation. *See Latham v. Matthews*, 662 F. Supp. 2d 441 (D.S.C. 2009) (granting in part and denying in part motions to dismiss in class

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action against medical device manufacturer and others involving alleged violations of federal securities laws and regulations); *George v. Duke Energy Retirement Cash Balance Plan*, 560 F. Supp. 2d 444 (D.S.C. 2008) (granting in part and denying in part summary judgment in class action brought under Employee Retire Income Security Act and Age Discrimination Act as a result of employer's conversion of tradition defined benefit plant to cash balance plan); *In re DNA Ex Post Facto Issues*, No. 299-cv-5555-RBH, 2007 WL 4443207 (D.S.C. Dec. 14, 2007) (denying motion for reconsideration of grant of summary judgment in lead case of mass tort litigation involving the South Carolina DNA Act); *Smith v. G. Joannou Cylce Co.*, No. 4:06-cv-01577-RBH, 2007 WL 3254771 (D.S.C. Nov. 1, 2007) (dismissing for lack of subject matter jurisdiction class action against bicycle manufacturer related to failure to provide warranty service).

While detailed statistics about the caseloads of the particular judges in the proposed forums are not available, the statistics that are available show that, as of March 31, 2009, Judge Harwell had only one civil case pending for more than three years and one motion pending for more than six months. (Civil Justice Reform Act District Summary Report at 26 (Exhibit D).) In contrast, according to those statistics, Judge Ivan L.R. Lemelle and Chief Judge Sarah S. Vance of the Eastern District of Louisiana had three and four cases, respectively, pending for more than three years, and many of the district judges in the Central District of California had more than ten cases pending for more than three years. (*Id.* at 31, 72.)

IV.
CONCLUSION

For the reasons set forth above, the Panel should transfer the Related Actions to the District of South Carolina, Spartanburg Division, for coordination or consolidation with the *Roberts* Action before the Honorable R. Bryan Harwell pursuant to 28 U.S.C. § 1407.

TOY-RQ-05E-00009746

Roberts Action before the Honorable R. Bryan Harwell pursuant to 28 U.S.C. § 1407.

DATED: February 18, 2010

Respectfully submitted,

By: _____

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Attorneys for Plaintiff Dale Roberts

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PROOF OF SERVICE

I hereby certify that a true and correct copy of Plaintiff's Motion for Transfer and Coordination or Consolidation of Related Actions Under 28 U.S.C. § 1407, Plaintiff's Brief in Support of to be served this 18th day of February, 2010 via Electronic filing and/or U.S. mail, postage prepaid upon the following listed clerks and counsel of record:

Clerks:

Seong Bae Choi et al. v. Toyota Motor Corporation, et al. (2:09-cv-08143)

United States District Court for the Central District of California (Western Division – Los Angeles)
Clerk of the Court
312 N. Spring Street
Los Angeles, CA 90012

Kmetz, et al. v. Toyota Motor Sales, U.S.A., Inc., et al. (2:09-cv-08478)

United States District Court for the Central District of California (Western Division – Los Angeles)
Clerk of the Court
312 N. Spring Street
Los Angeles, CA 90012

Lane v. Toyota Motor Sales. U.S.A., Inc. (2:09-cv-09158)

United States District Court for the Central District of California (Western Division – Los Angeles)
Clerk of the Court
312 N. Spring Street
Los Angeles, CA 90012

Baldisseri v. Toyota Motor Sales. U.S.A., Inc., et al. (2:09-cv-09386)

United States District Court for the Central District of California (Western Division – Los Angeles)
Clerk of the Court
312 N. Spring Street
Los Angeles, CA 90012

TOY-RQ-05E-00009748

Hauter, et al. v. Toyota Motor Sales, U.S.A., Inc. , et al. (1:10-cv-00105)

United States District Court for the Central District of California (Southern Division – Santa Ana)
Clerk of the Court
411 West Fourth Street, Room 1053
Santa Ana, C A 92701

Gellman v. Toyota Motor Sales, U.S.A., Inc. (1:10-cv-20006)

United States District Court for the Southern District of Florida (Miami Division)
Steven M. Larimore, Clerk of Court
400 North Miami Avenue, 8th floor
Miami, FL 33128

Graves, et al. v. Toyota Motor Manufacturing, West Virginia, Inc., et al. (2:09-cv-01247)

United States District Court for the Southern District of West Virginia (Charleston Division)
Teresa L. Deppner, Clerk of the Court
P. O. Box 2546
Charleston, WV 25329

Lynch, et al. v. Toyota Motor Corporation, et al. (8:10-cv-00326)

United States District Court for the Middle District of Florida (Tampa Division)
Clerk of Court
801 North Florida Avenue
Tampa Florida, 33602

Maillho, et al. v. Toyota Motor North America, Inc., et al. (2:10-cv-00279)
Brock v. Toyota Motor North America, Inc., et al. (2:10-cv-00281)
Weimer, et al. v. Toyota Motor North America, Inc. (2:10-cv-00219)

United States District Court for the Eastern District of Louisiana
Clerk of Court
500 Poydras Street, Room C-151
New Orleans, LA 70130

Roberts v. Toyota Motor Corporation, et al. (7:10-cv-00281)

United States District Court for the District of South Carolina (Spartanburg)
Larry Propes, Clerk of the Court
201 Magnolia Street
Spartanburg, SC 29306

Wooten v. Toyota Motor North America, Inc. (3:10-cv-00229)

United States District Court for the District of South Carolina (Columbia)
Clerk of the Court
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Seong Bae Choi et al. v. Toyota Motor Corporation, et al. (2:09-cv-08143)

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Kmetz, et al. v. Tovota Motor Sales, U.S.A., Inc., et al. (2:09-cv-08478)

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Lane v. Toyota Motor Sales. U.S.A., Inc. (2:09-cv-09158)

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Baldisseri v. Toyota Motor Sales, U.S.A., Inc., et al. (2:09-cv-09386)

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Hauter, et al. v. Toyota Motor Sales, U.S.A., Inc., , et al. (1:10-cv-00105)

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Gellman v. Toyota Motor Sales, U.S.A., Inc. (1:10-cv-20006)

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Graves, et al. v. Toyota Motor Manufacturing, West Virginia, Inc., et al. (2:09-cv-01247)

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TOY-RQ-05E-00009752

Maillho, et al. v. Toyota Motor North America, Inc., et al. (2:10-cv-00279)
Brock v. Toyota Motor North America, Inc., et al. (2:10-cv-00281)
Weimer, et al. v. Toyota Motor North America, Inc. (2:10-cv-00219)

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Defendants: No Answer on File

Brock v. Toyota Motor North America, Inc., et al. (2:10-cv-00281)

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Defendants: No Answer on File

Weimer, et al v. Toyota Motor North America, Inc. (2:10-cv-00219)

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Defendants: No Answer on File

Lynch, et al. v. Toyota Motor Corporation, et al. (8:10-cv-00326)

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Tampa, Florida 33602
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Defendants: No Answer on File

Wooten v. Toyota Motor North America, Inc. (3:10-cv-00229)

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Arthur Camden Lewis
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Counsel for Plaintiff: Linda Alford Wooten

Defendants: No Answer on File

Defendants in actions where no answer is currently on file:

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Through its agent for service of process:
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Baton Rouge, LA 70808

Toyota Motor North America, Inc.
Through its agent for service of process:
CT Corporation System
818 West Seventh Street
Los Angeles, CA 90017

Toyota Motor Engineering & Manufacturing North America, Inc.
Through its agent for service of process:
CT Corporation System
4169 Westport Road
Louisville, KY 40207

Toyota Motor Sales, U.S.A., Inc.
Through its agent for service of process:

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Baton Rouge, LA 70808

By: s/John B. White, Jr.
John B. White, Jr.

TOY-RQ-05E-00009757

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February 18, 2010

Jeffrey N. Luthi, Clerk of the Panel
Judicial Panel on Multidistrict Litigation
Room G-255, Thurgood Marshall Bldg.
One Columbus Circle, N.E.
Washington, D.C. 2002-8004

Via Fax: 202-502-2888

RE: United States Judicial Panel On Multidistrict Litigation; MDL No. 2151 – IN RE: Toyota Motor Corp. Defective Gas Pedal Products Liability Litigation; C.A. No. 7:10-281-RBH; *Dale Roberts, on behalf of himself and others similarly situated, Plaintiffs v. Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Inc. and Does 1 through 10, Defendants*; In the United States District Court of South Carolina, Spartanburg Division

Dear Mr. Luthi:

Please find enclosed an original and five copies of the following and one computer generated disk of the pleading in Adobe Acrobat PDF format.

1. Plaintiff's Motion for Transfer of Related Actions to the District of South Carolina for Coordinated Or Consolidated Pretrial Proceedings Pursuant to 28 U.S.C. § 1407;
2. Brief In Support of Plaintiff's Motion for Transfer of Related Actions to the District of South Caroline for Coordinated Or Consolidated Pretrial Proceedings Pursuant to 28 U.S.C. § 1407 with Exhibits; and
3. Proof of Service.

Please file stamp the extra copy and return to our office in the envelope provided. As referenced below, a copy has been sent to all counsel of record. Thank you for your attention to this matter and do not hesitate to call our office if you need additional information.

Sincerely,

Fletcher V. Trammell

FT:nk
Enclosures

cc: John White
Harrison, White, Smith & Coggins
178 West Main Street
Spartanburg, South Carolina 29306

All Clerks of Court and Parties on Proof of Service Attached

EXHIBIT A

BEFORE THE JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION

IN RE TOYOTA MOTOR CORP. DEFECTIVE GAS PEDAL PRODUCTS LIABILITY LITIGATION	No. MDL DOCKET NO. 2151

SCHEDULE OF ACTIONS

Case Caption	Court	Civil Action No.	Judge
Plaintiffs: Dale Roberts, on behalf of himself and all others similarly situated **Defendants:** Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Inc., and Does 1 through 10	South Carolina	7:10-cv-00281	Judge R. Bryan Harwell
Plaintiffs: Linda Alford Wooten **Defendants:** 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	South Carolina	3:10-cv-00229	Judge Matthew J. Perry, Jr.
Plaintiffs: Seong Bae Choi and Chris Chan Park, as individuals, and on behalf of themselves and all others similarly situated **Defendants:** Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Inc., and Does 1 through 10	C.D. California	2:09-cv-08143-	Judge A. Howard Matz

Plaintiffs: Eric Kmets and Joe Morris, on behalf of themselves and all others similarly situated **Defendants:** Toyota Motor Sales, U.S.A., Inc., Toyota Motor Corporation, and Doe Defendants 1-10	C.D. California	2:09-cv-08478	Judge A. Howard Matz
Plaintiffs: Heather A. Lane, individually and on behalf of all others similarly situated **Defendant:** Toyota Motor Sales, U.S.A., Inc., a California corporation	C.D. California	2:09-cv-09158	Judge Gary A. Feess
Plaintiffs: Dale Baldisseri, on behalf of himself and all others similarly situated and the general public **Defendants:** Toyota Motor Sales, U.S.A., Inc.; Toyota Motor North America, Inc.; Toyota Motor Manufacturing California, Inc.; Toyota Motor Engineering & Manufacturing North America, Inc.	C.D. California	2:09-cv-09386	Judge Gary A. Feess
Plaintiffs: Joseph Hauter and Fran Palomares, on behalf of themselves and all others similarly situated **Defendants:** Toyota Motor Sales, U.S.A., Inc., Toyota Motor Corporation, and Doe Defendants 1-10	C.D. California	8:10-cv-00105	Judge A. Howard Matz
Plaintiffs: Jonathan Gellman, an individual, on behalf of himself and all others similarly situated **Defendants:** Toyota Motor Sales, U.S.A., Inc., a California corporation	S.D. Florida	1:10-cv-20006	Judge Marcia G. Cooke

Plaintiffs: Michael Graves, and Michael C. Graves, and Jeff Mullins, individually, and on behalf of all others similarly situated **Defendants:** 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	S.D. West Virginia	2:09-cv-01247	Judge Joseph R. Goodwin
Plaintiffs: Daniel Weimer, Jr., Colby Wenck, and Ann Cavalier, all individually and on behalf of all other similarly situated Plaintiffs **Defendants:** Toyota Motor North America, Inc., Toyota Motor Engineering and Manufacturing North America, Inc., and Toyota Motor Sales, U.S.A.	E.D. Louisiana	2:10-cv-00219	Judge Ivan L.R. Lemelle
Plaintiffs: Michelle Lynch, on behalf of herself and all others similarly situated **Defendants:** Toyota Motor Corporation and Toyota Motor Sales, U.S.A.	M.D. Florida	8:10-cv-00326	Judge Steven D. Merryday
Plaintiffs: Amanda Maillho **Defendants:** Toyota Motor North America, Inc., Toyota Motor Engineering and Manufacturing North America, Inc., and Toyota Motor Sales, U.S.A.	E.D. Louisiana	2:10-cv-00279	Judge Mary Ann Vial Lemmon
Plaintiffs: Gary T. Brock	E.D. Louisiana	2:10-cv-00281	Judge Ivan L.R. Lemelle

Defendants: Toyota Motor North America, Inc., Toyota Motor Engineering and Manufacturing North America, Inc., and Toyota Motor Sales, U.S.A.			

EXHIBIT B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

DALE ROBERTS, on behalf of himself and all others similarly situated, Plaintiffs, v. TOYOTA MOTOR CORPORATION, TOYOTA MOTOR SALES, U.S.A., INC., AND DOES 1 through 10 Defendants.	CIVIL ACTION No. 7:10-281-RBH **CLASS ACTION COMPLAINT**

PLAINTIFFS' ORIGINAL CLASS ACTION COMPLAINT

Plaintiff DALE ROBERTS brings this action on behalf of himself, as an individual (hereinafter, "Plaintiff"), and on behalf of all others similarly situated (hereinafter, the "Plaintiff Class") against Defendants TOYOTA MOTOR CORPORATION, TOYOTA MOTOR SALES, U.S.A., INC., and DOES 1-10 (collectively, "Defendants"), and alleges as follows:

I.
JURISDICTION & VENUE

1. This Court has subject-matter jurisdiction pursuant to 28 U.S.C. § 1332(d)(2) because the matter in controversy in this civil action exceeds the sum or value of $5,000,000, exclusive of interests and costs, and there is minimal diversity because certain members of the Plaintiff Class and Subclasses are citizens of a different state than any Defendant as required under 28 U.S.C. § 1332(d)(2)(A).

2. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and (c) because Defendants reside in this district and a substantial part of the events or omissions giving rise to

the claims herein occurred within this District. Defendants reside in this District for purposes of 28 U.S.C. § 1391 because they are subject to general personal jurisdiction in this District. Defendants have continuous and systematic contacts with South Carolina, including this District, through selling vehicles in South Carolina to South Carolina residents, including residents of this District. Defendants are also subject to specific personal jurisdiction in this District because their contacts with this District gave rise to the instant action.

3. Venue is also proper in this Court because Plaintiff Dale Roberts is a citizen of the County of Spartanburg, State of South Carolina who purchased a Toyota Camry in Spartanburg, South Carolina; and proposed Class members include citizens of South Carolina who reside in this District.

II.
PARTIES

4. Plaintiff Dale Roberts owns a 2007 Toyota Camry, which he purchased as a new vehicle from an authorized Toyota dealer in Spartanburg, South Carolina, and he is a resident of the County of Spartanburg, State of South Carolina.

5. Defendant TOYOTA MOTOR CORPORATION ("TMC") is a Japanese corporation with its principal place of business in Toyota City, Aichi, Japan and Tokyo, Japan. Service of process upon Defendant TMC shall be effectuated pursuant to Fed. R. Civ. P. 4(h).

6. Defendant TOYOTA MOTOR SALES, U.S.A., INC. ("Toyota U.S.A.") is a California corporation with its principal place of business in Torrance, Los Angeles County, California. Service of process upon Defendant Toyota U.S.A. shall be effectuated pursuant to Fed. R. Civ. P. 4(h).

7. The true names and capacities of Defendants sued herein as DOES 1 through 10 are currently unknown to Plaintiff, who therefore sues such Defendants by such fictitious names.

Each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of Court to amend this Complaint to reflect the true names and capacities of the Defendants designated herein as DOES when such identities become known.

8. Upon information and belief, Plaintiff alleges that at all times mentioned herein, each and every Defendant was acting as an agent and/or employee of each of the other Defendants, and at all times mentioned was acting within the course and scope of each of the other Defendants. In addition, each of the acts and/or omissions of each Defendant alleged herein were made known to, and ratified by, each of the other Defendants.

III.
FACTUAL ALLEGATIONS

9. This action is brought as a class action pursuant to Federal Rule of Civil Procedure 23 on behalf of the Plaintiff Class, as well as subclasses, as defined below. Each Plaintiff and member of the Putative Plaintiff Class and Subclasses purchased or leased a vehicle manufactured and warranted by Defendants that is subject to uncontrolled and/or unintended and/or sudden acceleration of such vehicles because of Defendants' admittedly faulty Electronic Throttle Control System with Intelligence ("ETCS-i") coupled with the lack of Brake Override System technology ("BOS"), thereby creating a serious and life-threatening safety condition for drivers of and passengers in Defendants' vehicles, as well as other motorists, pedestrians, and bystanders. As a result of the absence of BOS in Defendants' vehicles, which Defendants failed to disclose to their customers, the vehicles are dangerously unsafe, inherently defective, and are worth less than the amount of money the customers who purchased them paid.

10. The vehicles subject to this action, which in the United States number in the millions, are all models bearing the "Toyota," "Lexus," and "Scion" nameplates, with ETCS-i

installed, but without an attendant BOS installed, including but not limited to the following models:

Toyota Avalon
Toyota Camry & Camry HV
Toyota Corolla & Corolla Matrix
Toyota FJ Cruiser
Toyota Highlander & Highlander Hybrid
Toyota Land Cruiser
Toyota Prius
Toyota Sequoia
Toyota Sienna
Toyota Tacoma
Toyota Tundra
Toyota RAV4
Toyota Venza

Lexus ES series vehicles
Lexus IS series vehicles
Lexus GS series vehicles
Lexus LS series vehicles
Lexus RX series vehicles
Lexus SC series vehicles

11. The accelerators on such vehicles are controlled by a drive pedal sensor that is a component part of a so-called "drive-by-wire" throttle system (known on Defendants' vehicles as ETCS-i), in which the gas pedal has no direct connection to the engine through a cable or mechanical linkage. Instead, the connection between the pedal and the engine is made by electrical signals traveling through wires. Such systems are the outgrowth of new electronic engine controls in cars. The pedal sensor is intended to gauge how far the driver is pressing the gas pedal and signals the engine's control computer, which determines how much to open the engine throttle, unless the drive-by-wire system sends the wrong signals to the engine computer, or such signals are interfered with or otherwise in error.

12. As an effective means to combat wrong signals, interference, or computer errors, most automakers equip their "drive-by-wire" vehicles with BOS technology. Defendants,

however, failed install BOS technology on their vehicles equipped with ETCS-i. BOS allows a driver to stop a car with the footbrake even if the accelerator is depressed (or the car computer "thinks" the pedal is depressed) and the vehicle is running at full throttle. In other words, if the brakes and the accelerator are in conflict, the brakes win, but only *if* a BOS is installed. Chrysler, Volkswagen, Audi, BMW, Mercedes-Benz, and General Motors are among the manufacturers that began installing BOS in their vehicles, some as far back as ten years ago. However, Defendants have not installed such systems on any vehicle sold in the United States, and will not install any BOS until, reportedly, January 2010.

13. At the Detroit Auto Show in December 2009, Toyota North America President Yoshi Inaba said the company would begin equipping its vehicles with BOS beginning this year. However, in the meantime, Defendants made the unprecedented move of halting production and sale of eight popular models in January 2010 after numerous reports of unintended acceleration. In November 2009, Defendants initially blamed the unintended accelerations on faulty floor mats and their installation, stating that the floor mats caused the accelerator pedal to stick in the depressed position, issuing a recall for millions of "defective" floor mats. In January 2010, Defendants announced that the unintended acceleration problem was due to a faulty accelerator pedal mechanism, which wore down and became susceptible to sticking in the depressed position due to condensation from the cars' heaters on cold days.

14. But Defendants' vehicles had already been subjected to heightened scrutiny for acceleration-safety-related issues for almost a decade. According to a senior engineer at *Consumer Reports'* Auto Test Center, Toyota accounted for approximately 40% of all the unintended acceleration complaints reported to the National Highway Traffic & Safety Administration ("NHTSA") in 2008—as compared to ***all other vehicle manufacturers' models.***

And, as far back as 2004, United States government investigators have been investigating 2002-2003 Toyota and Lexus vehicles to determine whether they were defective, gathering information about owner complaints of sudden acceleration, according to the Center for Auto Safety. Automotive experts say that in at least some of those incidents, a BOS would have prevented harm.

15. As early as 2004, the NHTSA looked at reports of unintended acceleration in Defendants' best-selling model, the Toyota Camry. But the NHTSA limited its investigation to only those incidents lasting one second or less. Upon information and belief, that limit came after a former NHTSA official who went to work for Defendants before the investigation began was involved in discussions with former colleagues at NHTSA.

16. One Massachusetts consumer safety group has identified 2,274 incidents of sudden unintended acceleration in Toyota vehicles causing 275 crashes and at least 18 fatalities since 1999. In another 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"—one out of every five vehicles investigated.

17. In one incident that has, perhaps, drawn the most publicity, a 2009 Lexus ES 350 raced through San Diego, California, weaving at 120 miles per hour through rush-hour freeway traffic. Veteran California Highway Patrol officer Mark Saylor was at the wheel, with his wife, teenage daughter, and brother-in-law aboard. Calls to 911 emergency services recounted Saylor's brother-in-law exclaiming to a police dispatcher via cell phone, "We're in trouble . . . . There's no brakes!" As they approached an intersection, and the end of the road, the passengers can be heard urging each other to pray. All four died. Afterward, investigators said that it appeared the brakes had been applied for so long that the brake pads had melted, according to an

NHTSA report. Had BOS technology been installed, the engine would have depowered and slowed.

18. Similarly, on December 26, 2009, a 2008 Toyota Avalon crashed just outside of Dallas. A Southlake, Texas police officer 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 the driver attempted to hit the brake or slow down. Two weeks later, an NHTSA investigator visited Southlake to inspect the car, accompanied by a Toyota engineer. One factor the pair immediately ruled out was the floor mats, which were in the trunk—perhaps due to the decedent operator's awareness of Defendants' November 2009 floor mat-related recall.

19. A Minnesota owner of a new Toyota Camry was much luckier. The woman's Camry, which was new and had about 6,000 miles on it, kept accelerating after she passed a pick-up truck on the highway in May 2008, even after she took her foot off the gas pedal. The next 6 miles of her journey were terrifying. The car barely slowed down when she pressed the brake—she was only able to slow the car to 60 miles per hour. "The car wanted to go 80, or higher," the driver reported. Visualizing the remainder of her commute, which traversed winding roads with no shoulders, she decided to head for a major freeway, requiring a high-speed turn through an intersection. She hit the brake with both feet, squealing through the turn and managing to swerve onto the road without hitting anything. By the time she got the car stopped miles later—with the coaching of a 911 operator, she managed to turn the car off—smoke was filling the car. Her brakes were smoldering, and the tires had started to melt near the

wheel rims. A police officer at the scene of the incident said the Camry's floor mats were not near the accelerator pedal.

20. Notwithstanding such alarming incidents, on or about January 28, 2010, Defendants represented to consumers on their Toyota USA Newsroom website that the unintended sudden acceleration "condition is rare and ***does not occur suddenly***." Inferring that the problem only occurs in vehicles that have experienced some excessive degree of use, as opposed to brand new vehicles, Defendants added: "It 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." Yet, reports of unintended acceleration in Defendants' vehicles stem from vehicles with fewer than 1,000 miles on them, and others with more than 60,000 miles. Indeed, Defendants' spokesperson Brian Lyons has represented that there is "no common theme when it comes to how long the product has been out there." Defendants subsequently announced that they intend to replace the supposedly defective pedal mechanisms as part of a massive 2.3 million vehicle recall.

21. But, even Defendants' own supplier of the reportedly defective accelerator pedals says that Defendants are far from done in ending the problem of runaway cars—and that Defendants told it that none of the serious accidents or deaths linked to runaway cars was caused by "sticky" gas pedals. Instead, Defendants acknowledged to the parts supplier that the "rare set of conditions"—i.e., excessive wear caused by condensation build up, making the gas pedal slow to return to idle—did not cause *any* accidents or injuries. The pedal supplier also stated that it has "deep concern that there is widespread confusion and incorrect information about the role of CTS-manufactured gas pedals" in the recall, and that its pedals "should absolutely not be linked with any sudden unintended acceleration incidents."

22. At almost every step, Defendants have underestimated the severity of the sudden-acceleration problem affecting its most popular cars. They moved from discounting early reports of problems to overconfidently announcing diagnoses and insufficient fixes. As recently as the fall of 2009, Defendants were still saying they were confident that loose floor mats were the *sole cause* of any sudden acceleration, issuing an advisory to millions of owners to remove the supposedly defective mats. The company said on November 2, 2009 that "there is no evidence to support" any other conclusion, and added that its claim was backed up by the NHTSA. But, in fact, the agency had not signed on to the explanation, and it issued a sharp rebuke. Defendants' statement was "misleading and inaccurate," the agency said. "This matter is not closed."

23. Such dangerous, quality and safety-related defects most certainly come as a surprise to loyal consumers of Defendants' vehicles like Plaintiff and members of the Plaintiff Class. Since first importing cars to the United States more than five decades ago, Defendants have in large part slowly and steadily built the Toyota and Lexus nameplates as having superior reputations for technical expertise and reliability. Consumers of Defendants' vehicles prized the automobiles for their quality and safety. As one auto industry analyst explained in a recent interview, "People don't buy [Toyotas] for their good looks. They don't buy it for the cash-back or financing offers. They buy them because they have a lot of confidence in the quality and safety of the vehicle."

24. However, in 2002, Defendants set an ambitious goal to own 15 percent of the global auto industry by 2010, intending to surpass General Motors as the world's largest automaker. To get there, Defendants had to grow the company by 50 percent. Defendants also had to build new plants in the United States, China, and elsewhere, and introduce dozens of new models. One significant resulting change was Defendants' decision to buy parts from companies

around the world, rather than from a small group of Japanese suppliers that had previously been longtime partners.

25. Defendants managed to win bragging rights as the world's biggest automaker in terms of global sales in 2006, four years ahead of schedule. But, the next year it lost its top quality ranking in the widely regarded and influential *Consumer Reports* magazine, a position it held in the United States for years, due to what the reviewers termed "bug-ridden designs." That year, *Consumer Reports* removed the Toyota Camry—which was then the best-selling car in the United States—from its list of recommended vehicles, the first time in 11 years that the Camry had not received a "recommended" rating. The magazine also boldly declared that it would no longer recommend any of Defendants' vehicles without data showing that past years' vehicles were reliable. In or about February 2010, the magazine announced it was suspending recommendations for any of Defendants' recalled models.

26. Now, with unintended acceleration problems plaguing Defendants' vehicles and after countless related accidents, injuries, and deaths, it has become apparent that consumers who purchased or leased Defendants' vehicles did not get the quality and safety they expected and paid for. As one putative member of the Plaintiff Class recently told the Los Angeles *Times*, "I thought Toyota was a very good company and built good products." But, "[n]ow I wouldn't even consider buying a Toyota in the future. This whole event tells me that they don't value my life, and that means I should never buy another car from them."

27. In a speech last year, Defendants' new president—the grandson of the founder—lamented that the drive for profits "may have stretched [the company] more than we should have, and that made us unable to capitalize on Toyota's traditional strengths"—quality, reliability, and safety. The company president declared in another speech last year that the company was one

step away from "capitulation to irrelevance or death," having already gone through a phase of "undisciplined pursuit of more." Plainly, as Defendants gained sales throughout the 2000s, they moved away from the business practices of slow but steady growth based on a reputation for reliability and safety.

28. Industry analysts question whether Defendants' reputation for quality, reliability, and safety is irreparably tarnished. Declared one senior auto industry strategic advisor on or about January 27, 2010, Defendants' "reputation for long-term quality is finished. . . . . People aren't going to buy Toyotas, period. It doesn't matter which model. What's happened is sufficient to keep people out of the stores." Another analyst explained, "This [issue] is going to have severe ramifications for Toyota."

29. Defendants designed and manufactured defective vehicles by not installing BOS as standard, or even optional, equipment—even in the face of admittedly and dangerously faulty and/or unreliable and/or unsafe ETCS-i acceleration systems. As most other automobile manufacturers have recognized, BOS provides an additional, but crucial, failsafe mechanism for drivers, passengers, and bystanders that experience and/or are put in peril by dangerous, unintended and sudden acceleration. Indeed, whatever the source of Defendants' problems with their ETCS-i acceleration systems—be it floor mat-related, "sticky" pedal-related, or a more insidious computer "glitch" causing the vehicles to accelerate uncontrollably—it is without question that inclusion of BOS on Defendants' vehicles would have helped save lives and prevent injuries and accidents by providing a failsafe "cutout" for unintended acceleration.

30. To save production costs and increase profits, however, Defendants intentionally did not install BOS in their vehicles equipped with ETCS-i, despite knowledge that ETCS-i was prone to sudden acceleration. Defendants have also opted not to install BOS in already sold or

leased vehicles as part of any recall or otherwise, either because it is impossible to install or program BOS on an aftermarket basis, or because it is prohibitively expensive to do so. Defendants have instead created the dangerous illusion of affirmative, safety-related action by repairing or replacing accelerator pedals on some but not all the defective cars and trucks. Even with Defendants' attempts to remedy the runaway car problem through such efforts, Defendants' vehicles with ETCS-i, but without BOS installed, remain dangerously defective and unsafe, and have resulted in damages to Plaintiff and the Plaintiff Class and Subclasses. In fact, as of the filing of this Complaint, Kelley Blue Book announced it was downgrading the value estimates of Defendants' vehicles as much as five percent, and that "there may be further devaluation ahead."

31. Upon information and belief, each of Defendants' vehicles were sold and/or leased to Plaintiff and members of the Plaintiff Class and Subclasses with express warranties covering repair, replacement, and/or adjustment of all items on those vehicles defective in material, workmanship, or factory preparation, and/or similar express warranties.

IV.
CLASS ACTION ALLEGATIONS

32. Pursuant to Rules 23(b) and (c) of the Federal Rules of Civil Procedure, Plaintiff brings this action on his own behalf and on behalf of the proposed Class. Plaintiff seeks certification a Plaintiff Class that consists of:

> All persons or entities domiciled or residing in any of the 50 states of the United States of America or in the District of Columbia who purchased or leased at least one new Toyota, Lexus, or Scion vehicle equipped with Defendants' Electronic Throttle Control System with Intelligence, but not equipped with a Brake Override System.

Plaintiff also seeks certification of the following Plaintiff Subclasses:

> 1. All persons domiciles or residing in any of the 50 states of the United States of America or in the District of Columbia who

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purchased and normally used for personal, family, or household purposes at least one new Toyota, Lexus, or Scion vehicle equipped with Defendants' Electronic Throttle Control System with Intelligence, but not equipped with a Brake Override System.

2. All persons or entities domiciled or residing in Arkansas, Colorado, Connecticut, Florida, Kansas, Missouri, New Jersey, New Mexico, New York, Ohio, Vermont, or Washington who purchased at least one new Toyota, Lexus, or Scion vehicle equipped with Defendants' Electronic Throttle Control System with Intelligence, but not equipped with a Brake Override System.

Excluded from the Plaintiff Class and Subclass are: (a) Defendants, any entity in which they have a controlling interest, their legal representatives, officers, directors, assigns and successors, and any other entity related to or affiliated with Defendants; and (b) all claims for personal injury, wrongful death, or any incidental or consequential damages over and above those sought herein, except as authorized by law.

33. Plaintiff and the Plaintiff Class assert the causes of action in Counts I and II.

34. Plaintiff and Plaintiff Subclass One, defined above, also assert the cause of action in Count III.

35. Plaintiff and Plaintiff Subclass Two, defined above, also assert the cause of action in Count IV.

36. The Class is comprised of millions of purchasers of Defendants' vehicles throughout the United States, making joinder impracticable. The exact number of Class Members is unknown, but their identity can be ascertained through Defendant's records. The disposition of the numerous claims of the Plaintiff Class and Plaintiff Subclass in a single class action will provide substantial benefits to all parties and to the Court.

37. There is a well-defined community of interest in the questions of law and fact involved affecting the Plaintiff Class. The questions of law and fact common to the Class

predominate over questions affecting only individual Class Members, and include, but are not limited to, the following:

(a) whether Defendants' vehicles purchased or leased by the members of the Plaintiff Class are inherently defective in that they are equipped with ETCS-i systems, but without the failsafe BOS installed;

(b) whether Defendants knew of the inherent defect in their vehicles with ETCS-i systems, but without the failsafe BOS installed;

(c) whether Defendants had a duty to members of the Plaintiff Class to disclose the defective nature of the vehicles with ETCS-i systems, but without the failsafe BOS installed;

(d) whether the facts concealed and/or otherwise not disclosed by Defendants to members of the Plaintiff Class are material facts;

(e) whether, as a result of Defendants' concealment and/or failure to disclose material facts, members of the Plaintiff Class acted to their detriment by purchasing vehicles containing the common defect described above;

(f) whether Defendants knew or should have known that Toyota, Lexus, and Scion vehicles with the common defect described above are inherently defective and, thus, that those vehicles are not suitable for the purposes for which they are intended to be used, and otherwise are not as warranted and represented by Defendants;

(g) whether Defendants' vehicles with the common defect described above are not as advertised and/or promoted by Defendant;

(h) whether Defendants expressly warranted to original purchasers and/or lessees of the subject vehicles that Defendants would repair, replace, or adjust all items on those vehicles defective in material, workmanship, or factory preparation;

(i) whether Defendants breached such express warranties because Defendants failed to successfully repair or otherwise remedy the common defect described above in vehicles owned or leased by members of the Plaintiff Class;

(j) whether Defendants breached their express warranties because members of the Plaintiff Class have been deprived of the value of the bargain;

(k) whether Defendants impliedly warranted to original purchasers and/or lessees of the subject vehicles that those vehicles were merchantable;

(l) whether Defendants breached their implied warranty of merchantability by selling and/or leasing members of the Plaintiff Class vehicles with an inherent defect;

(m) whether members of the Plaintiff Class are entitled to compensatory damages for the diminution in the fair market value of the subject vehicles as a result of the common defect described above, and the amount of such damages; and

(n) whether Defendants should be declared financially responsible for notifying all members of the Plaintiff Class of the defective nature of the subject vehicles and the cost of the diminution in fair market value of said vehicles.

38. Plaintiff asserts claims that are typical of the Plaintiff Class, having purchased and/or leased a Toyota, Lexus, and/or Scion vehicle with ETCS-installed, but without BOS installed. Plaintiff and members of the Plaintiff Class and Subclasses have similarly suffered harm arising from Defendants' breaches of express and implied warranties.

39. Injuries sustained by Plaintiff and the Plaintiff Class in each instance form a common nucleus of operative facts—Defendants' breach of express and implied warranties as a result of the common defect in the subject vehicles, as described herein.

40. Plaintiff is an adequate representative of the Plaintiff Class because her interests do not conflict with and are not antagonistic to the interests of the Plaintiff Class members she seeks to represent. Plaintiff will fairly and adequately represent and protect the interests of the Plaintiff Class. Plaintiff has retained counsel who are competent and experienced in the prosecution of mass torts and class litigation.

41. Plaintiff and members of the Plaintiff Class have all suffered and will continue to suffer substantial harm and damages due to Defendants' breaches of express and implied warranties. A class action is superior to other methods for the fair and efficient adjudication of the subject controversy. Absent a class action, most Plaintiff Class members likely will find the

cost of litigating their individual claims to be prohibitive, and will have no effective remedy at all. Because of the relatively small size of the individual claims of Plaintiff Class members, few members of the Plaintiff Class could likely afford to seek legal redress on their own. Absent a class action, members of the Plaintiff Class will continue to sustain damages, and Defendants' misconduct will proceed without remedy. The class treatment of common questions of law and fact is also superior to multiple individual actions or piecemeal litigation in that it conserves the resources of the courts and the litigants and promotes consistency and efficiency of adjudication. Additionally, Defendants have acted, and failed to act, on grounds generally applicable to Plaintiff and the Plaintiff Class, requiring Court imposition of uniform relief to insure compatible standards of conduct toward Plaintiff and the Plaintiff Class.

42. Notice can be provided to original purchasers and lessees of subject vehicles at Defendants' expense via internet publication and through the U.S. postal service.

V.
CAUSES OF ACTION

COUNT 1 – BREACH OF EXPRESS WARRANTY

43. Plaintiffs reallege and incorporate by reference each preceding paragraph as if fully set forth herein. Hereinafter, "Plaintiffs" shall refer to the Plaintiff and the Plaintiff Class collectively.

44. Through a written manufacturer's warranty, Defendants expressly warranted to Plaintiffs that they would repair, replace, or adjust items defective in material, workmanship, or factory preparation on all vehicles they originally sold and/or leased that were equipped with ETCS-i, but not equipped with BOS.

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45. Defendants breached those express warranties because they either refused to or are unable to successfully repair or otherwise remedy the common defect in the vehicles, described above.

46. Defendants also breached those express warranties because Plaintiffs have been deprived of the value of the bargain with respect to the subject vehicles.

47. The warranty remedy of repair or replacement has failed of its essential purpose because, although Defendants have been given a reasonable chance to repair or otherwise remedy the common defect described above, all subject vehicles are still dangerously defective and fail to function properly in that the ETCS-i installed on the vehicles cannot be safely and reliably overridden in an emergency, unintended, and/or sudden acceleration incident or situation. As a result, the health, safety, and lives of drivers and passengers of Defendants' vehicles, together with bystanders, remain in peril.

48. Defendants efforts to repair or otherwise remedy the common defect in the vehicles have failed because the defect is permanent and/or prohibitively difficult or expensive for Defendants to remedy.

49. As alleged above, Defendants knew or should have known and intentionally concealed the defective nature of the vehicles equipped with ETCS-i, but without BOS. Defendants failed to warn Plaintiffs about the common defect in the subject vehicles.

50. Defendants were on notice of the common defect in the subject vehicles, which Defendants are unable and/or have refused to repair, replace, and/or adjust.

51. When Defendants made the express warranty described above, Defendants knew the purpose for which the subject vehicles were to be used, and warranted them to be in all respects safe and proper for that purpose.

52. As a direct and proximate result of Defendants' breach of express warranty, Plaintiffs have suffered actual damages in the form of substantial diminution in the fair market value of their subject vehicles. The diminution in fair market value would not have occurred but for the inherent defect, described above.

53. Plaintiffs demand judgment against Defendants for compensatory damages in an amount to be determined at trial, together with reasonable attorneys' fees.

COUNT 2 – BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

54. Plaintiffs reallege and incorporate by reference each preceding paragraph as though fully set forth herein.

55. Defendants are merchants with respect to vehicles such as the subject Toyota, Lexus, and Scion vehicles.

56. As merchants with respect to those vehicles, Defendants impliedly warranted to Plaintiffs that Toyota, Lexus, and Scion vehicles equipped with ETCS-i, but not equipped with BOS, were merchantable, including that they passed without objection in the trade and were fit for the ordinary purposes for which such goods are used.

57. Due to their undisclosed defective nature, new Toyota, Lexus, and Scion vehicles equipped with ETCS-i, but not equipped with BOS, were unmerchantable when sold to Plaintiffs because they could not pass without objection in the trade and were unfit for the ordinary purposes for which such goods are used.

58. Defendants breached the implied warranty of merchantability with respect to the subject vehicles by selling unmerchantable vehicles to Plaintiffs.

59. As alleged above, Defendants actually knew or should have known of and intentionally concealed the defective nature of the subject vehicles from Plaintiffs. Defendants failed to warn Plaintiffs about the common defect in the vehicles.

60. Defendants were on notice of the common defect in the subject vehicles, which Defendants are unable and/or have refused to repair, replace, and/or adjust.

61. As a direct and proximate result of Defendants' breach of the implied warranty of merchantability, Plaintiffs have suffered actual damages in the form of substantial diminution in the fair market value of their subject vehicles. The diminution in fair market value would not have occurred but for the inherent defect in the vehicles.

62. Plaintiffs demand judgment against Defendants for compensatory damages in an amount to be determined at trial, together with reasonable attorneys' fees.

COUNT 3 – VIOLATION OF THE MAGNUSON-MOSS WARRANTY ACT

63. Each preceding paragraph is realleged and incorporated in full as though fully set forth herein.

64. Members of Plaintiff Subclass One, including representatives of the Subclass, are "consumers" as defined by 15 U.S.C. § 2301(3).

65. Defendants are "supplier[s]," "warrantor[s]," and "service contractor[s]" as defined by 15 U.S.C. §§ 2301(4), 2301(5), and 2301(8), respectively.

66. The Toyota, Lexus, and Scion vehicles equipped with ETCS-i, but without BPS installed, which were purchased by members of Plaintiff Subclass One and Subclass representatives, are "consumer products" as defined by 15 U.S.C. § 2301(1).

67. The Magnuson-Moss Warranty Act provides: "a consumer who is damaged by the failure of a supplier, warrantor, or service contractor to comply with any obligation under this

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title, or under a written warranty, implied warranty, or service contract . . . may bring suit for damages and other legal and equitable relief . . . in an appropriate district court of the United States." 15 U.S.C. § 2310(d)(1). The Magnuson-Moss Warranty Act also authorizes class actions and the award of attorney's fees. 15 U.S.C. § 2310(e).

68. Upon information and belief, Defendants knew or should have known at the time of sale to members of Plaintiff Subclass One and Subclass Representatives that an inherent defect existed in the subject vehicles, which rendered those vehicles unfit for their customary and usual purposes and for the particular purpose for which Defendants knew or should have known the vehicles were intended, as alleged more fully above.

69. Defendants' knowledge of the defect in the subject vehicles gave Defendants more than adequate opportunity to repair or otherwise remedy the defect. After a reasonable number of attempts, Defendants have failed to repair or otherwise remedy the ETCS-i and BOS defect because the defect is inherent and permanent.

70. As described above, Defendants have failed to comply with their obligations under written manufacturer's warranties issued to members of Plaintiff Subclass One and Subclass Representatives because Defendants cannot successfully repair or otherwise remedy the inherent and permanent defect in the ETCS-i and BOS. Those written warranties are "service contracts" as defined by 15 U.S.C. 2301(8).

71. Defendants impliedly warranted that the subject vehicles would be merchantable. Defendants breached that warranty in the manner described above in Count II.

72. As a direct and proximate result of Defendants breach of written warranties and service contracts, members of Plaintiff Subclass One and their Subclass Representatives sustained actual damages in the form of significant diminution in the fair market value of their

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subject vehicles. The diminution in fair market value would not have occurred but for the inherent defect in the subject vehicles. Members of Plaintiff Subclass One and their Subclass Representatives, demand judgment against Defendants for compensatory damages in an amount to be determined at trial, together with reasonable attorneys' fees.

COUNT 4 – VIOLATION OF CONSUMER PROTECTION STATUTES

73. Each preceding paragraph is realleged and incorporated in full as though fully set forth herein.

74. Defendants' advertising, marketing, distribution, and sales of Toyota, Lexus, and Scion vehicles equipped with ETCS-i, but without BOS installed, as well as its servicing of those vehicles after sale, constitute conduct and activities in the course of trade and commerce.

75. Defendants engaged in unfair, unconscionable, deceptive, and fraudulent trade practices and acts in violation of the state consumer protection statutes listed below by advertising, marketing, distributing, and selling the subject vehicles without informing them of the common defects relative to the ETCS-i and BOS.

76. As alleged above, Defendants had, and still have, superior knowledge of the inherent defect in the subject vehicles, and intentionally concealed the defects from members of Plaintiff Subclass Two and their Subclass Representatives in order to induce them into purchasing one or more of said vehicles.

77. At the very least, Defendants should have known of the defective nature of the subject vehicles, yet Defendants failed to warn or otherwise inform members of Plaintiff Subclass Two and their Subclass Representatives about the common defect in said vehicles. Members of Plaintiff Subclass Two and their Subclass Representatives did not know, and had no reason to know, of the defect prior to purchasing their subject vehicles.

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78. Members of Plaintiff Subclass Two and their Subclass Representatives could not have discovered the defect in the relative to the ETCS-i and absence of BOS through any reasonable inspection of the vehicles before purchase.

79. Members of Plaintiff Subclass Two and their Subclass Representatives were without access to the information concealed by Defendants regarding the inherent defects in the subject vehicles, and Plaintiff Subclass Two and their Subclass Representatives, therefore, reasonably relied on Defendants' warranties, promises, and representations regarding the quality, reliability, safety, and other material characteristics of Defendants' vehicles before and at the time of sale, together with reasonable reliance on and Defendants' ability to repair, replace, or adjust items on the subject vehicles that are defective in material, workmanship, or factory preparation.

80. Members of Plaintiff Subclass Two and their Subclass Representatives also reasonably relied on Defendants to disclose, and not conceal or fail to warn of, material information about the subject vehicles and defects.

81. Defendants concealment of the defects described herein from Plaintiff Subclass Two and their Subclass Representatives constitutes unfair competition and unfair, unconscionable, deceptive, and fraudulent trade practices and acts in violation of the state consumer protection statutes listed below. Alternatively, Defendants' failure to warn Plaintiff Subclass Two and their Subclass Representatives about the subject defects constitutes unfair competition and unfair, unconscionable, deceptive, and fraudulent trade practices and acts in violation of the state consumer protection statutes listed below.

82. Defendants also violated the state consumer protection statutes listed below by selling the subject vehicles when Defendants knew or should have known that the inherent

defects in vehicles described herein cannot be remedied through repair, replacement, and/or adjustment, or such remedy is prohibitively difficult or expensive to accomplish.

83. Defendants engaged in unfair competition and unfair and deceptive trade practices and acts in violation of Ark. Code § 4-88-101, *et seq.*

84. Defendants engaged in unfair competition and unfair and deceptive trade practices and acts and has made false representations in violation of Colo. Rev. Stat. § 6-1-105, *et seq.*

85. Defendants engaged in unfair competition and unfair and deceptive trade practices and acts in violation of Conn. Gen. Stat. § 42-110b, *et seq.*

86. Defendants engaged in unfair competition and unfair and deceptive practices and acts in violation of Fla. Stat. § 501.201, *et seq.*

87. Defendants engaged in unfair competition and unfair and deceptive trade practices and acts in violation of Kan. Stat. § 50-623, *et seq.*

88. Defendants engaged in unfair competition and unfair and deceptive trade practices and acts in violation of Vernon's Missouri Stat. § 407.010, *et seq.*

89. Defendants engaged in unfair competition and unfair and deceptive trade practices and acts in violation of N.J. Rev. Stat. § 56:8-1, *et seq.*

90. Defendants engaged in unfair competition and unfair and deceptive trade a practices and acts in violation of N.M. Stat. § 57-12-1, *et seq.*

91. Defendants engaged in unfair competition and unfair and deceptive trade practices and acts in violation of N.Y. Gen. Bus. Law § 349, *et seq.*

92. Defendants engaged in unfair competition and unfair and deceptive trade practices and acts in violation of Ohio Rev. Stat. § 1345.01, *et seq.*

93. Defendants engaged in unfair competition and unfair and deceptive trade practices and acts in violation of 9 Vt. § 2451, *et seq.*

94. Defendants engaged in unfair competition and unfair and deceptive trade practices and acts in violation of Wash. Rev. Code. § 19.86.010, *et seq.*

95. Defendant's unfair competition and unfair and deceptive trade practices and acts have directly, foreseeably, and proximately caused damages and injury to Plaintiff Subclass Two and their Subclass Representatives in the form of significant diminution in the fair market value of their subject vehicles. The diminution in fair market value would not have occurred but for the inherent defect in the subject vehicles.

96. Had Plaintiff Subclass Two and their Subclass Representatives known of the inherent defects in the subject vehicles, they would have paid less for their vehicles than the amounts they actually paid, or they would not have purchased those vehicles.

97. Plaintiff Subclass Two and their Subclass Representatives demand judgment against Defendants for compensatory damages, and any other damages authorized by the above listed state consumer protection statutes, in an amount to be determined at trial, together with reasonable attorneys' fees.

VI.
DEMAND FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, pray for:

(a) An order certifying this matter as a class action with Plaintiffs as Class representatives and Subclass One Reprentatives as representatives of Plaintiff Subclass One and Subclass Two Representatives as representatives of Plaintiff Subclass Two, and designating Plaintiffs' counsel as Class Counsel and Subclass

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Counsel;

(b) Judgment in favor of Plaintiffs and the Class on Counts I and II;

(c) Judgment in favor of Subclass One Representatives and Plaintiff Subclass One on Count III;

(d) Judgment in favor of Subclass Two Representatives and Plaintiff Subclass Two on Count IV;

(e) Pre-judgment and post judgment interest on such monetary relief;

(f) An award of reasonable attorneys' fees and costs of Plaintiffs and the Plaintiff Subclasses; and

(g) Such other and further relief as the nature of the case may require or as may be determined to be just, equitable, and proper by this Court.

Respectfully submitted,

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February 5, 2010

Spartanburg, South Carolina

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EXHIBIT C

U.S. DISTRICT COURT - JUDICIAL CASELOAD PROFILE

SOUTH CAROLINA			12-MONTH PERIOD ENDING SEPTEMBER 30						Numerical Standing	
			2008	2007	2006	2005	2004	2003	U.S.	Circuit
OVERALL CASELOAD STATISTICS	Filings*		5,460	5,508	4,670	4,875	24,510	5,210		
	Terminations		5,147	5,370	4,984	25,042	5,377	4,981		
	Pending		4,202	3,877	3,705	3,964	24,228	5,167		
	% Change in Total Filings	Over Last Year		-.9					53	6
		Over Earlier Years			16.9	12.0	-77.7	4.8	26	3
Number of Judgeships			10	10	10	10	10	10		
Vacant Judgeship Months**			.0	.0	.0	.0	8.8	9.4		
ACTIONS PER JUDGESHIP	FILINGS	Total	545	551	468	488	2,452	521	18	1
		Civil	445	440	363	397	2,360	428	9	1
		Criminal Felony	80	86	80	76	78	83	35	6
		Supervised Release Hearings**	20	25	25	15	14	10	56	8
	Pending Cases		420	388	371	396	2,423	517	27	2
	Weighted Filings**		503	519	462	514	2,454	505	26	2
	Terminations		515	537	498	2,504	538	498	21	1
	Trials Completed		36	39	39	22	20	20	7	2
MEDIAN TIMES (months)	From Filing to Disposition	Criminal Felony	9.4	8.5	8.9	8.6	8.7	8.5	56	7
		Civil**	8.2	8.0	9.5	9.0	9.4	8.2	30	4
	From Filing to Trial** (Civil Only)		21.5	18.5	21.8	21.0	20.0	22.5	23	4
OTHER	Civil Cases Over 3 Years Old**	Number	53	35	91	74	918	68		
		Percentage	1.6	1.2	3.1	2.3	3.9	1.6	5	1
	Average Number of Felony Defendants Filed Per Case		1.6	1.7	1.7	1.8	1.6	1.7		
	Jurors	Avg. Present for Jury Selection	39.06	47.08	39.24	47.92	30.59	37.98		
		Percent Not Selected or Challenged	15.0	20.3	17.0	13.4	13.2	25.7		

2008 CIVIL AND CRIMINAL FELONY FILINGS BY NATURE OF SUIT AND OFFENSE													
Type of	TOTAL	A	B	C	D	E	F	G	H	I	J	K	L
Civil	4454	191	516	1937	36	100	256	445	388	50	401	5	129
Criminal*	795	12	162	27	272	138	32	25	32	40	17	17	21

* Filings in the "Overall Caseload Statistics" section include criminal transfers, while filings "By Nature of Offense" do not.
** See "Explanation of Selected Terms."

U.S. DISTRICT COURT - JUDICIAL CASELOAD PROFILE

CALIFORNIA CENTRAL			12-MONTH PERIOD ENDING SEPTEMBER 30							
			2008	2007	2006	2005	2004	2003	Numerical Standing	
									U.S.	Circuit
OVERALL CASELOAD STATISTICS	Filings*		15,144	14,154	12,909	14,630	16,938	14,720		
	Terminations		14,742	13,642	13,680	16,173	15,269	15,800		
	Pending		12,221	11,817	12,401	13,180	14,720	13,129		
	% Change in Total Filings	Over Last Year		7.0					23	3
		Over Earlier Years			17.3	3.5	-10.6	2.9	28	4
Number of Judgeships			28	28	28	28	28	28		
Vacant Judgeship Months**			12.0	31.2	53.9	24.8	2.3	23.6		
ACTIONS PER JUDGESHIP	FILINGS	Total	540	505	461	523	605	526	19	5
		Civil	433	425	397	450	515	451	12	3
		Criminal Felony	63	47	36	45	60	49	49	9
		Supervised Release Hearings**	44	33	28	28	30	26	15	6
	Pending Cases		436	422	443	471	526	469	24	5
	Weighted Filings**		578	551	518	565	651	590	12	4
	Terminations		527	487	489	578	545	564	20	7
	Trials Completed		11	12	12	13	12	14	84	12
MEDIAN TIMES (months)	From Filing to Disposition	Criminal Felony	7.5	12.1	12.4	10.3	8.2	9.4	32	4
		Civil**	7.0	6.8	7.2	7.4	7.3	7.5	12	2
	From Filing to Trial** (Civil Only)		22.0	21.3	21.3	20.5	17.8	21.2	24	2
OTHER	Civil Cases Over 3 Years Old**	Number	821	712	1,240	809	624	609		
		Percentage	8.1	7.2	11.6	7.2	5.0	5.4	68	10
	Average Number of Felony Defendants Filed Per Case		1.5	1.3	1.6	1.5	1.4	1.4		
	Jurors	Avg. Present for Jury Selection	60.94	60.57	64.08	47.33	49.01	49.49		
		Percent Not Selected or Challenged	53.7	56.5	55.7	48.3	49.4	51.6		

2008 CIVIL AND CRIMINAL FELONY FILINGS BY NATURE OF SUIT AND OFFENSE													
Type of	TOTAL	A	B	C	D	E	F	G	H	I	J	K	L
Civil	12130	1023	200	2976	287	205	839	1508	562	1395	1292	113	1730
Criminal*	1761	12	242	671	115	360	48	124	49	48	15	37	40

* Filings in the "Overall Caseload Statistics" section include criminal transfers, while filings "By Nature of Offense" do not.
** See "Explanation of Selected Terms."

U.S. DISTRICT COURT - JUDICIAL CASELOAD PROFILE

			12-MONTH PERIOD ENDING SEPTEMBER 30							
LOUISIANA EASTERN			2008	2007	2006	2005	2004	2003	Numerical Standing	
OVERALL CASELOAD STATISTICS	Filings*		8,690	10,949	10,173	5,152	3,783	3,990	U.S.	Circuit
	Terminations		9,680	6,596	3,611	3,339	3,584	3,883		
	Pending		15,654	16,431	12,238	5,326	3,526	3,324		
	% Change in Total Filings	Over Last Year		-20.6					90	9
		Over Earlier Years			-14.6	68.7	129.7	117.8	2	1
Number of Judgeships			12	12	12	12	12	12		
Vacant Judgeship Months**			.0	.0	.0	.0	.0	.0		
ACTIONS PER JUDGESHIP	FILINGS	Total	724	913	848	429	316	332	7	3
		Civil	694	874	817	398	283	297	5	1
		Criminal Felony	23	31	23	24	25	27	93	9
		Supervised Release Hearings**	7	8	8	7	8	8	87	7
	Pending Cases		1,305	1,369	1,020	444	294	277	3	1
	Weighted Filings**		852	914	568	317	314	320	2	1
	Terminations		807	550	301	278	299	324	4	2
	Trials Completed		14	12	13	12	12	13	70	9
MEDIAN TIMES (months)	From Filing to Disposition	Criminal Felony	8.8	9.3	10.3	9.1	6.8	7.2	48	5
		Civil**	8.8	7.9	11.6	9.6	9.3	9.8	44	4
	From Filing to Trial** (Civil Only)		17.6	19.7	20.0	17.0	16.2	17.4	11	1
OTHER	Civil Cases Over 3 Years Old**	Number	2,065	374	569	314	225	40		
		Percentage	13.4	2.3	4.8	6.2	6.9	1.3	84	9
	Average Number of Felony Defendants Filed Per Case		1.6	1.4	1.3	1.6	1.7	1.5		
	Jurors	Avg. Present for Jury Selection	49.50	34.60	37.85	36.84	27.30	28.51		
		Percent Not Selected or Challenged	52.3	39.5	44.3	30.1	28.8	30.6		

2008 CIVIL AND CRIMINAL FELONY FILINGS BY NATURE OF SUIT AND OFFENSE													
Type of	TOTAL	A	B	C	D	E	F	G	H	I	J	K	L
Civil	8325	52	1051	435	11	33	86	5085	861	34	285	3	389
Criminal*	271	2	62	46	40	62	9	6	4	17	3	9	11

* Filings in the "Overall Caseload Statistics" section include criminal transfers, while filings "By Nature of Offense" do not.
** See "Explanation of Selected Terms."

EXHIBIT D

U.S. Party/Case Index

Statistical Reports

District Summary Report

Description: The Civil Justice Reform Act Report provides summary and detailed information on pending motions, bench trials, three-year-old cases, bankruptcy appeals, and Social Security appeal cases. The summary reports display totals of these pending civil matters, by individual district judges and magistrate judges, district, circuit, and nationwide. The detailed reports also display these totals; however, they also include information on the type of proceeding, divisional office, docket number, nature of case, case title, CJRA filing/reopened and deadline dates, and case status. Please note that there are separate data files for courts which have used the CJRA Integrated Case Management (ICMS) and Case Management/Electronic Case Files (CM/ECF) automated systems since March 1998, and for those courts (specifically designated as "Non-ICMS") which reported their CJRA pending matters manually. In addition, it should be noted that all reports may not exactly match numbers previously published in the CJRA national summary reports, as CJRA automated system modifications, new reporting policy, and court requests for data corrections have occurred since the inception of electronic reports in March 1998. These changes have resulted in minimal differences in the numbers of CJRA pending matters compared to the previously published national summaries.

Report Dates: Six-month periods ending March 31 and September 30

More Information: For questions concerning the content of these reports, contact Maurice Galloway, in the Statistics Division at (202) 502-1493. For all other questions concerning the U.S. Party/Case Index, contact the PACER Service Center.

Report Contents	Report Size	Report Cost	Options
DISTRICT SUMMARY REPORT AS OF DATE: 03/31/2009	407 KBytes 101 Pages	$ 8.08	View Report
DISTRICT SUMMARY REPORT AS OF DATE: 09/30/2008	405 KBytes 99 Pages	$ 7.92	View Report
DISTRICT SUMMARY REPORT AS OF DATE: 03/31/2008	402 KBytes 99 Pages	$ 7.92	View Report
DISTRICT SUMMARY REPORT AS OF DATE: 09/30/2007	406 KBytes 100 Pages	$ 8.00	View Report
DISTRICT SUMMARY REPORT AS OF DATE: 03/31/2007	401 KBytes 99 Pages	$ 7.92	View Report
DISTRICT SUMMARY REPORT	402 KBytes	$ 8.00	View Report

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DISTRICT SUMMARY REPORT
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U.S. DISTRICT COURT FOR DISTRICT OF COLUMBIA

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
ROBINSON, DEBORAH ANN	2	0	0	0	0
KAY, ALAN	0	5	0	0	0
FACCIOLA, JOHN M.	5	0	0	0	0
SUBTOTAL	7	5	0	0	0
DISTRICT JUDGES					
SHANSTROM, JACK D. (VJ)	1	4	0	0	0
OBERDORFER, LOUIS F.	0	1	0	0	0
HOGAN, THOMAS F.	23	25	0	0	0
LAMBERTH, ROYCE C. (CJ)	11	1	0	0	0
KESSLER, GLADYS	20	27	0	0	0
FRIEDMAN, PAUL L.	16	10	0	0	0
URBINA, RICARDO M.	23	0	0	0	0
SULLIVAN, EMMET G.	25	6	0	0	0
ROBERTSON, JAMES	1	0	0	0	0
KOLLAR-KOTELLY, COLLEEN	18	0	0	0	0
KENNEDY, HENRY H., JR.	27	7	0	0	0
ROBERTS, RICHARD W.	39	96	0	1	0
HUVELLE, ELLEN SEGAL	1	0	0	0	0
WALTON, REGGIE B.	9	8	0	0	0
BATES, JOHN D.	2	2	0	0	0
LEON, RICHARD J.	24	4	0	0	0
COLLYER, ROSEMARY M.	8	0	0	0	0
SUBTOTAL	248	191	0	1	0
DISTRICT TOTAL:	255	196	0	1	0
CIRCUIT TOTAL:	255	196	0	1	0

DISTRICT SUMMARY REPORT
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U.S. DISTRICT COURT FOR MAINE

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
MARTIN, DAVID L.	0	0	0	0	0
KRAVCHUK, MARGARET J.	0	0	0	0	0
RICH, JOHN, III	0	0	0	0	0
SUBTOTAL	0	0	0	0	0
DISTRICT JUDGES					
CARTER, GENE	0	0	0	0	0
HORNBY, D. BROCK	2	0	0	0	0
SINGAL, GEORGE Z.	0	0	0	0	0
WOODCOCK, JOHN A., JR. (CJ)	1	0	0	0	0
SUBTOTAL	3	0	0	0	0
DISTRICT TOTAL:	3	0	0	0	0

DISTRICT SUMMARY REPORT
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U.S. DISTRICT COURT FOR MASSACHUSETTS

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
COLLINGS, ROBERT B.	6	0	1	0	0
BOWLER, MARIANNE B.	1	8	0	0	0
NEIMAN, KENNETH P.	0	0	0	0	0
DEIN, JUDITH G.	0	0	0	0	0
SOROKIN, LEO T.	2	0	0	0	0
HILLMAN, TIMOTHY S.	1	0	0	0	0
SUBTOTAL	10	8	1	0	0
DISTRICT JUDGES					

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TAURO, JOSEPH L.	0	0	0	0	0
ZOBEL, RYA W.	6	1	0	0	0
YOUNG, WILLIAM G.	0	0	0	0	0
WOLF, MARK L. (CJ)	12	17	2	1	0
WOODLOCK, DOUGLAS P.	9	0	1	0	0
HARRINGTON, EDWARD F.	4	0	0	0	0
GORTON, NATHANIEL M.	6	0	0	0	0
STEARNS, RICHARD G.	5	0	0	0	0
SARIS, PATTI B.	2	0	0	0	0
PONSOR, MICHAEL A.	2	0	0	0	0
GERTNER, NANCY	19	12	0	0	1
O'TOOLE, GEORGE A., JR.	11	16	0	0	0
SAYLOR, F. DENNIS	6	0	0	0	0
LASKER, MORRIS E.	2	0	0	0	0
UNASSIGNED	6	3	2	0	0
SUBTOTAL	90	49	5	1	1
DISTRICT TOTAL:	100	57	6	1	1

DISTRICT SUMMARY REPORT

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U.S. DISTRICT COURT FOR NEW HAMPSHIRE

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
MUIRHEAD, JAMES R.	0	0	0	0	0
SUBTOTAL	0	0	0	0	0
DISTRICT JUDGES					
DICLERICO, JOSEPH A.	3	0	0	0	0
BARBADORO, PAUL J.	8	0	0	0	0
MCAULIFFE, STEVEN J. (CJ)	1	0	0	0	0
LAPLANTE, JOSEPH N.	1	0	0	0	0
SUBTOTAL	13	0	0	0	0
DISTRICT TOTAL:	13	0	0	0	0

DISTRICT SUMMARY REPORT

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U.S. DISTRICT COURT FOR RHODE ISLAND

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
HAGOPIAN, JACOB	0	7	0	0	0
LOVEGREEN, ROBERT W.	0	0	0	0	0
MARTIN, DAVID L.	0	1	0	0	4
ALMOND, LINCOLN D.	0	0	0	0	1
SUBTOTAL	0	8	0	0	5
DISTRICT JUDGES					
LAGUEUX, RONALD R.	260	58	0	0	0
TORRES, ERNEST C.	0	0	0	0	0
LISI, MARY M. (CJ)	1	7	0	0	3
SMITH, WILLIAM E.	11	21	0	0	1
SUBTOTAL	272	86	0	0	4
DISTRICT TOTAL:	272	94	0	0	9

DISTRICT SUMMARY REPORT

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U.S. DISTRICT COURT FOR PUERTO RICO

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
ARENAS, JOSTO	0	0	0	0	0
VELEZ-RIVE, CAMILLE L.	0	0	0	0	0
MCGIVERIN, BRUCE J.	0	1	0	0	0
LOPEZ, MARCOS E.	0	0	0	0	0
UNASSIGNED	0	1	0	0	0

SUBTOTAL	0	2	0	0	0
DISTRICT JUDGES					
PEREZ-GIMENEZ, JUAN M.	25	24	0	0	0
CEREZO, CARMEN CONSUELO	2	1	0	0	0
FIERAS, JAIME, JR.	3	9	0	0	1
ACOSTA, RAYMOND L.	4	13	0	0	0
FUSTE, JOSE ANTONIO (CJ)	0	0	0	0	0
CASELLAS, SALVADOR E.	2	0	0	0	1
DOMINGUEZ, DANIEL R.	1	0	0	1	0
GARCIA-GREGORY, JAY A.	3	7	0	0	1
DELGADO-COLON, AIDA M.	3	2	1	0	0
GELPI, GUSTAVO A., JR.	14	0	0	0	0
BESOSA, FRANCISCO A.	16	71	0	5	2
SUBTOTAL	73	127	1	6	5
DISTRICT TOTAL:	73	129	1	6	5
CIRCUIT TOTAL:	461	280	7	7	15

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DISTRICT SUMMARY REPORT
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U.S. DISTRICT COURT FOR CONNECTICUT

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
SMITH, THOMAS F.	1	0	0	0	0
MARGOLIS, JOAN G.	1	0	0	0	0
FITZSIMMONS, HOLLY B.	2	0	0	0	0
MARTINEZ, DONNA F.	2	6	0	0	0
GARFINKEL, WILLIAM I.	3	0	0	0	0
SUBTOTAL	9	6	0	0	0
DISTRICT JUDGES					
BURNS, ELLEN B.	5	14	1	0	0
EGINTON, WARREN W.	14	10	0	0	1
DORSEY, PETER C.	2	4	0	0	0
NEVAS, ALAN H.	0	0	0	0	0
COVELLO, ALFRED V.	11	0	0	0	0
CHATIGNY, ROBERT N. (CJ)	13	18	1	0	0
SQUATRITO, DOMINIC J.	8	5	0	0	0
THOMPSON, ALVIN W.	15	10	0	1	1
ARTERTON, JANET BOND	0	0	0	0	0
DRONEY, CHRISTOPHER F.	33	8	0	1	1
HALL, JANET C.	4	1	0	0	1
UNDERHILL, STEFAN R.	67	10	0	1	2
KRAVITZ, MARK R.	0	0	0	0	0
BRYANT, VANESSA L.	0	0	0	0	0
HAIGHT, CHARLES S., JR.	0	5	0	0	0
SUBTOTAL	172	85	2	3	6
DISTRICT TOTAL:	181	91	2	3	6

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DISTRICT SUMMARY REPORT
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U.S. DISTRICT COURT FOR NEW YORK NORTHERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
DIBIANCO, GUSTAVE J.	0	2	0	0	0
HOMER, DAVID R.	2	0	0	0	0
PEEBLES, DAVID E.	2	7	0	0	0
TREECE, RANDOLPH F.	1	0	0	0	1
LOWE, GEORGE H.	0	5	0	0	0
KUDRLE, LARRY A.	0	0	0	0	0
BIANCHINI, VICTOR E.	2	0	0	0	9
SUBTOTAL	7	14	0	0	10
DISTRICT JUDGES					
MCCURN, NEAL P.	18	15	0	0	0
MCAVOY, THOMAS J.	21	3	0	0	16
SINGLETON, JAMES K. (VJ)	1	0	0	0	0
SESSIONS, WILLIAM K., III (VJ)	3	0	0	0	0
STROM, LYLE E. (VJ)	7	5	0	0	0
SCULLIN, FREDERICK J., JR.	38	34	0	0	24

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KAHN, LAWRENCE E.	13	13	0	0	45
MAGNUSON, PAUL A. (VJ)	1	0	0	0	0
MORDUE, NORMAN A. (CJ)	30	27	0	6	29
HURD, DAVID N.	25	23	2	0	16
SHARPE, GARY L.	24	12	1	0	22
SUDDABY, GLENN T.	48	85	0	0	0
SUBTOTAL	229	217	3	6	152
DISTRICT TOTAL:	236	231	3	6	162

DISTRICT SUMMARY REPORT
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U.S. DISTRICT COURT FOR NEW YORK EASTERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
AZRACK, JOAN M.	4	2	0	0	0
GOLD, STEVEN M.	4	5	1	0	0
GO, MARILYN	4	10	0	0	0
LINDSAY, ARLENE R.	2	0	1	0	0
MANN, ROANNE L.	1	1	0	0	0
POHORELSKY, VIKTOR V.	1	7	1	0	0
LEVY, ROBERT M.	0	1	0	0	0
BOYLE, E. THOMAS	2	0	0	0	0
POLLAK, CHERYL	7	1	1	0	0
WALL, WILLIAM D.	4	2	0	0	0
BLOOM, LOIS	0	1	0	0	0
ORENSTEIN, JAMES	0	0	0	0	0
REYES, RAMON E., JR.	3	0	0	0	0
TOMLINSON, A. KATHLEEN	0	0	0	0	0
ORENSTEIN, MICHAEL L.	1	0	0	0	0
SUBTOTAL	33	30	4	0	0
DISTRICT JUDGES					
WOLLE, CHARLES R. (VJ)	0	1	0	0	0
WALTER, DONALD E. (VJ)	0	2	0	0	0
WEINSTEIN, JACK B.	44	3	0	0	0
PLATT, THOMAS C., JR.	72	2	0	0	0
SIFTON, CHARLES P.	17	4	0	0	0
GLASSER, ISRAEL LEO	93	6	0	0	0
WEXLER, LEONARD D.	0	1	0	0	0
KORMAN, EDWARD R.	7	7	0	0	0
DEARIE, RAYMOND J. (CJ)	22	2	0	0	0
SPATT, ARTHUR D.	21	0	0	0	0
AMON, CAROL BAGLEY	18	7	1	1	1
JOHNSON, STERLING, JR.	6	6	0	0	0
HURLEY, DENIS R.	55	6	0	0	0
TRAGER, DAVID G.	44	1	0	0	0
SEYBERT, JOANNA	51	1	0	0	0
ROSS, ALLYNE	14	10	0	0	0
GLEESON, JOHN	68	0	0	0	0
BLOCK, FREDERIC	27	0	0	0	0
GERSHON, NINA	33	13	0	0	12
GARAUFIS, NICHOLAS G.	23	4	0	0	8
FEUERSTEIN, SANDRA J.	18	9	0	0	0
TOWNES, SANDRA L.	49	24	0	0	9
IRIZARRY, DORA L.	24	8	0	2	7
BIANCO, JOSEPH F.	15	0	0	0	0
VITALIANO, ERIC N.	41	43	0	3	8
COGAN, BRIAN M.	6	1	0	0	0
MAUSKOPF, ROSLYNN R.	65	8	1	2	0

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U.S. DISTRICT COURT FOR NEW YORK EASTERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MATSUMOTO, KIYO A.	39	0	0	0	0
SUBTOTAL	872	169	2	8	45
DISTRICT TOTAL:	905	199	6	8	45

DISTRICT SUMMARY REPORT
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U.S. DISTRICT COURT FOR NEW YORK SOUTHERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					

DOLINGER, MICHAEL H.	1	5	0	0	0
FRANCIS, JAMES C., IV	1	0	0	0	0
KATZ, THEODORE H.	0	0	0	0	0
ELLIS, RONALD L.	0	0	0	0	0
PECK, ANDREW J.	0	0	0	0	0
SMITH, LISA M.	1	4	0	0	0
EATON, DOUGLAS F.	0	0	0	0	0
PITMAN, HENRY B.	4	1	0	0	0
YANTHIS, GEORGE A.	5	0	0	0	0
FOX, KEVIN N.	0	0	0	0	0
MAAS, FRANK S.	0	0	0	0	0
FREEMAN, DEBRA C.	2	0	0	0	0
GORENSTEIN, GABRIEL W.	1	0	0	0	0
DAVISON, PAUL E.	1	0	0	0	0
GOLDBERG, MARTIN R.	0	0	0	0	0
SUBTOTAL	16	10	0	0	0

DISTRICT JUDGES

SULLIVAN, RICHARD J.	78	19	0	1	1
SEIBEL, CATHY	25	21	0	0	0
GARDEPHE, PAUL G.	21	19	0	0	0
STEIN, SIDNEY H.	79	4	0	0	0
EGINTON, WARREN W. (VJ)	1	0	0	0	0
JONES, BARBARA S.	60	27	0	5	1
CONTI, SAMUEL (VJ)	1	0	0	0	0
RAKOFF, JED S.	12	7	0	0	0
HELLERSTEIN, ALVIN K.	1410	2	0	1	0
BERMAN, RICHARD M.	27	0	0	0	0
MCMAHON, COLLEEN	10	0	0	0	0
PAULEY, WILLIAM H., III	14	0	0	2	0
ZILLY, THOMAS S. (VJ)	2	0	0	0	0
BUCHWALD, NAOMI REICE	3	0	0	0	0
MARRERO, VICTOR	3	4	0	0	0
DANIELS, GEORGE B.	41	13	0	3	0
SWAIN, LAURA TAYLOR	55	42	0	0	0
POGUE, DONALD C.	1	0	0	0	0
YOUNG, WILLIAM G. (VJ)	3	0	0	0	0
LYNCH, GERARD E.	27	7	0	0	0
ROBINSON, STEPHEN C.	64	134	2	12	1
CASTEL, P. KEVIN	6	0	0	0	0
HARZILAY, JUDITH M.	1	0	0	0	0
HOLWELL, RICHARD J.	28	8	0	1	1
KITTNER, DAVID (VJ)	1	0	0	0	0
KARAS, KENNETH M.	31	7	0	0	4
CROTTY, PAUL A.	20	10	1	0	1

DISTRICT SUMMARY REPORT

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U.S. DISTRICT COURT FOR NEW YORK SOUTHERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
ASPEN, MARVIN E. (VJ)	3	0	0	0	0
BRIEANT, CHARLES L., JR. (VJ)	0	1	0	0	0
GRIESA, THOMAS P.	82	0	0	0	0
CARTER, ROBERT L.	9	24	0	0	1
DUFFY, KEVIN THOMAS	43	5	0	0	0
CONNER, WILLIAM C.	15	5	0	0	0
OWEN, RICHARD	1	0	0	0	0
HAIGHT, CHARLES S., JR. (VJ)	3	3	0	0	0
SWEET, ROBERT W.	49	11	0	0	0
SAND, LEONARD B.	7	16	0	1	0
KRAM, SHIRLEY WOHL	43	9	0	0	0
KEENAN, JOHN F.	15	1	0	0	0
LEISURE, PETER K.	9	26	0	0	0
STANTON, LOUIS L.	2	0	0	0	0
CEDARBAUM, MIRIAM GOLDMAN	12	0	0	0	0
WOOD, KIMBA M. (CJ)	19	5	0	2	0
PATTERSON, ROBERT P., JR.	11	0	0	0	0
MCKENNA, LAWRENCE M.	113	57	0	0	0
PRESKA, LORETTA A.	23	2	0	1	0
BATTS, DEBORAH A.	48	30	0	3	1
COTE, DENISE	10	0	0	0	0
KAPLAN, LEWIS A.	20	0	0	0	1
BAER, HAROLD, JR.	2	1	1	0	0
KOELTL, JOHN G.	11	3	0	0	1
CHIN, DENNY	24	0	0	0	0
SCHEINDLIN, SHIRA ANN	407	0	1	0	0
SUBTOTAL	3005	523	5	32	13
DISTRICT TOTAL:	3021	533	5	32	13

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U.S. DISTRICT COURT FOR NEW YORK WESTERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
SCOTT, HUGH B.	3	0	0	0	0
FELDMAN, JONATHAN	7	0	0	0	0
SCHROEDER, H. KENNETH, JR.	40	44	0	0	0
PAYSON, MARIAN W.	3	3	1	0	0
MCCARTHY, JEREMIAH J.	3	1	0	0	0
BIANCHINI, VICTOR E.	35	0	0	0	0
FOSCHIO, LESLIE G.	9	17	0	0	0
SUBTOTAL	100	65	1	0	0
DISTRICT JUDGES					
CURTIN, JOHN T.	15	33	0	0	16
TELESCA, MICHAEL A.	25	3	0	0	8
LARIMER, DAVID G.	112	58	0	0	1
ARCARA, RICHARD J. (CJ)	63	44	0	0	11
SKRETNY, WILLIAM M.	57	107	0	2	5
SIRAGUSA, CHARLES J.	101	51	0	2	0
SUBTOTAL	373	296	0	4	41
DISTRICT TOTAL:	473	361	1	4	41

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U.S. DISTRICT COURT FOR VERMONT

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
CONROY, JOHN M.	0	0	0	0	0
NIEDERMEIER, JEROME J.	1	1	0	0	0
SUBTOTAL	1	1	0	0	0
DISTRICT JUDGES					
MURTHA, J. GARVAN	0	12	1	0	0
SESSIONS, WILLIAM K., III (CJ)	3	1	0	1	0
SUBTOTAL	3	13	1	1	0
DISTRICT TOTAL:	4	14	1	1	0
CIRCUIT TOTAL:	4820	1429	18	54	267

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U.S. DISTRICT COURT FOR DELAWARE

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
THYNGE, MARY PAT	7	16	0	0	0
STARK, LEONARD P.	1	17	0	0	0
SUBTOTAL	8	33	0	0	0
DISTRICT JUDGES					
FARNAN, JOSEPH J., JR.	76	37	0	0	0
ROBINSON, SUE L.	28	22	4	2	0
SLEET, GREGORY M. (CJ)	55	47	1	3	1
SUBTOTAL	159	106	5	5	1
DISTRICT TOTAL:	167	139	5	5	1

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U.S. DISTRICT COURT FOR NEW JERSEY

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
ARLEO, MADELINE COX	1	1	0	0	0
FALK, MARK	0	0	0	0	0

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SHWARTZ, PATTY	0	0	0	0	0
DONIO, ANN MARIE	0	0	0	0	0
BONGIOVANNI, TONIANNE J.	1	0	0	0	0
CECCHI, CLAIRE C.	0	0	0	0	0
SCHNEIDER, JOEL	0	0	0	0	0
SALAS, ESTHER	0	0	0	0	0
SHIPP, MICHAEL A.	0	0	0	0	0
ARPERT, DOUGLAS	0	0	0	0	0
GOODMAN, LOIS H.	0	0	0	0	0
KNIGHT, EDWARD R.	0	0	0	0	0
MAUTONE, ANTHONY R.	0	0	0	0	0
SUBTOTAL	2	1	0	0	0
DISTRICT JUDGES					
BROTMAN, STANLEY S.	0	0	0	0	0
DEBEVOISE, DICKINSON R.	10	0	0	0	0
THOMPSON, ANNE E.	3	0	0	0	0
ACKERMAN, HAROLD A.	17	8	0	0	0
RODRIGUEZ, JOSEPH H.	4	0	0	0	0
BROWN, GARRETT E., JR. (CJ)	15	8	0	0	1
COOPER, MARY LITTLE	17	0	0	0	0
IRENAS, JOSEPH E.	5	7	0	0	0
SIMANDLE, JEROME B.	9	1	0	0	0
WALLS, WILLIAM H.	21	18	0	0	0
GREENAWAY, JOSEPH A., JR.	27	0	0	0	0
HAYDEN, KATHARINE S.	20	3	1	0	0
HOCHBERG, FAITH S.	23	3	0	0	2
PISANO, JOEL A.	1	0	0	0	3
CAVANAUGH, DENNIS M.	13	1	0	0	0
MARTINI, WILLIAM J.	2	7	0	0	1
LINARES, JOSE L.	16	0	0	0	0
CHESLER, STANLEY R.	26	6	0	0	0
KUGLER, ROBERT B.	9	0	0	0	0
WOLFSON, FREDA L.	10	0	0	0	0
SHERIDAN, PETER G.	10	3	1	1	0
HILLMAN, NOEL L.	13	11	2	0	0
BUMB, RENEE M.	4	0	0	0	0
WIGENTON, SUSAN D.	3	1	0	0	0
SUBTOTAL	278	77	4	1	7
DISTRICT TOTAL:	280	78	4	1	7

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U.S. DISTRICT COURT FOR PENNSYLVANIA EASTERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
RUETER, THOMAS J.	0	0	0	0	0
WELLS, CAROL SANDRA MOORE	0	0	0	0	0
HART, JACOB P.	0	0	0	0	0
CARACAPPA, LINDA K.	0	1	0	0	0
RICE, TIMOTHY R.	0	0	0	0	0
STRAWBRIDGE, DAVID R.	0	0	0	0	0
RESTREPO, LUIS FELIPE	1	0	0	0	0
PERKIN, HENRY S.	0	0	0	0	0
HEY, ELIZABETH T.	0	0	0	0	0
SITARSKI, LYNNE A.	0	0	0	0	0
RAPOPORT, ARNOLD C.	0	0	0	0	0
ANGELL, M. FAITH	0	3	0	0	0
SUBTOTAL	1	4	0	0	0
DISTRICT JUDGES					
FULLAM, JOHN P.	20	30	0	0	2
DITTER, J. WILLIAM, JR.	1	4	0	1	0
POLLAK, LOUIS H.	7	11	0	0	3
SHAPIRO, NORMA L.	2	3	0	0	0
O'NEILL, THOMAS N., JR.	8	1	0	0	0
KATZ, MARVIN	0	0	0	0	0
LUDWIG, EDMUND V.	0	0	0	0	1
KELLY, ROBERT F.	0	0	0	0	0
REED, LOWELL A., JR.	0	0	0	0	0
DUBOIS, JAN E.	4	4	0	0	0
BUCKWALTER, RONALD L.	9	3	0	0	1
BARTLE, HARVEY, III (CJ)	242	0	0	0	0
YOHN, WILLIAM H., JR.	0	0	0	0	0
KUGLER, ROBERT B. (VJ)	0	1	0	0	0
DALZELL, STEWART	0	0	0	0	0
PADOVA, JOHN R.	1	0	0	0	0
JOYNER, J. CURTIS	4	3	0	0	0
ROBRENO, EDUARDO C.	4	3	0	1	0
BRODY, ANITA B.	3	0	0	0	0
KAUFFMAN, BRUCE W.	23	13	0	1	1

MCLAUGHLIN, MARY A.	16	16	1	0	0
TUCKER, PETRESE B.	3	5	0	1	1
SCHILLER, BERLE M.	1	0	0	0	0
SURRICK, R. BARCLAY	109	158	1	0	1
DAVIS, LEGROME D.	1	0	0	0	0
BAYLSON, MICHAEL M.	0	0	0	0	0
RUFE, CYNTHIA M.	0	0	0	0	0
SAVAGE, TIMOTHY J.	9	2	0	0	0
GARDNER, JAMES KNOLL	0	0	0	0	0
PRATTER, GENE E.K.	2	4	0	0	1

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U.S. DISTRICT COURT FOR PENNSYLVANIA EASTERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
STENGEL, LAWRENCE F.	0	0	0	0	0
DIAMOND, PAUL S.	0	0	0	0	0
SANCHEZ, JUAN R.	0	1	0	0	0
GOLDEN, THOMAS M.	2	0	0	0	1
SLOMSKY, JOEL H.	4	0	0	0	0
GOLDBERG, MITCHELL S.	4	0	0	1	0
JONES, C. DARNELL, II	3	0	0	1	0
SUBTOTAL	482	262	2	6	12
DISTRICT TOTAL:	483	266	2	6	12

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U.S. DISTRICT COURT FOR PENNSYLVANIA MIDDLE

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
SMYSER, J. ANDREW	0	2	0	0	0
BLEWITT, THOMAS M.	0	0	0	0	0
MANNION, MALACHY E.	1	2	0	0	0
ARBUCKLE, WILLIAM	0	0	0	0	0
SUBTOTAL	1	4	0	0	0
DISTRICT JUDGES					
NEALON, WILLIAM J., JR.	1	2	0	0	0
MUIR, MALCOLM	0	0	0	0	0
CONABOY, RICHARD P.	1	0	0	0	0
RAMBO, SYLVIA H.	5	11	1	0	0
CALDWELL, WILLIAM W.	1	1	0	0	0
KOSIK, EDWIN M.	0	2	0	0	0
MCCLURE, JAMES FOCHT, JR.	2	17	0	0	0
VANASKIE, THOMAS I.	13	18	0	0	0
CAPUTO, A. RICHARD	7	12	0	0	0
MUNLEY, JAMES M.	3	6	0	0	0
KANE, YVETTE (CJ)	3	11	0	0	0
CONNER, CHRISTOPHER C.	2	5	0	0	1
JONES, JOHN E., III	6	0	0	0	0
SUBTOTAL	44	85	1	0	1
DISTRICT TOTAL:	45	89	1	0	1

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U.S. DISTRICT COURT FOR PENNSYLVANIA WESTERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
BAXTER, SUSAN PARADISE	0	0	0	0	0
HAY, AMY R.	1	0	0	0	0
LENIHAN, LISA PUPO	1	0	0	0	1
BISSOON, CATHY	1	0	0	0	0
PESTO, KEITH A.	1	2	0	0	0
MITCHELL, ROBERT C.	0	0	0	0	0
SUBTOTAL	4	2	0	0	1
DISTRICT JUDGES					
VANASKIE, THOMAS I. (VJ)	0	1	0	0	0
COHILL, MAURICE B., JR.	8	12	0	0	0
DIAMOND, GUSTAVE	1	0	0	0	0

BLOCH, ALAN N.	0	0	0	0	0
STANDISH, WILLIAM L.	0	0	0	0	0
AMBROSE, DONETTA W. (CJ)	0	0	0	0	0
LANCASTER, GARY L.	3	0	0	0	0
MCLAUGHLIN, SEAN J.	2	1	0	1	0
CONTI, JOY FLOWERS	9	1	0	0	0
CERCONE, DAVID STEWART	2	1	0	0	0
MCVERRY, TERRENCE F.	7	0	0	0	0
SCHWAB, ARTHUR J.	1	0	0	0	0
GIBSON, KIM R.	15	11	0	1	0
FISCHER, NORA B.	4	0	0	0	0
SUBTOTAL	52	27	0	2	0
DISTRICT TOTAL:	56	29	0	2	1

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U.S. DISTRICT COURT FOR VIRGIN ISLANDS

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
BARNARD, G. W.	0	7	0	0	0
CANNON, GEORGE W., JR.	0	8	0	0	0
SUBTOTAL	0	15	0	0	0
DISTRICT JUDGES					
FINCH, RAYMOND L.	85	31	1	0	0
GOMEZ, CURTIS V. (CJ)	38	1	0	4	0
BROTMAN, STANLEY S. (VJ)	0	2	0	0	0
THOMPSON, ANNE E. (VJ)	1	0	0	0	0
DUBOIS, JAN E. (VJ)	1	0	0	0	0
BUCKWALTER, RONALD L. (VJ)	9	1	0	0	0
BARTLE, HARVEY, III (VJ)	5	6	0	0	0
KAUFFMAN, BRUCE W. (VJ)	3	0	0	0	0
SAVAGE, TIMOTHY J. (VJ)	7	1	0	0	0
STENGEL, LAWRENCE F. (VJ)	6	0	0	0	0
SANCHEZ, JUAN R. (VJ)	26	2	0	0	0
UNASSIGNED	48	7	0	0	0
SUBTOTAL	229	51	1	4	0
DISTRICT TOTAL:	229	66	1	4	0
CIRCUIT TOTAL:	1260	667	13	18	22

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U.S. DISTRICT COURT FOR MARYLAND

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
SCHULZE, JILLYN K.	0	0	0	0	19
CONNELLY, WILLIAM G.	0	0	0	0	0
GAUVEY, SUSAN K.	0	0	0	0	0
GRIMM, PAUL W.	2	0	0	0	25
DAY, CHARLES BERNARD	0	0	0	0	0
BREDAR, JAMES K.	0	0	0	0	0
GESNER, BETH P.	0	0	0	0	0
DIGIROLAMO, THOMAS M.	0	0	0	0	4
LAWS, VICTOR H., III	0	0	0	0	0
SUBTOTAL	2	0	0	0	48
DISTRICT JUDGES					
MOTZ, J. FREDERICK	226	0	0	0	0
GARBIS, MARVIN J.	5	0	2	0	0
NICKERSON, WILLIAM M.	3	2	0	0	0
LEGG, BENSON EVERETT (CJ)	7	3	0	0	0
CHASANOW, DEBORAH K.	13	0	0	0	0
MESSITTE, PETER J.	7	44	0	0	0
WILLIAMS, ALEXANDER, JR.	6	0	0	0	0
DAVIS, ANDRE M.	8	1	0	0	0
BLAKE, CATHERINE C.	48	0	0	0	0
QUARLES, WILLIAM D., JR.	1	0	0	0	0
BENNETT, RICHARD D.	0	0	0	0	0
TITUS, ROGER W.	0	0	0	0	0
SUBTOTAL	324	50	2	0	0

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DISTRICT TOTAL:	326	50	2	0	48

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U.S. DISTRICT COURT FOR NO CAROLINA EASTERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
WEBB, WILLIAM A.	0	0	0	0	0
DANIEL, DAVID W.	0	0	0	0	0
GATES, JAMES E.	0	0	0	0	0
JONES, ROBERT B., JR.	0	0	0	0	0
SUBTOTAL	0	0	0	0	0
DISTRICT JUDGES					
BRITT, W. EARL	12	1	0	0	0
FOX, JAMES C.	6	47	0	3	0
BOYLE, TERRENCE WILLIAM	2	0	0	0	0
HOWARD, MALCOLM J.	3	10	0	0	0
FLANAGAN, LOUISE W. (CJ)	1	3	0	0	0
DEVER, JAMES C., III	0	1	0	0	0
SUBTOTAL	24	62	0	3	0
DISTRICT TOTAL:	24	62	0	3	0

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U.S. DISTRICT COURT FOR NO CAROLINA MIDDLE

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
SHARP, PAUL TREVOR	0	12	0	0	0
DIXON, WALLACE W.	0	0	0	0	0
DIETRICH, DONALD P.	0	0	0	0	0
SUBTOTAL	0	12	0	0	0
DISTRICT JUDGES					
TILLEY, N. CARLTON, JR.	9	48	0	0	0
BEATY, JAMES A., JR. (CJ)	2	9	0	0	0
OSTEEN, WILLIAM L., JR.	6	24	0	0	0
SCHROEDER, THOMAS D.	0	12	0	0	0
UNASSIGNED	1	26	0	0	0
SUBTOTAL	18	119	0	0	0
DISTRICT TOTAL:	18	131	0	0	0

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U.S. DISTRICT COURT FOR NO CAROLINA WESTERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
KEESLER, DAVID C.	0	5	0	0	0
HOWELL, DENNIS LEE	0	0	0	0	0
SUBTOTAL	0	5	0	0	0
DISTRICT JUDGES					
VOORHEES, RICHARD L.	1	10	0	1	4
MULLEN, GRAHAM CALDER	7	60	1	1	2
THORNBURG, LACY H.	4	6	0	0	0
CONRAD, ROBERT JAMES, JR. (CJ)	1	17	0	0	1
WHITNEY, FRANK D.	0	1	0	0	0
REIDINGER, MARTIN K.	1	9	0	0	0
SUBTOTAL	14	103	1	2	7
DISTRICT TOTAL:	14	108	1	2	7

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U.S. DISTRICT COURT FOR SOUTH CAROLINA

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
CARR, ROBERT S.	0	0	0	0	0
CATOE, WILLIAM M., JR.	0	0	0	0	0
MCCROREY, JOSEPH R.	0	0	1	0	0
MARCHANT, BRISTOW	0	0	0	0	0
ROGERS, THOMAS EDWARD, III	0	0	0	0	0
HENDRICKS, BRUCE HOWE	0	0	0	0	0
GOSSETT, PAIGE J.	0	0	0	0	0
BUCHANAN, ROBERT L., JR.	0	0	0	0	0
SUBTOTAL	0	0	1	0	0
DISTRICT JUDGES					
BERTELSMAN, WILLIAM O. (VJ)	0	1	0	0	0
BLATT, SOLOMON, JR.	0	0	0	0	0
PERRY, MATTHEW J., JR.	4	7	2	0	0
HOUCK, C. WESTON	1	9	0	0	0
ANDERSON, GEORGE ROSS, JR.	0	0	0	0	0
ANDERSON, JOSEPH F., JR.	0	0	1	0	0
NORTON, DAVID C. (CJ)	1	2	0	1	0
HERLONG, HENRY M., JR.	0	0	0	0	0
CURRIE, CAMERON MCGOWAN	0	0	1	0	0
DUFFY, PATRICK MICHAEL	0	0	1	0	0
SEYMOUR, MARGARET B.	4	0	0	0	0
WOOTEN, TERRY L.	1	0	0	0	0
FLOYD, HENRY F.	0	0	0	0	0
HARWELL, ROBERT BRYAN	1	1	0	0	0
SUBTOTAL	12	20	5	1	0
DISTRICT TOTAL:	12	20	6	1	0

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U.S. DISTRICT COURT FOR VIRGINIA EASTERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
MILLER, TOMMY E.	0	0	0	0	0
BRADBERRY, JAMES E.	0	0	0	0	0
JONES, THOMAS R., JR.	0	0	0	0	0
BUCHANAN, THERESA C.	0	0	0	0	0
DOHNAL, DENNIS	1	0	0	0	0
STILLMAN, F. BRADFORD	0	0	0	0	0
LAUCK, M. HANNAH	0	0	0	0	0
ANDERSON, JOHN F.	0	0	0	0	0
DAVIS, IVAN D.	0	0	0	0	0
PRINCE, WILLIAM T.	0	0	0	0	0
SUBTOTAL	1	0	0	0	0
DISTRICT JUDGES					
WILLIAMS, RICHARD L.	0	5	0	0	0
CACHERIS, JAMES C.	0	1	0	0	0
DOUMAR, ROBERT G.	0	0	0	0	0
HILTON, CLAUDE M.	0	0	0	0	0
SPENCER, JAMES R. (CJ)	2	0	0	0	0
ELLIS, THOMAS SELBY, III	0	0	0	0	0
SMITH, REBECCA BEACH	0	0	0	0	0
MORGAN, HENRY COKE, JR.	0	0	0	0	0
PAYNE, ROBERT E.	0	0	0	0	0
BRINKEMA, LEONIE M.	0	0	0	0	0
JACKSON, RAYMOND ALVIN	0	0	0	0	0
FRIEDMAN, JEROME B.	0	0	0	0	0
LEE, GERALD BRUCE	0	0	0	0	0
HUDSON, HENRY E.	1	0	0	0	0
O'GRADY, LIAM	0	0	0	0	0
DAVIS, MARK S.	1	0	0	0	0
TRENGA, ANTHONY J.	1	0	0	0	0
SUBTOTAL	5	6	0	0	0
DISTRICT TOTAL:	6	6	0	0	0

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U.S. DISTRICT COURT FOR VIRGINIA WESTERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
CRIGLER, B. WAUGH	0	0	0	0	0
SARGENT, PAMELA M.	0	1	0	0	0
URBANSKI, MICHAEL F.	0	0	0	0	0
WELSH, JAMES G.	0	0	0	0	0
SUBTOTAL	0	1	0	0	0
DISTRICT JUDGES					
TURK, JAMES C.	3	3	0	0	0
WILLIAMS, GLEN M.	0	1	0	0	0
KISER, JACKSON L.	0	0	0	0	0
WILSON, SAMUEL GRAYSON	0	0	0	0	0
JONES, JAMES PARKER (CJ)	0	0	0	0	0
MOON, NORMAN K.	0	0	0	0	0
CONRAD, GLEN E.	0	2	0	0	0
SUBTOTAL	3	6	0	0	0
DISTRICT TOTAL:	3	7	0	0	0

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U.S. DISTRICT COURT FOR W VIRGINIA NORTHERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
SEIBERT, JAMES E.	0	0	0	0	0
KAULL, JOHN S.	0	0	0	0	0
JOEL, DAVID J.	0	0	0	0	0
SUBTOTAL	0	0	0	0	0
DISTRICT JUDGES					
MAXWELL, ROBERT EARL	0	0	0	0	0
STAMP, FREDERICK P., JR.	1	0	0	0	0
KEELEY, IRENE M.	2	0	0	0	0
BAILEY, JOHN P. (CJ)	1	0	0	0	0
SUBTOTAL	4	0	0	0	0
DISTRICT TOTAL:	4	0	0	0	0

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U.S. DISTRICT COURT FOR W VIRGINIA SOUTHERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
TAYLOR, MAURICE G., JR.	0	27	0	0	47
STANLEY, MARY E.	0	0	0	0	0
VANDERVORT, R. CLARKE	0	0	0	0	0
SUBTOTAL	0	27	0	0	47
DISTRICT JUDGES					
COPENHAVER, JOHN T., JR.	5	10	1	1	0
FABER, DAVID A.	0	0	0	0	0
GOODWIN, JOSEPH R. (CJ)	0	1	0	0	0
CHAMBERS, ROBERT C.	22	30	0	0	0
JOHNSTON, THOMAS E.	0	0	0	0	0
SUBTOTAL	27	41	1	1	0
DISTRICT TOTAL:	27	68	1	1	47
CIRCUIT TOTAL:	434	452	10	7	102

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U.S. DISTRICT COURT FOR LOUISIANA EASTERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
CHASEZ, ALMA	0	0	0	0	0
MOORE, LOUIS, JR.	0	0	0	0	0
WILKINSON, JOSEPH C., JR.	1	0	0	0	0
SHUSHAN, SALLY	0	0	0	0	0
ROBY, KAREN WELLS	0	0	0	0	0
KNOWLES, DANIEL E., III	4	0	0	0	0
SUBTOTAL	5	0	0	0	0
DISTRICT JUDGES					
HEEBE, FREDERICK J.	0	0	0	0	0
WALTER, DONALD E. (VJ)	1	0	0	0	0
SCHWARTZ, CHARLES, JR.	0	0	0	0	0
BEER, PETER	0	0	0	0	0
MCNAMARA, A. J.	1	0	0	0	0
FELDMAN, MARTIN L. C.	15	0	0	0	0
BERRIGAN, HELEN G.	0	2	0	4	0
DUVAL, STANWOOD R., JR.	9	6	0	0	1
VANCE, SARAH S. (CJ)	4	0	0	0	0
PORTEOUS, G. THOMAS, JR.	0	0	0	0	0
FALLON, ELDON E.	4263	10	0	0	0
LEMMON, MARY ANN VIAL	4	4	0	0	0
LEMELLE, IVAN L.	3	0	0	0	0
BARBIER, CARL J.	1	0	0	0	0
ENGELHARDT, KURT D.	4	0	0	0	0
ZAINEY, JAY C.	2	0	0	0	1
AFRICK, LANCE M.	1	0	0	0	0
SUBTOTAL	4308	22	0	4	2
DISTRICT TOTAL:	4313	22	0	4	2

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U.S. DISTRICT COURT FOR LOUISIANA MIDDLE

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
RIEDLINGER, STEPHEN C.	1	29	0	0	0
NOLAND, CHRISTINE	0	0	0	0	0
DALBY, DOCIA L.	0	0	0	0	0
SUBTOTAL	1	29	0	0	0
DISTRICT JUDGES					
PARKER, JOHN V.	5	1	0	0	1
POLOZOLA, FRANK J.	0	0	0	0	0
TYSON, RALPH E. (CJ)	35	98	1	3	4
BRADY, JAMES J.	10	3	0	0	0
SUBTOTAL	50	102	1	3	5
DISTRICT TOTAL:	51	131	1	3	5

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U.S. DISTRICT COURT FOR LOUISIANA WESTERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
METHVIN, MILDRED E.	0	5	0	0	0
KIRK, JAMES D.	0	0	0	0	0
HILL, CHARLES M.	0	4	0	0	0
HORNSBY, MARK L.	0	2	0	0	0
HAYES, KAREN L.	0	0	0	0	0
KAY, KATHLEEN	1	3	1	0	0
SUBTOTAL	1	14	1	0	0
DISTRICT JUDGES					
STAGG, TOM	1	1	0	0	1
WALTER, DONALD E.	3	0	0	0	0

HAIK, RICHARD T. (CJ)	15	15	0	1	6
TRIMBLE, JAMES T., JR.	15	6	0	0	0
DOHERTY, REBECCA F.	3	9	0	0	4
MELANCON, TUCKER L.	5	1	0	0	3
JAMES, ROBERT G.	1	4	0	0	0
DRELL, DEE D.	9	8	0	0	0
HICKS, S. MAURICE, JR.	6	38	0	0	0
MINALDI, PATRICIA H.	1	6	0	0	1
VANCE, SARAH S. (VJ)	2	0	0	0	0
LEMELLE, IVAN L. (VJ)	1	0	0	0	0
BLOCK, FREDERIC (VJ)	1	0	0	0	0
SUBTOTAL	63	88	0	1	15
DISTRICT TOTAL:	64	102	1	1	15

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U.S. DISTRICT COURT FOR MISSISSIPPI NORTHERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
DAVIS, JERRY A.	1	0	0	0	0
ALEXANDER, S. ALLAN	0	0	0	0	0
SANDERS, DAVID A.	0	0	0	0	0
SUBTOTAL	1	0	0	0	0
DISTRICT JUDGES					
BIGGERS, NEAL	0	0	0	0	0
DAVIDSON, GLEN H.	1	0	0	0	0
PEPPER, W. ALLEN, JR.	6	2	0	0	0
MILLS, MICHAEL P. (CJ)	1	0	0	0	0
AYCOCK, SHARION	3	0	0	0	0
SUBTOTAL	11	2	0	0	0
DISTRICT TOTAL:	12	2	0	0	0

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U.S. DISTRICT COURT FOR MISSISSIPPI SOUTHERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
ROPER, JOHN M.	0	0	0	0	0
SUMNER, JAMES C.	0	0	0	0	0
WALKER, ROBERT H.	0	0	0	0	0
PARKER, MICHAEL T.	0	0	0	0	0
ANDERSON, LINDA R.	0	2	0	0	0
SUBTOTAL	0	2	0	0	0
DISTRICT JUDGES					
RUSSELL, DAN M., JR.	0	0	0	0	0
SENTER, L. T., JR.	0	0	0	0	0
BARBOUR, WILLIAM HENRY, JR.	3	0	0	0	0
BIGGERS, NEAL (VJ)	1	0	0	0	0
LEE, TOM S.	3	4	0	0	0
WINGATE, HENRY T. (CJ)	20	96	2	0	1
GEX, WALTER J., III	1	0	0	0	0
BRAMLETTE, DAVID	1	0	0	0	0
GUIROLA, LOUIS, JR.	1	4	0	0	0
STARRETT, KEITH	1	0	0	0	0
JORDAN, DANIEL P., III	2	0	0	0	0
OZERDEN, SUL	0	0	0	0	0
O'MALLEY, KATHLEEN M. (VJ)	0	1	0	0	0
UNASSIGNED	0	1	0	0	0
SUBTOTAL	33	106	2	0	1
DISTRICT TOTAL:	33	108	2	0	1

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U.S. DISTRICT COURT FOR TEXAS NORTHERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
SANDERSON, WILLIAM F., JR.	0	0	0	0	0
AVERITTE, CLINTON E.	0	0	0	0	0
KAPLAN, JEFF	0	1	0	0	0
BLSIL, CHARLES M.	0	0	0	0	0
STICKNEY, PAUL D.	0	0	0	0	0
KOENIG, NANCY M.	0	0	0	0	0
RAMIREZ, IRMA C.	0	0	0	0	0
LANE, PHILIP R.	1	0	0	0	0
ROACH, ROBERT K.	0	0	0	0	0
SUBTOTAL	1	1	0	0	0
DISTRICT JUDGES					
ROBINSON, MARY LOU	1	1	1	1	0
BUCHMEYER, JERRY	0	0	0	0	0
FISH, A. JOE	3	3	0	0	0
MALONEY, ROBERT B.	0	0	0	0	0
FITZWATER, SIDNEY A. (CJ)	1	1	0	0	0
CUMMINGS, SAMUEL RAY	0	0	0	0	0
MCBRYDE, JOHN H.	0	0	0	0	0
FURGESON, W. ROYAL, JR.	10	27	0	0	0
SOLIS, JORGE A.	3	0	0	0	0
MEANS, TERRY	1	0	0	0	0
LINDSAY, SAM A.	0	0	0	0	0
LYNN, BARBARA M. G.	4	1	0	0	0
GODBEY, DAVID C.	3	0	0	0	0
KINKEADE, JAMES EDGAR	0	0	0	0	0
BOYLE, JANE J.	1	0	0	0	0
O'CONNOR, REED	1	11	0	0	0
SUBTOTAL	28	44	1	1	0
DISTRICT TOTAL:	29	45	1	1	0

0

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U.S. DISTRICT COURT FOR TEXAS EASTERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
BRYANT, BARRY A. (VJ)	1	0	0	0	0
HINES, EARL S.	0	0	0	0	0
GUTHRIE, JUDITH K.	0	0	0	0	0
CRAVEN, CAROLINE M.	0	0	0	0	0
BUSH, DONALD D.	0	0	0	0	0
GIBLIN, KEITH F.	0	4	0	0	0
LOVE, JOHN D.	0	0	0	0	0
EVERINGHAM, CHARLES, IV	0	0	0	0	0
MAZZANT, AMOS	0	0	0	0	0
SUBTOTAL	1	4	0	0	0
DISTRICT JUDGES					
JUSTICE, WILLIAM WAYNE (VJ)	1	0	0	0	0
SCHELL, RICHARD A.	7	0	0	0	0
FOLSOM, DAVID (CJ)	10	1	0	0	0
HEARTFIELD, THAD	0	0	0	0	0
WARD, T. JOHN	7	0	0	0	0
DAVIS, LEONARD E.	3	0	0	0	0
CLARK, RON	0	0	0	0	0
CRONE, MARCIA A.	0	0	0	0	0
SCHNEIDER, MICHAEL H.	0	0	0	0	0
SUBTOTAL	28	1	0	0	0
DISTRICT TOTAL:	29	5	0	0	0

0

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U.S. DISTRICT COURT FOR TEXAS SOUTHERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
BOTLEY, CALVIN	0	0	0	0	0
STACY, FRANCES	0	0	0	0	0
JOHNSON, NANCY K.	0	0	0	0	0
FROESCHNER, JOHN R.	0	1	0	0	0
MILLOY, MARYROSE	0	0	0	0	0

RAMOS, DORINA	0	0	0	0	0
ELLINGTON, B. JANICE	0	0	0	0	0
RECIO, FELIX, JR.	0	0	0	0	0
SMITH, STEPHEN W.	0	0	0	0	0
ORMSBY, PETER E.	0	0	0	0	0
OWSLEY, BRIAN L.	0	0	0	0	0
SALDANA, DIANA	0	0	0	0	0
HACKER, J. SCOTT	0	0	0	0	0
SUBTOTAL	0	1	0	0	0
DISTRICT JUDGES					
HUDSPETH, HARRY LEE (VJ)	0	2	0	0	0
KAZEN, GEORGE P.	3	0	0	0	1
KEAR, HAYDEN W., JR. (CJ)	0	0	1	0	0
HINOJOSA, RICARDO H.	4	3	0	0	0
HUGHES, LYNN N.	9	20	0	0	0
HITTNER, DAVID	1	1	0	0	0
ROYT, KENNETH M.	3	0	0	0	0
LAKE, SIMEON TIMOTHY, III	2	0	0	0	0
HARMON, MELINDA	40	1	0	1	0
RAINEY, JOHN D.	10	0	1	0	0
KENT, SAMUEL B.	0	0	0	0	0
WERLEIN, EWING, JR.	3	2	0	0	0
ROSENTHAL, LEE H.	3	6	0	0	0
JACK, JANIS GRAHAM	0	0	0	0	0
GILMORE, VANESSA D.	3	1	0	0	0
ATLAS, NANCY F.	0	0	0	0	0
LEMELLE, IVAN L. (VJ)	1	0	0	0	0
TAGLE, HILDA G.	3	2	0	0	0
ELLISON, KEITH P.	0	0	0	0	0
CRANE, RANDY	1	2	0	0	0
HANEN, ANDREW S.	3	2	0	0	0
ALVAREZ, MICAELA	0	0	0	0	0
MILLER, GRAY H.	2	0	0	0	0
SUBTOTAL	91	42	2	1	1
DISTRICT TOTAL:	91	43	2	1	1

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U.S. DISTRICT COURT FOR TEXAS WESTERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
GREEN, DENNIS G.	0	0	0	0	0
PRIMOMO, JOHN W.	0	0	0	0	0
NOWAK, NANCY S.	0	0	0	0	0
MESA, RICHARD	0	0	0	0	0
MCDONALD, MICHAEL S.	0	0	0	0	0
MATHY, PAMELA ANN	0	0	0	0	0
AUSTIN, ANDREW W.	0	0	0	0	0
GARNEY, NORBERT J.	0	0	0	0	7
MANSKE, JEFFREY C.	0	2	0	0	0
GARCIA, VICTOR ROBERTO	0	0	0	0	0
PITMAN, ROBERT L.	0	0	0	0	0
GOAINS, B. DWIGHT	0	0	0	0	0
SUBTOTAL	0	2	0	0	7
DISTRICT JUDGES					
JUSTICE, WILLIAM WAYNE	0	0	0	0	0
HUDSPETH, HARRY LEE	2	1	0	0	0
NOWLIN, JAMES R.	0	0	0	0	0
SMITH, WALTER S., JR. (CJ)	5	5	0	0	0
SPARKS, SAM	1	0	0	0	0
FURGESON, W. ROYAL, JR. (VJ)	2	0	0	0	0
GARCIA, ORLANDO L.	1	0	0	0	0
BIERY, SAMUEL F., JR.	2	0	0	0	0
BRIONES, DAVID	3	0	0	0	0
MARTINEZ, PHILIP R.	1	0	0	0	0
LUDLUM, ALIA MOSES	0	0	0	0	0
JUNELL, ROBERT A.	0	1	0	0	0
CARDONE, KATHLEEN	0	0	0	0	0
YEAKEL, LEE	0	0	0	0	0
MONTALVO, FRANK	0	0	0	0	0
RODRIGUEZ, XAVIER	0	0	0	0	0
SUBTOTAL	17	7	0	0	0
DISTRICT TOTAL:	17	9	0	0	7
CIRCUIT TOTAL:	4639	467	7	10	31

DISTRICT SUMMARY REPORT

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U.S. DISTRICT COURT FOR KENTUCKY EASTERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
WEHRMAN, J. GREGORY	0	0	0	0	0
TODD, JAMES B.	0	0	0	0	0
ATKINS, EDWARD B.	0	0	0	0	0
WIER, ROBERT E.	0	0	0	0	0
SUBTOTAL	0	0	0	0	0
DISTRICT JUDGES					
BERTELSMAN, WILLIAM O.	2	2	0	0	0
UNTHANK, G. WIX	0	0	0	0	0
WILHOIT, HENRY R., JR.	0	0	0	0	0
FORESTER, KARL S.	0	0	0	0	0
HOOD, JOSEPH M.	0	0	0	0	0
COFFMAN, JENNIFER B. (CJ)	4	0	0	0	0
CALDWELL, KAREN K.	3	0	0	0	0
REEVES, DANNY C.	0	0	0	0	0
BUNNING, DAVID L.	15	8	0	0	0
VAN TATENHOVE, GREGORY F.	2	0	0	0	0
THAPAR, AMUL R.	4	0	0	0	0
SUBTOTAL	30	10	0	0	0
DISTRICT TOTAL:	30	10	0	0	0

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U.S. DISTRICT COURT FOR KENTUCKY WESTERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
KING, W. DAVID	0	0	0	0	0
MOYER, JAMES D.	2	1	0	0	0
GOEBEL, E. ROBERT	0	0	0	0	0
WHALIN, DAVE	1	0	0	0	0
SUBTOTAL	3	1	0	0	0
DISTRICT JUDGES					
JOHNSTONE, EDWARD H.	0	0	0	0	0
SIMPSON, CHARLES R., III	13	3	0	0	0
COFFMAN, JENNIFER B.	6	1	0	0	0
HEYBURN, JOHN G., II	4	1	0	0	0
RUSSELL, THOMAS B. (CJ)	4	2	0	0	0
MCKINLEY, JOSEPH H., JR.	9	0	0	0	0
THAPAR, AMUL R. (VJ)	0	1	0	0	0
SUBTOTAL	36	8	0	0	0
DISTRICT TOTAL:	39	9	0	0	0

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U.S. DISTRICT COURT FOR MICHIGAN EASTERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
PEPE, STEVEN D.	1	3	0	0	0
BINDER, CHARLES E.	0	1	0	0	0
MORGAN, VIRGINIA	0	0	0	0	0
SCHEER, DONALD A.	0	0	0	0	0
WEALEN, R. STEVEN	0	0	0	0	0
MAJZOUB, MONA K.	0	0	0	0	0
HLUCHANIUK, MICHAEL	0	0	0	0	0
KOMIVES, PAUL J.	0	1	0	0	0
SUBTOTAL	1	5	0	0	0
DISTRICT JUDGES					
SIMPSON, CHARLES R., III (VJ)	0	1	0	0	0

FEIKENS, JOHN	2	17	0	0	0
JOINER, CHARLES W.	0	0	0	0	0
COOK, JULIAN ABELE, JR.	5	1	0	0	0
COHN, AVERN	10	10	0	0	0
TAYLOR, ANNA DIGGS	2	0	0	0	0
ZATKOFF, LAWRENCE P.	0	0	0	0	0
DUGGAN, PATRICK J.	2	4	0	0	0
FRIEDMAN, BERNARD A.	7	3	0	0	0
ROSEN, GERALD E. (CJ)	10	12	0	3	1
CLELAND, ROBERT H.	2	0	0	0	0
EDMUNDS, NANCY G.	1	0	0	0	0
HOOD, DENISE PAGE	45	1	1	2	1
BORMAN, PAUL D.	7	8	0	0	0
O'MEARA, JOHN CORBETT	1	0	0	0	0
TARNOW, ARTHUR J.	5	2	0	0	0
STEEH, GEORGE CARAM, III	2	0	0	0	0
ROBERTS, VICTORIA A.	0	1	0	0	0
BATTANI, MARIANNE O.	4	1	0	0	0
LAWSON, DAVID M.	4	8	0	0	0
LUDINGTON, THOMAS L.	1	2	0	0	0
COX, SEAN F.	1	6	0	0	0
MURPHY, STEPHEN J., III	8	6	0	0	0
UNASSIGNED	1	0	0	0	0
SUBTOTAL	120	83	1	5	2
DISTRICT TOTAL:	121	88	1	5	2

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U.S. DISTRICT COURT FOR MICHIGAN WESTERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
BRENNEMAN, HUGH W., JR.	0	0	0	0	0
SCOVILLE, JOSEPH G.	0	5	0	0	0
GREELEY, TIMOTHY P.	0	1	0	0	0
CARMODY, ELLEN	1	0	0	0	0
SUBTOTAL	1	6	0	0	0
DISTRICT JUDGES					
EDGAR, R. ALLAN (VJ)	0	1	0	0	1
BELL, ROBERT HOLMES	16	36	0	0	0
QUIST, GORDON J.	2	0	0	0	0
MALONEY, PAUL L. (CJ)	10	34	0	1	3
JONKER, ROBERT J.	4	2	0	0	1
NEFF, JANET T.	2	6	0	0	3
SUBTOTAL	34	79	0	1	8
DISTRICT TOTAL:	35	85	0	1	8

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U.S. DISTRICT COURT FOR OHIO NORTHERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
ARMSTRONG, VERNELIS K.	0	0	0	0	0
VECCHIARELLI, NANCY A.	0	0	0	0	0
LIMBERT, GEORGE J.	1	0	0	0	0
BAUGHMAN, WILLIAM H., JR.	0	1	0	0	5
MCHARGH, KENNETH S.	0	0	0	0	0
WHITE, GREG	0	0	0	0	0
PEARSON, BENITA Y.	0	0	0	0	0
PERELMAN, DAVID	0	0	0	0	0
GALLAS, JAMES S.	1	1	0	0	0
SUBTOTAL	2	2	0	0	5
DISTRICT JUDGES					
ALDRICH, ANN	4	7	0	0	1
DOWD, DAVID D., JR.	0	3	0	0	0
WELLS, LESLEY	4	1	0	0	0
CARR, JAMES G. (CJ)	7	7	0	0	0
OLIVER, SOLOMON, JR.	11	22	0	6	1
KATZ, DAVID A.	13	18	0	0	0
O'MALLEY, KATHLEEN M.	821	0	0	0	0
ECONOMUS, PETER C.	3	2	0	0	0
NUGENT, DONALD C.	1	0	0	0	0

GAUGHAN, PATRICIA A.	1	0	0	0	0
GWIN, JAMES S.	0	0	0	0	0
POLSTER, DAN A.	1	0	0	0	0
ADAMS, JOHN R.	2	9	0	0	1
BOYKO, CHRISTOPHER A.	2	0	0	0	0
ZOUHARY, JACK	0	0	0	0	0
LIOI, SARA E.	1	0	0	0	0
SUBTOTAL	871	69	0	6	3
DISTRICT TOTAL:	873	71	0	6	8

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U.S. DISTRICT COURT FOR OHIO SOUTHERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
ABEL, MARK R.	0	0	0	0	0
KING, NORAH M.	1	2	0	0	0
MERZ, MICHAEL R.	1	0	0	0	0
KEMP, TERENCE	1	0	0	0	0
HOGAN, TIMOTHY S.	2	4	1	0	0
OVINGTON, SHARON L.	1	0	0	0	0
BLACK, TIMOTHY S.	2	0	0	0	0
SUBTOTAL	8	6	1	0	0
DISTRICT JUDGES					
SPIEGEL, S. ARTHUR	6	7	0	0	1
HOLSCHUH, JOHN DAVID	8	4	0	0	0
RICE, WALTER HERBERT	17	0	0	0	0
WEBER, HERMAN J.	1	24	0	0	7
GRAHAM, JAMES L.	1	1	0	0	0
SMITH, GEORGE C.	4	5	0	0	0
BECKWITH, SANDRA S.	3	2	0	0	3
DLOTT, SUSAN J. (CJ)	9	16	1	0	1
SARGUS, EDMUND A., JR.	7	0	0	0	0
MARBLEY, ALGENON L.	9	0	0	0	0
ROSE, THOMAS M.	4	0	0	0	0
FROST, GREGORY L.	1	0	0	0	0
WATSON, MICHAEL H.	13	13	0	0	0
BARRETT, MICHAEL R.	2	5	0	0	0
UNASSIGNED	0	1	0	0	0
SUBTOTAL	85	78	1	0	12
DISTRICT TOTAL:	93	84	2	0	12

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U.S. DISTRICT COURT FOR TENNESSEE EASTERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
INMAN, DENNIS HISEY	1	0	0	0	0
CARTER, WILLIAM B.	0	5	0	0	0
SHIRLEY, C. CLIFFORD, JR.	0	0	0	0	0
GUYTON, H. BRUCE	0	0	0	0	0
LEE, SUSAN K.	0	0	0	0	0
SUBTOTAL	1	5	0	0	0
DISTRICT JUDGES					
EDGAR, R. ALLAN	9	14	0	0	1
JORDAN, ROBERT LEON	10	9	0	0	0
COLLIER, CURTIS LYNN (CJ)	9	16	0	0	0
PHILLIPS, THOMAS W.	14	4	0	0	0
VARLAN, THOMAS A.	0	0	0	0	0
GREER, J. RONNIE	2	13	0	0	0
MATTICE, SANDY	1	0	0	0	0
SUBTOTAL	45	56	0	0	1
DISTRICT TOTAL:	46	61	0	0	1

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U.S. DISTRICT COURT FOR TENNESSEE MIDDLE

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
GRIFFIN, JULIET E.	0	0	0	0	0
BROWN, JOE B.	0	0	0	0	0
KNOWLES, E. CLIFTON	0	0	0	0	0
BRYANT, JOHN S.	0	0	0	0	0
SUBTOTAL	0	0	0	0	0
DISTRICT JUDGES					
WISEMAN, THOMAS A., JR.	1	0	0	0	13
NIXON, JOHN T.	22	77	0	0	30
ECHOLS, ROBERT L.	0	0	0	0	0
CAMPBELL, TODD J. (CJ)	0	1	0	0	0
TRAUGER, ALETA ARTHUR	10	0	0	0	0
HAYNES, WILLIAM JOSEPH, JR.	3	0	0	0	0
SUBTOTAL	36	78	0	0	43
DISTRICT TOTAL:	36	78	0	0	43

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U.S. DISTRICT COURT FOR TENNESSEE WESTERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
VESCOVO, DIANE K.	1	0	0	0	0
PHAM, TU M.	1	0	0	0	0
BRYANT, EDWARD G.	0	0	0	0	0
COHN, GERALD	0	0	0	0	0
SUBTOTAL	2	0	0	0	0
DISTRICT JUDGES					
TODD, JAMES DALE	3	0	0	0	0
MCCALLA, JON P. (CJ)	4	0	0	0	0
DONALD, BERNICE BOUIE	5	0	0	0	0
MAYS, SAMUEL H., JR.	5	0	0	0	0
BREEN, J. DANIEL	12	3	0	0	0
ANDERSON, S. THOMAS	9	17	0	0	0
SUBTOTAL	38	20	0	0	0
DISTRICT TOTAL:	40	20	0	0	0
CIRCUIT TOTAL:	1313	506	3	12	74

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U.S. DISTRICT COURT FOR ILLINOIS NORTHERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
MAHONEY, P. MICHAEL	1	0	0	0	0
ASHMAN, MARTIN C.	3	0	0	0	0
KEYS, ARLANDER	0	0	0	0	0
DENLOW, MORTON	3	0	0	0	0
NOLAN, NAN R.	2	0	0	0	0
SCHENKIER, SIDNEY	4	0	0	0	0
BROWN, GERALDINE SOAT	2	0	0	0	0
MASON, MICHAEL T.	1	0	0	0	0
COLE, JEFFEREY N.	1	0	1	0	0
VALDEZ, MARIA G.	2	0	1	0	0
COX, SUSAN E.	1	0	0	0	0
UNASSIGNED	1	0	0	0	0
SUBTOTAL	21	0	2	0	0
DISTRICT JUDGES					
POSNER, RICHARD A.	1	0	0	0	0
GRADY, JOHN F.	96	2	0	0	0
ASPEN, MARVIN E.	55	0	0	1	0
SHADUR, MILTON I.	9	0	0	0	0
KOCORAS, CHARLES P.	5	0	0	0	0

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NORDBERG, JOHN A.	9	11	0	0	0
HART, WILLIAM T.	4	9	0	0	0
PLUNKETT, PAUL E.	0	0	0	0	0
NORGLE, CHARLES R., SR.	56	0	0	1	0
HOLDERMAN, JAMES F., JR. (CJ)	15	0	0	0	0
LEINENWEBER, HARRY D.	2	5	0	0	0
ZAGEL, JAMES B.	38	12	0	1	0
CONLON, SUZANNE B.	0	0	0	0	0
MAROVICH, GEORGE M.	2	0	0	0	0
LINDBERG, GEORGE W.	0	1	0	0	0
ANDERSEN, WAYNE R.	22	9	0	0	0
REINHARD, PHILIP G.	4	0	0	0	0
CASTILLO, RUBEN	0	0	0	0	0
MANNING, BLANCHE M.	8	0	0	0	0
COAR, DAVID H.	9	32	0	1	0
GETTLEMAN, ROBERT W.	15	3	0	0	0
BUCKLO, ELAINE E.	7	0	0	0	0
GOTTSCHALL, JOAN B.	40	0	0	0	0
FALLMEYER, REBECCA R.	7	2	0	0	0
KENNELLY, MATTHEW F.	7	0	0	0	0
HIBBLER, WILLIAM J.	4	0	0	0	0
GUZMAN, RONALD A.	9	7	1	0	0
DARRAH, JOHN W.	3	0	0	0	0
LEFKOW, JOAN HUMPHREY	9	2	0	7	0
ST. EVE, AMY J.	4	0	0	0	0

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U.S. DISTRICT COURT FOR ILLINOIS NORTHERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
DER-YEGHIAYAN, SAMUEL	0	0	0	0	0
KENDALL, VIRGINIA M.	2	0	0	0	0
KAPALA, FREDERICK J.	22	3	0	0	0
DOW, ROBERT M.	12	3	0	0	0
UNASSIGNED	12	8	0	1	0
SUBTOTAL	488	109	1	12	0
DISTRICT TOTAL:	509	109	3	12	0

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U.S. DISTRICT COURT FOR ILLINOIS CENTRAL

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
BERNTHAL, DAVID G.	1	0	0	0	0
CUDMORE, BYRON G.	0	0	0	0	0
GORMAN, JOHN A.	2	0	0	0	0
EVANS, CHARLES H.	0	0	0	0	0
SUBTOTAL	3	0	0	0	0
DISTRICT JUDGES					
BAKER, HAROLD ALBERT	6	3	0	0	0
MIHM, MICHAEL M.	2	0	0	0	0
MILLS, RICHARD	3	0	0	0	0
MCDADE, JOE BILLY	4	0	0	0	0
MCCUSKEY, MICHAEL PATRICK (CJ)	1	0	0	0	1
SCOTT, JEANNE E.	2	0	0	0	0
SUBTOTAL	18	3	0	0	1
DISTRICT TOTAL:	21	3	0	0	1

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U.S. DISTRICT COURT FOR ILLINOIS SOUTHERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
FRAZIER, PHILLIP M	0	0	0	0	0
PROUD, CLIFFORD J.	1	1	0	0	0
WILKERSON, DONALD G.	3	1	0	0	0
SUBTOTAL	4	2	0	0	0
DISTRICT JUDGES					

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STIEHL, WILLIAM D.	4	5	0	0	0
GILBERT, J. PHIL	23	14	0	0	0
MURPHY, G. PATRICK	6	0	0	0	0
HERNDON, DAVID R. (CJ)	14	3	0	0	0
REAGAN, MICHAEL J.	4	8	1	2	0
SUBTOTAL	51	30	1	2	0
DISTRICT TOTAL:	55	32	1	2	0

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U.S. DISTRICT COURT FOR INDIANA NORTHERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
ROBOVICH, ANDREW P.	2	2	0	0	1
COSBEY, ROGER B.	0	2	0	0	0
NUECHTERLEIN, CHRISTOPHER	0	0	0	0	0
CHERRY, PAUL R.	0	0	0	0	0
SUBTOTAL	2	4	0	0	1
DISTRICT JUDGES					
SHARP, ALLEN	0	0	0	0	0
LEE, WILLIAM C.	3	1	0	0	0
MOODY, JAMES T.	3	2	0	0	0
MILLER, ROBERT L., JR. (CJ)	35	26	0	0	0
LOZANO, RUDY	0	0	0	0	0
SIMON, PHILIP PETER	0	1	0	0	0
SPRINGMANN, THERESA L.	3	24	0	0	0
VAN BOKKELEN, JOSEPH	11	16	0	0	3
SUBTOTAL	55	70	0	0	3
DISTRICT TOTAL:	57	74	0	0	4

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U.S. DISTRICT COURT FOR INDIANA SOUTHERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
FOSTER, KENNARD P.	0	0	0	0	0
HUSSMANN, WILLIAM G., JR.	1	0	0	0	1
BAKER, TIM A.	0	0	0	0	0
MAGNUS-STINSON, JANE E.	0	0	0	0	0
LYNCH, DEBRA MCVICKER	0	0	0	0	0
MCKEE, CRAIG M.	0	0	0	0	0
NAVILLE, MICHAEL G.	0	0	0	0	0
SUBTOTAL	1	0	0	0	1
DISTRICT JUDGES					
BARKER, SARAH EVANS	20	5	1	0	0
MCKINNEY, LARRY J.	13	7	0	0	3
TINDER, JOHN DANIEL	1	1	0	0	0
HAMILTON, DAVID F. (CJ)	46	7	0	0	0
YOUNG, RICHARD L.	9	2	1	0	0
LAWRENCE, WILLIAM T.	7	0	0	0	0
SUBTOTAL	96	22	2	0	3
DISTRICT TOTAL:	97	22	2	0	4

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U.S. DISTRICT COURT FOR WISCONSIN EASTERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
GOODSTEIN, AARON E.	1	0	0	0	0
GORENCE, PATRICIA J.	1	1	0	0	0
CALLAHAN, WILLIAM E., JR.	2	0	0	0	0
SICKEL, JAMES	0	0	0	0	0

SUBTOTAL	4	1	0	0	0
DISTRICT JUDGES					
STADTMUELLER, J.P.	3	0	0	0	0
RANDA, RUDOLPH T. (CJ)	3	0	0	0	0
CLEVERT, C. N.	24	17	3	1	5
ADELMAN, LYNN S.	10	0	0	0	0
GRIESBACH, WILLIAM C.	1	0	0	0	0
SUBTOTAL	41	17	3	1	5
DISTRICT TOTAL:	45	18	3	1	5

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U.S. DISTRICT COURT FOR WISCONSIN WESTERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
CROCKER, STEPHEN L.	0	0	0	0	0
SUBTOTAL	0	0	0	0	0
DISTRICT JUDGES					
CRABB, BARBARA B. (CJ)	0	0	0	0	0
SHABAZ, JOHN C.	0	0	0	0	0
SUBTOTAL	0	0	0	0	0
DISTRICT TOTAL:	0	0	0	0	0
CIRCUIT TOTAL:	704	258	9	15	14

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U.S. DISTRICT COURT FOR ARKANSAS EASTERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
JONES, HENRY L., JR.	1	0	0	0	0
YOUNG, H. DAVID	1	0	0	0	0
RAY, J. THOMAS	0	0	0	0	0
DEERE, BETH	0	0	0	0	0
CAVANEAU, JERRY W.	0	0	0	0	0
SUBTOTAL	2	0	0	0	0
DISTRICT JUDGES					
EISELE, GARNETT THOMAS	0	1	0	0	0
WRIGHT, SUSAN WEBBER	3	4	0	0	0
WILSON, WILLIAM R., JR.	2042	0	0	0	0
MOODY, JAMES MAXWELL	4	1	0	0	0
HOLMES, J. LEON (CJ)	2	0	0	0	0
MILLER, BRIAN S.	0	1	0	0	0
WHIPPLE, DEAN (VJ)	0	1	0	0	0
SUBTOTAL	2051	8	0	0	0
DISTRICT TOTAL:	2053	8	0	0	0

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U.S. DISTRICT COURT FOR ARKANSAS WESTERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
MARSCHEWSKI, JAMES R.	0	0	0	0	0
BRYANT, BARRY A.	0	0	0	0	0
SUBTOTAL	0	0	0	0	0
DISTRICT JUDGES					

HENDREN, JIMM LARRY (CJ)	0	0	0	0	0
BARNES, HARRY F.	1	0	0	0	0
DAWSON, ROBERT T.	0	0	0	0	0
SUBTOTAL	1	0	0	0	0
DISTRICT TOTAL:	1	0	0	0	0

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U.S. DISTRICT COURT FOR IOWA NORTHERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
ZOSS, PAUL A.	0	0	0	0	0
SCOLES, JON S.	0	0	0	0	0
SUBTOTAL	0	0	0	0	0
DISTRICT JUDGES					
MCMANUS, EDWARD J.	1	20	0	0	0
O'BRIEN, DONALD E.	3	0	0	0	0
BENNETT, MARK W.	1	0	0	0	0
READE, LINDA R. (CJ)	0	0	0	0	0
SUBTOTAL	5	20	0	0	0
DISTRICT TOTAL:	5	20	0	0	0

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U.S. DISTRICT COURT FOR IOWA SOUTHERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
BREMER, CELESTE	0	0	0	0	0
WALTERS, ROSS A.	0	2	0	0	0
SHIELDS, THOMAS J.	2	1	0	0	0
SUBTOTAL	2	3	0	0	0
DISTRICT JUDGES					
VIETOR, HAROLD D.	1	0	0	0	0
WOLLE, CHARLES R.	0	0	0	0	0
LONGSTAFF, RONALD E.	12	1	0	0	0
PRATT, ROBERT W. (CJ)	6	5	0	0	0
GRITZNER, JAMES E.	3	2	0	0	2
JARVEY, JOHN A.	0	0	0	0	0
SUBTOTAL	22	8	0	0	2
DISTRICT TOTAL:	24	11	0	0	2

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U.S. DISTRICT COURT FOR MINNESOTA

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
NOEL, FRANKLIN L.	0	0	0	0	0
ERICKSON, RAYMOND L.	0	0	0	0	0
BOYLAN, ARTHUR J.	0	0	0	0	0
NELSON, SUSAN RICHARD	0	0	0	0	0
MAYERON, JANIE S.	0	0	0	0	0
GRAHAM, JEANNE J.	0	0	0	0	0
KEYES, JEFFREY J.	0	0	0	0	0
KLEIN, MARY KAY	0	0	0	0	0
SUBTOTAL	0	0	0	0	0
DISTRICT JUDGES					
ALSOP, DONALD D.	0	0	0	0	0
MAGNUSON, PAUL A.	8	0	0	0	0
ROSENBAUM, JAMES M.	3	2	0	0	0

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DOTY, DAVID S.	0	1	0	0	0
KYLE, RICHARD H.	3	1	0	0	0
DAVIS, MICHAEL JAMES (CJ)	15	2	0	0	0
TUNHEIM, JOHN R.	9	0	0	0	0
MONTGOMERY, ANN D.	1	0	0	0	0
FRANK, DONOVAN W.	167	0	0	0	1
ERICKSEN, JOAN N.	3	0	0	0	0
SCHILTZ, PATRICK J.	2	0	0	0	0
UNASSIGNED	0	2	0	0	0
SUBTOTAL	211	8	0	0	1
DISTRICT TOTAL:	211	8	0	0	1

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U.S. DISTRICT COURT FOR MISSOURI EASTERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
NOCE, DAVID D.	0	0	0	0	0
BUCKLES, FREDERICK R.	1	0	0	0	0
BLANTON, LEWIS M.	0	0	0	0	0
ADELMAN, TERRY I.	0	0	1	0	1
MEDLER, MARY A.	0	0	0	0	0
MUMMERT, THOMAS C.	0	0	0	0	0
FLEISSIG, AUDREY G.	2	0	0	0	0
UNASSIGNED	0	1	3	0	0
SUBTOTAL	3	1	4	0	1
DISTRICT JUDGES					
HAMILTON, JEAN C.	0	0	0	0	0
STOHR, DONALD J.	1	2	0	0	0
JACKSON, CAROL E. (CJ)	3	0	0	0	0
SHAW, CHARLES A.	0	0	0	0	0
PERRY, CATHERINE D.	2	1	0	0	0
WEBBER, E. RICHARD	4	6	0	0	0
SIPPEL, RODNEY W.	2	0	0	0	0
AUTREY, HENRY EDWARD	2	1	0	1	0
LIMBAUGH, STEPHEN N., JR.	2	3	0	0	1
UNASSIGNED	1	14	1	0	0
SUBTOTAL	17	21	1	1	1
DISTRICT TOTAL:	20	22	5	1	2

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U.S. DISTRICT COURT FOR MISSOURI WESTERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
ENGLAND, JAMES C.	1	0	0	0	0
KNOX, WILLIAM A.	0	0	0	0	0
MAUGHMER, JOHN T.	0	0	0	0	0
LARSEN, ROBERT E.	1	1	0	0	0
HAYS, SARAH W.	0	0	0	0	1
SUBTOTAL	2	1	0	0	1
DISTRICT JUDGES					
WRIGHT, SCOTT O.	2	0	0	0	0
SACHS, HOWARD F.	2	1	0	0	0
WHIPPLE, DEAN	3	6	0	0	0
GAITAN, FERNANDO J., JR. (CJ)	1	0	0	0	0
SMITH, ORTRIE D.	2	0	0	0	0
FENNER, GARY A.	4	0	1	0	0
LAUGHREY, NANETTE K.	0	0	0	0	0
DORR, RICHARD E.	3	1	0	0	0
KAYS, DAVID G.	1	0	0	0	0
SUBTOTAL	18	8	1	0	0
DISTRICT TOTAL:	20	9	1	0	1

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U.S. DISTRICT COURT FOR NEBRASKA

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
PIESTER, DAVID L.	0	0	0	0	0
THALKEN, THOMAS D.	0	0	0	0	0
GOSSETT, F. A., III	0	0	0	0	0
SUBTOTAL	0	0	0	0	0
DISTRICT JUDGES					
URBOM, WARREN K.	0	0	0	0	0
STROM, LYLE E.	4	1	0	0	0
KOPF, RICHARD G.	1	0	0	0	0
BATAILLON, JOSEPH F. (CJ)	0	0	0	0	0
CAMP, LAURIE SMITH	0	0	0	0	0
SUBTOTAL	5	1	0	0	0
DISTRICT TOTAL:	5	1	0	0	0

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U.S. DISTRICT COURT FOR NORTH DAKOTA

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
KLEIN, KAREN	0	0	0	0	0
MILLER, CHARLES S., JR.	2	0	0	0	0
SENECHAL, ALICE R.	0	0	0	0	0
SUBTOTAL	2	0	0	0	0
DISTRICT JUDGES					
CONMY, PATRICK A.	0	0	0	0	0
WEBB, RODNEY S.	2	3	0	0	0
HOVLAND, DANIEL L. (CJ)	1	4	0	0	0
ERICKSON, RALPH R.	1	6	0	0	0
SUBTOTAL	4	13	0	0	0
DISTRICT TOTAL:	6	13	0	0	0

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U.S. DISTRICT COURT FOR SOUTH DAKOTA

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
SIMKO, JOHN E.	0	0	0	0	0
MORENO, MARK A.	0	0	0	0	0
DUFFY, VERONICA L.	0	0	0	0	0
GERDES, WILLIAM D.	0	0	0	0	0
SUBTOTAL	0	0	0	0	0
DISTRICT JUDGES					
BOGUE, ANDREW W.	1	4	0	0	0
JONES, JOHN B.	0	0	0	0	0
BATTEY, RICHARD H.	0	0	0	0	0
PIERSOL, LAWRENCE L.	2	5	1	0	0
KORNMANN, CHARLES BRUNO	0	0	0	0	0
SCHREIER, KAREN E. (CJ)	1	3	0	0	0
SUBTOTAL	4	12	1	0	0
DISTRICT TOTAL:	4	12	1	0	0
CIRCUIT TOTAL:	2349	104	7	1	6

DISTRICT SUMMARY REPORT
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U.S. DISTRICT COURT FOR ALASKA

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
ROBERTS, JOHN D.	0	0	0	0	0
SMITH, DEBORAH M.	0	0	0	0	0
JAMIN, MATTHEW D.	0	0	0	0	0
LONGENBAUGH, LESLIE C.	0	0	0	0	0
THOMPSON, MICHAEL	0	0	0	0	0
ORAVEC, SCOTT	0	0	0	0	0
SUBTOTAL	0	0	0	0	0
DISTRICT JUDGES					
VON DER HEYDT, JAMES A.	0	0	0	0	0
FITZGERALD, JAMES M.	0	0	0	0	0
HOLLAND, H. RUSSEL	5	3	1	0	0
SINGLETON, JAMES K.	3	0	0	0	0
SEDWICK, JOHN W. (CJ)	2	0	0	0	0
BEISTLINE, RALPH R.	3	0	0	0	0
BURGESS, TIMOTHY M.	4	5	0	0	0
SUBTOTAL	17	8	1	0	0
DISTRICT TOTAL:	17	8	1	0	0

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U.S. DISTRICT COURT FOR ARIZONA

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
EDMONDS, GLENDA E.	0	2	0	0	0
ANDERSON, LAWRENCE O.	0	0	0	0	0
VELASCO, BERNARDO P.	0	0	0	0	0
IRWIN, JAY R.	0	0	0	0	0
DUNCAN, DAVID K.	0	0	0	0	0
PYLE, CHARLES R.	0	1	0	0	0
MARSHALL, JACQUELINE J.	0	0	0	0	0
VOSS, EDWARD C.	2	0	0	0	0
ASPEY, MARK E.	0	0	0	0	0
ESTRADA, HECTOR C.	0	0	0	0	0
GUERIN, JENNIFER C.	0	0	0	0	0
BURNS, MICHELLE H.	0	0	0	0	0
FERRARO, D. THOMAS	0	0	0	0	0
SUBTOTAL	2	3	0	0	0
DISTRICT JUDGES					
HOLLAND, H. RUSSEL (VJ)	2	0	0	0	0
EZRA, DAVID A. (VJ)	1	0	0	0	0
CARROLL, EARL H.	15	16	0	0	1
ROSENBLATT, PAUL G.	14	0	0	0	0
BROOMFIELD, ROBERT C.	1	0	0	0	1
STRAND, ROGER G.	0	0	0	0	0
MCNAMEE, STEPHEN M.	12	1	0	0	0
ROLL, JOHN M. (CJ)	6	0	0	0	0
SILVER, ROSLYN O.	4	1	0	0	0
ZAPATA, FRANK R.	12	6	0	0	1
COLLINS, RANER	6	2	0	0	1
TEILBORG, JAMES A.	2	0	0	0	0
BOLTON, SUSAN R.	3	0	0	0	0
MURGUIA, MARY H.	13	0	0	0	0
MARTONE, FREDERICK J.	0	0	0	0	0
JORGENSON, CINDY K.	5	4	0	0	1
BURY, DAVID C.	7	0	0	0	0
CAMPBELL, DAVID G.	3	1	0	0	0
WAKE, NEIL VINCENT	1	0	0	0	0
SNOW, G. MURRAY	1	0	0	0	0
UNASSIGNED	0	2	0	0	0
SUBTOTAL	108	33	0	0	5
DISTRICT TOTAL:	110	36	0	0	5

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U.S. DISTRICT COURT FOR CALIFORNIA NORTHERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					

BRAZIL, WAYNE D.	0	0	0	0	0
TRUMBULL, PATRICIA	1	4	0	0	4
JAMES, MARIA-ELENA	4	2	1	0	0
ZIMMERMAN, BERNARD	0	0	0	0	0
LARSON, JAMES L.	1	1	0	0	1
LAPORTE, ELIZABETH D.	1	0	0	0	0
SPERO, JOSEPH	1	0	0	0	0
SEEBORG, RICHARD	3	1	0	0	0
CHEN, EDWARD M.	0	0	0	0	0
LLOYD, HOWARD R.	1	0	0	0	1
VADAS, NANDOR	2	2	0	0	0
SUBTOTAL	14	10	1	0	6
DISTRICT JUDGES					
CONTI, SAMUEL	2	0	0	0	0
SHUBB, WILLIAM B.	1	0	0	0	0
SCHWARZER, WILLIAM W.	2	0	0	0	0
HENDERSON, THELTON E.	15	2	0	0	0
PATEL, MARILYN H.	27	3	0	0	0
JENSEN, D. LOWELL	2	0	0	0	0
WALKER, VAUGHN R. (CJ)	9	4	0	0	0
WARE, JAMES	28	4	0	3	1
ARMSTRONG, SAUNDRA BROWN	5	0	0	0	0
WHYTE, RONALD M.	29	12	1	0	2
WILKEN, CLAUDIA	15	0	0	0	0
CHESNEY, MAXINE M.	7	0	0	0	0
ILLSTON, SUSAN YVONNE	13	0	0	0	0
BREYER, CHARLES R.	3	0	0	0	0
FOGEL, JEREMY D.	22	1	0	0	0
ALSUP, WILLIAM HASKELL	10	4	0	0	0
HAMILTON, PHYLLIS J.	30	2	0	0	0
WHITE, JEFFREY STEVEN	6	5	0	0	0
UNASSIGNED	0	1	0	0	0
SUBTOTAL	226	38	1	3	3
DISTRICT TOTAL:	240	48	2	3	9

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U.S. DISTRICT COURT FOR CALIFORNIA EASTERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
MOULDS, JOHN F.	0	0	0	0	0
HOLLOWS, GREGORY G.	0	1	0	0	0
BECK, DENNIS L.	6	3	0	0	0
SNYDER, SANDRA	3	1	0	0	2
DROZD, DALE A.	1	0	0	0	16
MUELLER, KIMBERLY J.	1	4	0	0	0
WUNDERLICH, WILLIAM M.	2	0	0	0	0
KELLISON, CRAIG M.	1	0	0	0	0
BRENNAN, EDMUND F.	2	8	0	0	2
AUSTIN, GARY S.	3	0	0	0	0
DIXON, JOHN M., JR.	0	0	0	0	0
SORRENTINO, CHARLENE H.	0	0	0	0	0
SUBTOTAL	19	17	0	0	20
DISTRICT JUDGES					
KARLTON, LAWRENCE K.	91	8	0	0	1
WINMILL, B. LYNN (VJ)	1	0	0	0	0
SINGLETON, JAMES K. (VJ)	5	0	0	0	0
COYLE, ROBERT E.	0	0	0	0	0
GARCIA, EDWARD J.	0	0	0	0	0
SHUBB, WILLIAM B.	8	6	0	0	0
WANGER, OLIVER W.	57	21	0	1	1
BURRELL, GARLAND E., JR.	67	11	0	0	0
WHALEY, ROBERT E. (VJ)	0	2	0	0	0
BRYAN, ROBERT J. (VJ)	1	0	0	0	0
SCHWARZER, WILLIAM W. (VJ)	0	1	0	0	0
ISHII, ANTHONY W. (CJ)	62	7	0	0	0
DAMRELL, FRANK C., JR.	56	9	0	1	0
ENGLAND, MORRISON C., JR.	76	13	0	0	0
O'NEILL, LAWRENCE J.	60	2	0	0	2
ALARCON, ARTHUR L.	0	1	0	0	0
MCNAMEE, STEPHEN M. (VJ)	1	0	0	0	0
MENDEZ, JOHN A.	60	13	0	1	0
ROLL, JOHN M. (VJ)	2	0	0	0	0
SILVER, ROSLYN O. (VJ)	2	0	0	0	0
ZAPATA, FRANK R. (VJ)	2	1	0	0	0
COLLINS, RANER (VJ)	2	0	0	0	0
TEILBORG, JAMES A. (VJ)	3	0	0	0	0
HOUSTON, JOHN A. (VJ)	1	0	0	0	0
BOLTON, SUSAN R. (VJ)	1	0	0	0	0

MURGUIA, MARY H. (VJ)	1	0	0	0	0
SAMMARTINO, JANIS L. (VJ)	0	1	0	0	0
BURY, DAVID C. (VJ)	2	0	0	0	0
CAMPBELL, DAVID G.	1	0	0	0	0
WAKE, NEIL VINCENT (VJ)	1	0	0	0	0

U.S. DISTRICT COURT FOR CALIFORNIA EASTERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
SNOW, G. MURRAY (VJ)	4	0	0	0	0
FOGEL, JEREMY D. (VJ)	1	0	0	0	0
ALSUP, WILLIAM HASKELL (VJ)	0	3	0	0	0
BEA, CARLOS	0	1	0	0	0
MATZ, A. HOWARD (VJ)	0	1	0	0	0
WRIGHT, OTIS D., II (VJ)	0	1	0	0	0
SUBTOTAL	568	102	0	3	4
DISTRICT TOTAL:	587	119	0	3	24

U.S. DISTRICT COURT FOR CALIFORNIA CENTRAL

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
EICK, CHARLES F.	0	0	0	0	0
TURCHIN, CAROLYN	0	0	0	0	0
HILLMAN, STEPHEN J.	0	0	0	0	2
WISTRICH, ANDREW J.	1	3	1	0	0
BLOCK, ROBERT N.	0	0	0	0	0
CHAPMAN, ROSALYN M.	0	0	0	0	0
WOEHRLE, CARLA M.	2	6	1	0	0
NAKAZATO, ARTHUR	0	0	0	0	0
ZAREFSKY, RALPH	0	0	0	0	0
NAGLE, MARGARET A.	0	0	0	0	0
JOHNSON, JEFFREY W.	0	0	0	0	0
GOLDMAN, MARC L.	0	0	0	0	0
KENTON, VICTOR B.	0	1	0	0	0
WALSH, PATRICK J.	0	0	0	0	0
LUM, JENNIFER T.	1	0	0	0	0
OLGUIN, FERNANDO M.	0	0	0	0	0
ABRAMS, PAUL L.	0	0	0	0	0
SEGAL, SUZANNE H.	0	0	0	0	0
CHOOLJIAN, JACQUELINE	0	6	0	0	0
PARADA, OSWALD	0	2	0	0	0
MUMM, FREDERICK F.	0	1	0	0	1
RAYBURN, JOHN C., JR.	0	0	0	0	0
ROSENBERG, ALICIA G.	0	0	0	0	0
FEDERMAN, RITA C.	0	0	0	0	0
SUBTOTAL	4	19	2	0	3
DISTRICT JUDGES					
WHALEY, ROBERT H. (VJ)	1	0	0	0	0
REAL, MANUEL L.	8	2	0	0	2
KELLEHER, ROBERT J.	1	0	0	0	0
TAKASUGI, ROBERT M.	5	1	0	0	0
PFAELZER, MARIANA R.	0	0	0	0	0
HATTER, TERRY J., JR.	17	8	0	0	0
MARSHALL, CONSUELO BLAND	10	1	1	1	0
STOTLER, ALICEMARIE H.	20	9	0	0	1
KELLER, WILLIAM DUFFY	2	1	0	0	0
WILSON, STEPHEN V.	30	28	0	1	0
LETTS, J. SPENCER	116	4	0	0	0
LEW, RONALD S.W.	14	7	0	2	0
COLLINS, AUDREY B. (CJ)	26	8	0	2	0
TIMLIN, ROBERT J.	1	0	0	0	0
KING, GEORGE H.	20	6	0	2	0
PREGERSON, DEAN D.	30	24	0	6	0
SNYDER, CHRISTINA A.	22	6	0	1	0
MORROW, MARGARET M.	15	20	0	2	1

U.S. DISTRICT COURT FOR CALIFORNIA CENTRAL

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MATZ, A. HOWARD	18	11	0	1	0
CARTER, DAVID O.	15	4	0	1	0
FEESS, GARY	21	9	0	0	0
COOPER, FLORENCE-MARIE	18	6	0	0	0

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PHILLIPS, VIRGINIA ANNE	12	13	0	0	0
WALTER, JOHN F.	12	5	0	1	0
ANDERSON, PERCY	14	4	0	5	0
KLAUSNER, ROBERT G.	7	0	0	0	0
OTERO, S. JAMES	8	2	0	0	0
SELNA, JAMES V.	13	3	0	0	0
CARNEY, CORMAC J..	6	3	0	0	0
FISCHER, DALE S.	12	8	0	2	0
LARSON, STEPHEN G.	16	2	0	0	0
GUILFORD, ANDREW J.	20	2	0	0	0
GUTIERREZ, PHILIP S.	18	3	0	0	0
FAIRBANK, VALERIE B.	13	8	0	0	0
WRIGHT, OTIS D., II	10	6	0	2	0
WU, GEORGE H.	20	48	1	1	0
SUBTOTAL	599	262	2	30	4
DISTRICT TOTAL:	603	281	4	30	7

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U.S. DISTRICT COURT FOR CALIFORNIA SOUTHERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
PORTER, LOUISA S.	0	0	0	0	0
PAPAS, LEO S.	0	0	0	0	0
BROOKS, RUBEN B.	0	0	0	0	0
BATTAGLIA, ANTHONY J.	0	0	0	0	0
STORMES, NITA L.	0	0	0	0	0
ADLER, JAN M.	0	0	0	0	0
MAJOR, BARBARA L.	0	0	0	0	0
MCCURINE, WILLIAM, JR.	2	0	0	0	0
LEWIS, PETER C.	0	0	0	0	0
BENCIVENGO, CATHY ANN	0	0	0	0	0
SUBTOTAL	2	0	0	0	0
DISTRICT JUDGES					
TURRENTINE, HOWARD B.	0	0	0	0	0
THOMPSON, GORDON, JR.	0	1	0	0	0
ENRIGHT, WILLIAM B.	0	0	0	0	0
BREWSTER, RUDI M.	1	1	0	0	0
NUFF, MARILYN L.	0	0	0	0	0
GONZALEZ, IRMA E. (CJ)	1	0	0	0	0
JONES, NAPOLEON A., JR.	2	2	0	0	0
MOSKOWITZ, BARRY TED	7	1	0	0	0
MILLER, JEFFREY T.	3	0	0	0	0
WHELAN, THOMAS J.	2	0	0	0	0
LORENZ, M. JAMES	6	0	0	0	0
BURNS, LARRY A.	0	0	0	0	0
SABRAW, DANA M.	3	0	0	0	0
HAYES, WILLIAM Q.	3	0	0	1	0
HOUSTON, JOHN A.	10	0	0	0	1
BENITEZ, ROGER T.	1	0	0	0	0
SAMMARTINO, JANIS L.	18	1	0	0	1
ANELLO, MICHAEL M.	12	0	0	0	1
SUBTOTAL	69	6	0	1	3
DISTRICT TOTAL:	71	6	0	1	3

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U.S. DISTRICT COURT FOR HAWAII

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
KURREN, BARRY	1	0	0	0	0
KOBAYASHI, LESLIE E.	1	0	0	0	0
CHANG, KEVIN C.	0	0	0	0	0
SUBTOTAL	2	0	0	0	0
DISTRICT JUDGES					
KING, SAMUEL P.	1	0	0	0	0
KAY, ALAN COOKE	0	0	0	0	0
EZRA, DAVID A.	4	0	0	0	0
GILLMOR, HELEN W. (CJ)	1	0	0	0	1
MOLLWAY, SUSAN OKI	0	0	0	0	0
SEABRIGHT, MICHAEL	1	0	0	0	0

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REAL, MANUEL L. (VJ)	2	0	0	0	0
SUBTOTAL	9	0	0	0	1
DISTRICT TOTAL:	11	0	0	0	1

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U.S. DISTRICT COURT FOR IDAHO

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
DALE, CANDY	0	0	0	0	0
BUSH, RONALD	0	0	0	0	0
WILLIAMS, MIKEL H.	0	0	0	0	0
BOYLE, LARRY M.	2	0	0	0	0
SUBTOTAL	2	0	0	0	0
DISTRICT JUDGES					
LODGE, EDWARD J. (CJ)	2	0	0	0	0
WINMILL, B. LYNN	21	0	0	0	0
CARTER, DAVID O. (VJ)	1	0	0	0	0
SUBTOTAL	24	0	0	0	0
DISTRICT TOTAL:	26	0	0	0	0

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U.S. DISTRICT COURT FOR MONTANA

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
OSTBY, CAROLYN S.	0	0	0	0	0
LYNCH, JEREMIAH C.	1	0	0	0	0
STRONG, KEITH	1	0	0	0	0
SCHUSTER, GERARD M.	0	0	0	0	0
HOLTER, ROBERT M.	0	0	0	0	0
ANDERSON, RICHARD W.	0	0	0	0	0
SUBTOTAL	2	0	0	0	0
DISTRICT JUDGES					
LOVELL, CHARLES C.	0	0	0	0	0
SHANSTROM, JACK D.	0	0	0	0	0
MOLLOY, DONALD W.	3	19	0	0	0
CEBULL, RICHARD F. (CJ)	6	6	0	0	0
HADDON, SAM E.	5	0	0	0	0
SUBTOTAL	14	25	0	0	0
DISTRICT TOTAL:	16	25	0	0	0

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U.S. DISTRICT COURT FOR NEVADA

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
JOHNSTON, ROBERT J.	0	0	0	0	0
LEAVITT, LAWRENCE R.	0	0	1	0	0
MCQUAID, ROBERT A., JR.	4	0	0	0	0
COOKE, VALERIE P.	0	0	0	0	0
LEEN, PEGGY A.	0	0	0	0	0
FOLEY, GEORGE W., JR.	0	0	0	0	0
SUBTOTAL	4	0	1	0	0
DISTRICT JUDGES					
REED, EDWARD C., JR.	17	0	0	0	0
GEORGE, LLOYD D.	9	0	0	0	0
MCKIBBEN, HOWARD B.	0	0	0	0	0
PRO, PHILIP M.	9	1	0	0	0

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EZRA, DAVID A. (VJ)	8	0	0	0	0
HUNT, ROGER L. (CJ)	2	0	0	0	0
DAWSON, KENT J.	10	0	0	0	0
HICKS, LARRY R.	12	6	0	0	0
MAHAN, JAMES C.	10	0	0	0	0
JONES, ROBERT CLIVE	15	3	0	2	0
SANDOVAL, BRIAN E.	13	1	0	2	0
SUBTOTAL	105	11	0	4	0
DISTRICT TOTAL:	109	11	1	4	0

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U.S. DISTRICT COURT FOR OREGON

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
COFFIN, THOMAS M.	1	0	0	0	1
STEWART, JANICE M.	6	1	0	0	2
HUBEL, DENNIS J.	2	0	0	0	0
PAPAK, PAUL J.	4	0	0	0	1
CLARKE, MARK D.	0	0	0	0	1
ACOSTA, JOHN V.	6	5	0	0	1
SULLIVAN, PATRICIA	2	7	0	0	0
JELDERKS, JOHN A.	1	0	0	0	0
ASHMANSKAS, DONALD C.	0	0	0	0	0
COONEY, JOHN P.	0	0	0	0	0
SUBTOTAL	25	13	0	0	6
DISTRICT JUDGES					
PANNER, OWEN M.	1	5	0	0	0
REDDEN, JAMES A.	3	2	0	0	0
FRYE, HELEN J.	0	1	0	0	0
MARSH, MALCOLM F.	0	2	0	0	0
JONES, ROBERT E.	4	0	0	0	0
HOGAN, MICHAEL R.	6	1	0	0	6
HAGGERTY, ANCER L.	6	6	0	0	0
AIKEN, ANN (CJ)	2	0	0	0	1
KING, GARR M.	3	0	0	0	2
BROWN, ANNA J.	4	2	0	0	0
MOSMAN, MICHAEL W.	3	0	0	0	0
SUBTOTAL	32	19	0	0	9
DISTRICT TOTAL:	57	32	0	0	15

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U.S. DISTRICT COURT FOR WASHINGTON EASTERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
IMBROGNO, CYNTHIA	0	0	0	0	2
HUTTON, JAMES P.	0	0	0	0	0
SUBTOTAL	0	0	0	0	2
DISTRICT JUDGES					
QUACKENBUSH, JUSTIN L.	1	0	0	0	0
NIELSEN, WILLIAM FREMMING	10	0	0	0	0
VAN SICKLE, FRED	5	0	0	0	0
WHALEY, ROBERT H. (CJ)	6	2	0	0	0
SHEA, EDWARD F.	1	4	0	0	0
SUKO, LONNY R.	2	2	0	0	0
SUBTOTAL	25	8	0	0	0
DISTRICT TOTAL:	25	8	0	0	2

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U.S. DISTRICT COURT FOR WASHINGTON WESTERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					

STROMBOM, KAREN L.	0	0	0	0	0
THEILER, MARY ALICE	0	0	0	0	0
DONOHUE, JAMES P.	0	0	0	0	0
TSUCHIDA, BRIAN A.	0	0	0	0	0
CREATURA, J. RICHARD	0	0	0	0	0
BRETT, DEAN R.	0	0	0	0	0
CHRISTEL, DAVID W.	0	0	0	0	0
SUBTOTAL	0	0	0	0	0
DISTRICT JUDGES					
MCGOVERN, WALTER T.	0	0	0	0	0
ROTHSTEIN, BARBARA JACOBS	0	0	0	0	0
COUGHENOUR, JOHN C.	3	0	0	0	0
DIMMICK, CAROLYN R.	0	0	0	0	0
BRYAN, ROBERT J.	0	0	0	0	0
ZILLY, THOMAS S.	0	0	0	0	0
BURGESS, FRANKLIN D.	1	0	0	0	0
LASNIK, ROBERT S. (CJ)	3	0	0	0	0
PECHMAN, MARSHA J.	0	0	0	0	0
LEIGHTON, RONALD B.	0	0	0	0	0
MARTINEZ, RICARDO S.	6	2	0	0	0
ROBART, JAMES L.	0	0	0	0	0
SETTLE, BENJAMIN H.	0	0	0	0	0
JONES, RICHARD A.	0	2	0	0	0
SUBTOTAL	13	4	0	0	0
DISTRICT TOTAL:	13	4	0	0	0

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U.S. DISTRICT COURT FOR GUAM

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
MANIBUSAN, JOAQUIN V., JR.	0	1	0	0	0
SUBTOTAL	0	1	0	0	0
DISTRICT JUDGES					
TYDINGCO-GATEWOOD, FRANCES (CJ)	2	1	0	0	0
SUBTOTAL	2	1	0	0	0
DISTRICT TOTAL:	2	2	0	0	0

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U.S. DISTRICT COURT FOR NORTHERN MARIANAS

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
DISTRICT JUDGES					
MUNSON, ALEX R. (CJ)	2	5	0	0	0
SUBTOTAL	2	5	0	0	0
DISTRICT TOTAL:	2	5	0	0	0
CIRCUIT TOTAL:	1989	585	8	41	66

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U.S. DISTRICT COURT FOR COLORADO

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
WATANABE, MICHAEL J.	0	0	0	0	0
BOLAND, BOYD	0	2	0	0	0
SHAFFER, CRAIG B.	0	0	0	0	0
BEGARTY, MICHAEL E.	0	0	0	0	0
MIX, KRISTEN L.	0	0	0	0	0
TAFOYA, KATHLEEN M.	0	0	0	0	0
WEST, DAVID L.	0	0	0	0	0
MILBURN, LAIRD T.	0	0	0	0	0

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SUBTOTAL	0	2	0	0	0
DISTRICT JUDGES					
MATSCH, RICHARD P.	19	30	0	0	12
KANE, JOHN L., JR.	4	19	0	0	0
WEINSHIENK, ZITA L.	2	6	0	0	0
EBEL, DAVID M.	0	1	0	0	0
BABCOCK, LEWIS T.	1	5	0	0	0
DANIEL, WILEY Y. (CJ)	8	0	0	2	3
MILLER, WALKER D.	11	0	1	0	0
KRIEGER, MARCIA S.	5	0	0	1	1
BLACKBURN, ROBERT E.	0	0	0	0	0
BRIMMER, PHILIP A.	8	0	0	1	2
ARGUELLO, CHRISTINE M.	2	0	0	3	2
SUBTOTAL	60	61	1	7	17
DISTRICT TOTAL:	60	63	1	7	17

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U.S. DISTRICT COURT FOR KANSAS

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
HUMPHREYS, KAREN M.	0	0	0	0	0
BOSTWICK, DONALD W.	0	2	0	0	0
WAXSE, DAVID J.	1	0	0	0	0
O'HARA, JAMES P.	0	1	0	0	0
SEBELIUS, KEITH G.	0	0	0	0	0
RUSHFELT, GERALD L.	0	0	0	0	0
SUBTOTAL	1	3	0	0	0
DISTRICT JUDGES					
BROWN, WESLEY E.	6	8	0	2	0
ROGERS, RICHARD DEAN	1	0	0	0	0
CROW, SAM A.	6	0	0	0	0
LUNGSTRUM, JOHN W.	12	4	0	0	0
BELOT, MONTI L.	7	7	0	0	0
VRATIL, KATHRYN H. (CJ)	3	0	0	0	0
MARTEN, JOHN THOMAS	3	0	0	0	0
MURGUIA, CARLOS	0	1	0	0	0
ROBINSON, JULIE A.	2	0	0	0	0
MELGREN, ERIC F.	4	0	0	4	0
SUBTOTAL	44	20	0	6	0
DISTRICT TOTAL:	45	23	0	6	0

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U.S. DISTRICT COURT FOR NEW MEXICO

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
GARCIA, LORENZO F.	0	0	0	0	0
PUGLISI, RICHARD L.	0	0	0	0	0
MOLZEN, KAREN B.	0	0	0	0	0
TORGERSON, ALAN C.	0	0	0	0	0
SCHNEIDER, W. DANIEL	0	1	0	0	0
SCOTT, ROBERT HAYES	0	5	0	0	0
MARTINEZ, LOURDES A.	0	0	0	0	0
LYNCH, WILLIAM P.	0	0	0	0	0
GARZA, CARMEN E.	0	0	0	0	0
IONTA, ROBERT W.	0	0	0	0	0
RIGGS, KEA W.	0	0	0	0	0
SVET, DON J.	0	0	0	0	0
SUBTOTAL	0	6	0	0	0
DISTRICT JUDGES					
DOWNES, WILLIAM F. (VJ)	1	0	0	0	0
CONWAY, JOHN E.	2	3	0	0	0
PARKER, JAMES A.	4	0	0	0	0
HANSEN, C. LEROY	1	12	0	0	0
VAZQUEZ, MARTHA (CJ)	4	0	0	0	0
BLACK, BRUCE D.	7	15	0	0	0

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	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
ARMIJO, M. CHRISTINA	1	0	0	0	0
JOHNSON, WILLIAM PAUL	2	11	0	0	0
BRACK, ROBERT	1	0	0	0	0
BROWNING, JAMES O.	1	1	0	1	0
HERRERA, JUDITH C.	2	0	0	0	0
SUBTOTAL	26	42	0	1	0
DISTRICT TOTAL:	26	48	0	1	0

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U.S. DISTRICT COURT FOR OKLAHOMA NORTHERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
MCCARTHY, FRANK H.	0	0	0	0	0
CLERRY, PAUL J.	0	0	0	0	0
WILSON, T. LANE	0	0	0	0	0
SUBTOTAL	0	0	0	0	0
DISTRICT JUDGES					
PAYNE, JAMES H.	3	0	0	0	0
KERN, TERENCE C.	10	30	0	1	0
EAGAN, CLAIRE V. (CJ)	5	2	0	0	0
FRIZZELL, GREGORY K.	14	1	1	0	0
SUBTOTAL	32	33	1	1	0
DISTRICT TOTAL:	32	33	1	1	0

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U.S. DISTRICT COURT FOR OKLAHOMA EASTERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
WEST, KIMBERLY E.	0	2	0	0	1
SHREDER, STEVEN P.	1	1	0	0	2
SUBTOTAL	1	3	0	0	3
DISTRICT JUDGES					
SEAY, FRANK HOWELL	0	2	0	0	0
PAYNE, JAMES E. (CJ)	3	13	0	0	6
WHITE, RONALD A.	0	1	0	0	6
SUBTOTAL	3	16	0	0	12
DISTRICT TOTAL:	4	19	0	0	15

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U.S. DISTRICT COURT FOR OKLAHOMA WESTERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
ARGO, DOYLE	0	0	0	0	0
ROBERTS, BANA	0	3	0	0	0
PURCELL, GARY M.	0	0	0	0	0
COUCH, VALERIE K.	0	0	0	0	0
BACHARACH, ROBERT	0	2	0	0	0
ERWIN, SHON T.	0	0	0	0	0
SUBTOTAL	0	5	0	0	0
DISTRICT JUDGES					
WEST, LEE R.	3	9	0	0	0
CAUTHRON, ROBIN J.	4	4	0	0	0
RUSSELL, DAVID L.	2	1	0	0	0
LEONARD, TIM	0	0	0	0	0
MILES-LAGRANGE, VICKI (CJ)	3	2	0	0	0
FRIOT, STEPHEN P.	7	2	0	0	0

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HEATON, JOE L.	5	2	0	0	0
DEGIUSTI, TIMOTHY D.	8	105	0	0	0
SUBTOTAL	32	125	0	0	0
DISTRICT TOTAL:	32	130	0	0	0

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U.S. DISTRICT COURT FOR UTAH

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
ALBA, SAMUEL	0	6	0	0	1
NUFFER, DAVID O.	0	0	0	0	0
WELLS, BROOKE C.	0	0	0	0	0
WARNER, PAUL M.	0	0	0	0	0
BRAITHWAITE, ROBERT T.	0	0	0	0	0
SUBTOTAL	0	6	0	0	1
DISTRICT JUDGES					
JENKINS, BRUCE S.	8	13	1	0	0
WINDER, DAVID K.	0	0	0	0	0
GREENE, J. THOMAS	1	6	0	0	2
SAM, DAVID	1	0	0	0	0
BENSON, DEE V.	15	20	0	0	2
CAMPBELL, TENA (CJ)	17	20	0	0	1
KIMBALL, DALE A.	7	0	0	0	0
STEWART, TED	7	10	0	0	2
WADDOUPS, CLARK	16	0	0	0	0
SUBTOTAL	72	69	1	0	7
DISTRICT TOTAL:	72	75	1	0	8

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U.S. DISTRICT COURT FOR WYOMING

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
COLE, STEPHEN E.	0	0	0	0	0
BEAMAN, WILLIAM C.	0	0	0	0	0
MARTY, KAREN L.	0	0	0	0	0
SKAVDAHL, SCOTT W.	0	0	0	0	0
SHICKICH, R. MICHAEL	0	0	0	0	0
LUBING, JAMES K.	0	0	0	0	0
MCKEE, TERESA M.	0	0	0	0	0
GIST, RICHARD D.	0	0	0	0	0
SUBTOTAL	0	0	0	0	0
DISTRICT JUDGES					
BRIMMER, CLARENCE A.	0	6	0	0	0
JOHNSON, ALAN B.	1	28	1	0	1
DOWNES, WILLIAM F. (CJ)	0	2	4	0	0
MILLER, WALKER D. (VJ)	0	1	0	0	0
SUBTOTAL	1	37	5	0	1
DISTRICT TOTAL:	1	37	5	0	1
CIRCUIT TOTAL:	272	428	8	15	41

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U.S. DISTRICT COURT FOR ALABAMA NORTHERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
PUTNAM, T. MICHAEL	0	1	0	0	0
GREENE, PAUL WILLIAM	4	43	0	0	0
ARMSTRONG, ROBERT R., JR.	1	0	0	0	0
DAVIS, HARWELL G., III	3	10	0	0	0
OTT, JOHN E.	2	9	0	0	0

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
SUBTOTAL	10	63	0	0	0
DISTRICT JUDGES					
HANCOCK, JAMES HUGHES	0	1	0	0	4
GUIN, J. FOY, JR.	0	0	0	0	3
PROPST, ROBERT B.	0	0	0	0	0
ACKER, WILLIAM M., JR.	0	1	0	0	0
BLACKBURN, SHARON LOVELACE (CJ)	4	6	0	0	0
SMITH, C. LYNWOOD, JR.	4	3	0	1	0
JOHNSON, INGE PRYTZ	2	1	0	0	0
BOWDRE, KARON O.	10	7	0	0	14
COOGLER, L. SCOTT	1	1	0	0	0
PROCTOR, R. DAVID	0	0	0	0	0
HOPKINS, VIRGINIA EMERSON	7	7	0	0	0
MARTINEZ, JOSE E. (VJ)	1	1	0	0	0
UNASSIGNED	0	4	0	0	0
SUBTOTAL	29	32	0	1	21
DISTRICT TOTAL:	39	95	0	1	21

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U.S. DISTRICT COURT FOR ALABAMA MIDDLE

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
COODY, CHARLES S.	0	1	0	0	0
WALKER, SUSAN RUSS	0	0	0	0	0
CAPEL, WALLACE, JR.	0	0	0	0	0
MOORER, TERRY F.	0	0	0	0	0
SUBTOTAL	0	1	0	0	0
DISTRICT JUDGES					
HOBBS, TRUMAN M.	0	0	0	0	0
THOMPSON, MYRON H.	12	16	0	0	0
ALBRITTON, WILLIAM H., III	0	2	0	0	0
DEMENT, IRA	0	1	0	0	0
FULLER, MARK E. (CJ)	5	19	0	0	0
WATKINS, W. KEITH	4	0	0	0	0
STROM, LYLE E. (VJ)	1	0	0	0	0
SUBTOTAL	22	38	0	0	0
DISTRICT TOTAL:	22	39	0	0	0

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U.S. DISTRICT COURT FOR ALABAMA SOUTHERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
CASSADY, WILLIAM E.	0	0	0	0	0
MILLING, BERT W., JR.	0	0	0	0	0
BIVINS, SONJA F.	0	3	0	0	2
SUBTOTAL	0	3	0	0	2
DISTRICT JUDGES					
BUTLER, CHARLES R., JR.	2	0	0	0	0
SANDS, W. LOUIS (VJ)	1	0	0	0	0
GRANADE, CALLIE V.S. (CJ)	5	11	0	0	0
STEELE, WILLIAM H.	2	3	0	0	0
DUBOSE, KRISTI K.	0	0	0	0	0
SUBTOTAL	10	14	0	0	0
DISTRICT TOTAL:	10	17	0	0	2

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U.S. DISTRICT COURT FOR FLORIDA NORTHERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS

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	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
SHERRILL, WILLIAM C., JR.	0	0	0	0	0
DAVIS, GORDON M.	0	0	0	0	0
KORNBLUM, ALLAN N.	0	5	0	0	0
TIMOTHY, ELIZABETH	0	0	0	0	0
BODIFORD, LARRY	0	0	0	0	0
SUBTOTAL	0	5	0	0	0
DISTRICT JUDGES					
STAFFORD, WILLIAM H., JR.	1	0	0	0	0
PAUL, MAURICE MITCHELL	5	45	0	0	9
VINSON, C. ROGER	0	0	0	0	0
COLLIER, LACEY A.	1	0	0	0	0
HINKLE, ROBERT L. (CJ)	0	0	0	0	0
MICKLE, STEPHAN P.	4	1	0	0	0
RODGERS, M. CASEY	0	0	0	0	0
SMOAK, JOHN RICHARD, JR.	0	0	0	0	0
ROBRENO, EDUARDO C. (VJ)	1	0	0	0	0
UNASSIGNED	13	0	0	0	0
SUBTOTAL	25	46	0	0	9
DISTRICT TOTAL:	25	51	0	0	9

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U.S. DISTRICT COURT FOR FLORIDA MIDDLE

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
WILSON, THOMAS G.	0	0	0	0	0
SNYDER, HOWARD T.	0	0	0	0	0
JENKINS, ELIZABETH A.	0	0	0	0	0
BAKER, DAVID A.	0	0	0	0	0
MCCOUN, THOMAS B., III	0	1	0	0	0
PIZZO, MARK A.	0	0	0	0	0
SPAULDING, KARLA R.	0	0	0	0	0
FRAZIER, DOUGLAS N.	1	0	0	0	0
JONES, GARY R.	0	0	0	0	0
MORRIS, THOMAS E.	0	0	0	0	0
CHAPPELL, SHERI P.	0	0	0	0	0
RICHARDSON, MONTE C.	0	0	0	0	0
KLINDT, JAMES R.	0	0	0	0	0
KELLY, GREGORY J.	0	0	0	0	0
SUBTOTAL	1	1	0	0	0
DISTRICT JUDGES					
HODGES, WILLIAM TERRELL	22	65	0	0	0
MELTON, HOWELL W.	0	0	0	1	0
CASTAGNA, WILLIAM J.	0	0	0	0	0
MOORE, JOHN H., II	0	0	0	0	0
KOVACHEVICH, ELIZABETH A.	7	16	0	0	0
SHARP, GEORGE KENDALL	4	0	0	0	0
FAWSETT, PATRICIA C.	0	0	0	0	0
SCHLESINGER, HARVEY E.	0	2	0	0	0
CONWAY, ANNE C. (CJ)	0	0	0	0	0
MERRYDAY, STEVEN D.	7	0	0	0	0
BUCKLEW, SUSAN C.	0	0	0	0	0
ADAMS, HENRY LEE, JR.	1	3	0	0	0
LAZZARA, RICHARD A.	1	0	0	0	0
WHITTEMORE, JAMES D.	0	0	0	0	0
ANTOON, JOHN, II	0	0	0	0	0
STEELE, JOHN E.	1	3	0	3	0
MOODY, JAMES S., JR.	1	0	0	0	0
PRESNELL, GREGORY A.	1	0	0	0	0
CORRIGAN, TIMOTHY J.	3	0	0	0	0
COVINGTON HERNANDEZ, VIRGINIA M.	0	0	0	0	0
HOWARD, MARCIA M.	1	3	0	0	0
SCRIVEN, MARY	0	0	0	0	0
UNASSIGNED	6	20	0	3	0
SUBTOTAL	55	112	0	7	0
DISTRICT TOTAL:	56	113	0	7	0

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U.S. DISTRICT COURT FOR FLORIDA SOUTHERN

CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS

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	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
SNOW, LURANA	0	0	0	0	0
TURNOFF, WILLIAM	0	0	0	0	0
JOHNSON, LINNEA R.	0	0	0	0	0
VITUNAC, ANN E.	0	0	0	0	0
SANDSTRA, TED E.	0	0	0	0	0
SELTZER, BARRY S.	0	0	0	0	0
BROWN, STEPHEN T.	1	0	0	0	0
GARBER, BARRY L.	3	1	0	0	0
LYNCH, FRANK J., JR.	0	0	0	0	0
SIMONTON, ANDREA M.	1	0	0	0	0
O'SULLIVAN, JOHN J.	0	0	0	0	0
WHITE, PATRICK A.	0	0	0	0	0
HOPKINS, JAMES M.	1	0	0	0	0
TORRES, EDWIN G.	1	0	0	0	0
MCALILEY, CHRIS MARIE	0	1	0	0	0
ROSENBAUM, ROBIN S.	0	0	0	0	0
PALERMO, PETER R.	0	0	0	0	0
DUBE, ROBERT L.	0	0	0	0	0
SUBTOTAL	7	2	0	0	0
DISTRICT JUDGES					
KING, JAMES LAWRENCE	0	0	0	0	0
HOEVELER, WILLIAM M.	3	8	0	0	0
GONZALEZ, JOSE A., JR.	0	0	0	0	0
STORY, RICHARD W. (VJ)	0	3	0	0	0
ZLOCH, WILLIAM J.	0	1	0	0	0
RYSKAMP, KENNETH L.	2	0	0	0	0
MORENO, FEDERICO A. (CJ)	3	0	0	0	0
GRAHAM, DONALD L.	0	0	0	0	0
HIGHSMITH, SHELBY	0	0	0	0	0
MOORE, K. MICHAEL	1	0	0	0	0
UNGARO, URSULA	0	0	0	0	0
HURLEY, DANIEL T.K.	2	2	0	0	0
LENARD, JOAN A.	0	14	0	0	0
MIDDLEBROOKS, DONALD M.	0	0	0	0	0
GOLD, ALAN STEPHEN	3	5	0	0	0
DIMITROULEAS, WILLIAM P.	0	0	0	0	0
SEITZ, PATRICIA A.	0	0	0	0	0
JORDAN, ADALBERTO	5	2	0	0	0
HUCK, PAUL C.	0	0	0	0	0
MARRA, KENNETH A.	17	1	0	0	0
MARTINEZ, JOSE E.	0	0	0	0	0
ALTONAGA, CECILIA M.	0	0	0	0	0
COHN, JAMES I.	0	0	0	0	0
COOKE, MARCIA G.	1	0	0	0	0

DISTRICT SUMMARY REPORT
AS OF DATE: 03/31/2009 RUN: 06/23/2009 PAGE 98

U.S. DISTRICT COURT FOR FLORIDA SOUTHERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
UNASSIGNED	56	27	0	0	0
SUBTOTAL	93	63	0	0	0
DISTRICT TOTAL:	100	65	0	0	0

DISTRICT SUMMARY REPORT
AS OF DATE: 03/31/2009 RUN: 06/23/2009 PAGE 99

U.S. DISTRICT COURT FOR GEORGIA NORTHERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
BRILL, GERRLYN G.	0	0	0	0	0
SCOFIELD, E. CLAYTON, III	1	3	0	0	0
HAGY, C. CHRISTOPHER	1	0	0	0	0
KING, JANET F.	0	0	0	0	0
WALKER, LINDA T.	0	0	0	0	0
BAVERMAN, ALAN J.	0	0	0	0	0
COLE, SUSAN S.	1	0	0	0	0
JOHNSON, WALTER E.	0	0	0	0	0
VINEYARD, RUSSELL G.	0	0	0	0	0
SUBTOTAL	3	3	0	0	0
DISTRICT JUDGES					
O'KELLEY, WILLIAM C.	1	0	0	0	0
MOYE, CHARLES A., JR.	0	1	0	0	0
MURPHY, HAROLD L.	4	0	0	0	0

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SHOOB, MARVIN H.	4	8	0	0	0
VINING, ROBERT L., JR.	1	9	0	1	0
TIDWELL, G. ERNEST	1	29	0	0	0
EVANS, ORINDA	0	0	0	0	0
WARD, HORACE T.	6	28	0	0	0
FORRESTER, J. OWEN	1	0	0	0	0
CAMP, JACK T.	0	2	0	0	0
CARNES, JULIE E. (CJ)	3	3	0	0	0
COOPER, CLARENCE	7	4	0	0	0
HUNT, WILLIS B., JR.	1	0	0	0	0
THRASH, THOMAS W., JR.	0	0	0	0	0
STORY, RICHARD W.	6	0	0	0	0
PANNELL, CHARLES A., JR.	5	2	0	0	0
MARTIN, BEVERLY B.	1	0	0	0	0
DUFFEY, WILLIAM S., JR.	0	0	0	0	0
BATTEN, TIMOTHY C., SR.	0	0	0	0	0
SUBTOTAL	41	86	0	1	0
DISTRICT TOTAL:	44	89	0	1	0

DISTRICT SUMMARY REPORT
AS OF DATE: 03/31/2009 RUN: 06/23/2009 PAGE 100

U.S. DISTRICT COURT FOR GEORGIA MIDDLE

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
HICKS, CLAUDE W., JR.	1	0	0	0	6
HODGE, RICHARD L.	2	0	0	0	0
FAIRCLOTH, G. MALLON	0	0	0	0	0
SUBTOTAL	3	0	0	0	6
DISTRICT JUDGES					
SANDS, W. LOUIS	6	1	0	0	0
LAWSON, HUGH	4	3	0	0	2
LAND, CLAY D.	2	0	0	0	0
ROYAL, C. ASHLEY (CJ)	6	0	0	0	4
SUBTOTAL	18	4	0	0	6
DISTRICT TOTAL:	21	4	0	0	12

DISTRICT SUMMARY REPORT
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U.S. DISTRICT COURT FOR GEORGIA SOUTHERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
SMITH, GEORGE R.	0	0	0	0	0
GRAHAM, JAMES E.	1	0	0	0	0
BARFIELD, W. LEON	0	0	0	0	0
SUBTOTAL	1	0	0	0	0
DISTRICT JUDGES					
ALAIMO, ANTHONY A.	1	2	0	0	0
EDENFIELD, B. AVANT	0	1	0	0	0
BOWEN, DUDLEY H., JR.	4	1	0	0	0
MOORE, WILLIAM T., JR. (CJ)	1	0	0	0	0
WOOD, LISA G.	0	0	0	0	0
HALL, JAMES RANDAL	0	0	0	0	0
SUBTOTAL	6	4	0	0	0
DISTRICT TOTAL:	7	4	0	0	0
CIRCUIT TOTAL:	324	477	0	9	44

TOY-RQ-05E-00009837

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

DALE ROBERTS, on behalf of himself and all others similarly situated, Plaintiffs, v. TOYOTA MOTOR CORPORATION, TOYOTA MOTOR SALES, U.S.A., INC., AND DOES 1 through 10 Defendants.	CIVIL ACTION No. 7:10-281-RBH

NOTICE OF PLAINTIFFS' MOTION TO TRANSFER FILED IN THE JPML

Pursuant to Rule 5.12(c) of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, please find attached a copy of Plaintiff's Motion for Transfer of Related Actions to the District of South Carolina for Coordinated or Consolidated Pretrial Proceedings Pursuant to 28 U.S.C. § 1407 and Brief in Support, which were filed with the United States Judicial Panel on Multidistrict Litigation on February 19, 2010.

Respectfully submitted,

By: s/John B. White, Jr.
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February 19, 2010

Spartanburg, South Carolina

TOY-RQ-05E-00009839

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

IN RE TOYOTA MOTOR CORP. DEFECTIVE GAS PEDAL PRODUCTS LIABILITY LITIGATION	No. MDL DOCKET NO. 2151

PLAINTIFF'S MOTION FOR TRANSFER OF RELATED ACTIONS TO THE DISTRICT OF SOUTH CAROLINA FOR COORDINATED OR CONSOLIDATED PRETRIAL PROCEEDINGS PURSUANT TO 28 U.S.C. § 1407

Dale Roberts, Plaintiff and proposed class representative in the action entitled *Roberts v. Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Inc., and Does 1 through 10*, No. 7:10-cv-281-RBH (the "*Roberts* Action"), currently pending before the Honorable R. Bryan Harwell in the United States District Court for the District of South Carolina, Spartanburg Division, by and through his undersigned counsel, respectfully moves the Judicial Panel on Multidistrict Litigation (the "Panel") for entry of an Order pursuant to 28 U.S.C. § 1407 transferring the related actions listed in the Schedule of Actions attached hereto as Exhibit A (the "Related Actions") to the United States District Court for the District of South Carolina (the "South Carolina District Court") for coordinated or consolidated pretrial proceedings with the *Roberts* Action before Judge Harwell.

As set forth more fully in the accompanying Brief in Support, each of the actions listed in the Schedule of Actions is based on sudden, unintended acceleration in motor vehicles designed, manufactured, marketed, and sold by Defendants Toyota Motor Corporation and/or Toyota Motor Sales, U.S.A., Inc. (collectively, "Toyota") and Toyota's conduct regarding that acceleration defect. Transfer of the actions to one forum for coordinated or consolidated pretrial proceedings will be for the convenience of parties and witnesses because the actions share many factual questions and involve parties, witnesses, and evidence spread across the country.

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Coordinated or consolidated pretrial proceedings will promote the just and efficient conduct of the actions by preventing duplicative discovery and conflicting pretrial rulings on common factual questions. The South Carolina District Court, where one of the Related Actions is currently pending, is well-suited for coordinated or consolidated pretrial proceedings in this litigation due to its geographic location and its experience with multidistrict litigation, and Judge Harwell's ability and experience with class actions and complex litigation qualify him to handle those proceedings.

For the reasons set forth above and in the accompanying Brief in Support, the Panel should transfer the Related Actions to the South Carolina District Court for coordinated or consolidated pretrial proceedings with the *Roberts* Action before Judge Harwell pursuant to § 1407.

DATED: February 18, 2010

Respectfully submitted,

By: _____

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BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

IN RE TOYOTA MOTOR CORP. DEFECTIVE GAS PEDAL PRODUCTS LIABILITY LITIGATION	No. MDL DOCKET NO. 2151

BRIEF IN SUPPORT OF PLAINTIFF'S MOTION FOR TRANSFER OF RELATED ACTIONS TO THE DISTRICT OF SOUTH CAROLINA FOR COORDINATED OR CONSOLIDATED PRETRIAL PROCEEDINGS PURSUANT TO 28 U.S.C. § 1407

Plaintiff Dale Roberts, individually and on behalf of all others similarly situated, in the action entitled *Roberts v. Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Inc., and Does 1 through 10*, No. 7:10-cv-281-RBH (the "*Roberts* Action"), currently pending before the Honorable R. Bryan Harwell in the United States District Court for the District of South Carolina, Spartanburg Division, by and through his undersigned counsel, respectfully submits this Brief in Support of Plaintiff's Motion for Transfer and Consolidation of Related Actions to the District of South Carolina for Coordinated or Consolidated Pretrial Proceedings Pursuant to 28 U.S.C. § 1407.

I. INTRODUCTION

The Judicial Panel on Multidistrict Panel (the "Panel") should transfer the related actions listed in the Schedule of Actions attached hereto as Exhibit A (the "Related Actions") to the United States District Court for the District of South Carolina ("South Carolina District Court"), for coordinated or consolidated pretrial proceedings with the *Roberts* Action before the Honorable R. Bryan Harwell. These actions satisfy § 1407's criteria for coordination or consolidation because they involve common questions of fact and centralization will be for the convenience of the parties and witness, and will promote the just and efficient conduct of these actions. Absent coordination or consolidation, duplicative discovery and pretrial hearings and

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conflicting pretrial rulings regarding common questions of fact will result.

The South Carolina District Court, Spartanburg Division, is an appropriate venue for coordinated or consolidated pretrial proceedings due to its geographic proximity to Kentucky and Washington, D.C., which may likely be the two largest repositories of witnesses and evidence in this litigation, and its ability to handle multidistrict litigation. Moreover, Judge Harwell is well-qualified to preside over coordinated or consolidated pretrial proceedings.

II.
BACKGROUND OF LITIGATION

Plaintiff Roberts filed a Class Action Complaint against Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Inc., and parties whose true names and capacities are currently unknown to Plaintiff Roberts (collectively, "Defendants") on February 5, 2010 on behalf of himself and a Plaintiff Class consisting of all persons or entities domiciled or residing in the United States who purchased or leased at least one new Toyota, Lexus, or Scion vehicle equipped with Defendants' Electronic Throttle Control System with Intelligence ("ETCS-i"), but not equipped with Brake Override System technology ("BOS"). (Compl. ¶ 32 (Exhibit B).) Plaintiff alleges that subject vehicles are defective because they are subject to uncontrolled, unintended, and/or sudden acceleration as a result of Defendants' admittedly faulty ETCS-i coupled with the lack of BOS. (*Id.* ¶ 9.) Plaintiff contends that Defendants knew or should have about the acceleration defect in the subject vehicles, but concealed or failed to warn the Plaintiff Class about the defect. (*See, e.g., id.* ¶¶ 76-77.)

Plaintiff seeks compensatory damages for the Plaintiff Class for the diminution in the fair market value of the subject vehicles that resulted from Defendants' breach of express and implied warranties. (*Id.* ¶¶ 52-53, 61-62, 72.) Plaintiff also seeks compensatory damages for a Plaintiff Subclass consisting of persons or entities domiciled or residing in the United States who

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purchased at least one of the subject vehicles and normally used it for personal, family, or household purposes for the diminution in the fair market value of those vehicles sustained as a result of Defendants' violation of the Magnuson-Moss Warranty Act. (*Id.* ¶¶ 32, 63-72.) In addition, Plaintiff seeks compensatory and any other authorized damages for a Subclass consisting of persons or entities domiciled or residing in Arkansas, Colorado, Connecticut, Florida, Kansas, Missouri, New Jersey, New Mexico, New York, Ohio, Vermont, and Washington for economic loss that resulted from Defendants' violation of those states' consumer protection statutes. (*Id.* ¶¶ 32, 73-97.)

As a result of the acceleration defect, Defendants began recalling vehicles in September 2009. To date, Defendants have issued approximately 10 million recall notices for problems related to unintended acceleration in their vehicles, about 2 million of which are involved in more than one recall. Defendants' recalls of and conduct regarding the subject vehicles have given rise to class actions filed across the country seeking economic damages caused by the acceleration defect in Defendants' vehicles. (*See* Schedule of Actions (Ex. A).) Plaintiff Roberts expects additional related class and individual actions to be filed in the near future.

III.
ARGUMENT & AUTHORITIES

A. The *Roberts* Action and the Related Actions Are Appropriate for Transfer and Pretrial Coordination or Consolidation Under 28 U.S.C. § 1407.

Title 28, § 1407(a) of the United States Code provides: "When civil actions involving one or more common questions of fact are pending in different districts, such actions may be transferred to any district for coordinated or consolidated pretrial proceedings." 28 U.S.C. § 1407(a). The Panel "shall" make such transfers when they will further "the convenience of the parties and witnesses and will promote the just and efficient conduct of such actions." *Id.* As

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explained below, the *Roberts* Action and the Related Actions meet these criteria.

1. These Actions Involve Common Questions of Fact.

The *Roberts* Action and the Related Actions satisfy the first criterion of § 1407(a) because they involve many common questions of fact. Each action arises from the diminished value of Toyota vehicles as a result of product defects related to unintended acceleration, and also relates to Defendants' conduct regarding those defects, as can be seen from a comparison of the Complaints filed in those actions. *See In re Air West, Inc. Sec. Litig.*, 384 F. Supp. 609, 611 (J.P.M.L. 1974) ("Indeed, when two or more complaints assert comparable allegations against identical defendants based on similar transactions or events, common factual questions are presumed.").[1] The common questions derive from, but are not limited to, the unknown cause of uncontrolled, unintended, and/or sudden acceleration in the subject vehicles, Defendants' knowledge about the acceleration defect, and when Defendants' acquired or should have acquired that knowledge, and Defendants' conduct after learning of the unintended acceleration defects.

2. Coordination or Consolidation of These Actions Will Be for the Convenience of the Parties and Witnesses.

Coordination or consolidation of these actions will satisfy the second criterion under § 1407(a) by eliminating party and witness inconvenience and unnecessary expenses that would result from the production of the same documents and evidence and the depositions of the same

---

[1] Although the defendants in the *Roberts* Action and the Related Actions are not identical, transfer and consolidation is appropriate because all of the named defendants are Toyota entities that participated in the design, manufacture, marketing, distribution, or sale of vehicles with the acceleration defect. *See In re Phenylpropanolamine (PPA) Prods. Liab. Litig.*, 173 F. Sup. 2d 1377, 379 (J.P.M.L. 2001) ("Notwithstanding differences among the actions in terms of named defendants, specific products involved, legal theories of recovery, status as class actions, and/or types of injury alleged, all actions remain rooted in complex core questions concerning the safety of [the defective product].'); *see also In re Silicone Breast Implant Litig.*, 793 F. Supp. 1098, 1100 (J.P.M.L. 1992) (finding that common questions of fact existed where different manufacturers designed similar defective products).

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witnesses in each of the Related Actions and future consumer actions based on the acceleration defect in Defendants' vehicles. *See In re Cuisinart Food Processor Antitrust Litig.*, 506 F. Supp. 651, 655 (J.P.M.L. 1981) (stating that transfer under § 1407 would "effectuate a significant overall savings of cost and a minimum of inconvenience to all concerned with the pretrial activities"). Coordination or consolidation will eliminate the possibility of duplicative discovery by enabling a single judge to formulate a pretrial program to coordinate discovery in these actions. *See In re A.H. Robins Co., Inc., "Dalkon Shield" IUD Prods. Liab. Litig.*, 406 F. Supp. 540, 542 (J.P.M.L. 1975) (stating that transfer under § 1407 was "necessary in order to prevent duplication of discovery"); *In re Nat'l Airlines, Inc. Maternity Leave Practices & Flight Attendant Weight Program Litig.*, 399 F. Supp. 1405, 1406-07 (J.P.M.L. 1975) (stating that "transfer under § 1407 is clearly necessary in order to prevent duplicative discovery" that would result from common factual issues).

3. Coordination or Consolidation of These Actions Will Promote the Just and Efficient Conduct of These Actions.

The various pretrial disputes likely to arise in these overlapping and parallel actions will be virtually identical, including issues concerning the sufficiency of the pleadings, the nature and scope of discovery, and questions regarding privilege. The Panel has long recognized that overlapping and parallel actions asserting similar claims and based upon similar complex factual questions are particularly well-suited for consolidation or coordination pursuant to § 1407 due to the potential for conflicting pretrial rulings on common questions of fact and duplicative pretrial proceedings in the absence of consolidation or coordination. *See, e.g., In re First Nat'l Bank, Havener, Okla. (First Mortgage Revenue Bonds) Sec. Litig.*, 451 F. Supp. 995, 997 (J.P.M.L. 1978) (holding that transfer under § 1407 was "necessary, even though only two actions [were] involved, in order to prevent duplicative pretrial proceedings and eliminate the possibility of

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inconsistent pretrial rulings" where actions arose from same factual situation and shared complex questions of fact). Accordingly, the Panel has repeatedly consolidated or coordinated actions arising from defective motor vehicle parts. *See, e.g., In re Land Rover LR3 Tire Wear Prods. Liab. Litig.*, 598 F. Supp. 2d 1384, 1386 (holding that centralization under § 1407 was warranted with respect to actions alleging that a design defect in certain of manufacturer's vehicles resulted in uneven and premature tire wear); *In re Multi-Piece Rim Prods. Liab. Litig.*, 464 F. Supp. 969, 974 (J.P.M.L. 1979) (holding that centralization under § 1407 was "necessary in order to prevent duplication of discovery and eliminate the possibility of conflicting pretrial rulings" in litigation arising from defective truck wheel).

Coordination or consolidation is especially warranted where, as here, more than one class action is based on the same underlying factual questions because of the danger of conflicting class certification decisions if the class actions are not coordinated or consolidated. The panel has "consistently held that transfer of actions under §1407 is appropriate, if not necessary, where the possibility of inconsistent class determinations exist." *In re Sugar Indus. Antitrust Litig.*, 395 F. Supp. 1271, 1273 (J.P.M.L. 1975); *see also In re Phenylpropanolamine (PPA) Prods. Liab. Litig.*, 173 F. Supp. 2d 1377, 1379 (J.P.M.L. 2001) ("Centralization under Section 1407 is necessary in order to eliminate duplicative discovery, prevent inconsistent pretrial rulings (especially with respect to questions of privilege issues, confidentiality issues and class certification), and conserve the resources of the parties, their counsel and the judiciary."); *In re S. Pac. Transp. Co. Employment Practices Litig.*, 429 F. Supp. 529, 531 (J.P.M.L. 1977) (concluding that transfer under § 1407 was necessary due in part to the "possibility of conflicting class determinations"). In addition, following coordination or consolidation under § 1407, pretrial proceedings regarding the relatively small number of non-common questions of fact can

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be conducted along with pretrial proceedings involving common questions of fact. *See In re Land Rover LR3 Tire Wear Prods. Liab. Litig.*, 598 F. Supp. 2d at 1386 (stating that "pretrial proceedings with respect to non-common issues [can] proceed concurrently with pretrial proceedings on common issues") (citing *In re Multi-Piece Rim Prods. Liab. Litig.*, 464 F. Supp. at 974).

In sum, the pending nationwide class actions present complex factual issues such that transfer and consolidation are particularly desirable. *See* C. Wright & A. Miller, *Federal Practice & Procedure* § 3863 (3d ed. 1998) ("In particular large complex multidistrict class actions, it has been argued that it is especially important to order pretrial consolidation; this will enable a singe judge to restrict 'disjoined 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.") (alteration in original). Therefore, for the sake of the parties and witnesses' convenience and judicial efficiency and consistency, the Panel should coordinate or consolidate the Related Actions and the *Roberts* Action for pretrial proceedings in one forum.

B. <u>The Panel Should Transfer the Related Actions to the District of South Carolina for Coordinated or Consolidated Pretrial Proceedings with the *Roberts* Action.</u>

1. The South Carolina District Court's Spartanburg Division Is An Appropriate Venue for Coordination or Consolidation.

In terms of scale and logistics, these actions are similar to those involved in the Phenylpropanolamine Products Liability Litigation. In granting a motion for transfer and centralization in that litigation, the Panel explained:

> Given the range of locations of partics and witnesses in this docket, the geographic dispersal of current and anticipated constituent actions, and the wide array already of suggested transferee districts, it is clear that any one of a large number of districts would qualify as an appropriate transferee forum for this litigation nationwide in scope.

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In re Phenylpropanolamine (PPA) Prods. Liab. Litig., 173 F. Supp. 2d 1377, 1379-80 (J.P.M.L. 2001). Notwithstanding that a number of districts qualify as an appropriate transferee forum for the nationwide litigation at issue here, the District of South Carolina is particularly well-suited for coordinated or consolidated pretrial proceedings given the convenience and efficiency that would result from centralization there.

Although Defendant Toyota Motor Sales, U.S.A., Inc. is headquartered in Torrance, California, Toyota Motor Engineering & Manufacturing North America, Inc. ("TEMA"), a subsidiary of Defendant Toyota Motor Corporation, is located in Erlanger, Kentucky. TEMA is responsible for the engineering design, development, research and development, and manufacture of Toyota vehicles in the United States, Canada, and Mexico. TEMA operates 14 parts and vehicles manufacturing plants across North America. Upon information and belief, a considerable amount of evidence and number of witness with on-the-ground knowledge about the acceleration defect in the subject vehicles are likely to be located in Kentucky.

Additionally, Toyota Motor North America, Inc. ("TMA"), Defendant Toyota Motor Corporation's holding company for its sales and manufacturing companies in the United States, has offices in Washington, D.C., New York, and Miami. TMA's functions include government and regulatory affairs, corporate advertising, and corporate communications. TMA's Washington, D.C. office has the most responsibility over government and regulatory affairs and is thus, upon information and belief, the likely location of much evidence and many witnesses with knowledge of Defendant's conduct regarding the acceleration defect in the subject vehicles.

Therefore, Kentucky and Washington, D.C. may likely be the two largest repositories of witnesses and evidence in these actions, making the nearby District of South Carolina a more convenient forum for parties and witnesses and discovery activities than the Central District of

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California or the Eastern District of Louisiana, the two other proposed forums for coordinated or consolidated pretrial proceedings. Moreover, while the average number of pending cases per district judge in the District of South Carolina and the Central District of California was approximately 425 cases as of September 30, 2008, the average number of pending cases per district judge in the Eastern District of Louisiana was 1,305 cases as of that date. (*See* Judicial Caseload Profiles (Exhibit C).)

Furthermore, the Panel has previously found the District of South Carolina to be an appropriate venue for multidistrict litigation. *See, e.g., In re Household Goods Movers Antitrust Litig.*, MDL Docket No. 1865, 502 F. Supp. 2d 1356 (J.P.M.L. 2007); *In re Bausch & Lomb Contact Lens Solution Prods. Liab. Litig.*, MDL Docket No. 1785, 444 F. Supp. 2d 1336 (J.P.M.L. 2006); *In re Thaxton Group, Inc. Sec. Litig.*, MDL Docket No. 1612, 323 F. Supp. 2d 1374 (J.P.M.L. 2004); *In re Elec. Receptacle Prods. Liab. Litig.*, MDL Docket No. 1595, 313 F. Supp. 2d 1378 (J.P.M.L. 2004); *In re Am. Gen. Life & Accident Ins. Co. Indus. Life Ins. Litig.*, MDL Docket No. 1429, 175 F. Supp. 2d 1380 (J.P.M.L. 2001); *In re Air Crash at Charlotte, N.C., on July 2, 1994*, MDL Docket No. 1041.

The Spartanburg Division of the South Carolina District Court is located in Spartanburg, South Carolina. Spartanburg is part of the Greenville-Spartanburg-Anderson Combined Statistical area, which had an estimated population of 1,203,795 in 2006. The nearby Greenville-Spartanburg International Airport serves more than 1.5 million passengers per year and offers direct flights to and from Atlanta, Charlotte, Chicago, Cleveland, Cincinnati, Dallas/Ft. Worth, Detroit, Ft. Lauderdale, Houston, New York, Newark, Orlando, Philadelphia, Tampa/St. Petersburg, and Washington, D.C. The Spartanburg-Greenville International Airport is served by 16 airlines, including Continental Airlines, Delta Air Lines, Northwest Airlines, Northwest

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Air Link, United Express Airlines, U.S. Airways, and U.S. Airways Express. Furthermore, the Federal Courthouse in Spartanburg is approximately 55 minutes by car from Charlotte/Douglas International Airport, the ninth busiest airport in the world and a major airline hub and international gateway, with direct flights to all major American cities. Charlotte/Douglas International Airport serves the Greenville-Spartanburg metropolitan area and upstate South Carolina, in addition to the 1.7 million residents of the Charlotte, North Carolina metropolitan area. In addition, Hartsfield-Jackson Atlanta International Airport, the world's busiest, is one hour away from Greenville-Spartanburg International Airport by air and offers direct flights to and from all major American and international cities.

Spartanburg has ample hotel and office accommodations and offers established legal service support systems. Additional hotel, office, and legal support systems are also available in nearby Greenville, which is 25 minutes away by car. Therefore, the Related Actions and any future tag-along actions would benefit from coordination or consolidation in the Spartanburg Division of the South Carolina District Court. *See In re Worldcom, Inc. Sec. & "ERISA" Litig.*, 226 F. Supp. 2d 1352, 1355 (J.P.M.L. 2002) (observing that a nationwide litigation would benefit from centralization in city that is "well served by major airlines, provides ample hotel and office accommodations, and offers a well-developed support system for legal services").

2. ***The Honorable R. Bryan Harwell Is Well-Qualified to Conduct Coordinated or Consolidated Pretrial Proceedings.***

The Honorable R. Bryan Harwell, the judge before whom the Roberts Action is pending in the District of South Carolina, is a very capable jurist with considerable experience in presiding over complex litigation. In particular, Judge Harwell has conducted pretrial proceedings in three class actions and one mass tort litigation. *See Latham v. Matthews*, 662 F. Supp. 2d 441 (D.S.C. 2009) (granting in part and denying in part motions to dismiss in class

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action against medical device manufacturer and others involving alleged violations of federal securities laws and regulations); *George v. Duke Energy Retirement Cash Balance Plan*, 560 F. Supp. 2d 444 (D.S.C. 2008) (granting in part and denying in part summary judgment in class action brought under Employee Retire Income Security Act and Age Discrimination Act as a result of employer's conversion of tradition defined benefit plant to cash balance plan); *In re DNA Ex Post Facto Issues*, No. 299-cv-5555-RBH, 2007 WL 4443207 (D.S.C. Dec. 14, 2007) (denying motion for reconsideration of grant of summary judgment in lead case of mass tort litigation involving the South Carolina DNA Act); *Smith v. G. Joannou Cylce Co.*, No. 4:06-cv-01577-RBH, 2007 WL 3254771 (D.S.C. Nov. 1, 2007) (dismissing for lack of subject matter jurisdiction class action against bicycle manufacturer related to failure to provide warranty service).

While detailed statistics about the caseloads of the particular judges in the proposed forums are not available, the statistics that are available show that, as of March 31, 2009, Judge Harwell had only one civil case pending for more than three years and one motion pending for more than six months. (Civil Justice Reform Act District Summary Report at 26 (Exhibit D).) In contrast, according to those statistics, Judge Ivan L.R. Lemelle and Chief Judge Sarah S. Vance of the Eastern District of Louisiana had three and four cases, respectively, pending for more than three years, and many of the district judges in the Central District of California had more than ten cases pending for more than three years. (*Id.* at 31, 72.)

IV.
CONCLUSION

For the reasons set forth above, the Panel should transfer the Related Actions to the District of South Carolina, Spartanburg Division, for coordination or consolidation with the *Roberts* Action before the Honorable R. Bryan Harwell pursuant to 28 U.S.C. § 1407.

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Roberts Action before the Honorable R. Bryan Harwell pursuant to 28 U.S.C. § 1407.

DATED: February 18, 2010

Respectfully submitted,

By: _____

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PROOF OF SERVICE

I hereby certify that a true and correct copy of Plaintiff's Motion for Transfer and Coordination or Consolidation of Related Actions Under 28 U.S.C. § 1407, Plaintiff's Brief in Support of to be served this 18th day of February, 2010 via Electronic filing and/or U.S. mail, postage prepaid upon the following listed clerks and counsel of record:

Clerks:

Seong Bae Choi et al. v. Toyota Motor Corporation, et al. (2:09-cv-08143)

United States District Court for the Central District of California (Western Division – Los Angeles)
Clerk of the Court
312 N. Spring Street
Los Angeles, CA 90012

Kmetz, et al. v. Toyota Motor Sales, U.S.A., Inc., et al. (2:09-cv-08478)

United States District Court for the Central District of California (Western Division – Los Angeles)
Clerk of the Court
312 N. Spring Street
Los Angeles, CA 90012

Lane v. Toyota Motor Sales, U.S.A., Inc. (2:09-cv-09158)

United States District Court for the Central District of California (Western Division – Los Angeles)
Clerk of the Court
312 N. Spring Street
Los Angeles, CA 90012

Baldisseri v. Toyota Motor Sales, U.S.A., Inc., et al. (2:09-cv-09386)

United States District Court for the Central District of California (Western Division – Los Angeles)
Clerk of the Court
312 N. Spring Street
Los Angeles, CA 90012

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Hauter, et al. v. Toyota Motor Sales, U.S.A., Inc. , et al. (1:10-cv-00105)

United States District Court for the Central District of California (Southern Division – Santa Ana)
Clerk of the Court
411 West Fourth Street, Room 1053
Santa Ana, C A 92701

Gellman v. Toyota Motor Sales, U.S.A., Inc. (1:10-cv-20006)

United States District Court for the Southern District of Florida (Miami Division)
Steven M. Larimore, Clerk of Court
400 North Miami Avenue, 8th floor
Miami, FL 33128

Graves, et al. v. Toyota Motor Manufacturing, West Virginia, Inc., et al. (2:09-cv-01247)

United States District Court for the Southern District of West Virginia (Charleston Division)
Teresa L. Deppner, Clerk of the Court
P. O. Box 2546
Charleston, WV 25329

Lynch, et al. v. Toyota Motor Corporation, et al. (8:10-cv-00326)

United States District Court for the Middle District of Florida (Tampa Division)
Clerk of Court
801 North Florida Avenue
Tampa Florida, 33602

Maillho, et al. v. Toyota Motor North America, Inc., et al. (2:10-cv-00279)
Brock v. Toyota Motor North America, Inc., et al. (2:10-cv-00281)
Weimer, et al. v. Toyota Motor North America, Inc. (2:10-cv-00219)

United States District Court for the Eastern District of Louisiana
Clerk of Court
500 Poydras Street, Room C-151
New Orleans, LA 70130

Roberts v. Toyota Motor Corporation, et al. (7:10-cv-00281)

United States District Court for the District of South Carolina (Spartanburg)
Larry Propes, Clerk of the Court
201 Magnolia Street
Spartanburg, SC 29306

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Wooten v. Toyota Motor North America, Inc. (3:10-cv-00229)

United States District Court for the District of South Carolina (Columbia)
Clerk of the Court
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Kmetz, et al. v. Toyota Motor Sales, U.S.A., Inc., et al. (2:09-cv-08478)

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Lane v. Toyota Motor Sales. U.S.A., Inc. (2:09-cv-09158)

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Baldisseri v. Toyota Motor Sales. U.S.A., Inc., et al. (2:09-cv-09386)

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Hauter, et al. v. Toyota Motor Sales, U.S.A., Inc. , et al. (1:10-cv-00105)

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Gellman v. Toyota Motor Sales, U.S.A., Inc. (1:10-cv-20006)

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Graves, et al. v. Toyota Motor Manufacturing, West Virginia, Inc., et al. (2:09-cv-01247)

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Maillho, et al. v. Toyota Motor North America, Inc., et al. (2:10-cv-00279)
Brock v. Toyota Motor North America, Inc., et al. (2:10-cv-00281)
Weimer, et al. v. Toyota Motor North America, Inc. (2:10-cv-00219)

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Brock v. Toyota Motor North America, Inc., et al. (2:10-cv-00281)

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Weimer, et al v. Toyota Motor North America, Inc. (2:10-cv-00219)

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Lynch, et al. v. Toyota Motor Corporation, et al. (8:10-cv-00326)

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Wooten v. Toyota Motor North America, Inc. (3:10-cv-00229)

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By: s/John B. White, Jr.
John B. White, Jr.

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EXHIBIT A

BEFORE THE JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION

IN RE TOYOTA MOTOR CORP. DEFECTIVE GAS PEDAL PRODUCTS LIABILITY LITIGATION	No. MDL DOCKET NO. 2151

SCHEDULE OF ACTIONS

Case Caption	Court	Civil Action No.	Judge
Plaintiffs: Dale Roberts, on behalf of himself and all others similarly situated **Defendants:** Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Inc., and Does 1 through 10	South Carolina	7:10-cv-00281	Judge R. Bryan Harwell
Plaintiffs: Linda Alford Wooten **Defendants:** 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	South Carolina	3:10-cv-00229	Judge Matthew J. Perry, Jr.
Plaintiffs: Seong Bae Choi and Chris Chan Park, as individuals, and on behalf of themselves and all others similarly situated **Defendants:** Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Inc., and Does 1 through 10	C.D. California	2:09-cv-08143-	Judge A. Howard Matz

Plaintiffs: Eric Kmets and Joe Morris, on behalf of themselves and all others similarly situated **Defendants:** Toyota Motor Sales, U.S.A., Inc., Toyota Motor Corporation, and Doe Defendants 1-10	C.D. California	2:09-cv-08478	Judge A. Howard Matz
Plaintiffs: Heather A. Lane, individually and on behalf of all others similarly situated **Defendant:** Toyota Motor Sales, U.S.A., Inc., a California corporation	C.D. California	2:09-cv-09158	Judge Gary A. Feess
Plaintiffs: Dale Baldisseri, on behalf of himself and all others similarly situated and the general public **Defendants:** Toyota Motor Sales, U.S.A., Inc.; Toyota Motor North America, Inc.; Toyota Motor Manufacturing California, Inc.; Toyota Motor Engineering & Manufacturing North America, Inc.	C.D. California	2:09-cv-09386	Judge Gary A. Feess
Plaintiffs: Joseph Hauter and Fran Palomares, on behalf of themselves and all others similarly situated **Defendants:** Toyota Motor Sales, U.S.A., Inc., Toyota Motor Corporation, and Doe Defendants 1-10	C.D. California	8:10-cv-00105	Judge A. Howard Matz
Plaintiffs: Jonathan Gellman, an individual, on behalf of himself and all others similarly situated **Defendants:** Toyota Motor Sales, U.S.A., Inc., a California corporation	S.D. Florida	1:10-cv-20006	Judge Marcia G. Cooke

Plaintiffs: Michael Graves, and Michael C. Graves, and Jeff Mullins, individually, and on behalf of all others similarly situated **Defendants:** 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	S.D. West Virginia	2:09-cv-01247	Judge Joseph R. Goodwin
Plaintiffs: Daniel Weimer, Jr., Colby Wenck, and Ann Cavalier, all individually and on behalf of all other similarly situated Plaintiffs **Defendants:** Toyota Motor North America, Inc., Toyota Motor Engineering and Manufacturing North America, Inc., and Toyota Motor Sales, U.S.A.	E.D. Louisiana	2:10-cv-00219	Judge Ivan L.R. Lemelle
Plaintiffs: Michelle Lynch, on behalf of herself and all others similarly situated **Defendants:** Toyota Motor Corporation and Toyota Motor Sales, U.S.A.	M.D. Florida	8:10-cv-00326	Judge Steven D. Merryday
Plaintiffs: Amanda Maillho **Defendants:** Toyota Motor North America, Inc., Toyota Motor Engineering and Manufacturing North America, Inc., and Toyota Motor Sales, U.S.A.	E.D. Louisiana	2:10-cv-00279	Judge Mary Ann Vial Lemmon
Plaintiffs: Gary T. Brock	E.D. Louisiana	2:10-cv-00281	Judge Ivan L.R. Lemelle

Defendants: Toyota Motor North America, Inc., Toyota Motor Engineering and Manufacturing North America, Inc., and Toyota Motor Sales, U.S.A.			

EXHIBIT B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

DALE ROBERTS, on behalf of himself and all others similarly situated, Plaintiffs, v. TOYOTA MOTOR CORPORATION, TOYOTA MOTOR SALES, U.S.A., INC., AND DOES 1 through 10 Defendants.	CIVIL ACTION No. 7:10-281-RBH **CLASS ACTION COMPLAINT**

PLAINTIFFS' ORIGINAL CLASS ACTION COMPLAINT

Plaintiff DALE ROBERTS brings this action on behalf of himself, as an individual (hereinafter, "Plaintiff"), and on behalf of all others similarly situated (hereinafter, the "Plaintiff Class") against Defendants TOYOTA MOTOR CORPORATION, TOYOTA MOTOR SALES, U.S.A., INC., and DOES 1-10 (collectively, "Defendants"), and alleges as follows:

I.
JURISDICTION & VENUE

1. This Court has subject-matter jurisdiction pursuant to 28 U.S.C. § 1332(d)(2) because the matter in controversy in this civil action exceeds the sum or value of $5,000,000, exclusive of interests and costs, and there is minimal diversity because certain members of the Plaintiff Class and Subclasses are citizens of a different state than any Defendant as required under 28 U.S.C. § 1332(d)(2)(A).

2. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and (c) because Defendants reside in this district and a substantial part of the events or omissions giving rise to

the claims herein occurred within this District. Defendants reside in this District for purposes of 28 U.S.C. § 1391 because they are subject to general personal jurisdiction in this District. Defendants have continuous and systematic contacts with South Carolina, including this District, through selling vehicles in South Carolina to South Carolina residents, including residents of this District. Defendants are also subject to specific personal jurisdiction in this District because their contacts with this District gave rise to the instant action.

3. Venue is also proper in this Court because Plaintiff Dale Roberts is a citizen of the County of Spartanburg, State of South Carolina who purchased a Toyota Camry in Spartanburg, South Carolina; and proposed Class members include citizens of South Carolina who reside in this District.

II.
PARTIES

4. Plaintiff Dale Roberts owns a 2007 Toyota Camry, which he purchased as a new vehicle from an authorized Toyota dealer in Spartanburg, South Carolina, and he is a resident of the County of Spartanburg, State of South Carolina.

5. Defendant TOYOTA MOTOR CORPORATION ("TMC") is a Japanese corporation with its principal place of business in Toyota City, Aichi, Japan and Tokyo, Japan. Service of process upon Defendant TMC shall be effectuated pursuant to Fed. R. Civ. P. 4(h).

6. Defendant TOYOTA MOTOR SALES, U.S.A., INC. ("Toyota U.S.A.") is a California corporation with its principal place of business in Torrance, Los Angeles County, California. Service of process upon Defendant Toyota U.S.A. shall be effectuated pursuant to Fed. R. Civ. P. 4(h).

7. The true names and capacities of Defendants sued herein as DOES 1 through 10 are currently unknown to Plaintiff, who therefore sues such Defendants by such fictitious names.

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Each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of Court to amend this Complaint to reflect the true names and capacities of the Defendants designated herein as DOES when such identities become known.

8. Upon information and belief, Plaintiff alleges that at all times mentioned herein, each and every Defendant was acting as an agent and/or employee of each of the other Defendants, and at all times mentioned was acting within the course and scope of each of the other Defendants. In addition, each of the acts and/or omissions of each Defendant alleged herein were made known to, and ratified by, each of the other Defendants.

III.
FACTUAL ALLEGATIONS

9. This action is brought as a class action pursuant to Federal Rule of Civil Procedure 23 on behalf of the Plaintiff Class, as well as subclasses, as defined below. Each Plaintiff and member of the Putative Plaintiff Class and Subclasses purchased or leased a vehicle manufactured and warranted by Defendants that is subject to uncontrolled and/or unintended and/or sudden acceleration of such vehicles because of Defendants' admittedly faulty Electronic Throttle Control System with Intelligence ("ETCS-i") coupled with the lack of Brake Override System technology ("BOS"), thereby creating a serious and life-threatening safety condition for drivers of and passengers in Defendants' vehicles, as well as other motorists, pedestrians, and bystanders. As a result of the absence of BOS in Defendants' vehicles, which Defendants failed to disclose to their customers, the vehicles are dangerously unsafe, inherently defective, and are worth less than the amount of money the customers who purchased them paid.

10. The vehicles subject to this action, which in the United States number in the millions, are all models bearing the "Toyota," "Lexus," and "Scion" nameplates, with ETCS-i

installed, but without an attendant BOS installed, including but not limited to the following models:

Toyota Avalon
Toyota Camry & Camry HV
Toyota Corolla & Corolla Matrix
Toyota FJ Cruiser
Toyota Highlander & Highlander Hybrid
Toyota Land Cruiser
Toyota Prius
Toyota Sequoia
Toyota Sienna
Toyota Tacoma
Toyota Tundra
Toyota RAV4
Toyota Venza

Lexus ES series vehicles
Lexus IS series vehicles
Lexus GS series vehicles
Lexus LS series vehicles
Lexus RX series vehicles
Lexus SC series vehicles

11. The accelerators on such vehicles are controlled by a drive pedal sensor that is a component part of a so-called "drive-by-wire" throttle system (known on Defendants' vehicles as ETCS-i), in which the gas pedal has no direct connection to the engine through a cable or mechanical linkage. Instead, the connection between the pedal and the engine is made by electrical signals traveling through wires. Such systems are the outgrowth of new electronic engine controls in cars. The pedal sensor is intended to gauge how far the driver is pressing the gas pedal and signals the engine's control computer, which determines how much to open the engine throttle, unless the drive-by-wire system sends the wrong signals to the engine computer, or such signals are interfered with or otherwise in error.

12. As an effective means to combat wrong signals, interference, or computer errors, most automakers equip their "drive-by-wire" vehicles with BOS technology. Defendants,

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however, failed install BOS technology on their vehicles equipped with ETCS-i. BOS allows a driver to stop a car with the footbrake even if the accelerator is depressed (or the car computer "thinks" the pedal is depressed) and the vehicle is running at full throttle. In other words, if the brakes and the accelerator are in conflict, the brakes win, but only *if* a BOS is installed. Chrysler, Volkswagen, Audi, BMW, Mercedes-Benz, and General Motors are among the manufacturers that began installing BOS in their vehicles, some as far back as ten years ago. However, Defendants have not installed such systems on any vehicle sold in the United States, and will not install any BOS until, reportedly, January 2010.

13. At the Detroit Auto Show in December 2009, Toyota North America President Yoshi Inaba said the company would begin equipping its vehicles with BOS beginning this year. However, in the meantime, Defendants made the unprecedented move of halting production and sale of eight popular models in January 2010 after numerous reports of unintended acceleration. In November 2009, Defendants initially blamed the unintended accelerations on faulty floor mats and their installation, stating that the floor mats caused the accelerator pedal to stick in the depressed position, issuing a recall for millions of "defective" floor mats. In January 2010, Defendants announced that the unintended acceleration problem was due to a faulty accelerator pedal mechanism, which wore down and became susceptible to sticking in the depressed position due to condensation from the cars' heaters on cold days.

14. But Defendants' vehicles had already been subjected to heightened scrutiny for acceleration-safety-related issues for almost a decade. According to a senior engineer at *Consumer Reports'* Auto Test Center, Toyota accounted for approximately 40% of all the unintended acceleration complaints reported to the National Highway Traffic & Safety Administration ("NHTSA") in 2008—as compared to ***all other vehicle manufacturers' models.***

And, as far back as 2004, United States government investigators have been investigating 2002-2003 Toyota and Lexus vehicles to determine whether they were defective, gathering information about owner complaints of sudden acceleration, according to the Center for Auto Safety. Automotive experts say that in at least some of those incidents, a BOS would have prevented harm.

15. As early as 2004, the NHTSA looked at reports of unintended acceleration in Defendants' best-selling model, the Toyota Camry. But the NHTSA limited its investigation to only those incidents lasting one second or less. Upon information and belief, that limit came after a former NHTSA official who went to work for Defendants before the investigation began was involved in discussions with former colleagues at NHTSA.

16. One Massachusetts consumer safety group has identified 2,274 incidents of sudden unintended acceleration in Toyota vehicles causing 275 crashes and at least 18 fatalities since 1999. In another 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"—one out of every five vehicles investigated.

17. In one incident that has, perhaps, drawn the most publicity, a 2009 Lexus ES 350 raced through San Diego, California, weaving at 120 miles per hour through rush-hour freeway traffic. Veteran California Highway Patrol officer Mark Saylor was at the wheel, with his wife, teenage daughter, and brother-in-law aboard. Calls to 911 emergency services recounted Saylor's brother-in-law exclaiming to a police dispatcher via cell phone, "We're in trouble . . . . There's no brakes!" As they approached an intersection, and the end of the road, the passengers can be heard urging each other to pray. All four died. Afterward, investigators said that it appeared the brakes had been applied for so long that the brake pads had melted, according to an

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NHTSA report. Had BOS technology been installed, the engine would have depowered and slowed.

18. Similarly, on December 26, 2009, a 2008 Toyota Avalon crashed just outside of Dallas. A Southlake, Texas police officer 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 the driver attempted to hit the brake or slow down. Two weeks later, an NHTSA investigator visited Southlake to inspect the car, accompanied by a Toyota engineer. One factor the pair immediately ruled out was the floor mats, which were in the trunk—perhaps due to the decedent operator's awareness of Defendants' November 2009 floor mat-related recall.

19. A Minnesota owner of a new Toyota Camry was much luckier. The woman's Camry, which was new and had about 6,000 miles on it, kept accelerating after she passed a pick-up truck on the highway in May 2008, even after she took her foot off the gas pedal. The next 6 miles of her journey were terrifying. The car barely slowed down when she pressed the brake—she was only able to slow the car to 60 miles per hour. "The car wanted to go 80, or higher," the driver reported. Visualizing the remainder of her commute, which traversed winding roads with no shoulders, she decided to head for a major freeway, requiring a high-speed turn through an intersection. She hit the brake with both feet, squealing through the turn and managing to swerve onto the road without hitting anything. By the time she got the car stopped miles later—with the coaching of a 911 operator, she managed to turn the car off—smoke was filling the car. Her brakes were smoldering, and the tires had started to melt near the

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wheel rims. A police officer at the scene of the incident said the Camry's floor mats were not near the accelerator pedal.

20. Notwithstanding such alarming incidents, on or about January 28, 2010, Defendants represented to consumers on their Toyota USA Newsroom website that the unintended sudden acceleration "condition is rare and ***does not occur suddenly***." Inferring that the problem only occurs in vehicles that have experienced some excessive degree of use, as opposed to brand new vehicles, Defendants added: "It 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." Yet, reports of unintended acceleration in Defendants' vehicles stem from vehicles with fewer than 1,000 miles on them, and others with more than 60,000 miles. Indeed, Defendants' spokesperson Brian Lyons has represented that there is "no common theme when it comes to how long the product has been out there." Defendants subsequently announced that they intend to replace the supposedly defective pedal mechanisms as part of a massive 2.3 million vehicle recall.

21. But, even Defendants' own supplier of the reportedly defective accelerator pedals says that Defendants are far from done in ending the problem of runaway cars—and that Defendants told it that none of the serious accidents or deaths linked to runaway cars was caused by "sticky" gas pedals. Instead, Defendants acknowledged to the parts supplier that the "rare set of conditions"—i.e., excessive wear caused by condensation build up, making the gas pedal slow to return to idle—did not cause *any* accidents or injuries. The pedal supplier also stated that it has "deep concern that there is widespread confusion and incorrect information about the role of CTS-manufactured gas pedals" in the recall, and that its pedals "should absolutely not be linked with any sudden unintended acceleration incidents."

22. At almost every step, Defendants have underestimated the severity of the sudden-acceleration problem affecting its most popular cars. They moved from discounting early reports of problems to overconfidently announcing diagnoses and insufficient fixes. As recently as the fall of 2009, Defendants were still saying they were confident that loose floor mats were the *sole cause* of any sudden acceleration, issuing an advisory to millions of owners to remove the supposedly defective mats. The company said on November 2, 2009 that "there is no evidence to support" any other conclusion, and added that its claim was backed up by the NHTSA. But, in fact, the agency had not signed on to the explanation, and it issued a sharp rebuke. Defendants' statement was "misleading and inaccurate," the agency said. "This matter is not closed."

23. Such dangerous, quality and safety-related defects most certainly come as a surprise to loyal consumers of Defendants' vehicles like Plaintiff and members of the Plaintiff Class. Since first importing cars to the United States more than five decades ago, Defendants have in large part slowly and steadily built the Toyota and Lexus nameplates as having superior reputations for technical expertise and reliability. Consumers of Defendants' vehicles prized the automobiles for their quality and safety. As one auto industry analyst explained in a recent interview, "People don't buy [Toyotas] for their good looks. They don't buy it for the cash-back or financing offers. They buy them because they have a lot of confidence in the quality and safety of the vehicle."

24. However, in 2002, Defendants set an ambitious goal to own 15 percent of the global auto industry by 2010, intending to surpass General Motors as the world's largest automaker. To get there, Defendants had to grow the company by 50 percent. Defendants also had to build new plants in the United States, China, and elsewhere, and introduce dozens of new models. One significant resulting change was Defendants' decision to buy parts from companies

around the world, rather than from a small group of Japanese suppliers that had previously been longtime partners.

25. Defendants managed to win bragging rights as the world's biggest automaker in terms of global sales in 2006, four years ahead of schedule. But, the next year it lost its top quality ranking in the widely regarded and influential *Consumer Reports* magazine, a position it held in the United States for years, due to what the reviewers termed "bug-ridden designs." That year, *Consumer Reports* removed the Toyota Camry—which was then the best-selling car in the United States—from its list of recommended vehicles, the first time in 11 years that the Camry had not received a "recommended" rating. The magazine also boldly declared that it would no longer recommend any of Defendants' vehicles without data showing that past years' vehicles were reliable. In or about February 2010, the magazine announced it was suspending recommendations for any of Defendants' recalled models.

26. Now, with unintended acceleration problems plaguing Defendants' vehicles and after countless related accidents, injuries, and deaths, it has become apparent that consumers who purchased or leased Defendants' vehicles did not get the quality and safety they expected and paid for. As one putative member of the Plaintiff Class recently told the Los Angeles *Times*, "I thought Toyota was a very good company and built good products." But, "[n]ow I wouldn't even consider buying a Toyota in the future. This whole event tells me that they don't value my life, and that means I should never buy another car from them."

27. In a speech last year, Defendants' new president—the grandson of the founder—lamented that the drive for profits "may have stretched [the company] more than we should have, and that made us unable to capitalize on Toyota's traditional strengths"—quality, reliability, and safety. The company president declared in another speech last year that the company was one

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step away from "capitulation to irrelevance or death," having already gone through a phase of "undisciplined pursuit of more." Plainly, as Defendants gained sales throughout the 2000s, they moved away from the business practices of slow but steady growth based on a reputation for reliability and safety.

28. Industry analysts question whether Defendants' reputation for quality, reliability, and safety is irreparably tarnished. Declared one senior auto industry strategic advisor on or about January 27, 2010, Defendants' "reputation for long-term quality is finished. . . . . People aren't going to buy Toyotas, period. It doesn't matter which model. What's happened is sufficient to keep people out of the stores." Another analyst explained, "This [issue] is going to have severe ramifications for Toyota."

29. Defendants designed and manufactured defective vehicles by not installing BOS as standard, or even optional, equipment—even in the face of admittedly and dangerously faulty and/or unreliable and/or unsafe ETCS-i acceleration systems. As most other automobile manufacturers have recognized, BOS provides an additional, but crucial, failsafe mechanism for drivers, passengers, and bystanders that experience and/or are put in peril by dangerous, unintended and sudden acceleration. Indeed, whatever the source of Defendants' problems with their ETCS-i acceleration systems—be it floor mat-related, "sticky" pedal-related, or a more insidious computer "glitch" causing the vehicles to accelerate uncontrollably—it is without question that inclusion of BOS on Defendants' vehicles would have helped save lives and prevent injuries and accidents by providing a failsafe "cutout" for unintended acceleration.

30. To save production costs and increase profits, however, Defendants intentionally did not install BOS in their vehicles equipped with ETCS-i, despite knowledge that ETCS-i was prone to sudden acceleration. Defendants have also opted not to install BOS in already sold or

leased vehicles as part of any recall or otherwise, either because it is impossible to install or program BOS on an aftermarket basis, or because it is prohibitively expensive to do so. Defendants have instead created the dangerous illusion of affirmative, safety-related action by repairing or replacing accelerator pedals on some but not all the defective cars and trucks. Even with Defendants' attempts to remedy the runaway car problem through such efforts, Defendants' vehicles with ETCS-i, but without BOS installed, remain dangerously defective and unsafe, and have resulted in damages to Plaintiff and the Plaintiff Class and Subclasses. In fact, as of the filing of this Complaint, Kelley Blue Book announced it was downgrading the value estimates of Defendants' vehicles as much as five percent, and that "there may be further devaluation ahead."

31. Upon information and belief, each of Defendants' vehicles were sold and/or leased to Plaintiff and members of the Plaintiff Class and Subclasses with express warranties covering repair, replacement, and/or adjustment of all items on those vehicles defective in material, workmanship, or factory preparation, and/or similar express warranties.

IV.
CLASS ACTION ALLEGATIONS

32. Pursuant to Rules 23(b) and (c) of the Federal Rules of Civil Procedure, Plaintiff brings this action on his own behalf and on behalf of the proposed Class. Plaintiff seeks certification a Plaintiff Class that consists of:

> All persons or entities domiciled or residing in any of the 50 states of the United States of America or in the District of Columbia who purchased or leased at least one new Toyota, Lexus, or Scion vehicle equipped with Defendants' Electronic Throttle Control System with Intelligence, but not equipped with a Brake Override System.

Plaintiff also seeks certification of the following Plaintiff Subclasses:

> 1. All persons domiciles or residing in any of the 50 states of the United States of America or in the District of Columbia who

purchased and normally used for personal, family, or household purposes at least one new Toyota, Lexus, or Scion vehicle equipped with Defendants' Electronic Throttle Control System with Intelligence, but not equipped with a Brake Override System.

2. All persons or entities domiciled or residing in Arkansas, Colorado, Connecticut, Florida, Kansas, Missouri, New Jersey, New Mexico, New York, Ohio, Vermont, or Washington who purchased at least one new Toyota, Lexus, or Scion vehicle equipped with Defendants' Electronic Throttle Control System with Intelligence, but not equipped with a Brake Override System.

Excluded from the Plaintiff Class and Subclass are: (a) Defendants, any entity in which they have a controlling interest, their legal representatives, officers, directors, assigns and successors, and any other entity related to or affiliated with Defendants; and (b) all claims for personal injury, wrongful death, or any incidental or consequential damages over and above those sought herein, except as authorized by law.

33. Plaintiff and the Plaintiff Class assert the causes of action in Counts I and II.

34. Plaintiff and Plaintiff Subclass One, defined above, also assert the cause of action in Count III.

35. Plaintiff and Plaintiff Subclass Two, defined above, also assert the cause of action in Count IV.

36. The Class is comprised of millions of purchasers of Defendants' vehicles throughout the United States, making joinder impracticable. The exact number of Class Members is unknown, but their identity can be ascertained through Defendant's records. The disposition of the numerous claims of the Plaintiff Class and Plaintiff Subclass in a single class action will provide substantial benefits to all parties and to the Court.

37. There is a well-defined community of interest in the questions of law and fact involved affecting the Plaintiff Class. The questions of law and fact common to the Class

predominate over questions affecting only individual Class Members, and include, but are not limited to, the following:

(a) whether Defendants' vehicles purchased or leased by the members of the Plaintiff Class are inherently defective in that they are equipped with ETCS-i systems, but without the failsafe BOS installed;

(b) whether Defendants knew of the inherent defect in their vehicles with ETCS-i systems, but without the failsafe BOS installed;

(c) whether Defendants had a duty to members of the Plaintiff Class to disclose the defective nature of the vehicles with ETCS-i systems, but without the failsafe BOS installed;

(d) whether the facts concealed and/or otherwise not disclosed by Defendants to members of the Plaintiff Class are material facts;

(e) whether, as a result of Defendants' concealment and/or failure to disclose material facts, members of the Plaintiff Class acted to their detriment by purchasing vehicles containing the common defect described above;

(f) whether Defendants knew or should have known that Toyota, Lexus, and Scion vehicles with the common defect described above are inherently defective and, thus, that those vehicles are not suitable for the purposes for which they are intended to be used, and otherwise are not as warranted and represented by Defendants;

(g) whether Defendants' vehicles with the common defect described above are not as advertised and/or promoted by Defendant;

(h) whether Defendants expressly warranted to original purchasers and/or lessees of the subject vehicles that Defendants would repair, replace, or adjust all items on those vehicles defective in material, workmanship, or factory preparation;

(i) whether Defendants breached such express warranties because Defendants failed to successfully repair or otherwise remedy the common defect described above in vehicles owned or leased by members of the Plaintiff Class;

(j) whether Defendants breached their express warranties because members of the Plaintiff Class have been deprived of the value of the bargain;

(k) whether Defendants impliedly warranted to original purchasers and/or lessees of the subject vehicles that those vehicles were merchantable;

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(l) whether Defendants breached their implied warranty of merchantability by selling and/or leasing members of the Plaintiff Class vehicles with an inherent defect;

(m) whether members of the Plaintiff Class are entitled to compensatory damages for the diminution in the fair market value of the subject vehicles as a result of the common defect described above, and the amount of such damages; and

(n) whether Defendants should be declared financially responsible for notifying all members of the Plaintiff Class of the defective nature of the subject vehicles and the cost of the diminution in fair market value of said vehicles.

38. Plaintiff asserts claims that are typical of the Plaintiff Class, having purchased and/or leased a Toyota, Lexus, and/or Scion vehicle with ETCS-installed, but without BOS installed. Plaintiff and members of the Plaintiff Class and Subclasses have similarly suffered harm arising from Defendants' breaches of express and implied warranties.

39. Injuries sustained by Plaintiff and the Plaintiff Class in each instance form a common nucleus of operative facts—Defendants' breach of express and implied warranties as a result of the common defect in the subject vehicles, as described herein.

40. Plaintiff is an adequate representative of the Plaintiff Class because her interests do not conflict with and are not antagonistic to the interests of the Plaintiff Class members she seeks to represent. Plaintiff will fairly and adequately represent and protect the interests of the Plaintiff Class. Plaintiff has retained counsel who are competent and experienced in the prosecution of mass torts and class litigation.

41. Plaintiff and members of the Plaintiff Class have all suffered and will continue to suffer substantial harm and damages due to Defendants' breaches of express and implied warranties. A class action is superior to other methods for the fair and efficient adjudication of the subject controversy. Absent a class action, most Plaintiff Class members likely will find the

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cost of litigating their individual claims to be prohibitive, and will have no effective remedy at all. Because of the relatively small size of the individual claims of Plaintiff Class members, few members of the Plaintiff Class could likely afford to seek legal redress on their own. Absent a class action, members of the Plaintiff Class will continue to sustain damages, and Defendants' misconduct will proceed without remedy. The class treatment of common questions of law and fact is also superior to multiple individual actions or piecemeal litigation in that it conserves the resources of the courts and the litigants and promotes consistency and efficiency of adjudication. Additionally, Defendants have acted, and failed to act, on grounds generally applicable to Plaintiff and the Plaintiff Class, requiring Court imposition of uniform relief to insure compatible standards of conduct toward Plaintiff and the Plaintiff Class.

42. Notice can be provided to original purchasers and lessees of subject vehicles at Defendants' expense via internet publication and through the U.S. postal service.

V.
CAUSES OF ACTION

COUNT 1 – BREACH OF EXPRESS WARRANTY

43. Plaintiffs reallege and incorporate by reference each preceding paragraph as if fully set forth herein. Hereinafter, "Plaintiffs" shall refer to the Plaintiff and the Plaintiff Class collectively.

44. Through a written manufacturer's warranty, Defendants expressly warranted to Plaintiffs that they would repair, replace, or adjust items defective in material, workmanship, or factory preparation on all vehicles they originally sold and/or leased that were equipped with ETCS-*i*, but not equipped with BOS.

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45. Defendants breached those express warranties because they either refused to or are unable to successfully repair or otherwise remedy the common defect in the vehicles, described above.

46. Defendants also breached those express warranties because Plaintiffs have been deprived of the value of the bargain with respect to the subject vehicles.

47. The warranty remedy of repair or replacement has failed of its essential purpose because, although Defendants have been given a reasonable chance to repair or otherwise remedy the common defect described above, all subject vehicles are still dangerously defective and fail to function properly in that the ETCS-i installed on the vehicles cannot be safely and reliably overridden in an emergency, unintended, and/or sudden acceleration incident or situation. As a result, the health, safety, and lives of drivers and passengers of Defendants' vehicles, together with bystanders, remain in peril.

48. Defendants efforts to repair or otherwise remedy the common defect in the vehicles have failed because the defect is permanent and/or prohibitively difficult or expensive for Defendants to remedy.

49. As alleged above, Defendants knew or should have known and intentionally concealed the defective nature of the vehicles equipped with ETCS-i, but without BOS. Defendants failed to warn Plaintiffs about the common defect in the subject vehicles.

50. Defendants were on notice of the common defect in the subject vehicles, which Defendants are unable and/or have refused to repair, replace, and/or adjust.

51. When Defendants made the express warranty described above, Defendants knew the purpose for which the subject vehicles were to be used, and warranted them to be in all respects safe and proper for that purpose.

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52. As a direct and proximate result of Defendants' breach of express warranty, Plaintiffs have suffered actual damages in the form of substantial diminution in the fair market value of their subject vehicles. The diminution in fair market value would not have occurred but for the inherent defect, described above.

53. Plaintiffs demand judgment against Defendants for compensatory damages in an amount to be determined at trial, together with reasonable attorneys' fees.

COUNT 2 – BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

54. Plaintiffs reallege and incorporate by reference each preceding paragraph as though fully set forth herein.

55. Defendants are merchants with respect to vehicles such as the subject Toyota, Lexus, and Scion vehicles.

56. As merchants with respect to those vehicles, Defendants impliedly warranted to Plaintiffs that Toyota, Lexus, and Scion vehicles equipped with ETCS-i, but not equipped with BOS, were merchantable, including that they passed without objection in the trade and were fit for the ordinary purposes for which such goods are used.

57. Due to their undisclosed defective nature, new Toyota, Lexus, and Scion vehicles equipped with ETCS-i, but not equipped with BOS, were unmerchantable when sold to Plaintiffs because they could not pass without objection in the trade and were unfit for the ordinary purposes for which such goods are used.

58. Defendants breached the implied warranty of merchantability with respect to the subject vehicles by selling unmerchantable vehicles to Plaintiffs.

59. As alleged above, Defendants actually knew or should have known of and intentionally concealed the defective nature of the subject vehicles from Plaintiffs. Defendants failed to warn Plaintiffs about the common defect in the vehicles.

60. Defendants were on notice of the common defect in the subject vehicles, which Defendants are unable and/or have refused to repair, replace, and/or adjust.

61. As a direct and proximate result of Defendants' breach of the implied warranty of merchantability, Plaintiffs have suffered actual damages in the form of substantial diminution in the fair market value of their subject vehicles. The diminution in fair market value would not have occurred but for the inherent defect in the vehicles.

62. Plaintiffs demand judgment against Defendants for compensatory damages in an amount to be determined at trial, together with reasonable attorneys' fees.

COUNT 3 – VIOLATION OF THE MAGNUSON-MOSS WARRANTY ACT

63. Each preceding paragraph is realleged and incorporated in full as though fully set forth herein.

64. Members of Plaintiff Subclass One, including representatives of the Subclass, are "consumers" as defined by 15 U.S.C. § 2301(3).

65. Defendants are "supplier[s]," "warrantor[s]," and "service contractor[s]" as defined by 15 U.S.C. §§ 2301(4), 2301(5), and 2301(8), respectively.

66. The Toyota, Lexus, and Scion vehicles equipped with ETCS-i, but without BPS installed, which were purchased by members of Plaintiff Subclass One and Subclass representatives, are "consumer products" as defined by 15 U.S.C. § 2301(1).

67. The Magnuson-Moss Warranty Act provides: "a consumer who is damaged by the failure of a supplier, warrantor, or service contractor to comply with any obligation under this

title, or under a written warranty, implied warranty, or service contract . . . may bring suit for damages and other legal and equitable relief . . . in an appropriate district court of the United States." 15 U.S.C. § 2310(d)(1). The Magnuson-Moss Warranty Act also authorizes class actions and the award of attorney's fees. 15 U.S.C. § 2310(e).

68. Upon information and belief, Defendants knew or should have known at the time of sale to members of Plaintiff Subclass One and Subclass Representatives that an inherent defect existed in the subject vehicles, which rendered those vehicles unfit for their customary and usual purposes and for the particular purpose for which Defendants knew or should have known the vehicles were intended, as alleged more fully above.

69. Defendants' knowledge of the defect in the subject vehicles gave Defendants more than adequate opportunity to repair or otherwise remedy the defect. After a reasonable number of attempts, Defendants have failed to repair or otherwise remedy the ETCS-i and BOS defect because the defect is inherent and permanent.

70. As described above, Defendants have failed to comply with their obligations under written manufacturer's warranties issued to members of Plaintiff Subclass One and Subclass Representatives because Defendants cannot successfully repair or otherwise remedy the inherent and permanent defect in the ETCS-i and BOS. Those written warranties are "service contracts" as defined by 15 U.S.C. 2301(8).

71. Defendants impliedly warranted that the subject vehicles would be merchantable. Defendants breached that warranty in the manner described above in Count II.

72. As a direct and proximate result of Defendants breach of written warranties and service contracts, members of Plaintiff Subclass One and their Subclass Representatives sustained actual damages in the form of significant diminution in the fair market value of their

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subject vehicles. The diminution in fair market value would not have occurred but for the inherent defect in the subject vehicles. Members of Plaintiff Subclass One and their Subclass Representatives, demand judgment against Defendants for compensatory damages in an amount to be determined at trial, together with reasonable attorneys' fees.

COUNT 4 – VIOLATION OF CONSUMER PROTECTION STATUTES

73. Each preceding paragraph is realleged and incorporated in full as though fully set forth herein.

74. Defendants' advertising, marketing, distribution, and sales of Toyota, Lexus, and Scion vehicles equipped with ETCS-i, but without BOS installed, as well as its servicing of those vehicles after sale, constitute conduct and activities in the course of trade and commerce.

75. Defendants engaged in unfair, unconscionable, deceptive, and fraudulent trade practices and acts in violation of the state consumer protection statutes listed below by advertising, marketing, distributing, and selling the subject vehicles without informing them of the common defects relative to the ETCS-i and BOS.

76. As alleged above, Defendants had, and still have, superior knowledge of the inherent defect in the subject vehicles, and intentionally concealed the defects from members of Plaintiff Subclass Two and their Subclass Representatives in order to induce them into purchasing one or more of said vehicles.

77. At the very least, Defendants should have known of the defective nature of the subject vehicles, yet Defendants failed to warn or otherwise inform members of Plaintiff Subclass Two and their Subclass Representatives about the common defect in said vehicles. Members of Plaintiff Subclass Two and their Subclass Representatives did not know, and had no reason to know, of the defect prior to purchasing their subject vehicles.

78. Members of Plaintiff Subclass Two and their Subclass Representatives could not have discovered the defect in the relative to the ETCS-i and absence of BOS through any reasonable inspection of the vehicles before purchase.

79. Members of Plaintiff Subclass Two and their Subclass Representatives were without access to the information concealed by Defendants regarding the inherent defects in the subject vehicles, and Plaintiff Subclass Two and their Subclass Representatives, therefore, reasonably relied on Defendants' warranties, promises, and representations regarding the quality, reliability, safety, and other material characteristics of Defendants' vehicles before and at the time of sale, together with reasonable reliance on and Defendants' ability to repair, replace, or adjust items on the subject vehicles that are defective in material, workmanship, or factory preparation.

80. Members of Plaintiff Subclass Two and their Subclass Representatives also reasonably relied on Defendants to disclose, and not conceal or fail to warn of, material information about the subject vehicles and defects.

81. Defendants concealment of the defects described herein from Plaintiff Subclass Two and their Subclass Representatives constitutes unfair competition and unfair, unconscionable, deceptive, and fraudulent trade practices and acts in violation of the state consumer protection statutes listed below. Alternatively, Defendants' failure to warn Plaintiff Subclass Two and their Subclass Representatives about the subject defects constitutes unfair competition and unfair, unconscionable, deceptive, and fraudulent trade practices and acts in violation of the state consumer protection statutes listed below.

82. Defendants also violated the state consumer protection statutes listed below by selling the subject vehicles when Defendants knew or should have known that the inherent

defects in vehicles described herein cannot be remedied through repair, replacement, and/or adjustment, or such remedy is prohibitively difficult or expensive to accomplish.

83. Defendants engaged in unfair competition and unfair and deceptive trade practices and acts in violation of Ark. Code § 4-88-101, *et seq.*

84. Defendants engaged in unfair competition and unfair and deceptive trade practices and acts and has made false representations in violation of Colo. Rev. Stat. § 6-1-105, *et seq.*

85. Defendants engaged in unfair competition and unfair and deceptive trade practices and acts in violation of Conn. Gen. Stat. § 42-110b, *et seq.*

86. Defendants engaged in unfair competition and unfair and deceptive practices and acts in violation of Fla. Stat. § 501.201, *et seq.*

87. Defendants engaged in unfair competition and unfair and deceptive trade practices and acts in violation of Kan. Stat. § 50-623, *et seq.*

88. Defendants engaged in unfair competition and unfair and deceptive trade practices and acts in violation of Vernon's Missouri Stat. § 407.010, *et seq.*

89. Defendants engaged in unfair competition and unfair and deceptive trade practices and acts in violation of N.J. Rev. Stat. § 56:8-1, *et seq.*

90. Defendants engaged in unfair competition and unfair and deceptive trade a practices and acts in violation of N.M. Stat. § 57-12-1, *et seq.*

91. Defendants engaged in unfair competition and unfair and deceptive trade practices and acts in violation of N.Y. Gen. Bus. Law § 349, *et seq.*

92. Defendants engaged in unfair competition and unfair and deceptive trade practices and acts in violation of Ohio Rev. Stat. § 1345.01, *et seq.*

93. Defendants engaged in unfair competition and unfair and deceptive trade practices and acts in violation of 9 Vt. § 2451, *et seq.*

94. Defendants engaged in unfair competition and unfair and deceptive trade practices and acts in violation of Wash. Rev. Code. § 19.86.010, *et seq.*

95. Defendant's unfair competition and unfair and deceptive trade practices and acts have directly, foreseeably, and proximately caused damages and injury to Plaintiff Subclass Two and their Subclass Representatives in the form of significant diminution in the fair market value of their subject vehicles. The diminution in fair market value would not have occurred but for the inherent defect in the subject vehicles.

96. Had Plaintiff Subclass Two and their Subclass Representatives known of the inherent defects in the subject vehicles, they would have paid less for their vehicles than the amounts they actually paid, or they would not have purchased those vehicles.

97. Plaintiff Subclass Two and their Subclass Representatives demand judgment against Defendants for compensatory damages, and any other damages authorized by the above listed state consumer protection statutes, in an amount to be determined at trial, together with reasonable attorneys' fees.

VI.
DEMAND FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, pray for:

(a) An order certifying this matter as a class action with Plaintiffs as Class representatives and Subclass One Reprentatives as representatives of Plaintiff Subclass One and Subclass Two Representatives as representatives of Plaintiff Subclass Two, and designating Plaintiffs' counsel as Class Counsel and Subclass

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Counsel;

(b) Judgment in favor of Plaintiffs and the Class on Counts I and II;

(c) Judgment in favor of Subclass One Representatives and Plaintiff Subclass One on Count III;

(d) Judgment in favor of Subclass Two Representatives and Plaintiff Subclass Two on Count IV;

(e) Pre-judgment and post judgment interest on such monetary relief;

(f) An award of reasonable attorneys' fees and costs of Plaintiffs and the Plaintiff Subclasses; and

(g) Such other and further relief as the nature of the case may require or as may be determined to be just, equitable, and proper by this Court.

Respectfully submitted,

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February 5, 2010

Spartanburg, South Carolina

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EXHIBIT C

U.S. DISTRICT COURT - JUDICIAL CASELOAD PROFILE

SOUTH CAROLINA			12-MONTH PERIOD ENDING SEPTEMBER 30						Numerical Standing	
			2008	2007	2006	2005	2004	2003	U.S.	Circuit
OVERALL CASELOAD STATISTICS	Filings*		5,460	5,508	4,670	4,875	24,510	5,210	U.S.	Circuit
	Terminations		5,147	5,370	4,984	25,042	5,377	4,981		
	Pending		4,202	3,877	3,705	3,964	24,228	5,167		
	% Change in Total Filings	Over Last Year		-.9	.				53	6
		Over Earlier Years			16.9	12.0	-77.7	4.8	26	3
Number of Judgeships			10	10	10	10	10	10		
Vacant Judgeship Months**			.0	.0	.0	.0	8.8	9.4		
ACTIONS PER JUDGESHIP	FILINGS	Total	545	551	468	488	2,452	521	18	1
		Civil	445	440	363	397	2,360	428	9	1
		Criminal Felony	80	86	80	76	78	83	35	6
		Supervised Release Hearings**	20	25	25	15	14	10	56	8
	Pending Cases		420	388	371	396	2,423	517	27	2
	Weighted Filings**		503	519	462	514	2,454	505	26	2
	Terminations		515	537	498	2,504	538	498	21	1
	Trials Completed		36	39	39	22	20	20	7	2
MEDIAN TIMES (months)	From Filing to Disposition	Criminal Felony	9.4	8.5	8.9	8.6	8.7	8.5	56	7
		Civil**	8.2	8.0	9.5	9.0	9.4	8.2	30	4
	From Filing to Trial** (Civil Only)		21.5	18.5	21.8	21.0	20.0	22.5	23	4
OTHER	Civil Cases Over 3 Years Old**	Number	53	35	91	74	918	68		
		Percentage	1.6	1.2	3.1	2.3	3.9	1.6	5	1
	Average Number of Felony Defendants Filed Per Case		1.6	1.7	1.7	1.8	1.6	1.7		
	Jurors	Avg. Present for Jury Selection	39.06	47.08	39.24	47.92	30.59	37.98		
		Percent Not Selected or Challenged	15.0	20.3	17.0	13.4	13.2	25.7		

2008 CIVIL AND CRIMINAL FELONY FILINGS BY NATURE OF SUIT AND OFFENSE													
Type of	TOTAL	A	B	C	D	E	F	G	H	I	J	K	L
Civil	4454	191	516	1937	36	100	256	445	388	50	401	5	129
Criminal*	795	12	162	27	272	138	32	25	32	40	17	17	21

* Filings in the "Overall Caseload Statistics" section include criminal transfers, while filings "By Nature of Offense" do not.
** See "Explanation of Selected Terms."

TOY-RQ-05E-00009898

U.S. DISTRICT COURT - JUDICIAL CASELOAD PROFILE

CALIFORNIA CENTRAL			12-MONTH PERIOD ENDING SEPTEMBER 30							
			2008	2007	2006	2005	2004	2003	Numerical Standing	
									U.S.	Circuit
OVERALL CASELOAD STATISTICS	Filings*		15,144	14,154	12,909	14,630	16,938	14,720		
	Terminations		14,742	13,642	13,680	16,173	15,269	15,800		
	Pending		12,221	11,817	12,401	13,180	14,720	13,129		
	% Change in Total Filings	Over Last Year		7.0					23	3
		Over Earlier Years			17.3	3.5	-10.6	2.9	28	4
Number of Judgeships			28	28	28	28	28	28		
Vacant Judgeship Months**			12.0	31.2	53.9	24.8	2.3	23.6		
ACTIONS PER JUDGESHIP	FILINGS	Total	540	505	461	523	605	526	19	5
		Civil	433	425	397	450	515	451	12	3
		Criminal Felony	63	47	36	45	60	49	49	9
		Supervised Release Hearings**	44	33	28	28	30	26	15	6
	Pending Cases		436	422	443	471	526	469	24	5
	Weighted Filings**		578	551	518	565	651	590	12	4
	Terminations		527	487	489	578	545	564	20	7
	Trials Completed		11	12	12	13	12	14	84	12
MEDIAN TIMES (months)	From Filing to Disposition	Criminal Felony	7.5	12.1	12.4	10.3	8.2	9.4	32	4
		Civil**	7.0	6.8	7.2	7.4	7.3	7.5	12	2
	From Filing to Trial** (Civil Only)		22.0	21.3	21.3	20.5	17.8	21.2	24	2
OTHER	Civil Cases Over 3 Years Old**	Number	821	712	1,240	809	624	609		
		Percentage	8.1	7.2	11.6	7.2	5.0	5.4	68	10
	Average Number of Felony Defendants Filed Per Case		1.5	1.3	1.6	1.5	1.4	1.4		
	Jurors	Avg. Present for Jury Selection	60.94	60.57	64.08	47.33	49.01	49.49		
		Percent Not Selected or Challenged	53.7	56.5	55.7	48.3	49.4	51.6		

2008 CIVIL AND CRIMINAL FELONY FILINGS BY NATURE OF SUIT AND OFFENSE													
Type of	TOTAL	A	B	C	D	E	F	G	H	I	J	K	L
Civil	12130	1023	200	2976	287	205	839	1508	562	1395	1292	113	1730
Criminal*	1761	12	242	671	115	360	48	124	49	48	15	37	40

* Filings in the "Overall Caseload Statistics" section include criminal transfers, while filings "By Nature of Offense" do not.
** See "Explanation of Selected Terms."

TOY-RQ-05E-00009899

U.S. DISTRICT COURT - JUDICIAL CASELOAD PROFILE

			12-MONTH PERIOD ENDING SEPTEMBER 30							
LOUISIANA EASTERN			2008	2007	2006	2005	2004	2003	Numerical Standing	
									U.S.	Circuit
OVERALL CASELOAD STATISTICS	Filings*		8,690	10,949	10,173	5,152	3,783	3,990		
	Terminations		9,680	6,596	3,611	3,339	3,584	3,883		
	Pending		15,654	16,431	12,238	5,326	3,526	3,324		
	% Change in Total Filings	Over Last Year		-20.6					90	9
		Over Earlier Years			-14.6	68.7	129.7	117.8	2	1
Number of Judgeships			12	12	12	12	12	12		
Vacant Judgeship Months**			.0	.0	.0	.0	.0	.0		
ACTIONS PER JUDGESHIP	FILINGS	Total	724	913	848	429	316	332	7	3
		Civil	694	874	817	398	283	297	5	1
		Criminal Felony	23	31	23	24	25	27	93	9
		Supervised Release Hearings**	7	8	8	7	8	8	87	7
	Pending Cases		1,305	1,369	1,020	444	294	277	3	1
	Weighted Filings**		852	914	568	317	314	320	2	1
	Terminations		807	550	301	278	299	324	4	2
	Trials Completed		14	12	13	12	12	13	70	9
MEDIAN TIMES (months)	From Filing to Disposition	Criminal Felony	8.8	9.3	10.3	9.1	6.8	7.2	48	5
		Civil**	8.8	7.9	11.6	9.6	9.3	9.8	44	4
	From Filing to Trial** (Civil Only)		17.6	19.7	20.0	17.0	16.2	17.4	11	1
OTHER	Civil Cases Over 3 Years Old**	Number	2,065	374	569	314	225	40		
		Percentage	13.4	2.3	4.8	6.2	6.9	1.3	84	9
	Average Number of Felony Defendants Filed Per Case		1.6	1.4	1.3	1.6	1.7	1.5		
	Jurors	Avg. Present for Jury Selection	49.50	34.60	37.85	36.84	27.30	28.51		
		Percent Not Selected or Challenged	52.3	39.5	44.3	30.1	28.8	30.6		

2008 CIVIL AND CRIMINAL FELONY FILINGS BY NATURE OF SUIT AND OFFENSE													
Type of	TOTAL	A	B	C	D	E	F	G	H	I	J	K	L
Civil	8325	52	1051	435	11	33	86	5085	861	34	285	3	389
Criminal*	271	2	62	46	40	62	9	6	4	17	3	9	11

* Filings in the "Overall Caseload Statistics" section include criminal transfers, while filings "By Nature of Offense" do not.
** See "Explanation of Selected Terms."

EXHIBIT D

U.S. Party/Case Index

Statistical Reports

District Summary Report

Description: The Civil Justice Reform Act Report provides summary and detailed information on pending motions, bench trials, three-year-old cases, bankruptcy appeals, and Social Security appeal cases. The summary reports display totals of these pending civil matters, by individual district judges and magistrate judges, district, circuit, and nationwide. The detailed reports also display these totals; however, they also include information on the type of proceeding, divisional office, docket number, nature of case, case title, CJRA filing/reopened and deadline dates, and case status. Please note that there are separate data files for courts which have used the CJRA Integrated Case Management (ICMS) and Case Management/Electronic Case Files (CM/ECF) automated systems since March 1998, and for those courts (specifically designated as "Non-ICMS") which reported their CJRA pending matters manually. In addition, it should be noted that all reports may not exactly match numbers previously published in the CJRA national summary reports, as CJRA automated system modifications, new reporting policy, and court requests for data corrections have occurred since the inception of electronic reports in March 1998. These changes have resulted in minimal differences in the numbers of CJRA pending matters compared to the previously published national summaries.

Report Dates: Six-month periods ending March 31 and September 30

More Information: For questions concerning the content of these reports, contact Maurice Galloway, in the Statistics Division at (202) 502-1493. For all other questions concerning the U.S. Party/Case Index, contact the PACER Service Center.

Report Contents	Report Size	Report Cost	Options
DISTRICT SUMMARY REPORT AS OF DATE: 03/31/2009	407 KBytes 101 Pages	$ 8.08	View Report
DISTRICT SUMMARY REPORT AS OF DATE: 09/30/2008	405 KBytes 99 Pages	$ 7.92	View Report
DISTRICT SUMMARY REPORT AS OF DATE: 03/31/2008	402 KBytes 99 Pages	$ 7.92	View Report
DISTRICT SUMMARY REPORT AS OF DATE: 09/30/2007	406 KBytes 100 Pages	$ 8.00	View Report
DISTRICT SUMMARY REPORT AS OF DATE: 03/31/2007	401 KBytes 99 Pages	$ 7.92	View Report
DISTRICT SUMMARY REPORT	402 KBytes	$ 8.00	View Report

D DISTRICT SUMMARY REPORT PAGE 1
AS OF DATE: 03/31/2009 RUN: 06/23/2009

U.S. DISTRICT COURT FOR DISTRICT OF COLUMBIA

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
ROBINSON, DEBORAH ANN	2	0	0	0	0
KAY, ALAN	0	5	0	0	0
FACCIOLA, JOHN M.	5	0	0	0	0
SUBTOTAL	7	5	0	0	0
DISTRICT JUDGES					
SHANSTROM, JACK D. (VJ)	1	4	0	0	0
OBERDORFER, LOUIS F.	0	1	0	0	0
HOGAN, THOMAS F.	23	25	0	0	0
LAMBERTH, ROYCE C. (CJ)	11	1	0	0	0
KESSLER, GLADYS	20	27	0	0	0
FRIEDMAN, PAUL L.	16	10	0	0	0
URBINA, RICARDO M.	23	0	0	0	0
SULLIVAN, EMMET G.	25	6	0	0	0
ROBERTSON, JAMES	1	0	0	0	0
KOLLAR-KOTELLY, COLLEEN	18	0	0	0	0
KENNEDY, HENRY H., JR.	27	7	0	0	0
ROBERTS, RICHARD W.	39	96	0	1	0
HUVELLE, ELLEN SEGAL	1	0	0	0	0
WALTON, REGGIE B.	9	8	0	0	0
BATES, JOHN D.	2	2	0	0	0
LEON, RICHARD J.	24	4	0	0	0
COLLYER, ROSEMARY M.	8	0	0	0	0
SUBTOTAL	248	191	0	1	0
DISTRICT TOTAL:	255	196	0	1	0
CIRCUIT TOTAL:	255	196	0	1	0

D DISTRICT SUMMARY REPORT PAGE 2
AS OF DATE: 03/31/2009 RUN: 06/23/2009

U.S. DISTRICT COURT FOR MAINE

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
MARTIN, DAVID L.	0	0	0	0	0
KRAVCHUK, MARGARET J.	0	0	0	0	0
RICH, JOHN, III	0	0	0	0	0
SUBTOTAL	0	0	0	0	0
DISTRICT JUDGES					
CARTER, GENE	0	0	0	0	0
HORNBY, D. BROCK	2	0	0	0	0
SINGAL, GEORGE Z.	0	0	0	0	0
WOODCOCK, JOHN A., JR. (CJ)	1	0	0	0	0
SUBTOTAL	3	0	0	0	0
DISTRICT TOTAL:	3	0	0	0	0

D DISTRICT SUMMARY REPORT PAGE 3
AS OF DATE: 03/31/2009 RUN: 06/23/2009

U.S. DISTRICT COURT FOR MASSACHUSETTS

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
COLLINGS, ROBERT B.	6	0	1	0	0
BOWLER, MARIANNE B.	1	0	0	0	0
NEIMAN, KENNETH P.	0	0	0	0	0
DEIN, JUDITH G.	0	0	0	0	0
SOROKIN, LEO T.	2	0	0	0	0
HILLMAN, TIMOTHY S.	1	0	0	0	0
SUBTOTAL	10	0	1	0	0
DISTRICT JUDGES					

TAURO, JOSEPH L.	0	0	0	0	0
ZOBEL, RYA W.	6	1	0	0	0
YOUNG, WILLIAM G.	0	0	0	0	0
WOLF, MARK L. (CJ)	12	17	2	1	0
WOODLOCK, DOUGLAS P.	9	0	1	0	0
WARRINGTON, EDWARD F.	4	0	0	0	0
GORTON, NATHANIEL M.	6	0	0	0	0
STEARNS, RICHARD G.	5	0	0	0	0
SARIS, PATTI B.	2	0	0	0	0
PONSOR, MICHAEL A.	2	0	0	0	0
GERTNER, NANCY	19	12	0	0	1
O'TOOLE, GEORGE A., JR.	11	16	0	0	0
SAYLOR, F. DENNIS	6	0	0	0	0
LASKER, MORRIS E.	2	0	0	0	0
UNASSIGNED	6	3	2	0	0
SUBTOTAL	90	49	5	1	1
DISTRICT TOTAL:	100	57	6	1	1

DISTRICT SUMMARY REPORT

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U.S. DISTRICT COURT FOR NEW HAMPSHIRE

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
MUIRHEAD, JAMES R.	0	0	0	0	0
SUBTOTAL	0	0	0	0	0
DISTRICT JUDGES					
DICLERICO, JOSEPH A.	3	0	0	0	0
BARBADORO, PAUL J.	8	0	0	0	0
MCAULIFFE, STEVEN J. (CJ)	1	0	0	0	0
LAPLANTE, JOSEPH N.	1	0	0	0	0
SUBTOTAL	13	0	0	0	0
DISTRICT TOTAL:	13	0	0	0	0

DISTRICT SUMMARY REPORT

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U.S. DISTRICT COURT FOR RHODE ISLAND

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
HAGOPIAN, JACOB	0	7	0	0	0
LOVEGREEN, ROBERT W.	0	0	0	0	0
MARTIN, DAVID L.	0	1	0	0	4
ALMOND, LINCOLN D.	0	0	0	0	1
SUBTOTAL	0	8	0	0	5
DISTRICT JUDGES					
LAGUEUX, RONALD R.	260	58	0	0	0
TORRES, ERNEST C.	0	0	0	0	0
LISI, MARY M. (CJ)	1	7	0	0	3
SMITH, WILLIAM E.	11	21	0	0	1
SUBTOTAL	272	86	0	0	4
DISTRICT TOTAL:	272	94	0	0	9

DISTRICT SUMMARY REPORT

AS OF DATE: 03/31/2009 RUN: 06/23/2009 PAGE 6

U.S. DISTRICT COURT FOR PUERTO RICO

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
ARENAS, JUSTO	0	0	0	0	0
VELEZ-RIVE, CAMILLE L.	0	0	0	0	0
MCGIVERIN, BRUCE J.	0	1	0	0	0
LOPEZ, MARCOS E.	0	0	0	0	0
UNASSIGNED	0	1	0	0	0

SUBTOTAL	0	2	0	0	0
DISTRICT JUDGES					
PEREZ-GIMENEZ, JUAN M.	25	24	0	0	0
CEREZO, CARMEN CONSUELO	2	1	0	0	0
PIERAS, JAIME, JR.	3	9	0	0	1
ACOSTA, RAYMOND L.	4	13	0	0	0
FUSTE, JOSE ANTONIO (CJ)	0	0	0	0	0
CASELLAS, SALVADOR E.	2	0	0	0	1
DOMINGUEZ, DANIEL R.	1	0	0	1	0
GARCIA-GREGORY, JAY A.	3	7	0	0	1
DELGADO-COLON, AIDA M.	3	2	1	0	0
GELPI, GUSTAVO A., JR.	14	0	0	0	0
BESOSA, FRANCISCO A.	16	71	0	5	2
SUBTOTAL	73	127	1	6	5
DISTRICT TOTAL:	73	129	1	6	5
CIRCUIT TOTAL:	461	280	7	7	15

DISTRICT SUMMARY REPORT
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U.S. DISTRICT COURT FOR CONNECTICUT

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
SMITH, THOMAS P.	1	0	0	0	0
MARGOLIS, JOAN G.	1	0	0	0	0
FITZSIMMONS, HOLLY B.	2	0	0	0	0
MARTINEZ, DONNA F.	2	6	0	0	0
GARFINKEL, WILLIAM I.	3	0	0	0	0
SUBTOTAL	9	6	0	0	0
DISTRICT JUDGES					
BURNS, ELLEN B.	5	14	1	0	0
EGINTON, WARREN W.	14	10	0	0	1
DORSEY, PETER C.	2	4	0	0	0
NEVAS, ALAN H.	0	0	0	0	0
COVELLO, ALFRED V.	11	0	0	0	0
CHATIGNY, ROBERT N. (CJ)	13	18	1	0	0
SQUATRITO, DOMINIC J.	8	5	0	0	0
THOMPSON, ALVIN W.	15	10	0	1	1
ARTERTON, JANET BOND	0	0	0	0	0
DRONEY, CHRISTOPHER F.	33	8	0	1	1
HALL, JANET C.	4	1	0	0	1
UNDERHILL, STEFAN R.	67	10	0	1	2
KRAVITZ, MARK R.	0	0	0	0	0
BRYANT, VANESSA L.	0	0	0	0	0
HAIGHT, CHARLES S., JR.	0	5	0	0	0
SUBTOTAL	172	85	2	3	6
DISTRICT TOTAL:	181	91	2	3	6

DISTRICT SUMMARY REPORT
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U.S. DISTRICT COURT FOR NEW YORK NORTHERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
DIBIANCO, GUSTAVE J.	0	2	0	0	0
HOMER, DAVID R.	2	0	0	0	0
PEEBLES, DAVID E.	2	7	0	0	0
TREECE, RANDOLPH F.	1	0	0	0	1
LOWE, GEORGE H.	0	5	0	0	0
KUDRLE, LARRY A.	0	0	0	0	0
BIANCHINI, VICTOR E.	2	0	0	0	9
SUBTOTAL	7	14	0	0	10
DISTRICT JUDGES					
MCCURN, NEAL P.	18	15	0	0	0
MCAVOY, THOMAS J.	21	3	0	0	16
SINGLETON, JAMES K. (VJ)	1	0	0	0	0
SESSIONS, WILLIAM K., III (VJ)	3	0	0	0	0
STROM, LYLE E. (VJ)	7	5	0	0	0
SCULLIN, FREDERICK J., JR.	38	34	0	0	24

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
KAHN, LAWRENCE E.	13	13	0	0	45
MAGNUSON, PAUL A. (VJ)	1	0	0	0	0
MORDUE, NORMAN A. (CJ)	30	27	0	6	29
HURD, DAVID N.	25	23	2	0	16
SHARPE, GARY L.	24	12	1	0	22
SUDDABY, GLENN T.	48	85	0	0	0
SUBTOTAL	229	217	3	6	152
DISTRICT TOTAL:	236	231	3	6	162

DISTRICT SUMMARY REPORT
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U.S. DISTRICT COURT FOR NEW YORK EASTERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
AZRACK, JOAN M.	4	2	0	0	0
GOLD, STEVEN M.	4	5	1	0	0
GO, MARILYN	4	10	0	0	0
LINDSAY, ARLENE R.	2	0	1	0	0
MANN, ROANNE L.	1	1	0	0	0
POMORELSKY, VIKTOR V.	1	7	1	0	0
LEVY, ROBERT M.	0	1	0	0	0
BOYLE, E. THOMAS	2	0	0	0	0
POLIAK, CHERYL	7	1	1	0	0
WALL, WILLIAM D.	4	2	0	0	0
BLOCH, LOIS	0	1	0	0	0
ORENSTEIN, JAMES	0	0	0	0	0
REYES, RAMON E., JR.	3	0	0	0	0
TOMLINSON, A. KATHLEEN	0	0	0	0	0
ORENSTEIN, MICHAEL L.	1	0	0	0	0
SUBTOTAL	33	30	4	0	0
DISTRICT JUDGES					
WOLLE, CHARLES R. (VJ)	0	1	0	0	0
WALTER, DONALD E. (VJ)	0	2	0	0	0
WEINSTEIN, JACK B.	44	3	0	0	0
PLATT, THOMAS C., JR.	72	2	0	0	0
SIFTON, CHARLES P.	17	4	0	0	0
GLASSER, ISRAEL LEO	93	6	0	0	0
WEXLER, LEONARD D.	0	1	0	0	0
KORMAN, EDWARD R.	7	7	0	0	0
DEARIE, RAYMOND J. (CJ)	22	2	0	0	0
SPATT, ARTHUR D.	21	0	0	0	0
AMON, CAROL BAGLEY	18	7	1	1	1
JOHNSON, STERLING, JR.	6	6	0	0	0
HURLEY, DENIS R.	55	6	0	0	0
TRAGER, DAVID G.	44	1	0	0	0
SEYBERT, JOANNA	51	1	0	0	0
ROSS, ALLYNE	14	10	0	0	0
GLEESON, JOHN	68	0	0	0	0
BLOCK, FREDERIC	27	0	0	0	0
GERSHON, NINA	33	15	0	0	12
GARAUFIS, NICHOLAS G.	23	4	0	0	8
FEUERSTEIN, SANDRA J.	18	9	0	0	0
TOWNES, SANDRA L.	49	24	0	0	9
IRIZARRY, DORA L.	24	8	0	2	7
BIANCO, JOSEPH F.	15	0	0	0	0
VITALIANO, ERIC N.	41	43	0	3	8
COGAN, BRIAN M.	6	1	0	0	0
MADSKOPF, ROSLYNN R.	65	8	1	2	0

DISTRICT SUMMARY REPORT
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U.S. DISTRICT COURT FOR NEW YORK EASTERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MATSUMOTO, KIYO A.	39	0	0	0	0
SUBTOTAL	872	169	2	8	45
DISTRICT TOTAL:	905	199	6	8	45

DISTRICT SUMMARY REPORT
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U.S. DISTRICT COURT FOR NEW YORK SOUTHERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					

TOY-RQ-05E-00009906

DOLINGER, MICHAEL H.	1	5	0	0	0
FRANCIS, JAMES C., IV	1	0	0	0	0
KATZ, THEODORE H.	0	0	0	0	0
ELLIS, RONALD L.	0	0	0	0	0
PECK, ANDREW J.	0	0	0	0	0
SMITH, LISA M.	1	4	0	0	0
EATON, DOUGLAS F.	0	0	0	0	0
PITMAN, HENRY B.	4	1	0	0	0
YANTHIS, GEORGE A.	5	0	0	0	0
FOX, KEVIN N.	0	0	0	0	0
MARA, FRANK S.	0	0	0	0	0
FREEMAN, DEBRA C.	2	0	0	0	0
GORENSTEIN, GABRIEL W.	1	0	0	0	0
DAVISON, PAUL E.	1	0	0	0	0
GOLDBERG, MARTIN R.	0	0	0	0	0
SUBTOTAL	16	10	0	0	0

DISTRICT JUDGES

SULLIVAN, RICHARD J.	78	19	0	1	1
SEIBEL, CATHY	25	21	0	0	0
GARDEPHE, PAUL G.	21	19	0	0	0
STEIN, SIDNEY H.	79	4	0	0	0
BGINTON, WARREN W. (VJ)	1	0	0	0	0
JONES, BARBARA S.	60	27	0	5	1
CONTI, SAMUEL (VJ)	1	0	0	0	0
RAKOFF, JED S.	12	7	0	0	0
HELLERSTEIN, ALVIN K.	1410	2	0	1	0
BERMAN, RICHARD M.	27	0	0	0	0
MCMAHON, COLLEEN	10	0	0	0	0
PAULEY, WILLIAM H.,.III	14	0	0	2	0
ZILLY, THOMAS S. (VJ)	2	0	0	0	0
BUCHWALD, NAOMI REICE	3	0	0	0	0
MARRERO, VICTOR	3	4	0	0	0
DANIELS, GEORGE B.	41	13	0	3	0
SWAIN, LAURA TAYLOR	35	42	0	0	0
POGUE, DONALD C.	1	0	0	0	0
YOUNG, WILLIAM G. (VJ)	3	0	0	0	0
LYNCH, GERARD E.	27	7	0	0	0
ROBINSON, STEPHEN C.	64	134	2	12	1
CASTEL, P. KEVIN	6	0	0	0	0
BARZILAY, JUDITH M.	1	0	0	0	0
HOLWELL, RICHARD J.	28	9	0	1	1
HITTNER, DAVID (VJ)	1	0	0	0	0
KARAS, KENNETH M.	31	7	0	0	4
CROTTY, PAUL A.	20	10	1	0	1

U.S. DISTRICT COURT FOR NEW YORK SOUTHERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
ASPEN, MARVIN E. (VJ)	3	0	0	0	0
BRIEANT, CHARLES L., JR. (VJ)	0	1	0	0	0
GRIESA, THOMAS P.	82	0	0	0	0
CARTER, ROBERT L.	9	24	0	0	1
DUFFY, KEVIN THOMAS	43	5	0	0	0
CONNER, WILLIAM C.	15	5	0	0	0
OWEN, RICHARD	1	0	0	0	0
HAIGHT, CHARLES S., JR. (VJ)	3	3	0	0	0
SWEET, ROBERT W.	49	11	0	0	0
SAND, LEONARD B.	7	16	0	1	0
KRAM, SHIRLEY WOHL	43	9	0	0	0
KEENAN, JOHN F.	15	1	0	0	0
LEISURE, PETER K.	9	26	0	0	0
STANTON, LOUIS L.	2	0	0	0	0
SCHARBAUM, MIRIAM GOLDMAN	12	0	0	0	0
WOOD, KIMBA M. (CJ)	19	5	0	2	0
PATTERSON, ROBERT P., JR.	11	0	0	0	0
MCKENNA, LAWRENCE M.	113	57	0	0	0
PRESKA, LORETTA A.	23	2	0	1	0
BATTS, DEBORAH A.	48	30	0	3	1
COTE, DENISE	10	0	0	0	0
KAPLAN, LEWIS A.	20	0	0	0	1
BAER, HAROLD, JR.	2	1	1	0	0
KOELTL, JOHN G.	11	3	0	0	1
CHIN, DENNY	24	0	0	0	0
SCHEINDLIN, SHIRA ANN	407	0	1	0	0
SUBTOTAL	3005	523	5	32	13
DISTRICT TOTAL:	3021	533	5	32	13

U.S. DISTRICT COURT FOR NEW YORK WESTERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS

TOY-RQ-05E-00009907

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
SCOTT, HUGH B.	3	0	0	0	0
FELDMAN, JONATHAN	7	0	0	0	0
SCHROEDER, H. KENNETH, JR.	40	44	0	0	0
PAYSON, MARIAN W.	3	3	1	0	0
MCCARTHY, JEREMIAH J.	3	1	0	0	0
BIANCHINI, VICTOR E.	35	0	0	0	0
FOSCHIO, LESLIE G.	9	17	0	0	0
SUBTOTAL	100	65	1	0	0
DISTRICT JUDGES					
CURTIN, JOHN T.	15	33	0	0	16
TELESCA, MICHAEL A.	25	9	0	0	8
LARIMER, DAVID G.	112	58	0	0	1
ARCARA, RICHARD J. (CJ)	63	44	0	0	11
SKRETNY, WILLIAM M.	57	107	0	2	5
SIRAGUSA, CHARLES J.	101	51	0	2	0
SUBTOTAL	373	296	0	4	41
DISTRICT TOTAL:	473	361	1	4	41

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U.S. DISTRICT COURT FOR VERMONT

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
CONROY, JOHN M.	0	0	0	0	0
NIEDERMEIER, JEROME J.	1	1	0	0	0
SUBTOTAL	1	1	0	0	0
DISTRICT JUDGES					
MURTER, J. GARVAN	0	12	1	0	0
SESSIONS, WILLIAM K., III (CJ)	3	1	0	1	0
SUBTOTAL	3	13	1	1	0
DISTRICT TOTAL:	4	14	1	1	0
CIRCUIT TOTAL:	4920	1425	18	54	267

DISTRICT SUMMARY REPORT
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U.S. DISTRICT COURT FOR DELAWARE

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
THYNGE, MARY PAT	7	16	0	0	0
STARK, LEONARD P.	1	17	0	0	0
SUBTOTAL	8	33	0	0	0
DISTRICT JUDGES					
FARNAN, JOSEPH J., JR.	75	37	0	0	0
ROBINSON, SUE L.	28	22	4	2	0
SLEET, GREGORY M. (CJ)	55	47	1	3	1
SUBTOTAL	159	106	5	5	1
DISTRICT TOTAL:	167	139	5	5	1

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U.S. DISTRICT COURT FOR NEW JERSEY

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
ARLEO, MADELINE COX	1	1	0	0	0
FALK, MARK	0	0	0	0	0

SHWARTZ, PATTY	0	0	0	0	0
DONIO, ANN MARIE	0	0	0	0	0
BONGIOVANNI, TONIANNE J.	1	0	0	0	0
CECCHI, CLAIRE C.	0	0	0	0	0
SCHNEIDER, JOEL	0	0	0	0	0
SALAS, ESTHER	0	0	0	0	0
SHIPP, MICHAEL A.	0	0	0	0	0
ARPERT, DOUGLAS	0	0	0	0	0
GOODMAN, LOIS H.	0	0	0	0	0
KNIGHT, EDWARD R.	0	0	0	0	0
MAUTONE, ANTHONY R.	0	0	0	0	0
SUBTOTAL	2	1	0	0	0
DISTRICT JUDGES					
BROTMAN, STANLEY S.	0	0	0	0	0
DEBEVOISE, DICKINSON R.	10	0	0	0	0
THOMPSON, ANNE E.	3	0	0	0	0
ACKERMAN, HAROLD A.	17	8	0	0	0
RODRIGUEZ, JOSEPH H.	4	0	0	0	0
BROWN, GARRETT E., JR. (CJ)	15	8	0	0	1
COOPER, NANY LITTLE	17	0	0	0	0
IRENAS, JOSEPH E.	5	7	0	0	0
SIMANDLE, JEROME B.	9	1	0	0	0
WALLS, WILLIAM H.	21	18	0	0	0
GREENAWAY, JOSEPH A., JR.	27	0	0	0	0
HAYDEN, KATHARINE S.	20	3	1	0	0
HOCHBERG, FAITH S.	23	3	0	0	2
PISANO, JOEL A.	1	0	0	0	3
CAVANAUGH, DENNIS M.	13	1	0	0	0
MARTINI, WILLIAM J.	2	7	0	0	1
LINARES, JOSE L.	16	0	0	0	0
CHESLER, STANLEY R.	26	6	0	0	0
KUGLER, ROBERT B.	9	0	0	0	0
WOLFSON, FREDA L.	10	0	0	0	0
SHERIDAN, PETER G.	20	3	1	1	0
HILLMAN, NOEL L.	13	11	2	0	0
BUMB, RENEE M.	4	0	0	0	0
WIGENTON, SUSAN D.	3	1	0	0	0
SUBTOTAL	278	77	4	1	7
DISTRICT TOTAL:	280	78	4	1	7

DISTRICT SUMMARY REPORT

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U.S. DISTRICT COURT FOR PENNSYLVANIA EASTERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
RUETER, THOMAS J.	0	0	0	0	0
WELLS, CAROL SANDRA MOORE	0	0	0	0	0
HART, JACOB P.	0	0	0	0	0
CARACAPPA, LINDA K.	0	1	0	0	0
RICE, TIMOTHY R.	0	0	0	0	0
STRAWBRIDGE, DAVID R.	0	0	0	0	0
RESTREPO, LUIS FELIPE	1	0	0	0	0
PERKIN, HENRY S.	0	0	0	0	0
HEY, ELIZABETH T.	0	0	0	0	0
SITARSKI, LYNNE A.	0	0	0	0	0
RAPOPORT, ARNOLD C.	0	0	0	0	0
ANGELL, M. FAITH	0	3	0	0	0
SUBTOTAL	1	4	0	0	0
DISTRICT JUDGES					
FULLAM, JOHN P.	20	30	0	0	2
DITTER, J. WILLIAM, JR.	1	4	0	1	0
POLLAK, LOUIS H.	7	11	0	0	3
SHAPIRO, NORMA L.	2	3	0	0	0
O'NEILL, THOMAS N., JR.	8	1	0	0	0
KATZ, MARVIN	0	0	0	0	0
LUDWIG, EDMUND V.	0	0	0	0	1
KELLY, ROBERT F.	0	0	0	0	0
REED, LOWELL A., JR.	0	0	0	0	0
DUBOIS, JAN E.	4	4	0	0	0
BUCKWALTER, RONALD L.	9	3	0	0	1
BARTLE, HARVEY, III (CJ)	242	0	0	0	0
YOHN, WILLIAM H., JR.	0	0	0	0	0
KUGLER, ROBERT B. (VJ)	0	1	0	0	0
DALZELL, STEWART	0	0	0	0	0
PADOVA, JOHN R.	1	0	0	0	0
JOYNER, J. CURTIS	4	3	0	0	0
ROBRENO, EDUARDO C.	4	3	0	1	0
BRODY, ANITA B.	3	0	0	0	0
KAUFFMAN, BRUCE W.	23	13	0	1	1

MCLAUGHLIN, MARY A.	16	16	1	0	0
TUCKER, PETRESE B.	3	5	0	1	1
SCHILLER, BERLE M.	1	0	0	0	0
SURRICK, R. BARCLAY	109	158	1	0	1
DAVIS, LEGROME D.	1	0	0	0	0
BAYLSON, MICHAEL M.	0	0	0	0	0
RUFE, CYNTHIA M.	0	0	0	0	0
SAVAGE, TIMOTHY J.	9	2	0	0	0
GARDNER, JAMES KNOLL	0	0	0	0	0
PRATTER, GENE E.K.	2	4	0	0	1

D DISTRICT SUMMARY REPORT

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U.S. DISTRICT COURT FOR PENNSYLVANIA EASTERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
STENGEL, LAWRENCE F.	0	0	0	0	0
DIAMOND, PAUL S.	0	0	0	0	0
SANCHEZ, JUAN R.	0	1	0	0	0
GOLDEN, THOMAS M.	2	0	0	0	1
SLOMSKY, JOEL B.	4	0	0	0	0
GOLDBERG, MITCHELL S.	4	0	0	1	0
JONES, C. DARNELL, II	3	0	0	1	0
SUBTOTAL	482	262	2	6	12
DISTRICT TOTAL:	483	266	2	6	12

D DISTRICT SUMMARY REPORT

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U.S. DISTRICT COURT FOR PENNSYLVANIA MIDDLE

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
SMYSER, J. ANDREW	0	2	0	0	0
BLEWITT, THOMAS M.	0	0	0	0	0
MANNION, MALACHY E.	1	2	0	0	0
ARBUCKLE, WILLIAM	0	0	0	0	0
SUBTOTAL	1	4	0	0	0
DISTRICT JUDGES					
NEALON, WILLIAM J., JR.	1	2	0	0	0
MUIR, MALCOLM	0	0	0	0	0
CONABOY, RICHARD P.	1	0	0	0	0
RAMBO, SYLVIA H.	5	11	1	0	0
CALDWELL, WILLIAM W.	1	1	0	0	0
KOSIK, EDWIN M.	0	2	0	0	0
MCCLURE, JAMES FOCHT, JR.	2	17	0	0	0
VANASKIE, THOMAS I.	13	18	0	0	0
CAPUTO, R. RICHARD	7	12	0	0	0
MUNLEY, JAMES M.	3	6	0	0	0
KANE, YVETTE (GJ)	3	11	0	0	0
CONNER, CHRISTOPHER C.	2	5	0	0	1
JONES, JOHN E., III	6	0	0	0	0
SUBTOTAL	44	85	1	0	1
DISTRICT TOTAL:	45	89	1	0	1

D DISTRICT SUMMARY REPORT

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U.S. DISTRICT COURT FOR PENNSYLVANIA WESTERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
BAXTER, SUSAN PARADISE	0	0	0	0	0
MAY, AMY R.	1	0	0	0	0
LENIHAN, LISA PUPO	1	0	0	0	1
BISSOON, CATHY	1	0	0	0	0
PESTO, KEITH A.	1	2	0	0	0
MITCHELL, ROBERT C.	0	0	0	0	0
SUBTOTAL	4	2	0	0	1
DISTRICT JUDGES					
VANASKIE, THOMAS I. (VJ)	0	1	0	0	0
COHILL, MAURICE B., JR.	8	12	0	0	0
DIAMOND, GUSTAVE	1	0	0	0	0

BLOCH, ALAN N.	0	0	0	0	0
STANDISH, WILLIAM L.	0	0	0	0	0
AMBROSE, DONETTA W. (CJ)	0	0	0	0	0
LANCASTER, GARY L.	3	0	0	0	0
MCLAUGHLIN, SEAN J.	2	1	0	1	0
CONTI, JOY FLOWERS	9	1	0	0	0
CERCONE, DAVID STEWART	2	1	0	0	0
MCVERRY, TERRENCE F.	7	0	0	0	0
SCHWAB, ARTHUR J.	1	0	0	0	0
GIBSON, KIM R.	15	11	0	1	0
FISCHER, NORA B.	4	0	0	0	0
SUBTOTAL	52	27	0	2	0
DISTRICT TOTAL:	56	29	0	2	1

DISTRICT SUMMARY REPORT

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U.S. DISTRICT COURT FOR VIRGIN ISLANDS

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
BARNARD, G. W.	0	7	0	0	0
CANNON, GEORGE H., JR.	0	8	0	0	0
SUBTOTAL	0	15	0	0	0
DISTRICT JUDGES					
FINCH, RAYMOND L.	85	31	1	0	0
GOMEZ, CURTIS V. (CJ)	38	1	0	4	0
BROTMAN, STANLEY S. (VJ)	0	2	0	0	0
THOMPSON, ANNE E. (VJ)	1	0	0	0	0
DUBOIS, JAN E. (VJ)	1	0	0	0	0
BUCKWALTER, RONALD L. (VJ)	9	1	0	0	0
BARTLE, HARVEY, III (VJ)	5	6	0	0	0
KAUFFMAN, BRUCE W. (VJ)	3	0	0	0	0
SAVAGE, TIMOTHY J. (VJ)	7	1	0	0	0
STENGEL, LAWRENCE F. (VJ)	6	0	0	0	0
SANCHEZ, JUAN R. (VJ)	26	2	0	0	0
UNASSIGNED	48	7	0	0	0
SUBTOTAL	229	51	1	4	0
DISTRICT TOTAL:	229	66	1	4	0
CIRCUIT TOTAL:	1260	667	13	18	22

DISTRICT SUMMARY REPORT

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U.S. DISTRICT COURT FOR MARYLAND

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
SCHULZE, JILLYN K.	0	0	0	0	19
CONNELLY, WILLIAM G.	0	0	0	0	0
GAUVEY, SUSAN K.	0	0	0	0	0
GRIMM, PAUL W.	2	0	0	0	25
DAY, CHARLES BERNARD	0	0	0	0	0
BREDAR, JAMES K.	0	0	0	0	0
GESNER, BETH P.	0	0	0	0	0
DIGIROLAMO, THOMAS M.	0	0	0	0	4
LAWS, VICTOR H., III	0	0	0	0	0
SUBTOTAL	2	0	0	0	48
DISTRICT JUDGES					
MOTZ, J. FREDERICK	226	0	0	0	0
GARBIS, MARVIN J.	5	0	2	0	0
NICKERSON, WILLIAM M.	3	2	0	0	0
LEGG, BENSON EVERETT (CJ)	7	3	0	0	0
CHASANOW, DEBORAH K.	13	0	0	0	0
MESSITTE, PETER J.	7	44	0	0	0
WILLIAMS, ALEXANDER, JR.	6	0	0	0	0
DAVIS, ANDRE M.	8	1	0	0	0
BLAKE, CATHERINE C.	48	0	0	0	0
QUARLES, WILLIAM D., JR.	1	0	0	0	0
BENNETT, RICHARD D.	0	0	0	0	0
TITUS, ROGER W.	0	0	0	0	0
SUBTOTAL	324	50	2	0	0

DISTRICT TOTAL:	326	50	2	0	48

DISTRICT SUMMARY REPORT

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U.S. DISTRICT COURT FOR NO CAROLINA EASTERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
WEBB, WILLIAM A.	0	0	0	0	0
DANIEL, DAVID W.	0	0	0	0	0
GATES, JAMES E.	0	0	0	0	0
JONES, ROBERT B., JR.	0	0	0	0	0
SUBTOTAL	0	0	0	0	0
DISTRICT JUDGES					
BRITT, W. EARL	12	1	0	0	0
FOX, JAMES C.	6	47	0	3	0
BOYLE, TERRENCE WILLIAM	2	0	0	0	0
HOWARD, MALCOLM J.	3	10	0	0	0
FLANAGAN, LOUISE W. (CJ)	1	3	0	0	0
DEVER, JAMES C., III	0	1	0	0	0
SUBTOTAL	24	62	0	3	0
DISTRICT TOTAL:	24	62	0	3	0

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U.S. DISTRICT COURT FOR NO CAROLINA MIDDLE

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
SHARP, PAUL TREVOR	0	12	0	0	0
DIXON, WALLACE W.	0	0	0	0	0
DIETRICH, DONALD P.	0	0	0	0	0
SUBTOTAL	0	12	0	0	0
DISTRICT JUDGES					
TILLEY, N. CARLTON, JR.	9	48	0	0	0
BEATY, JAMES A., JR. (CJ)	2	9	0	0	0
OSTEEN, WILLIAM L., JR.	6	24	0	0	0
SCHROEDER, THOMAS D.	0	12	0	0	0
UNASSIGNED	1	26	0	0	0
SUBTOTAL	18	119	0	0	0
DISTRICT TOTAL:	18	131	0	0	0

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U.S. DISTRICT COURT FOR NO CAROLINA WESTERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
KEESLER, DAVID C.	0	5	0	0	0
HOWELL, DENNIS LEE	0	0	0	0	0
SUBTOTAL	0	5	0	0	0
DISTRICT JUDGES					
VOORHEES, RICHARD L.	1	10	0	1	4
MULLEN, GRAHAM CALDER	7	60	1	1	2
THORNBURG, LACY H.	4	6	0	0	0
CONRAD, ROBERT JAMES, JR. (CJ)	1	17	0	0	1
WHITNEY, FRANK D.	0	1	0	0	0
REIDINGER, MARTIN K.	1	9	0	0	0
SUBTOTAL	14	103	1	2	7
DISTRICT TOTAL:	14	108	1	2	7

DISTRICT SUMMARY REPORT

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U.S. DISTRICT COURT FOR SOUTH CAROLINA

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
CARR, ROBERT S.	0	0	0	0	0
CATOE, WILLIAM M., JR.	0	0	0	0	0
MCCRORKEY, JOSEPH R.	0	0	1	0	0
MARCHANT, BRISTOW	0	0	0	0	0
ROGERS, THOMAS EDWARD, III	0	0	0	0	0
HENDRICKS, BRUCE HOWE	0	0	0	0	0
GOSSETT, ZAIGE J.	0	0	0	0	0
BUCHANAN, ROBERT L., JR.	0	0	0	0	0
SUBTOTAL	0	0	1	0	0
DISTRICT JUDGES					
BERTELSMAN, WILLIAM O. (VJ)	0	1	0	0	0
BLATT, SOLOMON, JR.	0	0	0	0	0
PERRY, MATTHEW J., JR.	4	7	2	0	0
HODGE, C. WESTON	1	9	0	0	0
ANDERSON, GEORGE ROSS, JR.	0	0	0	0	0
ANDERSON, JOSEPH F., JR.	0	0	1	0	0
NORTON, DAVID C. (CJ)	1	2	0	1	0
HERLONG, HENRY M., JR.	0	0	0	0	0
CURRIE, CAMERON MCGOWAN	0	0	1	0	0
DUFFY, PATRICK MICHAEL	0	0	1	0	0
SEYMOUR, MARGARET B.	4	0	0	0	0
WOOTEN, TERRY L.	1	0	0	0	0
FLOYD, HENRY F.	0	0	0	0	0
HAMWELL, ROBERT BRYAN	1	1	0	0	0
SUBTOTAL	12	20	5	1	0
DISTRICT TOTAL:	12	20	6	1	0

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U.S. DISTRICT COURT FOR VIRGINIA EASTERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
MILLER, TOMMY E.	0	0	0	0	0
BRADBERRY, JAMES E.	0	0	0	0	0
JONES, THOMAS R., JR.	0	0	0	0	0
BUCHANAN, THERESA C.	0	0	0	0	0
DOHNAL, DENNIS	1	0	0	0	0
STILLMAN, F. BRADFORD	0	0	0	0	0
LAUCH, M. HANNAH	0	0	0	0	0
ANDERSON, JOEL F.	0	0	0	0	0
DAVIS, IVAN D.	0	0	0	0	0
PRINCE, WILLIAM T.	0	0	0	0	0
SUBTOTAL	1	0	0	0	0
DISTRICT JUDGES					
WILLIAMS, RICHARD L.	0	5	0	0	0
CACHERIS, JAMES C.	0	1	0	0	0
DOUMAR, ROBERT G.	0	0	0	0	0
HILTON, CLAUDE M.	0	0	0	0	0
SPENCER, JAMES R. (CJ)	2	0	0	0	0
ELLIS, THOMAS SELBY, III	0	0	0	0	0
SMITH, REBECCA BEACH	0	0	0	0	0
MORGAN, HENRY COKE, JR.	0	0	0	0	0
PAYNE, ROBERT E.	0	0	0	0	0
BRINKEMA, LEONIE M.	0	0	0	0	0
JACKSON, RAYMOND ALVIN	0	0	0	0	0
FRIEDMAN, JEROME B.	0	0	0	0	0
LEE, GERALD BRUCE	0	0	0	0	0
HUDSON, HENRY E.	1	0	0	0	0
O'GRADY, LIAM	0	0	0	0	0
DAVIS, MARK S.	1	0	0	0	0
TRENGA, ANTHONY J.	1	0	0	0	0
SUBTOTAL	5	6	0	0	0
DISTRICT TOTAL:	6	6	0	0	0

DISTRICT SUMMARY REPORT

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U.S. DISTRICT COURT FOR VIRGINIA WESTERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
CRIGLER, B. WAUGH	0	0	0	0	0
SARGENT, PAMELA M.	0	1	0	0	0
URBANSKI, MICHAEL F.	0	0	0	0	0
WELSH, JAMES G.	0	0	0	0	0
SUBTOTAL	0	1	0	0	0
DISTRICT JUDGES					
TURK, JAMES C.	3	3	0	0	0
WILLIAMS, GLEN M.	0	1	0	0	0
KISER, JACKSON L.	0	0	0	0	0
WILSON, SAMUEL GRAYSON	0	0	0	0	0
JONES, JAMES PARKER (CJ)	0	0	0	0	0
MOON, NORMAN K.	0	0	0	0	0
CONRAD, GLEN E.	0	2	0	0	0
SUBTOTAL	3	6	0	0	0
DISTRICT TOTAL:	3	7	0	0	0

DISTRICT SUMMARY REPORT
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U.S. DISTRICT COURT FOR W VIRGINIA NORTHERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
SEIBERT, JAMES E.	0	0	0	0	0
KAULL, JOHN S.	0	0	0	0	0
JOEL, DAVID J.	0	0	0	0	0
SUBTOTAL	0	0	0	0	0
DISTRICT JUDGES					
MAXWELL, ROBERT EARL	0	0	0	0	0
STAMP, FREDERICK P., JR.	1	0	0	0	0
KEELEY, IRENE M.	2	0	0	0	0
BAILEY, JOHN F. (CJ)	1	0	0	0	0
SUBTOTAL	4	0	0	0	0
DISTRICT TOTAL:	4	0	0	0	0

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U.S. DISTRICT COURT FOR W VIRGINIA SOUTHERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
TAYLOR, MAURICE G., JR.	0	27	0	0	47
STANLEY, MARY E.	0	0	0	0	0
VANDERVORT, R. CLARKE	0	0	0	0	0
SUBTOTAL	0	27	0	0	47
DISTRICT JUDGES					
COPENHAVER, JOHN T., JR.	5	10	1	1	0
FABER, DAVID A.	0	0	0	0	0
GOODWIN, JOSEPH R. (CJ)	0	1	0	0	0
CHAMBERS, ROBERT C.	22	30	0	0	0
JOHNSTON, THOMAS E.	0	0	0	0	0
SUBTOTAL	27	41	1	1	0
DISTRICT TOTAL:	27	68	1	1	47
CIRCUIT TOTAL:	434	452	10	7	102

DISTRICT SUMMARY REPORT
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U.S. DISTRICT COURT FOR LOUISIANA EASTERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
CHASEZ, ALMA	0	0	0	0	0
MOORE, LOUIS, JR.	0	0	0	0	0
WILKINSON, JOSEPH C., JR.	1	0	0	0	0
SHUSHAN, SALLY	0	0	0	0	0
ROBY, KAREN WELLS	0	0	0	0	0
KNOWLES, DANIEL E., III	4	0	0	0	0
SUBTOTAL	5	0	0	0	0
DISTRICT JUDGES					
HEEBE, FREDERICK J.	0	0	0	0	0
WALKER, DONALD E. (VJ)	1	0	0	0	0
SCHWARTZ, CHARLES, JR.	0	0	0	0	0
BEER, PETER	0	0	0	0	0
MCNAMARA, A. J.	1	0	0	0	0
FELDMAN, MARTIN L. C.	15	0	0	0	0
BERRIGAN, HELEN G.	0	2	0	4	0
DUVAL, STANWOOD R., JR.	9	6	0	0	1
VANCE, SARAH S. (CJ)	4	0	0	0	0
PORTEOUS, G. THOMAS, JR.	0	0	0	0	0
FALLON, ELDON E.	4263	10	0	0	0
LEMMON, MARY ANN VIAL	4	4	0	0	0
LEMELLE, IVAN L.	3	0	0	0	0
BARBIER, CARL J.	1	0	0	0	0
ENGELHARDT, KURT D.	4	0	0	0	0
ZAINEY, JAY C.	2	0	0	0	1
AFRICK, LANCE M.	1	0	0	0	0
SUBTOTAL	4308	22	0	4	2
DISTRICT TOTAL:	4313	22	0	4	2

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DISTRICT SUMMARY REPORT

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U.S. DISTRICT COURT FOR LOUISIANA MIDDLE

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
RIEDLINGER, STEPHEN C.	1	29	0	0	0
NOLAND, CHRISTINE	0	0	0	0	0
DALBY, DOCIA L.	0	0	0	0	0
SUBTOTAL	1	29	0	0	0
DISTRICT JUDGES					
PARKER, JOHN V.	5	1	0	0	1
POLOZOLA, FRANK J.	0	0	0	0	0
TYSON, RALPH E. (CJ)	35	98	1	3	4
BRADY, JAMES J.	10	3	0	0	0
SUBTOTAL	50	102	1	3	5
DISTRICT TOTAL:	51	131	1	3	5

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DISTRICT SUMMARY REPORT

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U.S. DISTRICT COURT FOR LOUISIANA WESTERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
METHVIN, MILDRED E.	0	5	0	0	0
KIRK, JAMES D.	0	0	0	0	0
HILL, CHARLES M.	0	4	0	0	0
HORNSBY, MARK L.	0	2	0	0	0
HAYES, KAREN L.	0	0	0	0	0
KAY, KATHLEEN	1	3	1	0	0
SUBTOTAL	1	14	1	0	0
DISTRICT JUDGES					
STAGG, TOM	1	1	0	0	1
WALTER, DONALD E.	3	0	0	0	0

HAIK, RICHARD T. (CJ)	15	15	0	1	6
TRIMBLE, JAMES T., JR.	15	6	0	0	0
DOHERTY, REBECCA F.	3	9	0	0	4
MELANCON, TUCKER L.	5	1	0	0	3
JAMES, ROBERT G.	1	4	0	0	0
DRELL, DEE D.	9	8	0	0	0
HICKS, S. MAURICE, JR.	6	38	0	0	0
MINALDI, PATRICIA H.	1	6	0	0	1
VANCE, SARAH S. (VJ)	2	0	0	0	0
LEMELLE, IVAN L. (VJ)	1	0	0	0	0
BLOCK, FREDERIC (VJ)	1	0	0	0	0
SUBTOTAL	63	88	0	1	15
DISTRICT TOTAL:	64	102	1	1	15

DISTRICT SUMMARY REPORT

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U.S. DISTRICT COURT FOR MISSISSIPPI NORTHERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
DAVIS, JERRY A.	1	0	0	0	0
ALEXANDER, S. ALLAN	0	0	0	0	0
SANDERS, DAVID A.	0	0	0	0	0
SUBTOTAL	1	0	0	0	0
DISTRICT JUDGES					
BIGGERS, NEAL	0	0	0	0	0
DAVIDSON, GLEN H.	1	0	0	0	0
PEPPER, W. ALLEN, JR.	6	2	0	0	0
MILLS, MICHAEL P. (CJ)	1	0	0	0	0
AYCOCK, SHARION	3	0	0	0	0
SUBTOTAL	11	2	0	0	0
DISTRICT TOTAL:	12	2	0	0	0

DISTRICT SUMMARY REPORT

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U.S. DISTRICT COURT FOR MISSISSIPPI SOUTHERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
ROPER, JOHN M.	0	0	0	0	0
SUMNER, JAMES C.	0	0	0	0	0
WALKER, ROBERT H.	0	0	0	0	0
PARKER, MICHAEL T.	0	0	0	0	0
ANDERSON, LINDA R.	0	2	0	0	0
SUBTOTAL	0	2	0	0	0
DISTRICT JUDGES					
RUSSELL, DAN M., JR.	0	0	0	0	0
SENTER, L. T., JR.	0	0	0	0	0
BARBOUR, WILLIAM HENRY, JR.	3	0	0	0	0
BIGGERS, NEAL (VJ)	1	0	0	0	0
LEE, TOM S.	3	4	0	0	0
WINGATE, HENRY T. (CJ)	20	96	2	0	1
GEX, WALTER J., III	1	0	0	0	0
BRAMLETTE, DAVID	1	0	0	0	0
GUIROLA, LOUIS, JR.	1	4	0	0	0
STARRETT, KEITH	1	0	0	0	0
JORDAN, DANIEL P., III	2	0	0	0	0
OZERDEN, SUL	0	0	0	0	0
O'MALLEY, KATHLEEN M. (VJ)	0	1	0	0	0
UNASSIGNED	0	1	0	0	0
SUBTOTAL	33	106	2	0	1
DISTRICT TOTAL:	33	108	2	0	1

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U.S. DISTRICT COURT FOR TEXAS NORTHERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
SANDERSON, WILLIAM P., JR.	0	0	0	0	0
AVERITTE, CLINTON E.	0	0	0	0	0
KAPLAN, JEFF	0	1	0	0	0
BRIL, CHARLES M.	0	0	0	0	0
STICKNEY, PAUL D.	0	0	0	0	0
KOENIG, NANCY M.	0	0	0	0	0
RAMIREZ, IRMA C.	0	0	0	0	0
LANE, PHILIP R.	1	0	0	0	0
ROACH, ROBERT K.	0	0	0	0	0
SUBTOTAL	1	1	0	0	0
DISTRICT JUDGES					
ROBINSON, MARY LOU	1	1	1	1	0
BUCHMEYER, JERRY	0	0	0	0	0
FISH, R. JOE	3	3	0	0	0
MALONEY, ROBERT B.	0	0	0	0	0
FITZWATER, SIDNEY A. (CJ)	1	1	0	0	0
CUMMINGS, SAMUEL RAY	0	0	0	0	0
MCBRYDE, JOHN H.	0	0	0	0	0
FURGESON, W. ROYAL, JR.	10	27	0	0	0
SOLIS, JORGE A.	3	0	0	0	0
MEANS, TERRY	1	0	0	0	0
LINDSAY, SAM A.	0	0	0	0	0
LYNN, BARBARA M. G.	4	1	0	0	0
GODBEY, DAVID C.	3	0	0	0	0
KINKEADE, JAMES EDGAR	0	0	0	0	0
BOYLE, JANE J.	1	0	0	0	0
O'CONNOR, REED	1	11	0	0	0
SUBTOTAL	28	44	1	1	0
DISTRICT TOTAL:	29	45	1	1	0

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U.S. DISTRICT COURT FOR TEXAS EASTERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
BRYANT, BARRY A. (VJ)	1	0	0	0	0
HINES, EARL S.	0	0	0	0	0
GUTHRIE, JUDITH K.	0	0	0	0	0
CRAVEN, CAROLINE M.	0	0	0	0	0
BUSH, DONALD D.	0	0	0	0	0
GIBLIN, KEITH F.	0	4	0	0	0
LOVE, JOHN D.	0	0	0	0	0
EVERINGHAM, CHARLES, IV	0	0	0	0	0
MAZZANT, AMOS	0	0	0	0	0
SUBTOTAL	1	4	0	0	0
DISTRICT JUDGES					
JUSTICE, WILLIAM WAYNE (VJ)	1	0	0	0	0
SCHELL, RICHARD A.	7	0	0	0	0
FOLSOM, DAVID (CJ)	10	1	0	0	0
HEARTFIELD, THAD	0	0	0	0	0
WARD, T. JOHN	7	0	0	0	0
DAVIS, LEONARD E.	3	0	0	0	0
CLARK, RON	0	0	0	0	0
CRONE, MARCIA A.	0	0	0	0	0
SCHNEIDER, MICHAEL H.	0	0	0	0	0
SUBTOTAL	28	1	0	0	0
DISTRICT TOTAL:	29	5	0	0	0

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U.S. DISTRICT COURT FOR TEXAS SOUTHERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
BOTLEY, CALVIN	0	0	0	0	0
STACY, FRANCES	0	0	0	0	0
JOHNSON, NANCY K.	0	0	0	0	0
FROESCHNER, JOHN R.	0	1	0	0	0
MILLOY, MARYROSE	0	0	0	0	0

RAMOS, DORINA	0	0	0	0	0
ELLINGTON, B. JANICE	0	0	0	0	0
RECIO, FELIX, JR.	0	0	0	0	0
SMITH, STEPHEN W.	0	0	0	0	0
ORNSBY, PETER E.	0	0	0	0	0
OWSLEY, BRIAN L.	0	0	0	0	0
SALDANA, DIANA	0	0	0	0	0
BACKER, J. SCOTT	0	0	0	0	0
SUBTOTAL	0	1	0	0	0
DISTRICT JUDGES					
HUDSPETH, HARRY LEE (VJ)	0	2	0	0	0
KAZEN, GEORGE P.	3	0	0	0	1
BEAD, HAYDEN W., JR. (CJ)	0	0	1	0	0
HINOJOSA, RICARDO H.	0	3	0	0	0
HUGHES, LYNN N.	9	20	0	0	0
HITTNER, DAVID	1	1	0	0	0
HOYT, KENNETH M.	3	0	0	0	0
LAKE, SIMEON TIMOTHY, III	2	0	0	0	0
HARMON, MELINDA	40	1	0	1	0
RAINEY, JOHN D.	10	0	1	0	0
KENT, SAMUEL B.	0	0	0	0	0
WERLEIN, EWING, JR.	3	2	0	0	0
ROSENTHAL, LEE H.	3	6	0	0	0
JACK, JANIS GRAHAM	0	0	0	0	0
GILMORE, VANESSA D.	3	1	0	0	0
ATLAS, NANCY F.	0	0	0	0	0
LEMELLE, IVAN L. (VJ)	1	0	0	0	0
EAGLE, HILDA G.	3	2	0	0	0
ELLISON, KEITH P.	0	0	0	0	0
CRANE, RANDY	1	2	0	0	0
HANEN, ANDREW S.	3	2	0	0	0
ALVAREZ, MICAELA	0	0	0	0	0
MILLER, GRAY H.	2	0	0	0	0
SUBTOTAL	91	42	2	1	1
DISTRICT TOTAL:	91	43	2	1	1

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U.S. DISTRICT COURT FOR TEXAS WESTERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
GREEN, DENNIS G.	0	0	0	0	0
PRINCHO, JOHN W.	0	0	0	0	0
NOWAK, NANCY S.	0	0	0	0	0
MESA, RICHARD	0	0	0	0	0
MCDONALD, MICHAEL S.	0	0	0	0	0
MATHY, PAMELA ANN	0	0	0	0	0
AUSTIN, ANDREW W.	0	0	0	0	0
GARNEY, NORBERT J.	0	0	0	0	7
MANSKE, JEFFREY C.	0	2	0	0	0
GARCIA, VICTOR ROBERTO	0	0	0	0	0
PITMAN, ROBERT L.	0	0	0	0	0
GOAINS, B. DWIGHT	0	0	0	0	0
SUBTOTAL	0	2	0	0	7
DISTRICT JUDGES					
JUSTICE, WILLIAM WAYNE	0	0	0	0	0
HUDSPETH, HARRY LEE	2	1	0	0	0
NOWLIN, JAMES R.	0	0	0	0	0
SMITH, WALTER S., JR. (CJ)	5	5	0	0	0
SPARKS, SAM	1	0	0	0	0
FURGESON, W. ROYAL, JR. (VJ)	2	0	0	0	0
GARCIA, ORLANDO L.	1	0	0	0	0
BIERY, SAMUEL F., JR.	2	0	0	0	0
BRIONES, DAVID	3	0	0	0	0
MARTINEZ, PHILIP R.	1	0	0	0	0
LUDLUM, ALIA MOSES	0	0	0	0	0
JUNELL, ROBERT A.	0	1	0	0	0
CARDONE, KATHLEEN	0	0	0	0	0
YEAKEL, LEE	0	0	0	0	0
MONTALVO, FRANK	0	0	0	0	0
RODRIGUEZ, XAVIER	0	0	0	0	0
SUBTOTAL	17	7	0	0	0
DISTRICT TOTAL:	17	9	0	0	7
CIRCUIT TOTAL:	4639	467	7	10	31

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U.S. DISTRICT COURT FOR KENTUCKY EASTERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
WEHRMAN, J. GREGORY	0	0	0	0	0
TODD, JAMES B.	0	0	0	0	0
ATKINS, EDWARD B.	0	0	0	0	0
WIER, ROBERT E.	0	0	0	0	0
SUBTOTAL	0	0	0	0	0
DISTRICT JUDGES					
BERTELSMAN, WILLIAM O.	2	2	0	0	0
UNTHANK, G. WIX	0	0	0	0	0
WILHOIT, HENRY R., JR.	0	0	0	0	0
FORESTER, KARL S.	0	0	0	0	0
HOOD, JOSEPH M.	0	0	0	0	0
COFFMAN, JENNIFER B. (CJ)	4	0	0	0	0
CALDWELL, KAREN K.	3	0	0	0	0
REEVES, DANNY C.	0	0	0	0	0
BUNNING, DAVID L.	15	8	0	0	0
VAN TATENHOVE, GREGORY F.	2	0	0	0	0
THAPAR, AMUL R.	4	0	0	0	0
SUBTOTAL	30	10	0	0	0
DISTRICT TOTAL:	30	10	0	0	0

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U.S. DISTRICT COURT FOR KENTUCKY WESTERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
KING, W. DAVID	0	0	0	0	0
MOYER, JAMES D.	2	1	0	0	0
GOEBEL, E. ROBERT	0	0	0	0	0
WHALIN, DAVE	1	0	0	0	0
SUBTOTAL	3	1	0	0	0
DISTRICT JUDGES					
JOHNSTONE, EDWARD H.	0	0	0	0	0
SIMPSON, CHARLES R., III	13	3	0	0	0
COFFMAN, JENNIFER B.	6	1	0	0	0
HEYBURN, JOHN G., II	4	1	0	0	0
RUSSELL, THOMAS B. (CJ)	4	2	0	0	0
MCKINLEY, JOSEPH H., JR.	9	0	0	0	0
THAPAR, AMUL R. (VJ)	0	1	0	0	0
SUBTOTAL	36	8	0	0	0
DISTRICT TOTAL:	39	9	0	0	0

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U.S. DISTRICT COURT FOR MICHIGAN EASTERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
PEPE, STEVEN D.	1	3	0	0	0
BINDER, CHARLES E.	0	1	0	0	0
MORGAN, VIRGINIA	0	0	0	0	0
SCHEER, DONALD A.	0	0	0	0	0
WHALEN, R. STEVEN	0	0	0	0	0
MAJZOUB, MONA K.	0	0	0	0	0
HLUCHANIUK, MICHAEL	0	0	0	0	0
KOMIVES, PAUL J.	0	1	0	0	0
SUBTOTAL	1	5	0	0	0
DISTRICT JUDGES					
SIMPSON, CHARLES R., III (VJ)	0	1	0	0	0

FEIKENS, JOHN	2	17	0	0	0
JOINER, CHARLES W.	0	0	0	0	0
COOK, JULIAN ABELE, JR.	5	1	0	0	0
COHN, AVERN	10	10	0	0	0
TAYLOR, ANNA DIGGS	2	0	0	0	0
ZATKOFF, LAWRENCE P.	0	0	0	0	0
DUGGAN, PATRICK J.	2	4	0	0	0
FRIEDMAN, BERNARD A.	7	3	0	0	0
ROSEN, GERALD E. (CJ)	10	12	0	3	1
CLELAND, ROBERT H.	2	0	0	0	0
EDMUNDS, NANCY G.	1	0	0	0	0
HOOD, DENISE PAGE	45	1	1	2	1
BORMAN, PAUL D.	7	8	0	0	0
O'MEARA, JOHN CORBETT	1	0	0	0	0
TARNOW, ARTHUR J.	5	2	0	0	0
STEEH, GEORGE CARAM, III	2	0	0	0	0
ROBERTS, VICTORIA A.	0	1	0	0	0
BATTANI, MARIANNE O.	4	1	0	0	0
LAWSON, DAVID M.	4	8	0	0	0
LUDINGTON, THOMAS L.	1	2	0	0	0
COX, SEAN F.	1	6	0	0	0
MURPHY, STEPHEN J., III	8	6	0	0	0
UNASSIGNED	1	0	0	0	0
SUBTOTAL	120	83	1	5	2
DISTRICT TOTAL:	121	88	1	5	2

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U.S. DISTRICT COURT FOR MICHIGAN WESTERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
BRENNEMAN, HUGH W., JR.	0	0	0	0	0
SCOVILLE, JOSEPH G.	0	5	0	0	0
GREELEY, TIMOTHY P.	0	1	0	0	0
CARMODY, ELLEN	1	0	0	0	0
SUBTOTAL	1	6	0	0	0
DISTRICT JUDGES					
EDGAR, R. ALLAN (VJ)	0	1	0	0	1
BELL, ROBERT HOLMES	16	36	0	0	0
QUIST, GORDON J.	2	0	0	0	0
MALONEY, PAUL L. (CJ)	10	34	0	1	3
JONKER, ROBERT J.	4	2	0	0	1
NEFF, JANET T.	2	6	0	0	3
SUBTOTAL	34	79	0	1	8
DISTRICT TOTAL:	35	85	0	1	8

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U.S. DISTRICT COURT FOR OHIO NORTHERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
ARMSTRONG, VERNELIS K.	0	0	0	0	0
VECCHIARELLI, NANCY A.	0	0	0	0	0
LIMBERT, GEORGE J.	1	0	0	0	0
BAUGHMAN, WILLIAM H., JR.	0	1	0	0	5
MCHARGH, KENNETH S.	0	0	0	0	0
WHITE, GREG	0	0	0	0	0
PEARSON, BENITA Y.	0	0	0	0	0
PERELMAN, DAVID	0	0	0	0	0
GALLAS, JAMES S.	1	1	0	0	0
SUBTOTAL	2	2	0	0	5
DISTRICT JUDGES					
ALDRICH, ANN	4	7	0	0	1
DOWD, DAVID D., JR.	0	3	0	0	0
WELLS, LESLEY	4	1	0	0	0
CARR, JAMES G. (CJ)	7	7	0	0	0
OLIVER, SOLOMON, JR.	11	22	0	6	1
KATZ, DAVID A.	13	18	0	0	0
O'MALLEY, KATHLEEN M.	821	0	0	0	0
ECONOMUS, PETER C.	3	2	0	0	0
NUGENT, DONALD C.	1	0	0	0	0

GAUGHAN, PATRICIA A.	1	0	0	0	0
GWIN, JAMES S.	0	0	0	0	0
POLSTER, DAN A.	1	0	0	0	0
ADAMS, JOHN R.	2	9	0	0	1
BOYKO, CHRISTOPHER A.	2	0	0	0	0
ZOUHARY, JACK	0	0	0	0	0
LIOI, SARA E.	1	0	0	0	0
SUBTOTAL	871	69	0	6	3
DISTRICT TOTAL:	873	71	0	6	3

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U.S. DISTRICT COURT FOR OHIO SOUTHERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
ABEL, MARK R.	0	0	0	0	0
KING, NORAH M.	1	2	0	0	0
MERZ, MICHAEL R.	1	0	0	0	0
KEMP, TERENCE	1	0	0	0	0
HOGAN, TIMOTHY S.	2	4	1	0	0
OVINGTON, SHARON L.	1	0	0	0	0
BLACK, TIMOTHY S.	2	0	0	0	0
SUBTOTAL	8	6	1	0	0
DISTRICT JUDGES					
SPIEGEL, S. ARTHUR	6	7	0	0	1
HOLSCHUH, JOHN DAVID	0	4	0	0	0
RICE, WALTER HERBERT	17	0	0	0	0
WEBER, HERMAN J.	1	24	0	0	7
GRAHAM, JAMES L.	1	1	0	0	0
SMITH, GEORGE C.	4	5	0	0	0
BECKWITH, SANDRA S.	3	2	0	0	3
DLOTT, SUSAN J. (CJ)	9	16	1	0	1
SARGUS, EDMUND A., JR.	7	0	0	0	0
MARBLEY, ALGENON L.	9	0	0	0	0
ROSE, THOMAS M.	4	0	0	0	0
FROST, GREGORY L.	1	0	0	0	0
WATSON, MICHAEL H.	13	13	0	0	0
BARRETT, MICHAEL R.	2	5	0	0	0
UNASSIGNED	0	1	0	0	0
SUBTOTAL	85	78	1	0	12
DISTRICT TOTAL:	93	84	2	0	12

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U.S. DISTRICT COURT FOR TENNESSEE EASTERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
INMAN, DENNIS HISEY	1	0	0	0	0
CARTER, WILLIAM B.	0	5	0	0	0
SHIRLEY, C. CLIFFORD, JR.	0	0	0	0	0
GUYTON, H. BRUCE	0	0	0	0	0
LEE, SUSAN K.	0	0	0	0	0
SUBTOTAL	1	5	0	0	0
DISTRICT JUDGES					
EDGAR, R. ALLAN	9	14	0	0	1
JORDAN, ROBERT LEON	10	9	0	0	0
COLLIER, CURTIS LYNN (CJ)	9	16	0	0	0
PHILLIPS, THOMAS W.	14	4	0	0	0
VARLAN, THOMAS A.	0	0	0	0	0
GREER, J. RONNIE	2	13	0	0	0
MATTICE, SANDY	1	0	0	0	0
SUBTOTAL	45	56	0	0	1
DISTRICT TOTAL:	46	61	0	0	1

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U.S. DISTRICT COURT FOR TENNESSEE MIDDLE

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
GRIFFIN, JULIET E.	0	0	0	0	0
BROWN, JOE B.	0	0	0	0	0
KNOWLES, E. CLIFTON	0	0	0	0	0
BRYANT, JOHN S.	0	0	0	0	0
SUBTOTAL	0	0	0	0	0
DISTRICT JUDGES					
WISEHAN, THOMAS A., JR.	1	0	0	0	13
NIXON, JOHN T.	22	77	0	0	30
ECHOLS, ROBERT L.	0	0	0	0	0
CAMPBELL, TODD J. (CJ)	0	1	0	0	0
TRAUGER, ALETA ARTHUR	10	0	0	0	0
HAYNES, WILLIAM JOSEPH, JR.	3	0	0	0	0
SUBTOTAL	36	78	0	0	43
DISTRICT TOTAL:	36	78	0	0	43

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U.S. DISTRICT COURT FOR TENNESSEE WESTERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
VESCOVO, DIANE K.	1	0	0	0	0
PHAM, TU M.	1	0	0	0	0
BRYANT, EDWARD G.	0	0	0	0	0
COHN, GERALD	0	0	0	0	0
SUBTOTAL	2	0	0	0	0
DISTRICT JUDGES					
TODD, JAMES DALE	3	0	0	0	0
MCCALLA, JON P. (CJ)	4	0	0	0	0
DONALD, BERNICE BOUIE	5	0	0	0	0
MAYS, SAMUEL H., JR.	5	0	0	0	0
BREEN, J. DANIEL	12	3	0	0	0
ANDERSON, S. THOMAS	9	17	0	0	0
SUBTOTAL	38	20	0	0	0
DISTRICT TOTAL:	40	20	0	0	0
CIRCUIT TOTAL:	1313	506	3	12	74

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U.S. DISTRICT COURT FOR ILLINOIS NORTHERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
MAHONEY, P. MICHAEL	1	0	0	0	0
ASHMAN, MARTIN C.	3	0	0	0	0
KEYS, ARLANDER	0	0	0	0	0
DENLOW, MORTON	3	0	0	0	0
NOLAN, NAN R.	2	0	0	0	0
SCHENKIER, SIDNEY	4	0	0	0	0
BROWN, GERALDINE SORT	2	0	0	0	0
MASON, MICHAEL T.	1	0	0	0	0
COLE, JEFFEREY H.	1	0	1	0	0
VALDEZ, MARIA G.	2	0	1	0	0
COX, SUSAN E.	1	0	0	0	0
UNASSIGNED	1	0	0	0	0
SUBTOTAL	21	0	2	0	0
DISTRICT JUDGES					
POSNER, RICHARD A.	1	0	0	0	0
GRADY, JOHN F.	96	2	0	0	0
ASPEN, MARVIN E.	55	0	0	1	0
SHADUR, MILTON I.	9	0	0	0	0
KOCORAS, CHARLES P.	5	0	0	0	0

NORDBERG, JOHN A.	9	11	0	0	0
HART, WILLIAM T.	4	9	0	0	0
PLUNKETT, PAUL E.	0	0	0	0	0
NORGLE, CHARLES R., SR.	56	0	0	1	0
HOLDERMAN, JAMES F., JR. (CJ)	15	0	0	0	0
LEINENWEBER, HARRY D.	2	5	0	9	0
ZAGEL, JAMES B.	38	12	0	1	0
CONLON, SUZANNE B.	0	0	0	0	0
MAROVICH, GEORGE M.	2	0	0	0	0
LINDBERG, GEORGE W.	0	1	0	0	0
ANDERSEN, WAYNE R.	22	9	0	0	0
REINHARD, PHILLIP G.	4	0	0	0	0
CASTILLO, RUBEN	0	0	0	0	0
MANNING, BLANCHE M.	8	0	0	0	0
COAR, DAVID H.	9	32	0	1	0
GETTLEMAN, ROBERT W.	15	3	0	0	0
BUCKLO, ELAINE E.	7	0	0	0	0
GOTTSCHALL, JOAN B.	40	0	0	0	0
PALLMEYER, REBECCA R.	7	2	0	0	0
KENNELLY, MATTHEW F.	7	0	0	0	0
HIBBLER, WILLIAM J.	4	0	0	0	0
GUZMAN, RONALD A.	9	7	1	0	0
DARRAH, JOHN W.	3	0	0	0	0
LEFKOW, JOAN HUMPHREY	9	2	0	7	0
ST. EVE, AMY J.	4	0	0	0	0

U.S. DISTRICT COURT FOR ILLINOIS NORTHERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
DER-YEGHIAYAN, SAMUEL	0	0	0	0	0
KENDALL, VIRGINIA M.	2	0	0	0	0
KAPALA, FREDERICK J.	22	3	0	0	0
DOW, ROBERT M.	12	3	0	0	0
UNASSIGNED	12	8	0	1	0
SUBTOTAL	488	109	1	12	0
DISTRICT TOTAL:	509	109	3	12	0

U.S. DISTRICT COURT FOR ILLINOIS CENTRAL

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
BERNTHAL, DAVID G.	1	0	0	0	0
CUDMORE, BYRON G.	0	0	0	0	0
GORMAN, JOHN A.	2	0	0	0	0
EVANS, CHARLES H.	0	0	0	0	0
SUBTOTAL	3	0	0	0	0
DISTRICT JUDGES					
BAKER, HAROLD ALBERT	6	3	0	0	0
MIHM, MICHAEL M.	2	0	0	0	0
MILLS, RICHARD	3	0	0	0	0
MCDADE, JOE BILLY	4	0	0	0	0
MCCUSKEY, MICHAEL PATRICK (CJ)	1	0	0	0	1
SCOTT, JEANNE E.	2	0	0	0	0
SUBTOTAL	18	3	0	0	1
DISTRICT TOTAL:	21	3	0	0	1

U.S. DISTRICT COURT FOR ILLINOIS SOUTHERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
FRAZIER, PHILLIP M	0	0	0	0	0
PROUD, CLIFFORD J.	1	1	0	0	0
WILKERSON, DONALD G.	3	1	0	0	0
SUBTOTAL	4	2	0	0	0
DISTRICT JUDGES					

STIEHL, WILLIAM D.	4	5	0	0	0
GILBERT, J. PHIL	23	14	0	0	0
MURPHY, G. PATRICK	6	0	0	0	0
HERNDON, DAVID R. (CJ)	14	3	0	0	0
REAGAN, MICHAEL J.	4	8	1	2	0
SUBTOTAL	51	30	1	2	0
DISTRICT TOTAL:	55	32	1	2	0

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U.S. DISTRICT COURT FOR INDIANA NORTHERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
RODOVICH, ANDREW P.	2	2	0	0	1
COSBEY, ROGER B.	0	2	0	0	0
NOECHTERLEIN, CHRISTOPHER	0	0	0	0	0
CHERRY, PAUL R.	0	0	0	0	0
SUBTOTAL	2	4	0	0	1
DISTRICT JUDGES					
SHARP, ALLEN	0	0	0	0	0
LEE, WILLIAM C.	3	1	0	0	0
MOODY, JAMES T.	3	2	0	0	0
MILLER, ROBERT L., JR. (CJ)	35	26	0	0	0
LOZANO, RUDY	0	0	0	0	0
SIMON, PHILIP PETER	0	1	0	0	0
SPRINGMANN, THERESA L.	3	24	0	0	0
VAN BOKKELEN, JOSEPH	11	16	0	0	3
SUBTOTAL	55	70	0	0	3
DISTRICT TOTAL:	57	74	0	0	4

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U.S. DISTRICT COURT FOR INDIANA SOUTHERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
FOSTER, KENNARD P.	0	0	0	0	0
HUSSMANN, WILLIAM G., JR.	1	0	0	0	1
BAKER, TIM A.	0	0	0	0	0
MAGNUS-STINSON, JANE E.	0	0	0	0	0
LYNCH, DEBRA MCVICKER	0	0	0	0	0
MCKEE, CRAIG H.	0	0	0	0	0
NAVILLE, MICHAEL G.	0	0	0	0	0
SUBTOTAL	1	0	0	0	1
DISTRICT JUDGES					
BARKER, SARAH EVANS	20	5	1	0	0
MCKINNEY, LARRY J.	13	7	0	0	3
TINDER, JOHN DANIEL	1	1	0	0	0
HAMILTON, DAVID F. (CJ)	46	7	0	0	0
YOUNG, RICHARD L.	9	2	1	0	0
LAWRENCE, WILLIAM T.	7	0	0	0	0
SUBTOTAL	96	22	2	0	3
DISTRICT TOTAL:	97	22	2	0	4

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U.S. DISTRICT COURT FOR WISCONSIN EASTERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
GOODSTEIN, AARON E.	1	0	0	0	0
GORENCE, PATRICIA J.	1	1	0	0	0
CALLAHAN, WILLIAM E., JR.	2	0	0	0	0
SICKEL, JAMES	0	0	0	0	0

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
SUBTOTAL	4	1	0	0	0
DISTRICT JUDGES					
STADTMUELLER, J.P.	3	0	0	0	0
RANDA, RUDOLPH T. (CJ)	3	0	0	0	0
CLEVERT, C. N.	24	17	3	1	5
ADELMAN, LYNN S.	10	0	0	0	0
GRIESBACH, WILLIAM C.	1	0	0	0	0
SUBTOTAL	41	17	3	1	5
DISTRICT TOTAL:	45	18	3	1	5

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U.S. DISTRICT COURT FOR WISCONSIN WESTERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
CROCKER, STEPHEN L.	0	0	0	0	0
SUBTOTAL	0	0	0	0	0
DISTRICT JUDGES					
CRABB, BARBARA B. (CJ)	0	0	0	0	0
SHABAZ, JOHN C.	0	0	0	0	0
SUBTOTAL	0	0	0	0	0
DISTRICT TOTAL:	0	0	0	0	0
CIRCUIT TOTAL:	784	258	9	15	14

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U.S. DISTRICT COURT FOR ARKANSAS EASTERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
JONES, HENRY L., JR.	1	0	0	0	0
YOUNG, H. DAVID	1	0	0	0	0
RAY, J. THOMAS	0	0	0	0	0
DEERE, BEEN	0	0	0	0	0
CAVANEAU, JERRY W.	0	0	0	0.	0
SUBTOTAL	2	0	0	0	0.
DISTRICT JUDGES					
DISELE, GARNETT THOMAS	0	1	0	0	0
WRIGHT, SUSAN WEBBER	3	4	0	0	0
WILSON, WILLIAM R., JR.	2042	0	0	0	0
MOODY, JAMES MAXWELL	4	1	0	0	0
HOLMES, J. LEON (CJ)	2	0	0	0	0
MILLER, BRIAN S.	0	1	0	0	0
WHIPPLE, DEAN (VJ)	0	1	0	0	0
SUBTOTAL	2051	8	0	0	0
DISTRICT TOTAL:	2053	8	0	0	0

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U.S. DISTRICT COURT FOR ARKANSAS WESTERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
MARSCHEWSKI, JAMES R.	0	0	0	0	0
BRYANT, BARRY A.	0	0	0	0	0
SUBTOTAL	0	0	0	0	0
DISTRICT JUDGES					

HENDREN, JIMM LARRY (CJ)	0	0	0	0	0
BARNES, HARRY F.	1	0	0	0	0
DAWSON, ROBERT T.	0	0	0	0	0
SUBTOTAL	1	0	0	0	0
DISTRICT TOTAL:	1	0	0	0	0

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U.S. DISTRICT COURT FOR IOWA NORTHERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
ZOSS, PAUL A.	0	0	0	0	0
SCOLES, JON S.	0	0	0	0	0
SUBTOTAL	0	0	0	0	0
DISTRICT JUDGES					
MCMANUS, EDWARD J.	1	20	0	0	0
O'BRIEN, DONALD E.	3	0	0	0	0
BENNETT, MARK W.	1	0	0	0	0
READE, LINDA R. (CJ)	0	0	0	0	0
SUBTOTAL	5	20	0	0	0
DISTRICT TOTAL:	5	20	0	0	0

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U.S. DISTRICT COURT FOR IOWA SOUTHERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
BREMER, CELESTE	0	0	0	0	0
WALTERS, ROSS A.	0	2	0	0	0
SHIELDS, THOMAS J.	2	1	0	0	0
SUBTOTAL	2	3	0	0	0
DISTRICT JUDGES					
VIETOR, HAROLD D.	1	0	0	0	0
NOLLE, CHARLES R.	0	0	0	0	0
LONGSTAFF, RONALD E.	12	1	0	0	0
PRATT, ROBERT W. (CJ)	6	5	0	0	0
GRITZNER, JAMES E.	3	2	0	0	2
JARVEY, JOHN A.	0	0	0	0	0
SUBTOTAL	22	8	0	0	2
DISTRICT TOTAL:	24	11	0	0	2

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U.S. DISTRICT COURT FOR MINNESOTA

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
NOEL, FRANKLIN L.	0	0	0	0	0
ERICKSON, RAYMOND L.	0	0	0	0	0
BOYLAN, ARTHUR J.	0	0	0	0	0
NELSON, SUSAN RICHARD	0	0	0	0	0
MAYERON, JANIE S.	0	0	0	0	0
GRAHAM, JEANNE J.	0	0	0	0	0
KEYES, JEFFREY J.	0	0	0	0	0
KLEIN, MARY KAY	0	0	0	0	0
SUBTOTAL	0	0	0	0	0
DISTRICT JUDGES					
ALSOP, DONALD D.	0	0	0	0	0
MAGNUSON, PAUL A.	8	0	0	0	0
ROSENBAUM, JAMES M.	3	2	0	0	0

DOTY, DAVID E.	0	1	0	0	0
KYLE, RICHARD H.	3	1	0	0	0
DAVIS, MICHAEL JAMES (CJ)	15	2	0	0	0
TUNHEIM, JOHN R.	9	0	0	0	0
MONTGOMERY, ANN D.	1	0	0	0	0
FRANK, DONOVAN W.	167	0	0	0	1
ERICKSEN, JOAN N.	3	0	0	0	0
SCHILTZ, PATRICK J.	2	0	0	0	0
UNASSIGNED	0	2	0	0	0
SUBTOTAL	211	8	0	0	1
DISTRICT TOTAL:	211	8	0	0	1

0

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U.S. DISTRICT COURT FOR MISSOURI EASTERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
NOCE, DAVID D.	0	0	0	0	0
BUCKLES, FREDERICK R.	1	0	0	0	0
HLANTON, LEWIS M.	0	0	0	0	0
ADELMAN, TERRY I.	0	0	1	0	1
MEDLER, MARY A.	0	0	0	0	0
MUMMERT, THOMAS C.	0	0	0	0	0
FLEISSIG, AUDREY G.	2	0	0	0	0
UNASSIGNED	0	1	3	0	0
SUBTOTAL	3	1	4	0	1
DISTRICT JUDGES					
HAMILTON, JEAN C.	0	0	0	0	0
STOHR, DONALD J.	1	2	0	0	0
JACKSON, CAROL E. (CJ)	3	0	0	0	0
SHAW, CHARLES A.	0	0	0	0	0
PERRY, CATHERINE D.	2	1	0	0	0
WEBBER, E. RICHARD	4	0	0	0	0
SIPPEL, RODNEY W.	2	0	0	0	0
AUTREY, HENRY EDWARD	2	1	0	1	0
LIMBAUGH, STEPHEN N., JR.	2	3	0	0	1
UNASSIGNED	1	14	1	0	0
SUBTOTAL	17	21	1	1	1
DISTRICT TOTAL:	20	22	5	1	2

0

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U.S. DISTRICT COURT FOR MISSOURI WESTERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
ENGLAND, JAMES C.	1	0	0	0	0
KNOX, WILLIAM A.	0	0	0	0	0
MAUGHMER, JOHN T.	0	0	0	0	0
LARSEN, ROBERT E.	1	1	0	0	0
HAYS, SARAH W.	0	0	0	0	1
SUBTOTAL	2	1	0	0	1
DISTRICT JUDGES					
WRIGHT, SCOTT O.	2	0	0	0	0
SACHS, HOWARD F.	2	1	0	0	0
WHIPPLE, DEAN	3	6	0	0	0
GRITZN, FERNANDO J., JR. (CJ)	1	0	0	0	0
SMITH, ORTRIE D.	2	0	0	0	0
FENNER, GARY A.	4	0	1	0	0
LAUGHREY, NANETTE K.	0	0	0	0	0
DORR, RICHARD E.	2	1	0	0	0
KAYS, DAVID G.	1	0	0	0	0
SUBTOTAL	18	8	1	0	0
DISTRICT TOTAL:	20	9	1	0	1

0

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U.S. DISTRICT COURT FOR NEBRASKA

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
FIESTER, DAVID L.	0	0	0	0	0
TRALKEN, THOMAS D.	0	0	0	0	0
GOSSETT, F. A., III	0	0	0	0	0
SUBTOTAL	0	0	0	0	0
DISTRICT JUDGES					
URBOM, WARREN K.	0	0	0	0	0
STROM, LYLE E.	4	1	0	0	0
KOPF, RICHARD G.	1	0	0	0	0
BATAILLON, JOSEPH F. (CJ)	0	0	0	0	0
CAMP, LAURIE SMITH	0	0	0	0	0
SUBTOTAL	5	1	0	0	0
DISTRICT TOTAL:	5	1	0	0	0

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U.S. DISTRICT COURT FOR NORTH DAKOTA

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
KLEIN, KAREN	0	0	0	0	0
MILLER, CHARLES S., JR.	2	0	0	0	0
SENECHAL, ALICE R.	0	0	0	0	0
SUBTOTAL	2	0	0	0	0
DISTRICT JUDGES					
CONMY, PATRICK A.	0	0	0	0	0
WEBB, RODNEY S.	2	3	0	0	0
HOVLAND, DANIEL L. (CJ)	1	4	0	0	0
ERICKSON, RALPH R.	1	6	0	0	0
SUBTOTAL	4	13	0	0	0
DISTRICT TOTAL:	6	13	0	0	0

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U.S. DISTRICT COURT FOR SOUTH DAKOTA

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
SIMKO, JOHN E.	0	0	0	0	0
MORENO, MARK A.	0	0	0	0	0
DUFFY, VERONICA L.	0	0	0	0	0
GERDES, WILLIAM D.	0	0	0	0	0
SUBTOTAL	0	0	0	0	0
DISTRICT JUDGES					
BOGUE, ANDREW W.	1	4	0	0	0
JONES, JOHN B.	0	0	0	0	0
BATTEY, RICHARD H.	0	0	0	0	0
PIERSOL, LAWRENCE L.	2	5	1	0	0
KORNMANN, CHARLES BRUNO	0	0	0	0	0
SCHREIER, KAREN E. (CJ)	1	3	0	0	0
SUBTOTAL	4	12	1	0	0
DISTRICT TOTAL:	4	12	1	0	0
CIRCUIT TOTAL:	2349	104	7	1	6

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U.S. DISTRICT COURT FOR ALASKA

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS

MAGISTRATE JUDGES					
ROBERTS, JOHN D.	0	0	0	0	0
SMITH, DEBORAH M.	0	0	0	0	0
JAMIN, MATTHEW D.	0	0	0	0	0
LONGENBRUGH, LESLIE C.	0	0	0	0	0
THOMPSON, MICHAEL	0	0	0	0	0
DRAVEC, SCOTT	0	0	0	0	0
SUBTOTAL	0	0	0	0	0
DISTRICT JUDGES					
VON DER HEYDT, JAMES A.	0	0	0	0	0
FITZGERALD, JAMES M.	0	0	0	0	0
HOLLAND, H. RUSSEL	5	3	1	0	0
SINGLETON, JAMES K.	3	0	0	0	0
SEDWICK, JOHN W. (CJ)	2	0	0	0	0
BEISTLINE, RALPH R.	3	0	0	0	0
BURGESS, TIMOTHY M.	4	5	0	0	0
SUBTOTAL	17	8	1	0	0
DISTRICT TOTAL:	17	8	1	0	0

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U.S. DISTRICT COURT FOR ARIZONA

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
EDMONDS, GLENDA E.	0	2	0	0	0
ANDERSON, LAWRENCE O.	0	0	0	0	0
VELASCO, BERNARDO P.	0	0	0	0	0
IRWIN, JAY R.	0	0	0	0	0
DUNCAN, DAVID K.	0	0	0	0	0
PYLE, CHARLES R.	0	1	0	0	0
MARSHALL, JACQUELINE J.	0	0	0	0	0
VOSS, EDWARD C.	2	0	0	0	0
ASBEY, MARK E.	0	0	0	0	0
ESTRADA, HECTOR C.	0	0	0	0	0
GUERIN, JENNIFER C.	0	0	0	0	0
BURNS, MICHELLE H.	0	0	0	0	0
FERRARO, D. THOMAS	0	0	0	0	0
SUBTOTAL	2	3	0	0	0
DISTRICT JUDGES					
HOLLAND, H. RUSSEL (VJ)	2	0	0	0	0
EZRA, DAVID A. (VJ)	1	0	0	0	0
CARROLL, EARL H.	15	16	6	0	1
ROSENBLATT, PAUL G.	14	0	0	0	0
BROOMFIELD, ROBERT C.	1	0	0	0	1
STRAND, ROGER G.	0	0	0	0	0
MCNAMEE, STEPHEN M.	12	1	0	0	0
KOLL, JOHN M. (CJ)	6	0	0	0	0
SILVER, ROSLYN O.	4	1	0	0	0
ZAPATA, FRANK R.	12	6	0	0	1
COLLINS, RANER	6	2	0	0	1
TEILBORG, JAMES A.	2	0	0	0	0
BOLTON, SUSAN R.	3	0	0	0	0
MORGUIA, MARY H.	13	0	0	0	0
MARTONE, FREDERICK J.	0	0	0	0	0
JORGENSON, CINDY K.	5	4	0	0	1
BURY, DAVID C.	7	0	0	0	0
CAMPBELL, DAVID G.	3	1	0	0	0
WAKE, NEIL VINCENT	1	0	0	0	0
SNOW, G. MURRAY	1	0	0	0	0
UNASSIGNED	0	2	0	0	0
SUBTOTAL	109	33	0	0	5
DISTRICT TOTAL:	110	36	0	0	5

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U.S. DISTRICT COURT FOR CALIFORNIA NORTHERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					

BRAZIL, WAYNE D.	0	0	0	0	0
THUMBULL, PATRICIA	1	4	0	0	4
JAMES, MARIA-ELENA	4	2	1	0	0
ZIMMERMAN, BERNARD	0	0	0	0	0
LARSON, JAMES L.	1	1	0	0	1
LAPORTE, ELIZABETH D.	1	0	0	0	0
SPERO, JOSEPH	1	0	0	0	0
SEEBORG, RICHARD	3	1	0	0	0
CHEN, EDWARD M.	0	0	0	0	0
LLOYD, HOWARD R.	1	0	0	0	1
VADAS, NANDOR	2	2	0	0	0
SUBTOTAL	14	10	1	0	6
DISTRICT JUDGES					
CONTI, SAMUEL	2	0	0	0	0
SHUBB, WILLIAM B.	1	0	0	0	0
SCHWARZER, WILLIAM W.	2	0	0	0	0
HENDERSON, THELTON E.	15	2	0	0	0
PATEL, MARILYN H.	27	3	0	0	0
JENSEN, D. LOWELL	2	0	0	0	0
WALKER, VAUGHN R. (CJ)	9	4	0	0	0
WARE, JAMES	28	4	0	3	1
ARMSTRONG, SAUNDRA BROWN	5	0	0	0	0
WHYTE, RONALD M.	29	12	1	0	2
WILKEN, CLAUDIA	15	0	0	0	0
CHESNEY, MAXINE M.	7	0	0	0	0
ILLSTON, SUSAN YVONNE	13	0	0	0	0
BREYER, CHARLES R.	3	0	0	0	0
FOGEL, JEREMY D.	22	1	0	0	0
ALSUP, WILLIAM HASKELL	10	4	0	0	0
HAMILTON, PHYLLIS J.	30	2	0	0	0
WHITE, JEFFREY STEVEN	6	5	0	0	0
UNASSIGNED	0	1	0	0	0
SUBTOTAL	226	38	1	3	3
DISTRICT TOTAL:	240	48	2	3	9

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U.S. DISTRICT COURT FOR CALIFORNIA EASTERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
MOULDS, JOHN F.	0	0	0	0	0
HOLLOWS, GREGORY G.	0	1	0	0	0
BECK, DENNIS L.	6	3	0	0	0
SNYDER, SANDRA	3	1	0	0	2
DROZD, DALE A.	1	0	0	0	16
MUELLER, KIMBERLY J.	1	4	0	0	0
HUNDERLICH, WILLIAM M.	2	0	0	0	0
KELLISON, CRAIG M.	1	0	0	0	0
BRENNAN, EDMUND F.	2	8	0	0	2
AUSTIN, GARY S.	3	0	0	0	0
DIXON, JOHN M., JR.	0	0	0	0	0
SORRENTINO, CHARLENE H.	0	0	0	0	0
SUBTOTAL	19	17	0	0	20
DISTRICT JUDGES					
KARLTON, LAWRENCE K.	91	8	0	0	1
NIMMILL, B. LYNN (VJ)	1	0	0	0	0
SINGLETON, JAMES K. (VJ)	5	0	0	0	0
COYLE, ROBERT E.	0	0	0	0	0
GARCIA, EDWARD J.	0	0	0	0	0
SHUBB, WILLIAM B.	8	6	0	0	0
WANGER, OLIVER W.	57	21	0	1	1
BURRELL, GARLAND E., JR.	57	11	0	0	0
WRALEY, ROBERT H. (VJ)	0	2	0	0	0
BRYAN, ROBERT J. (VJ)	1	0	0	0	0
SCHWARZER, WILLIAM W. (VJ)	6	1	0	0	0
ISHII, ANTHONY W. (CJ)	62	7	0	0	0
DAMRELL, FRANK C., JR.	56	9	0	1	0
ENGLAND, MORRISON C., JR.	76	13	0	0	0
O'NEILL, LAWRENCE J.	60	2	0	0	2
ALARCON, ARTHUR L.	0	1	0	0	0
MCNAMEE, STEPHEN M. (VJ)	1	0	0	0	0
MENDEZ, JOHN A.	60	13	0	1	0
ROLL, JOHN M. (VJ)	2	0	0	0	0
SILVER, ROSLYN O. (VJ)	2	0	0	0	0
KAPETA, FRANK R. (VJ)	2	1	0	0	0
COLLINS, RANER (VJ)	2	0	0	0	0
TEILBORG, JAMES A. (VJ)	3	0	0	0	0
HOUSTON, JOHN A. (VJ)	1	0	0	0	0
BOLTON, SUSAN R. (VJ)	1	0	0	0	0

MURGUIA, MARY H. (VJ)	1	0	0	0	0
SAMMARTINO, JANIS L. (VJ)	0	1	0	0	0
BURY, DAVID C. (VJ)	2	0	0	0	0
CAMPBELL, DAVID G.	1	0	0	0	0
WAKE, NEIL VINCENT (VJ)	1	0	0	0	0

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U.S. DISTRICT COURT FOR CALIFORNIA EASTERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
SNOW, G. MURRAY (VJ)	4	0	0	0	0
FOGEL, JEREMY D. (VJ)	1	0	0	0	0
ALSUP, WILLIAM HASKELL (VJ)	0	3	0	0	0
BEA, CARLOS	0	1	0	0	0
MATZ, A. HOWARD (VJ)	0	1	0	0	0
WRIGHT, OTIS D., II (VJ)	0	1	0	0	0
SUBTOTAL	560	102	0	3	4
DISTRICT TOTAL:	587	119	0	3	24

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U.S. DISTRICT COURT FOR CALIFORNIA CENTRAL

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
EICK, CHARLES F.	0	0	0	0	0
TORCHIN, CAROLYN	0	0	0	0	0
HILLMAN, STEPHEN J.	0	0	0	0	2
WISTRICH, ANDREW J.	1	3	1	0	0
BLOCK, ROBERT N.	0	0	0	0	0
CHAPMAN, ROSALYN M.	0	0	0	0	0
MOEHRLE, CARLA M.	2	6	1	0	0
NAKAZATO, ARTHUR	0	0	0	0	0
ZAREFSKY, RALPH	0	0	0	0	0
NAGLE, MARGARET A.	0	0	0	0	0
JOHNSON, JEFFREY W.	0	0	0	0	0
GOLDMAN, MARC L.	0	0	0	0	0
KENTON, VICTOR B.	0	1	0	0	0
WALSH, PATRICK J.	0	0	0	0	0
LUM, JENNIFER T.	1	0	0	0	0
OLGUIN, FERNANDO M.	0	0	0	0	0
ABRAMS, PAUL L.	0	0	0	0	0
SEGAL, SUZANNE H.	0	0	0	0	0
CHODILJIAN, JACQUELINE	0	6	0	0	0
EARADA, OSWALD	0	2	0	0	0
MUMM, FREDERICK F.	0	1	0	0	1
RAYBURN, JOHN C., JR.	0	0	0	0	0
ROSENBERG, ALICIA G.	0	0	0	0	0
FEDERMAN, RITA C.	0	0	0	0	0
SUBTOTAL	4	19	2	0	3
DISTRICT JUDGES					
WHALEY, ROBERT H. (VJ)	1	0	0	0	0
REAL, MANUEL L.	8	2	0	0	2
KELLEHER, ROBERT J.	1	0	0	0	0
TAKASUGI, ROBERT M.	5	1	0	0	0
PFAELZER, MARIANA R.	0	0	0	0	0
HATTER, TERRY J., JR.	17	8	0	0	0
MARSHALL, CONSUELO BLAND	10	1	1	1	0
STOTLER, ALICEMARIE H.	20	9	0	0	1
KELLER, WILLIAM DUFFY	2	1	0	0	0
WILSON, STEPHEN V.	30	28	0	1	0
LETTS, J. SPENCER	116	4	0	0	0
LEW, RONALD S.W.	14	7	0	2	0
COLLINS, AUDREY B. (CJ)	26	8	0	2	0
TIMLIN, ROBERT J.	1	0	0	0	0
KING, GEORGE H.	20	5	0	2	0
FREGERSON, DEAN D.	30	24	0	6	0
SNYDER, CHRISTINA A.	22	6	0	1	0
MORROW, MARGARET M.	15	20	0	2	1

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U.S. DISTRICT COURT FOR CALIFORNIA CENTRAL

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MATZ, A. HOWARD	18	11	0	1	0
CARTER, DAVID O.	15	4	0	1	0
FRESS, GARY	21	9	0	0	0
COOPER, FLORENCE-MARIE	18	6	0	0	0

PHILLIPS, VIRGINIA ANNE	12	13	0	0	0
WALTER, JOHN F.	12	5	0	1	0
ANDERSON, PERCY	14	4	0	5	0
KLAUSNER, ROBERT G.	7	0	0	0	0
OTERO, S. JAMES	8	2	0	0	0
SELNA, JAMES V.	13	3	0	0	0
CARNEY, CORMAC J..	6	3	0	0	0
FISCHER, DALE S.	12	8	0	2	0
LARSON, STEPHEN G.	16	2	0	0	0
GUILFORD, ANDREW J.	20	2	0	0	0
GUTIERREZ, PHILIP S.	18	3	0	0	0
FAIRBANK, VALERIE B.	13	8	0	0	0
WRIGHT, OTIS D., II	18	6	0	2	0
WU, GEORGE H.	28	48	1	1	0
SUBTOTAL	559	262	2	30	4
DISTRICT TOTAL:	603	281	4	30	7

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U.S. DISTRICT COURT FOR CALIFORNIA SOUTHERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
PORTER, LOUISA S.	0	0	0	0	0
PAPAS, LEO S.	0	0	0	0	0
BROOKS, RUBEN B.	0	0	0	0	0
BATTAGLIA, ANTHONY J.	0	0	0	0	0
STORMES, NITA L.	0	0	0	0	0
ADLER, JAN M.	0	0	0	0	0
MAJOR, BARBARA L.	0	0	0	0	0
MCCURINE, WILLIAM, JR.	2	0	0	0	0
LEWIS, PETER C.	0	0	0	0	0
BENCIVENGO, CATHY ANN	0	0	0	0	0
SUBTOTAL	2	0	0	0	0
DISTRICT JUDGES					
TURRENTINE, HOWARD B.	0	0	0	0	0
THOMPSON, GORDON, JR.	0	1	0	0	0
ENRIGHT, WILLIAM B.	0	0	0	0	0
BREWSTER, RUDI M.	1	1	0	0	0
HUFF, MARILYN L.	0	0	0	0	0
GONZALEZ, IRMA E. (CJ)	1	0	0	0	0
JONES, NAPOLEON A., JR.	2	2	0	0	0
MOSKOWITZ, BARRY TED	7	1	0	0	0
MILLER, JEFFREY T.	3	0	0	0	0
WHELAN, THOMAS J.	2	0	0	0	0
LORENZ, M. JAMES	6	0	0	0	0
BURNS, LARRY A.	0	0	0	0	0
SABRAW, DANA M.	3	0	0	0	0
HAYES, WILLIAM Q.	3	0	6	1	0
HOUSTON, JOHN A.	10	0	0	0	1
BENITEZ, ROGER T.	1	0	0	0	0
SAMMARTINO, JANIS L.	18	1	0	0	1
ANELLO, MICHAEL M.	12	0	0	0	1
SUBTOTAL	69	6	0	1	3
DISTRICT TOTAL:	71	6	0	1	3

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U.S. DISTRICT COURT FOR HAWAII

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
KUREN, BARRY	1	0	0	0	0
KOBAYASHI, LESLIE E.	1	0	0	0	0
CHANG, KEVIN C.	0	0	0	0	0
SUBTOTAL	2	0	0	0	0
DISTRICT JUDGES					
KING, SAMUEL P.	1	0	0	0	0
KAY, ALAN COOKE	0	0	0	0	0
EZRA, DAVID A.	4	0	0	0	0
GILLMOR, HELEN W. (CJ)	1	0	0	0	1
MOLLWAY, SUSAN OKI	0	0	0	0	0
SEABRIGHT, MICHAEL	1	0	0	0	0

REAL, MANUEL L. (VJ)	2	0	0	0	0
SUBTOTAL	9	0	0	0	1
DISTRICT TOTAL:	11	0	0	0	1

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U.S. DISTRICT COURT FOR IDAHO

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
DALE, CANDY	0	0	0	0	0
BUSH, RONALD	0	0	0	0	0
WILLIAMS, MIKEL H.	0	0	0	0	0
BOYLE, LARRY M.	2	0	0	0	0
SUBTOTAL	2	0	0	0	0
DISTRICT JUDGES					
LODGE, EDWARD J. (CJ)	2	0	0	0	0
WINMILL, B. LYNN	21	0	0	0	0
CARTER, DAVID O. (VJ)	1	0	0	0	0
SUBTOTAL	24	0	0	0	0
DISTRICT TOTAL:	26	0	0	0	0

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U.S. DISTRICT COURT FOR MONTANA

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
OSTBY, CAROLYN S.	0	0	0	0	0
LYNCH, JEREMIAH C.	1	0	0	0	0
STRONG, KEITH	1	0	0	0	0
SCHUSTER, GERARD H.	0	0	0	0	0
HOLTER, ROBERT M.	0	0	0	0	0
ANDERSON, RICHARD W.	0	0	0	0	0
SUBTOTAL	2	0	0	0	0
DISTRICT JUDGES					
LOVELL, CHARLES C.	0	0	0	0	0
SHANSTROM, JACK D.	0	0	0	0	0
MOLLOY, DONALD W.	3	19	0	0	0
CEBULL, RICHARD F. (CJ)	6	6	0	0	0
HADDON, SAM E.	5	0	0	0	0
SUBTOTAL	14	25	0	0	0
DISTRICT TOTAL:	16	25	0	0	0

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U.S. DISTRICT COURT FOR NEVADA

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
JOHNSTON, ROBERT J.	0	0	0	0	0
LEAVITT, LAWRENCE R.	0	0	1	0	0
MCQUAID, ROBERT A., JR.	4	0	0	0	0
COOKE, VALERIE P.	0	0	0	0	0
LEEN, PEGGY A.	0	0	0	0	0
FOLEY, GEORGE H., JR.	0	0	0	0	0
SUBTOTAL	4	0	1	0	0
DISTRICT JUDGES					
REED, EDWARD C., JR.	17	0	0	0	0
GEORGE, LLOYD D.	9	0	0	0	0
MCKIBBEN, HOWARD D.	0	0	0	0	0
PRO, PHILIP M.	9	1	0	0	0

EZRA, DAVID A. (VJ)	8	0	0	0	0
HUNT, ROGER L. (CJ)	2	0	0	0	0
DAWSON, KENT J.	10	0	0	0	0
HICKS, LARRY R.	12	5	0	0	0
MAHAN, JAMES C.	10	0	0	0	0
JONES, ROBERT CLIVE	15	3	0	2	0
SANDOVAL, BRIAN E.	13	1	0	2	0
SUBTOTAL	105	11	0	4	0
DISTRICT TOTAL:	109	11	1	4	0

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U.S. DISTRICT COURT FOR OREGON

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
COFFIN, THOMAS M.	4	0	0	0	1
STEWART, JANICE M.	6	1	0	0	2
HUBEL, DENNIS J.	2	0	0	0	0
PAPAK, PAUL J.	4	0	0	0	1
CLARKE, MARK D.	0	0	0	0	1
ACOSTA, JOHN V.	6	5	0	0	1
SULLIVAN, PATRICIA	2	7	0	0	0
JELDERKS, JOHN A.	1	0	0	0	0
ASHMANSKAS, DONALD C.	0	0	0	0	0
COONEY, JOHN P.	0	0	0	0	0
SUBTOTAL	25	13	0	0	6
DISTRICT JUDGES					
PANNER, OWEN M.	1	5	0	0	0
REDDEN, JAMES A.	3	2	0	0	0
FRYE, HELEN J.	0	1	0	0	0
MARSH, MALCOLM F.	0	2	0	0	0
JONES, ROBERT E.	4	0	0	0	0
HOGAN, MICHAEL R.	6	1	0	0	6
HAGGERTY, ANCER L.	5	6	0	0	0
AIKEN, ANN (CJ)	2	0	0	0	1
KING, GARR M.	3	0	0	0	2
BROWN, ANNA J.	4	2	0	0	0
MOSMAN, MICHAEL W.	3	0	0	0	0
SUBTOTAL	32	19	0	0	9
DISTRICT TOTAL:	57	32	0	0	15

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U.S. DISTRICT COURT FOR WASHINGTON EASTERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
IMBROGNO, CYNTHIA	0	0	0	0	2
HUTTON, JAMES P.	0	0	0	0	0
SUBTOTAL	0	0	0	0	2
DISTRICT JUDGES					
QUACKENBUSH, JUSTIN L.	1	0	0	0	0
NIELSEN, WILLIAM FREMMING	10	0	0	0	0
VAN SICKLE, FRED	5	0	0	0	0
WHALEY, ROBERT H. (CJ)	6	2	0	0	0
SHEA, EDWARD F.	1	4	0	0	0
SUKO, LONNY R.	2	2	0	0	0
SUBTOTAL	25	8	0	0	0
DISTRICT TOTAL:	25	8	0	0	2

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U.S. DISTRICT COURT FOR WASHINGTON WESTERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					

STROMBOM, KAREN L.	0	0	0	0	0
THEILER, MARY ALICE	0	0	0	0	0
DONOHUE, JAMES P.	0	0	0	0	0
TSUCHIDA, BRIAN A.	0	0	0	0	0
CREATURA, J. RICHARD	0	0	0	0	0
BRETT, DEAN R.	0	0	0	0	0
CHRISTEL, DAVID W.	0	0	0	0	0
SUBTOTAL	0	0	0	0	0
DISTRICT JUDGES					
MCGOVERN, WALTER T.	0	0	0	0	0
ROTHSTEIN, BARBARA JACOBS	0	0	0	0	0
COUGHENOUR, JOHN C.	3	0	0	0	0
DIMMICK, CAROLYN R.	0	0	0	0	0
BRYAN, ROBERT J.	0	0	0	0	0
ZILLY, THOMAS S.	0	0	0	0	0
BURGESS, FRANKLIN D.	1	0	0	0	0
LASNIK, ROBERT S. (CJ)	3	0	0	0	0
PECHMAN, MARSHA J.	0	0	0	0	0
LEIGHTON, RONALD B.	0	0	0	0	0
MARTINEZ, RICARDO S.	6	2	0	0	0
HONART, JAMES L.	0	0	0	0	0
SETTLE, BENJAMIN H.	0	0	0	0	0
JONES, RICHARD A.	0	2	0	0	0
SUBTOTAL	13	4	0	0	0
DISTRICT TOTAL:	13	4	0	0	0

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U.S. DISTRICT COURT FOR GUAM

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
MANIBUSAN, JOAQUIN V., JR.	0	1	0	0	0
SUBTOTAL	0	1	0	0	0
DISTRICT JUDGES					
TYDINGCO-GATEWOOD, FRANCES (CJ)	2	1	0	0	0
SUBTOTAL	2	1	0	0	0
DISTRICT TOTAL:	2	2	0	0	0

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U.S. DISTRICT COURT FOR NORTHERN MARIANAS

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
DISTRICT JUDGES					
MUNSON, ALEX R. (CJ)	2	5	0	0	0
SUBTOTAL	2	5	0	0	0
DISTRICT TOTAL:	2	5	0	0	0
CIRCUIT TOTAL:	1689	585	8	41	66

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U.S. DISTRICT COURT FOR COLORADO

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
WATANABE, MICHAEL J.	0	0	0	0	0
BOLAND, BOYD	0	2	0	0	0
SHAFFER, CRAIG B.	0	0	0	0	0
NEGARTY, MICHAEL E.	0	0	0	0	0
MIX, KRISTEN L.	0	0	0	0	0
TAFOYA, KATHLEEN M.	0	0	0	0	0
WEST, DAVID L.	0	0	0	0	0
MILBURN, LAIRD T.	0	0	0	0	0

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SUBTOTAL	0	2	0	0	0
DISTRICT JUDGES					
MATSCH, RICHARD P.	19	30	0	0	12
KANE, JOHN L., JR.	4	19	0	0	0
WEINSHIENK, ZITA L.	2	6	0	0	0
EBEL, DAVID M.	0	1	0	0	0
BABCOCK, LEWIS T.	1	5	0	0	0
DANIEL, WILEY Y. (CJ)	8	0	0	2	0
MILLER, WALKER D.	11	0	1	0	0
KRIEGER, MARCIA S.	5	0	0	1	1
BLACKBURN, ROBERT E.	0	0	0	0	0
BRIMMER, PHILIP A.	8	0	0	1	2
ARGUELLO, CHRISTINE M.	2	0	0	3	2
SUBTOTAL	60	61	1	7	17
DISTRICT TOTAL:	60	63	1	7	17

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U.S. DISTRICT COURT FOR KANSAS

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
HUMPHREYS, KAREN M.	0	0	0	0	0
ROSTWICK, DONALD W.	0	2	0	0	0
WAXSE, DAVID J.	1	0	0	0	0
O'HARA, JAMES P.	0	1	0	0	0
SEBELIUS, KEITH G.	0	0	0	0	0
RUSHFELT, GERALD L.	0	0	0	0	0
SUBTOTAL	1	3	0	0	0
DISTRICT JUDGES					
BROWN, WESLEY E.	6	8	0	2	8
ROGERS, RICHARD DEAN	1	0	0	0	0
CROW, SAM A.	6	0	0	0	0
LUNGSTRUM, JOHN W.	12	4	0	0	0
BELOT, MONTI L.	7	7	0	0	0
VRATIL, KATHRYN H. (CJ)	3	0	0	0	0
MARTEN, JOHN THOMAS	3	0	0	0	0
MURGUIA, CARLOS	0	1	0	0	0
ROBINSON, JULIE A.	2	0	0	0	0
MELGREN, ERIC F.	4	0	0	4	0
SUBTOTAL	44	20	0	6	8
DISTRICT TOTAL:	45	23	0	6	8

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U.S. DISTRICT COURT FOR NEW MEXICO

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
GARCIA, LORENZO F.	0	0	0	0	0
PUGLISI, RICHARD L.	0	0	0	0	0
MOLZEN, KAREN B.	0	0	0	0	0
TORGERSON, ALAN C.	0	0	0	0	0
SCHNEIDER, N. DANIEL	0	1	0	0	0
SCOTT, ROBERT HAYES	0	5	0	0	0
MARTINEZ, LOURDES A.	0	0	0	0	0
LYNCH, WILLIAM P.	0	0	0	0	0
GARZA, CARMEN E.	0	0	0	0	0
IONTA, ROBERT W.	0	0	0	0	0
RIGGS, KEA W.	0	0	0	0	0
SVET, DON J.	0	0	0	0	0
SUBTOTAL	0	6	0	0	0
DISTRICT JUDGES					
DOWNES, WILLIAM F. (VJ)	1	0	0	0	0
CONWAY, JOHN E.	2	3	0	0	0
PARKER, JAMES A.	4	0	0	0	0
HANSEN, C. LEROY	1	12	0	0	0
VAZQUEZ, MARTHA (CJ)	4	0	0	0	0
BLACK, BRUCE D.	7	15	0	0	0

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ARMIJO, M. CHRISTINA	1	0	0	0	0
JOHNSON, WILLIAM PAUL	2	11	0	0	0
BRACK, ROBERT	1	0	0	0	0
BROWNING, JAMES O.	1	1	0	1	0
HERRERA, JUDITH C.	2	0	0	0	0
SUBTOTAL	26	42	0	1	0
DISTRICT TOTAL:	26	48	0	1	0

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U.S. DISTRICT COURT FOR OKLAHOMA NORTHERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
MCCARTHY, FRANK H.	0	0	0	0	0
CLEARY, PAUL J.	0	0	0	0	0
WILSON, T. LANE	0	0	0	0	0
SUBTOTAL	0	0	0	0	0
DISTRICT JUDGES					
PAYNE, JAMES H.	3	0	0	0	0
KERN, TERENCE C.	10	30	0	1	0
EAGAN, CLAIRE V. (CJ)	5	2	0	0	0
FRIZZELL, GREGORY K.	14	1	1	0	0
SUBTOTAL	32	33	1	1	0
DISTRICT TOTAL:	32	33	1	1	0

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U.S. DISTRICT COURT FOR OKLAHOMA EASTERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
BEST, KIMBERLY E.	0	2	0	0	1
SHREDER, STEVEN P.	1	1	0	0	2
SUBTOTAL	1	3	0	0	3
DISTRICT JUDGES					
SEAY, FRANK HOWELL	0	2	0	0	0
PAYNE, JAMES H. (CJ)	3	13	0	0	6
WHITE, RONALD A.	0	1	0	0	6
SUBTOTAL	3	16	0	0	12
DISTRICT TOTAL:	4	19	0	0	15

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U.S. DISTRICT COURT FOR OKLAHOMA WESTERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
ARGO, DOYLE	0	0	0	0	0
ROBERTS, BANA	0	3	0	0	0
PURCELL, GARY M.	0	0	0	0	0
COUCH, VALERIE K.	0	0	0	0	0
BACHARACH, ROBERT	0	2	0	0	0
ERWIN, SHON T.	0	0	0	0	0
SUBTOTAL	0	5	0	0	0
DISTRICT JUDGES					
WEST, LEE R.	3	9	0	0	0
CAUTHRON, ROBIN J.	4	4	0	0	0
RUSSELL, DAVID L.	2	1	0	0	0
LEONARD, TIM	0	0	0	0	0
MILES-LAGRANGE, VICKI (CJ)	3	2	0	0	0
FRIOT, STEPHEN P.	7	2	0	0	0

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HEATON, JOE L.	5	2	0	0	0
DEGIUSTI, TIMOTHY D.	8	105	0	0	0
SUBTOTAL	32	125	0	0	0
DISTRICT TOTAL:	32	130	0	0	0

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U.S. DISTRICT COURT FOR UTAH

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
ALBA, SAMUEL	0	6	0	0	1
NUFFER, DAVID O.	0	0	0	0	0
WELLS, BROOKE C.	0	0	0	0	0
WARNER, PAUL M.	0	0	0	0	0
BRAITHWAITE, ROBERT T.	0	0	0	0	0
SUBTOTAL	0	6	0	0	1
DISTRICT JUDGES					
JENKINS, BRUCE S.	8	13	1	0	0
WINDER, DAVID K.	0	0	0	0	0
GREENE, J. THOMAS	1	6	0	0	2
SAM, DAVID	1	0	0	0	0
BENSON, DEE V.	15	20	0	0	2
CAMPBELL, TENA (CJ)	17	20	0	0	1
KIMBALL, DALE A.	7	0	0	0	0
STEWART, TED	7	10	0	0	2
WADDOUPS, CLARK	16	0	0	0	0
SUBTOTAL	72	69	1	0	7
DISTRICT TOTAL:	72	75	1	0	8

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U.S. DISTRICT COURT FOR WYOMING

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
COLE, STEPHEN E.	0	0	0	0	0
BERMAN, WILLIAM C.	0	0	0	0	0
MARTY, KAREN L.	0	0	0	0	0
SKAVDAHL, SCOTT W.	0	0	0	0	0
SHICKICH, R. MICHAEL	0	0	0	0	0
LUBING, JAMES K.	0	0	0	0	0
MCKEE, TERESA M.	0	0	0	0	0
GIST, RICHARD D.	0	0	0	0	0
SUBTOTAL	0	0	0	0	0
DISTRICT JUDGES					
BRIMMER, CLARENCE A.	0	6	0	0	0
JOHNSON, ALAN B.	1	28	1	0	1
DOWNES, WILLIAM F. (CS)	0	2	4	0	0
MILLER, WALKER D. (VJ)	0	1	0	0	0
SUBTOTAL	1	37	5	0	1
DISTRICT TOTAL:	1	37	5	0	1
CIRCUIT TOTAL:	272	428	8	15	41

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U.S. DISTRICT COURT FOR ALABAMA NORTHERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
PUTNAM, T. MICHAEL	0	1	0	0	0
GREENE, PAUL WILLIAM	4	43	0	0	0
ARMSTRONG, ROBERT R., JR.	1	0	0	0	0
DAVIS, HARWELL G., III	3	10	0	0	0
OTT, JOHN E.	2	9	0	0	0

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
SUBTOTAL	10	63	0	0	0
DISTRICT JUDGES					
HANCOCK, JAMES HUGHES	0	1	0	0	4
GUIN, J. FOY, JR.	0	0	0	0	3
PROPST, ROBERT B.	0	0	0	0	0
ACKER, WILLIAM M., JR.	0	1	0	0	0
BLACKBURN, SHARON LOVELACE (CJ)	4	6	0	0	0
SMITH, C. LYNWOOD, JR.	4	3	0	1	0
JOHNSON, INGE PRYTZ	2	1	0	0	0
BOWDRE, KARON O.	10	7	0	0	14
COOGLER, L. SCOTT	1	1	0	0	0
PROCTOR, R. DAVID	0	0	0	0	0
HOPKINS, VIRGINIA EMERSON	7	7	0	0	0
MARTINEZ, JOSE E. (VJ)	1	1	0	0	0
UNASSIGNED	0	4	0	0	0
SUBTOTAL	29	32	0	1	21
DISTRICT TOTAL:	39	95	0	1	21

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U.S. DISTRICT COURT FOR ALABAMA MIDDLE

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
CODDY, CHARLES S.	0	1	0	0	0
WALKER, SUSAN RUSS	0	0	0	0	0
CAPEL, WALLACE, JR.	0	0	0	0	0
MOORER, TERRY F.	0	0	0	0	0
SUBTOTAL	0	1	0	0	0
DISTRICT JUDGES					
HOBBS, TRUMAN M.	0	0	0	0	0
THOMPSON, MYRON H.	12	16	0	0	0
ALBRITTON, WILLIAM H., III	0	2	0	0	0
DEMENT, IRA	0	1	0	0	0
FULLER, MARK E. (CJ)	5	19	0	0	0
WATKINS, W. KEITH	4	0	0	0	0
STROM, LYLE E. (VJ)	1	0	0	0	0
SUBTOTAL	22	38	0	0	0
DISTRICT TOTAL:	22	39	0	0	0

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U.S. DISTRICT COURT FOR ALABAMA SOUTHERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
CASSADY, WILLIAM E.	0	0	0	0	0
MILLING, BERT W., JR.	0	0	0	0	0
BIVINS, SONJA F.	0	3	0	0	2
SUBTOTAL	0	3	0	0	2
DISTRICT JUDGES					
BUTLER, CHARLES R., JR.	2	0	0	0	0
SANDS, W. LOUIS (VJ)	1	0	0	0	0
GRIMADE, CALLIE V.S. (CJ)	5	11	0	0	0
STEELE, WILLIAM H.	2	3	0	0	0
DUBOSE, KRISTI K.	0	0	0	0	0
SUBTOTAL	10	14	0	0	0
DISTRICT TOTAL:	10	17	0	0	2

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U.S. DISTRICT COURT FOR FLORIDA NORTHERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
SHERRILL, WILLIAM C., JR.	0	0	0	0	0
DAVIS, GORDON M.	0	0	0	0	0
KORNBLUM, ALLAN N.	0	5	0	0	0
TIMOTHY, ELIZABETH	0	0	0	0	0
BODIFORD, LARRY	0	0	0	0	0
SUBTOTAL	0	5	0	0	0
DISTRICT JUDGES					
STAFFORD, WILLIAM K., JR.	1	0	0	0	0
PAUL, MAURICE MITCHELL	5	45	0	0	9
VINSON, C. ROGER	0	0	0	0	0
COLLIER, LACEY A.	1	0	0	0	0
HINKLE, ROBERT L. (CJ)	0	0	0	0	0
MICKLE, STEPHAN P.	4	1	0	0	0
RODGERS, M. CASEY	0	0	0	0	0
SMOAK, JOHN RICHARD, JR.	0	0	0	0	0
ROBRENO, EDUARDO C. (VJ)	1	0	0	0	0
UNASSIGNED	13	0	0	0	0
SUBTOTAL	25	46	0	0	9
DISTRICT TOTAL:	25	51	0	0	9

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U.S. DISTRICT COURT FOR FLORIDA MIDDLE

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
WILSON, THOMAS G.	0	0	0	0	0
SNYDER, HOWARD T.	0	0	0	0	0
JENKINS, ELIZABETH A.	0	0	0	0	0
BAKER, DAVID A.	0	0	0	0	0
MCCOUN, THOMAS B., III	0	1	0	0	0
PIZZO, MARK A.	0	0	0	0	0
SPAULDING, KARLA R.	0	0	0	0	0
FRAZIER, DOUGLAS N.	1	0	0	0	0
JONES, GARY R.	0	0	0	0	0
MORRIS, THOMAS E.	0	0	0	0	0
CHAPPELL, SHERI P.	0	0	0	0	0
RICHARDSON, MONTE C.	0	0	0	0	0
KLINDT, JAMES R.	0	0	0	0	0
KELLY, GREGORY J.	0	0	0	0	0
SUBTOTAL	1	1	0	0	0
DISTRICT JUDGES					
HODGES, WILLIAM TERRELL	22	65	0	0	0
MELTON, HOWELL W.	0	0	0	1	0
CASTAGNA, WILLIAM J.	0	0	0	0	0
MOORE, JOHN H., II	0	0	0	0	0
KOVACHEVICH, ELIZABETH A.	7	16	0	0	0
SHARP, GEORGE KENDALL	4	0	0	0	0
PAMSETT, PATRICIA C.	0	0	0	0	0
SCHLESINGER, HARVEY E.	0	2	0	0	0
CONWAY, ANNE C. (CJ)	0	0	0	0	0
MERRYDAY, STEVEN D.	7	0	0	0	0
BUCKLEW, SUSAN C.	0	0	0	0	0
ADAMS, HENRY LEE, JR.	1	3	0	0	0
LAZZARA, RICHARD A.	1	0	0	0	0
WHITTEMORE, JAMES D.	0	0	0	0	0
ANTOON, JOHN, II	0	0	0	0	0
STEELE, JOHN E.	1	3	0	3	0
MOODY, JAMES S., JR.	1	0	0	0	0
PRESNELL, GREGORY A.	1	0	0	0	0
CORRIGAN, TIMOTHY J.	3	0	0	0	0
COVINGTON HERNANDEZ, VIRGINIA M.	0	0	0	0	0
HOWARD, MARCIA M.	1	3	0	0	0
SCRIVEN, MARY	0	0	0	0	0
UNASSIGNED	6	20	0	3	0
SUBTOTAL	55	112	0	7	0
DISTRICT TOTAL:	56	113	0	7	0

DISTRICT SUMMARY REPORT

AS OF DATE: 03/31/2009 RUN: 06/23/2009 PAGE 97

U.S. DISTRICT COURT FOR FLORIDA SOUTHERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS

MAGISTRATE JUDGES					
SNOW, LURANA	0	0	0	0	0
TORNOFF, WILLIAM	0	0	0	0	0
JOHNSON, LINNEA R.	0	0	0	0	0
VITUNAC, ANN E.	0	0	0	0	0
BRANDSTR, TED E.	0	0	0	0	0
SELTZER, BARRY S.	0	0	0	0	0
BROWN, STEPHEN T.	1	0	0	0	0
GARBER, BARRY L.	3	1	0	0	0
LYNCH, FRANK J., JR.	0	0	0	0	0
SIMONTON, ANDREA M.	1	0	0	0	0
O'SULLIVAN, JOHN J.	0	0	0	0	0
WHITE, PATRICK A.	0	0	0	0	0
HOPKINS, JAMES M.	1	0	0	0	0
TORRES, EDWIN G.	1	0	0	0	0
MCKILBY, CARIN MARIE	0	1	0	0	0
ROSENBAUM, ROBIN S.	0	0	0	0	0
PALERMO, PETER R.	0	0	0	0	0
DUBE, ROBERT L.	0	0	0	0	0
SUBTOTAL	7	2	0	0	0
DISTRICT JUDGES					
KING, JAMES LAWRENCE	0	0	0	0	0
HOEVELER, WILLIAM M.	3	8	0	0	0
GONZALEZ, JOSE A., JR.	0	0	0	0	0
STORY, RICHARD W. (VJ)	0	3	0	0	0
ZLOCH, WILLIAM J.	0	1	0	0	0
RYSKAMP, KENNETH L.	2	0	0	0	0
MORENO, FEDERICO A. (CJ)	3	0	0	0	0
GRAHAM, DONALD L.	0	0	0	0	0
HIGHSMITH, SHELBY	0	0	0	0	0
MOORE, K. MICHAEL	1	0	0	0	0
UNGARO, URSULA	0	0	0	0	0
HURLEY, DANIEL T.K.	2	2	0	0	0
LENARD, JOAN A.	0	14	0	0	0
MIDDLEBROOKS, DONALD M.	0	0	0	0	0
GOLD, ALAN STEPHEN	3	5	0	0	0
DIMITROULEAS, WILLIAM P.	0	0	0	0	0
SEITZ, PATRICIA A.	0	0	0	0	0
JORDAN, ADALBERTO	5	2	0	0	0
HUCK, PAUL C.	0	0	0	0	0
MARRA, KENNETH A.	17	1	0	0	0
MARTINEZ, JOSE E.	0	0	0	0	0
ALTONAGA, CECILIA M.	0	0	0	0	0
CONN, JAMES I.	0	0	0	0	0
COOKE, MARCIA G.	1	0	0	0	0

0 DISTRICT SUMMARY REPORT

AS OF DATE: 03/31/2009 RUN: 06/23/2009 PAGE 98

U.S. DISTRICT COURT FOR FLORIDA SOUTHERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
UNASSIGNED	56	27	0	0	0
SUBTOTAL	93	63	0	0	0
DISTRICT TOTAL:	100	65	0	0	0

0 DISTRICT SUMMARY REPORT

AS OF DATE: 03/31/2009 RUN: 06/23/2009 PAGE 99

U.S. DISTRICT COURT FOR GEORGIA NORTHERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
BRILL, GERRLYN G.	0	0	0	0	0
SCOFIELD, E. CLAYTON, III	1	3	0	0	0
HAGY, C. CHRISTOPHER	1	0	0	0	0
KING, JANET F.	0	0	0	0	0
WALKER, LINDA T.	0	0	0	0	0
BAVERMAN, ALAN J.	0	0	0	0	0
COLE, SUSAN S.	1	0	0	0	0
JOHNSON, WALTER E.	0	0	0	0	0
VINEYARD, RUSSELL G.	0	0	0	0	0
SUBTOTAL	3	3	0	0	0
DISTRICT JUDGES					
O'KELLEY, WILLIAM C.	1	0	0	0	0
MOYE, CHARLES A., JR.	0	1	0	0	0
MURPHY, HAROLD L.	4	0	0	0	0

SHOOB, MARVIN H.	4	8	0	0	0
VINING, ROBERT L., JR.	1	9	0	1	0
TIDWELL, G. ERNEST	1	29	0	0	0
EVANS, ORINDA	0	0	0	0	0
WARD, HORACE T.	6	28	0	0	0
FORRESTER, J. OWEN	1	0	0	0	0
CAMP, JACK T.	0	2	0	0	0
CARNES, JULIE E. (CJ)	3	3	0	0	0
COOPER, CLARENCE	7	4	0	0	0
HUNT, WILLIS B., JR.	1	0	0	0	0
THRASH, THOMAS H., JR.	0	6	0	0	0
STORY, RICHARD W.	6	0	0	0	0
PANNELL, CHARLES A., JR.	5	2	0	0	0
MARTIN, BEVERLY B.	1	0	0	0	0
DUFFEY, WILLIAM S., JR.	0	0	0	0	0
BATTEN, TIMOTHY C., SR.	0	0	0	0	0
SUBTOTAL	41	86	0	1	0
DISTRICT TOTAL:	44	89	0	1	0

0

DISTRICT SUMMARY REPORT

AS OF DATE: 03/31/2009 RUN: 06/23/2009 PAGE 100

U.S. DISTRICT COURT FOR GEORGIA MIDDLE

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
HICKS, CLAUDE W., JR.	1	0	0	0	6
HODGE, RICHARD L.	2	0	0	0	0
FAIRCLOTH, G. MALLON	0	0	0	0	0
SUBTOTAL	3	0	0	0	6
DISTRICT JUDGES					
SANDS, W. LOUIS	6	1	0	0	0
LAWSON, HUGH	4	3	0	0	2
LAND, CLAY D.	2	0	0	0	0
ROYAL, C. ASHLEY (CJ)	6	0	0	0	4
SUBTOTAL	18	4	0	0	6
DISTRICT TOTAL:	21	4	0	0	12

0

DISTRICT SUMMARY REPORT

AS OF DATE: 03/31/2009 RUN: 06/23/2009 PAGE 101

U.S. DISTRICT COURT FOR GEORGIA SOUTHERN

	CASES	MOTIONS PENDING	BENCH TRIALS	BANK. APPEALS	SOC-SEC APPEALS
MAGISTRATE JUDGES					
SMITH, GEORGE R.	0	0	0	0	0
GRAHAM, JAMES E.	1	0	0	0	0
BARFIELD, W. LEON	0	0	0	0	0
SUBTOTAL	1	0	0	0	0
DISTRICT JUDGES					
ALAIMO, ANTHONY A.	1	2	0	0	0
EDENFIELD, B. AVANT	0	1	0	0	0
BOWEN, DUDLEY H., JR.	4	1	0	0	0
MOORE, WILLIAM T., JR. (CJ)	1	0	0	0	0
WOOD, LISA G.	0	0	0	0	0
HALL, JAMES RANDAL	0	0	0	0	0
SUBTOTAL	6	4	0	0	0
DISTRICT TOTAL:	7	4	0	0	0
CIRCUIT TOTAL:	324	477	0	9	44

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
(_____Spartanburg DIVISION)

DALE ROBERTS on behalf of himself and all others similarly situated

Plaintiff/Petitioner/USA,

v.

TOYOTA MOTOR CORPORATION, ET AL

Defendant/Respondent.

Case No. 7:10-281-RBH

Motion in Support of *Pro Hac Vice* Application

The undersigned local counsel hereby moves, together with the attached Application and Affidavit, that Fletcher V. Trammell be admitted *pro hac vice* in the above-captioned case as associate counsel. As local counsel, I understand that:

1. I will personally sign and include my District of South Carolina federal bar attorney identification number on each pleading, motion, discovery procedure, or other document that I serve or file in this court; and

2. All pleadings and other documents that I file in this case will contain my name, firm name, address, and phone number and those of my associate counsel admitted *pro hac vice*; and

3. Service of all pleadings and notices as required shall be sufficient if served upon me, and it is my responsibility to serve my associate counsel admitted *pro hac vice*; and

4. Unless excused by the court, I will be present at all pretrial conferences, hearings, and trials and may attend discovery proceedings. I will be prepared to actively participate if necessary.

5. Certification of Consultation (Local Civil Rule 7.02).

☐ Prior to filing this Motion, I conferred with opposing counsel who has indicated the following position as to this Motion: ☐ will likely oppose; ☐ does not intend to oppose

☑ Prior to filing this Motion, I attempted to confer with opposing counsel but was unable to do so for the following reason(s):
Opposing counsel has not yet appeared.

☐ No duty of consultation is required because the opposing party is proceeding pro se.

Harrison, White, Smith & Coggins, P.C.
Firm Name

178 West Main Street
Street Address or Post Office Box

Spartanburg, SC 29306
City, State, Zip Code

(864)585-5100
Telephone Number

jwhite@spartanlaw.com
E-Mail Address

John B. White, Jr.
Name of Local Counsel

s/John B. White, Jr.
Signature of Local Counsel

Local Counsel for the Plaintiffs, Dale Roberts, et al

District of South Carolina
Federal Bar Number 4619

revised 09/19/05

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
(SPARTANBURG DIVISION)

DALE ROBERTS on behalf of himself, et al,
Plaintiff/Petitioner/USA,

v.

TOYOTA MOTOR CORPORATION, ET AL.,
Defendant/Respondent.

Case No. 7:10-281-RBH

Application/Affidavit for *Pro Hac Vice* Admission

(1) Name. Fletcher (First) V. (Middle) Trammell (Last)

(2) Residence. I reside in the following state: Texas
If a South Carolina resident, indicate months/years of residence: _____

(3) Business Address. I am an attorney and practice law under the name of or as a member of the following firm:

Firm name: Bailey Perrin Bailey
Mailing address: 440 Louisiana Street, Ste. 2100 City/State/Zip: Houston, TX 77002
Telephone number: 713-425-7100
Facsimile number: 713-425-7101
E-mail address: ftrammell@bpblaw.com
(Application will not be considered without an e-mail address to receive electronic notification.)

(4) Jurisdiction of this Court. I, by execution of this Application and Affidavit, consent and agree to comply with the applicable statutes, laws, and rules of the State of South Carolina, with all applicable federal statutes, laws, and rules, including Local Rules of the United States District Court for the District of South Carolina (particularly, Local Civil Rule 83.I.08 and/or Local Criminal Rule 57.I.08). I consent to the jurisdiction of the United States District Court for the District of South Carolina in all matters of attorney conduct.[1]

(5) Regular Practice of Law. I am a member in good standing of the bar of the highest court of the District of Columbia or the State of Texas where I regularly practice law. **Attached is my certificate of good standing.**

(6) Additional Bar Membership. I have been admitted to practice before the following courts: (List all of the courts Applicant has been admitted to practice before: United States District Courts; United States Circuit Courts of Appeals; the Supreme Court of the United States; and courts of other states or the District of Columbia.) By signing this Affidavit, I certify that I am a member in good standing of each of the listed bars unless otherwise noted.

[1] This District maintains a web site (www.scd.uscourts.gov) from which the federal and local rules of procedure and related materials may be obtained.

Court	Date Admitted	Good Standing
US District Courts Southern and Eastern Districts of Texas		☑ Yes ☐ No
Eleventh Circuit United States Court of Appeals		☑ Yes ☐ No
US District Courts Eastern and Western Districts of Arkansas		☑ Yes ☐ No

(7) Pending Disciplinary Matters. Are you presently the subject of any formal suspension or disbarment proceedings, and have you been notified by any disciplinary agency of the initiation of formal procedures? ..... ☐ Yes ☑ No

(If "yes," give particulars, such as jurisdiction, court, date, grounds. Information to comply with this paragraph may be provided *in camera* but that fact shall be revealed below.)

(8) Curtailment of Prior *Pro Hac Vice* Admissions. Have you ever had any application for admission *pro hac vice* in this or any other jurisdiction denied or any *pro hac vice* admission revoked?

☐ Yes ☑ No

(If "yes," give particulars, such as date, court, docket number, judge, circumstances; attach a copy of any order of denial or revocation.)

(9) Sanctions. Have you ever had any certificate or privilege to appear and practice before any judicial or administrative body suspended or revoked, or received a public reprimand or greater sanction?

☐ Yes ☑ No

(If "yes," give particulars, e.g., judicial or administrative body, date of suspension, and reinstatement.)

(10) Criminal Sanctions. Have you ever been convicted of a felony under the laws of the District of Columbia or of any State or under the laws of the United States?

☐ Yes ☑ No

(If "yes," give particulars, such as date, court, judge, circumstances, and ultimate disposition.)

(11) Present and Previous *Pro Hac Vice* in this Court. Have you, within the last ten (10) years, filed an application to appear *pro hac vice* in the United States District Court for the District of South Carolina or another court in the state of South Carolina?

☑ Yes ☐ No

(If "yes," give court, case name, docket number, and status of litigation, year of application, local counsel of record in each case, and state whether application is pending or was granted.) Attach additional pages if necessary.

USDC South Carolina Florence Division, C.A. 4:09-CV-03277- TLW - Local counsel John Simmons

Pro Hac Application granted on 1-26-10 - case pending

(12) Designated Local Counsel. Local counsel of record associated with Applicant in this case is:

TOY-RQ-05E-00009945

Attorney Name:	John B. White, Jr.
Firm Name:	Harrison, White, Smith & Coggins, P.C.
Street Address or Post Office Box:	178 West Main Street
City, State, and Zip Code:	Spartanburg, South Carolina 29306
Telephone Number:	864-585-5100
E-Mail Address:	jwhite@spartanlaw.com

I understand that local counsel of record is required to: (1) personally sign each pleading, motion, discovery procedure, or other document served or filed in this Court; (2) accept service of all pleadings and notices as required on behalf of all counsel for the party represented; (3) be present at all pretrial conferences, hearings and trials, unless excused by the Court; (4) be prepared to participate actively as may be necessary; and (5) assure compliance with Local Civil Rules 83.I.04, 83.I.05, and 83.I.06 or Local Criminal Rules 57.I.04, 57.I.05, and 57.I.06 as appropriate. Local counsel of record may attend discovery proceedings.

(13) Associated Counsel. In addition to local counsel designated above, the following counsel are also associated with the undersigned in this case.
n/a

(14) Application Fee. I affirm that the application fee of two hundred and fifty dollars ($250) has been paid in accordance with Local Civil Rule 83.I.05 or Local Criminal Rule 57.I.05 or paid herewith.

(15) Electronic Notification. By submitting this application, I consent to electronic notification.

(16) Represented Party/Parties. I seek to represent the following party/parties:
Plaintiffs: Dale Roberts, on behalf of himself and all others similarly situated

Signature of Applicant

Sworn to and subscribed before me
this 18th day of February 2010.

Norma C Koole

A Notary Public
of the State of Texas

NORMA C. KOOLE
Notary Public, State of Texas
My Commission Expires
October 05, 2013

My Commission expires: October 5, 2013

TOY-RQ-05E-00009946

The Supreme Court of Texas

AUSTIN

CLERK'S OFFICE

I, BLAKE HAWTHORNE, Clerk of the Supreme Court of Texas, certify that the records of this office show that

Fletcher Vines Trammell

was duly admitted and licensed as an attorney and counselor at law by the Supreme Court of Texas on the 6th day of November, 2003.

I further certify that the records of this office show that, as of this date

Fletcher Vines Trammell

is presently enrolled with the State Bar of Texas as an active member in good standing.

IN TESTIMONY WHEREOF witness my hand and the seal of the Supreme Court of Texas at the City of Austin, this, the 23rd day of December, 2009.

BLAKE HAWTHORNE, Clerk

by Brad Sonego

Brad Sonego, Deputy Clerk

No. 1223M

This certification expires thirty days from this date, unless sooner revoked or rendered invalid by operation of rule or law.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

DALE ROBERTS, on behalf of himself and all others similarly situated, Plaintiffs, v. TOYOTA MOTOR CORPORATION, TOYOTA MOTOR SALES, U.S.A., INC., Defendant.	CIVIL ACTION No. 7:10-cv-00281-RBH **NOTICE OF APPEARANCE**

Please take notice that the undersigned hereby enters a notice of appearance on behalf of Plaintiff in addition to previously identified Plaintiff's counsel. The Clerk of Court and counsel for other parties are requested to serve notice of all hearings, pleadings, motions and discovery upon the undersigned.

Respectfully submitted,

SIMMONS LAW FIRM, LLC

BY: s/John S. Simmons
John S. Simmons
1711 Pickens Street
Post Office Box 5
Columbia, South Carolina 29202
803-779-4600
Attorney for Plaintiff

February 26, 2010

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF SOUTH CAROLINA

COLUMBIA DIVISION

Dale Roberts, Plaintiff, vs. Toyota Motor Corporation, Toyota Motor Sales, U.S.A., and Does 1 through 10, Defendants.	)	Civil Action No.: 7:10-281-RBH CONSENT ORDER EXTENDING TIME TO ANSWER, MOVE OR OTHERWISE PLEAD

Pursuant to Local Rule 12.01 and 6.01, Defendant Toyota Motor Sales U.S.A., Inc. and Plaintiff Dale Roberts consent to an extension of time to answer, move or otherwise plead in response to the complaint in the above-captioned case, making its response due on or before April 1, 2010. Consent is given on the following grounds and in the following respects:

1. The complaint was served on Toyota Motor Sales U.S.A., Inc. on February 16, 2010.
2. The response to the complaint is currently due on March 9, 2010.
3. By agreement, twenty-one (21) additional days are allowed, and the new deadline to answer, move, or otherwise plead in response to the complaint is March 30, 2010.
4. No prior extension of time to answer has been requested or granted in this case, and there are no other deadlines affected by this extension.

5. Toyota Motor Corporation is not a party to this agreement as it has not been effectively served pursuant to Fed. R. Civ. P. 4(f)(1).

SIGNATURE PAGE TO FOLLOW

TOY-RQ-05E-00009950

WE SO CONSENT:

By: Angela Strickland

PAMELA J. ROBERTS
Federal Bar No. 5756
E-Mail: pamela.roberts@bowmanandbrooke.com
ANGELA G. STRICKLAND
Federal Bar No. 9824
E-Mail: angela.strickland@bowmanandbrooke.com
BOWMAN AND BROOKE LLP
1441 Main Street
Columbia, SC 29201
(803) 726-0020

Counsel for Toyota Motor Sales, U.S.A.

WE SO CONSENT:

By: _____

HARRISON, WHITE, SMITH & COGGINS, P.C.
John B. White, Jr. (FED ID No. 4619)
Donald C. Coggins, Jr. (FED ID No. 198)
Attorneys for Plaintiffs
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Of Counsel:
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Robert W. Cowan (Texas Bar No. 24031976)
Of Counsel for Plaintiffs
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rcowan@bpblaw.com
(713) 425-7100 Telephone
(713) 425-7101 Facsimile
(*pro hac* admission will be requested)

TOY-RQ-05E-00009952

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

DALE ROBERTS, on behalf of himself and all others similarly situated,	)	
Plaintiff,	)	
v.	)	Case No. 7:10-cv-00281-RBH
TOYOTA MOTOR CORPORATION, TOYOTA MOTOR SALES, U.S.A., INC., and DOES 1 through 10,	)	
Defendants.	)	

DEFENDANT TOYOTA MOTOR SALES, U.S.A., INC.'S MOTION AND BRIEF IN SUPPORT OF MOTION TO STAY PENDING ACTION BY THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

Defendant Toyota Motor Sales, U.S.A., Inc.[1] ("Toyota") respectfully moves this Honorable Court 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 a Multidistrict Litigation appears highly likely, Toyota moves to stay

[1] Plaintiff in this case has not yet served Toyota Motor Corporation.

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.

Pursuant to Local Rule 7.02, counsel for Toyota has consulted with counsel for Plaintiff on this motion. Plaintiff's counsel does not consent to this motion.

Respectfully submitted, this 4th day of March, 2010.

By: s/ANGELA G. STRICKLAND
PAMELA J. ROBERTS
Federal Bar No. 5756
E-Mail: pamela.roberts@bowmanandbrooke.com
ANGELA G. STRICKLAND
Federal Bar No. 9824
E-Mail: angela.strickland@bowmanandbrooke.com
Bowman and Brooke LLP
1441 Main Street
Columbia, SC 29201
(803) 726-0020

Attorneys for Defendants
Toyota Motor North America, Inc.,
Toyota Motor Engineering & Manufacturing North America, Inc.,
Toyota Motor Manufacturing Kentucky, Inc., and
Toyota Motor Sales, U.S.A., Inc.

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

DALE ROBERTS, on behalf of himself and all others similarly situated,	)	
Plaintiff,	)	
v.	)	Case No. 7:10-cv-00281-RBH
TOYOTA MOTOR CORPORATION, TOYOTA MOTOR SALES, U.S.A., INC., and DOES 1 through 10,	)	
Defendants.	)	

DEFENDANT TOYOTA MOTOR SALES, U.S.A., INC.'S MOTION AND BRIEF IN SUPPORT OF MOTION TO STAY PENDING ACTION BY THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

INTRODUCTION

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

[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.

defendants. Plaintiffs in these cases claim to be owners or lessees of Toyota and Lexus 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 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, see 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

[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.

TOY-RQ-05E-00009956

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. 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 entered orders staying at least nine (9) related actions pursuant to a similar request by Toyota, *see* Exhibit D, and consent motions to stay are currently being presented to several additional federal courts. Toyota respectfully suggests that the same rationale applies here.

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 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

[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).

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 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 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

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(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. 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 will not 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 will be brief and will not prejudice Plaintiff 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 Plaintiff could somehow demonstrate prejudice to its case due to the 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 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 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

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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 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 has been emailed to your chambers per your filing preferences.

Respectfully submitted this 4th day of March, 2010.

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UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

DALE ROBERTS, on behalf of himself and all others similarly situated,	)	
Plaintiff,	)	
v.	)	Case No. 7:10-cv-00281-RBH
TOYOTA MOTOR CORPORATION, TOYOTA MOTOR SALES, U.S.A., INC., and DOES 1 through 10,	)	
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, U.S.A., INC.'s MOTION TO STAY PENDING ACTION BY THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION (with brief in support)** by electronically filing with the Clerk of Court using the CM/ECF system.

This 4th day of March, 2010.

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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

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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*

[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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TOY-RQ-05E-00009984

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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TOY-RQ-05E-00009985

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

TOY-RQ-05E-00009988

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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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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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TOY-RQ-05E-00010004

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.

7:10-cv-00281-RBH Date Filed 03/04/10 Entry Number 19-1 Page 42 of 50

TOY-RQ-05E-00010005

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
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

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:

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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.

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.

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

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

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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-00010060

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-00010061

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-00010062

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-00010063

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-00010064

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

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

DALE ROBERTS, on behalf of himself and all others similarly situated, Plaintiffs, v. TOYOTA MOTOR CORPORATION, TOYOTA MOTOR SALES, U.S.A., INC., AND DOES 1 through 10, Defendants.	CIVIL ACTION No. 7:10-281-RBH

PLAINTIFFS' MOTION FOR ENTRY OF ORDER GOVERNING PRESERVATION OF EVIDENCE AND INCORPORATED MEMORANDUM OF LAW

Plaintiff Dale Roberts, on behalf of himself and all others similarly situated, (hereinafter "Plaintiffs"), by and through the undersigned counsel, files this Motion for Entry of an Order Governing Preservation of Evidence and Incorporated Memorandum of Law. An order requiring the preservation of evidence described herein is appropriate and consistent with Federal Rules of Civil Procedure and related case law prescribing litigants' duties to preserve discoverable information, taking steps to prevent the alteration, or destruction, of evidence, as more fully outlined below. By their Motion, Plaintiffs seek the entry of the attached proposed order, requiring Defendants Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Inc., and Does 1 through 10, (hereinafter, "Defendants") to preserve documents and data, in electronic form and otherwise, tangible things, and all other evidence that may be relevant to the above-styled case, and for cause would show the Court as follows:

I.
INTRODUCTION

Plaintiffs' action is brought as a class action pursuant to Fed. R. Civ. P. 23 against Defendants Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Inc., and Does 1 through 10, claiming damages on behalf of the Plaintiff Class and Subclasses, comprised of purchasers and lessees of vehicles manufactured and warranted by Defendants, as more fully defined in Plaintiffs' Original Class Action Complaint (Doc. 1), as a result of Defendants' breach of express and implied warranties attendant to a common defect in the subject vehicles. More specifically, each Plaintiff purchased or leased a vehicle manufactured and warranted by Defendants that is subject to uncontrolled and/or unintended and/or sudden acceleration because of Defendants' admittedly faulty Electronic Throttle Control System with Intelligence ("ETCS-i") coupled with the lack of Brake Override System technology ("BOS"). As a result of the absence of BOS in Defendants' vehicles, which Defendants failed to disclose to Plaintiffs, the vehicles are dangerously unsafe, inherently defective, and are worth less than the amount of money Plaintiffs who purchased them paid.

II.
ARGUMENTS & AUTHORITIES

In view of Defendants' evidentiary retention obligations, Plaintiffs hereby move the Court for the entry of an order prohibiting the alteration and destruction of evidence during the pendency of this action by Defendants, their employees, agents, contractors and any non-parties who possess materials reasonably anticipated by Defendants to be subject to discovery in this action. An order requiring the preservation of evidence is appropriate and commensurate with the Federal Rules of Civil Procedure governing discovery and applicable federal case law requiring Defendants to take necessary steps to prevent the alteration and destruction of evidence that may be relevant to this action. *See, e.g.*, Fed. R. Civ. P. 26(f) (directing litigants to, as soon

TOY-RQ-05E-00010067

as practicable, address "any issues about preserving discoverable information," and develop a proposed plan therefor); Fed. R. Civ. P. 34 and 45; s*ee also Silvestri v. General Motors Corp.*, 271 F.3d 583, 590 (4th Cir. 2001) (consistent with federal principles of spoliation and underlying policy "to preserve the integrity of the judicial process in order to retain confidence that the process works to uncover the truth," parties must preserve material evidence); *Goodman v. Praxair Servs., Inc.*, 632 F. Supp. 2d. 494, 511 (D. Md. 2009) ("Once a party reasonably anticipates litigation, ***it is obligated to suspend its routine document retention/destruction policy and implement a litigation hold*** to ensure the preservation or relevant documents.") (emphasis added) (internal quotation marks omitted).

"The duty to preserve material evidence arises not only during litigation but also extends to that period before the litigation when a party reasonably should know that the evidence may be relevant to anticipated litigation." *Id.* at 591; *accord Kronisch v. United States*, 150 F.3d 112, 126 (2d Cir. 1998). It extends to all documents, data and tangible things in the possession, custody and control of the defendants and any employees, agents, contractors, or other non-parties who possess materials reasonably anticipated to be subject to discovery. *See* Fed. R. Civ. P. 34(a); *Zubulake v. UBS Warburg LLC*, 220 F.R.D. 212, 217-18 (S.D. N.Y. 2003) ("The broad contours of the duty to preserve are relatively clear. That duty should certainly extend to any documents or tangible things (as defined by Rule 34(a)) made by individuals 'likely to have discoverable information that the disclosing party may use to support its claims or defenses.' The duty also includes documents prepared *for* those individuals," and "information that is relevant to the claims or defenses of *any* party.") (quoting Fed. R. Civ. P. 34(a)) (emphases in original). "'Preservation' is to be interpreted broadly to accomplish the goal of maintaining the

TOY-RQ-05E-00010068

integrity of" such materials. *In re Nat'l Security Agency Telecommunications Records Litig.*, No. 06-1791, 2007 WL 3306579, at *1 (N.D. Cal. Nov. 6, 2007).

Preservation includes, more specifically, "taking reasonable steps to prevent the partial or full destruction, alteration, testing, deletion, shredding, incineration, wiping, relocation, migration, theft, or mutation of such material, as well as negligent or intentional handling that would make material incomplete or inaccessible." *Id.* Counsel should likewise "exercise efforts to identify and notify . . . non-parties, including employees of corporate or institutional parties." *Id.*; *see also Silvestri*, 271 F.3d at 591 ("If a party cannot fulfill this duty to preserve because he does not own or control the evidence, he still has an obligation to give the opposing party notice of access to the evidence if the party anticipates litigation involving that evidence."). Such efforts include inquiring of their clients "if the business practices of any party involve the routine destruction, recycling, relocation, or mutation os [sic] such materials and, if so, direct the party . . . either to (1) halt such business processes; (2) sequester or remove such material from the business process; or (3) arrange for the preservation or complete and accurate duplicates or copies of such material, suitable for later discovery if requested." *Id.* at *2.

Pursuant to Local Rule 7.02, counsel for plaintiffs certify they attempted to consult with counsel for defendants to no avail.

For the reasons set forth above, the Court should grant Plaintiffs' Motion in its entirety and enter the attached proposed Order Governing Preservation of Evidence in this matter.

Respectfully submitted,

By: s/John B. White, Jr.
HARRISON, WHITE, SMITH & COGGINS, P.C.
John B. White, Jr. (Federal Bar No. 4619)
Donald C. Coggins, Jr. (Federal Bar No. 198)

TOY-RQ-05E-00010069

178 West Main Street (29306)
Post Office Box 3547
Spartanburg, SC 29304
(864) 585-5100 Telephone
(864) 591-0491 Fax

SIMMONS LAW FIRM, L.L.C.
John S. Simmons (Federal Bar No. 5000)
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BAILEY PERRIN BAILEY
Fletcher V. Trammell (Federal Bar No. 37307)
440 Louisiana, Suite 2100
Houston, Texas 77002
(713) 425-7100 Telephone
(713) 425-7101 Facsimile
(*pro hac* admission will be requested)

March 5, 2010

Spartanburg, South Carolina

TOY-RQ-05E-00010070

CT Corporation

Service of Process Transmittal

02/16/2010
CT Log Number 516158710

TO: Dorothy Sutton, Administrative Assistant
Toyota Motor Sales, U.S.A., Inc.
19001 S. Western Ave., HQ11
Torrance, CA 90501

RE: **Process Served in South Carolina**

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:	Dale Roberts, on behalf of himself and all others similarly situated, Pltfs. vs. Toyota Motor Corporation, et al. including Toyota Motor Sales, U.S.A., Inc., Dfts.
DOCUMENT(S) SERVED:	Summons, Return Form, Complaint
COURT/AGENCY:	Spartanburg Division: United States District Court, SC Case # 7:10-281
NATURE OF ACTION:	Product Liability Litigation - Manufacturing Defect - Each plaintiff and member of the putative plaintiff class and subclasses purchased or leased a vehicle manufactured and warrantied by defendants that is subject to uncontrolled and/or unintended and/or sudden acceleration of such vehicles because of defendants' admittedly faulty electronic throttle control system with intelligence coupled with the lack of brake override system technology thereby creating a serious and life-threatening safety condition
ON WHOM PROCESS WAS SERVED:	CT Corporation System, Columbia, SC
DATE AND HOUR OF SERVICE:	By Process Server on 02/16/2010 at 10:35
APPEARANCE OR ANSWER DUE:	Within 21 days after service, exclusive of the day of service
ATTORNEY(S) / SENDER(S):	John B. White, Jr. Harrison, White, Smith & Coggins, P.C. 178 West Main St. Spartanburg, SC 29304 864-585-5100
REMARKS:	Kindly note that the process server has underlined and/or highlighted the entity being served prior to the receipt by CT
ACTION ITEMS:	SOP Papers with Transmittal, via Fed Ex 2 Day , 799510376907 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:	CT Corporation System
PER:	Divya Peter
ADDRESS:	2 Office Park Court Suite 103 Columbia, SC 29229
TELEPHONE:	800-528-8790

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.

U.S. District Court
District of South Carolina (Spartanburg)
CIVIL DOCKET FOR CASE #: 7:10-cv-00281-RBH

Roberts v. Toyota Motor Corporation et al
Assigned to: Honorable R Bryan Harwell
Cause: 28:1332 Diversity-Personal Injury

Date Filed: 02/05/2010
Jury Demand: None
Nature of Suit: 360 P.I.: Other
Jurisdiction: Diversity

Plaintiff

Dale Roberts
on behalf of himself and all others similarly situated

represented by **John S Simmons**
John S Simmons Law Offices
PO Box 5
Columbia, SC 29202
803-779-4600
Fax: 803-254-8874
Email: jsimmons@simmonslawfirm.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

John Belton White , Jr
Harrison White Smith and Coggins
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Email: ftrammell@bpblaw.com
PRO HAC VICE
ATTORNEY TO BE NOTICED

TOY-RQ-05E-00010072

V.

Defendant

Toyota Motor Corporation

Defendant

Toyota Motor Sales USA Inc represented by **Pamela J Roberts**
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803-726-0023
Email:
pamela.roberts@bowmanandbrooke.com
ATTORNEY TO BE NOTICED

Angela Gilbert Strickland
Bowman and Brooke
1441 Main Street
Suite 1000
Columbia, SC 29201
803-726-0024
Email:
angela.strickland@bowmanandbrooke.com

ATTORNEY TO BE NOTICED

Defendant

Does 1 through 10

Date Filed	#	Docket Text
02/05/2010	1	COMPLAINT against Does 1 through 10, Toyota Motor Corporation, Toyota Motor Sales USA Inc (Filing fee $ 350 receipt number 0420-2536665.), filed by Dale Roberts.(awil) (Entered: 02/05/2010)
02/05/2010	3	Local Rule 26.01 Answers to Interrogatories by Dale Roberts.(awil) (Entered: 02/05/2010)
02/05/2010	4	Summons Issued as to Does 1 through 10, Toyota Motor Corporation, Toyota Motor Sales USA Inc. (awil) (Entered: 02/05/2010)
02/18/2010	5	SUMMONS Returned Executed by Dale Roberts. Toyota Motor Sales USA Inc served on 2/16/2010, answer due 3/9/2010. (Attachments: # 1 Affidavit AOS CT CORP AS REGISTERED AGENT FOR TOYOTA MOTOR SALES, U.S.A.)(White, John) (Entered: 02/18/2010)
02/18/2010	9	Letter from Plaintiffs' Counsel. (Attachments: # 1 Main Document JPML Filing Letter, # 2 Main Document Plaintiff's Motion to Transfer, # 3 Memo in

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		Support, # 4 Exhibit A to Brief, # 5 Exhibit B to Brief, # 6 Exhibit C to Brief, # 7 Exhibit D to Brief)(White, John) Modified on 2/22/2010 to correct filing date and to remove duplicative text (awil). (Entered: 02/19/2010)
02/22/2010	10	DELETION OF DOCKET ENTRY NUMBER 6 Reason: Correct document filed. Corrected Filing Document Number 9 . Modified filing date to that of original filing: 2/18/10. (awil) (Entered: 02/22/2010)
02/22/2010	11	MOTION to Appear Pro Hac Vice by Fletcher Trammell (Filing fee $ 250 receipt number 0420-2564736) by Dale Roberts. Response to Motion due by 3/11/2010 (Attachments: # 1 Affidavit-Application Pro Hac Vice - Fletcher Trammell)No proposed order(White, John) (Main Document 11 replaced on 2/23/2010) (awil,). Modified on 2/23/2010 to replace incorrect document with correct document as provided by filing user and to remove duplicative text (awil). (Entered: 02/22/2010)
02/24/2010	13	TEXT ORDER granting 11 Motion to Appear Pro Hac Vice. Entered by Honorable R Bryan Harwell on 2/24/10.(awil) (Entered: 02/24/2010)
02/26/2010	14	NOTICE of Appearance by John S Simmons on behalf of Dale Roberts (Simmons, John) (Entered: 02/26/2010)
03/02/2010	16	LETTER EXTENDING TIME TO ANSWER Toyota Motor Sales USA Inc answer due 3/30/2010. (Strickland, Angela) (Entered: 03/02/2010)
03/03/2010	18	NOTICE to Counsel: Pursuant to the Judicial Filing Preferences, "All legal memoranda MUST be converted rather than scanned." Please refer to these Filing Preferences for all future pleadings. (awil) (Entered: 03/03/2010)
03/04/2010	19	MOTION to Stay *Pending Action by the Judicial Panel on Multidistrict Litigation* by Toyota Motor Sales USA Inc. Response to Motion due by 3/22/2010 (Attachments: # 1 Exhibit Response ISO Transfer of Actions to CDCA_1, # 2 Exhibit 2151_Notice to Involved Counsel, # 3 Exhibit United States Judicial Panel_Notice of Hearing Session_1, # 4 Exhibit Order granting stays (combined as of 3-2-10))Proposed order is being emailed to chambers with copy to opposing counsel(Strickland, Angela) (Entered: 03/04/2010)
03/05/2010	20	MOTION Plaintiff's Motion for Preservation by Dale Roberts. Response to Motion due by 3/22/2010 Proposed order is being emailed to chambers with copy to opposing counsel(White, John) (Entered: 03/05/2010)

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

FAXED

ELAINE BYRNES, individually and on behalf of all others similarly situated,

Plaintiff,

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,

Defendant.

Case No. CV10 0947 GW (JEMx)

CLASS ACTION

CLASS ACTION AND REPRESENTATIVE ACTION COMPLAINT FOR DAMAGES AND EQUITABLE AND INJUNCTIVE RELIEF

JURY TRIAL DEMANDED

TOY-RQ-05E-00010076

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TOY-RQ-05E-00010077

CLASS ACTION

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 fail safes 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.

Plaintiff ELAINE BYRNES by her undersigned counsel makes the allegations in this Class Action against TOYOTA MOTOR NORTH AMERICA, INC., TOYOTA MOTOR ENGINEERING AND MANUFACTURING NORTH AMERICA, INC., TOYOTA MOTOR SALES U.S.A., INC., and TOYOTA MOTOR CORPORATION, (hereinafter referred to collectively as "TOYOTA") as to her own acts and status upon actual knowledge, and as to all other matter upon information and belief and the investigation of her counsel.

JURISDICTION AND VENUE

1. This action asserts claims under California law, including the California Unfair Competition Law ("UCL"); Business and Professions Code § 17200 *et seq.*; the False Advertising Law; and the California Consumers Legal Remedies Act [Cal. Civ. Code §§ 1750, *et seq.*], and under similar common and statutory law in effect in California.

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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. The Plaintiff ELAINE BYRNES is a citizen of California. Defendant TOYOTA MOTOR CORPORATION is a Japanese corporation. 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.

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 California, 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 California has a substantial and paramount interest in preventing the practices alleged herein from occurring in California.

6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because, among other thing, a substantial portion of the acts and omissions complained of occurred in this judicial district.

PRELIMINARY STATEMENT

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7. The Plaintiff seeks damages, restitution and equitable relief for herself 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") as a result of 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 fail safes 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 is the owner of a 2007 Toyota Camry. The 2007 Toyota Camry is equipped with the ETCS-i.

9. Runaway accelerations 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 fail safe to allow the driver to return the vehicle safely under control when faced with such an emergency. Toyota has failed to provide such fail safe.

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

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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 fail safe 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 Camry, without incorporating an electronic or mechanical fail safe similar to those provided by Toyota's competitors, Toyota has misled and harmed the Plaintiffs and thousands of unsuspecting consumers throughout California.

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.

15. When the NHTSA opened an investigation1 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

[1] Defect Petition DP04-003; Investigation PE04-021

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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 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.

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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) 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 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

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identified at this time and further use of agency resources does not appear to be warranted."[2]

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 floor mats 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 purpose of the engineering analysis was to:

- Determine whether reported incidents of unintended acceleration were caused by a vehicle system malfunction or mechanical interference;
- 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," urgently supports this action under the Consumers Legal Remedies 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).

[2] ODI Resume, PE04-021, Date Closed 07/22/2004.

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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 fail safe.

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 recall in Toyota's history and the sixth largest in the United States.

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.

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27. Despite directing a high profile media campaign claiming that floor mat entrapment was the true cause for the high incidence of sudden acceleration in Toyota and Lexus vehicles, Toyota was aware by September 2009 that other potential causes for the problem existed, and had not ruled out electrical problems as the potential cause of the unintended acceleration events.

28. On January 21, 2010, Toyota issued a voluntary safety recall on select Toyota vehicles for sticking accelerator pedals. Toyota claimed that the problems with the accelerators were due to wear issues which could cause the pedals to be harder to depress, slow to return, or stuck in a partially depressed position. As part of its January 21, 2010 announcement, Toyota recalled a limited population of certain class vehicles. Toyota did not include any Lexus or Scion vehicles in its recall effort.

29. Toyota knew at the time of the January 21, 2010 recall that problems with the accelerator pedal were not limited to wear issues. On January 26, 2010, Toyota called an immediate halt of all sales of certain class vehicles. Toyota also announced plans to suspend production of a limited number of vehicles.

30. At the same time that Toyota was representing to the public that the only potential causes for unintended acceleration were floor mats or defective accelerator pedals, Toyota was aware that other potential causes, including electrical issues involving the ETCS-i module were to blame.

31. Toyota's public representations were contrary to the information Toyota shared with Congressional sub-committees that were investigating the problem with sudden acceleration of Toyota vehicles. On January 27, 2010, Toyota admitted to members of the House Committee on Energy and Commerce that sticking accelerator pedals could not explain certain sudden acceleration events involving high-speeds. Toyota also admitted that contrary to public statements claiming that Toyota first became aware of sticking pedals in October 2009, it had reports of sticking pedals from at least as early as April or May 2009.

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Toyota also admitted that it could not rule out an electrical cause for the problem despite public statements to the contrary.

32. On or about February 1, 2010, Toyota announced a plan to perform retro-fits to correct the performance of the defective pedals Toyota chose to include in its recall. Toyota also announced that it would begin installing a "brake pedal override," a fail safe of the type sought by class members in this suit, to a limited but undisclosed number of vehicles.

33. On February 3, 2010, Transportation Secretary Ray LaHood advised all owners of affected vehicles to stop driving them until the problem was corrected.

34. Without the remedies provided by California's CLRA 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 fail safe 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.

35. 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 Camrys from Model Year (MY) 2002 though 2009
Toyota FJ Cruisers from MY 2007 through 2008
Toyota Tacoma pickup trucks from MY 2003 through 2008
Lexus models from MY 1998 through 2009
Toyota Tundra pickup trucks MY 2000 through 2009

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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 PARTIES

36. The Plaintiff ELAINE BYRNES is an individual who, at all times relevant to the Complaint, resided in Las Angeles, California. Ms. Byrnes purchased a 2007 Toyota Camry as a new vehicle from Carson Toyota, located in the City of Carson, California. Ms. Byrnes paid a purchase price of $23,000 for the vehicle. In reality, the 2007 Toyota Camry is unreasonably dangerous as designed and manufactured by Toyota.

37. Plaintiff did not learn of the vehicle's unique propensity for runaway acceleration, or that Toyota failed to provide adequate fail safes until after Toyota issued a safety warning regarding the floor mats in certain Toyota vehicles.

38. 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.

39. Plaintiffs appears in this action on behalf of herself and on behalf of all others similarly situated.

40. Plaintiff appears in this action on behalf of herself and on behalf of all others similarly situated and, pursuant to Civil Code § 1781, on behalf of the general public in her capacity as a private attorney general.

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FACTS COMMON TO ALL CLAIMS FOR RELIEF

41. Toyota vehicles containing the ETCS-i system have been purchased throughout California, and are in wide use on California roads.

42. 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 fail safe into its design.

43. Toyota had actual knowledge that ETCS-i-equipped vehicles, as currently designed and manufactured, are unreasonably dangerous consumers expected to use them.

44. 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;

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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,

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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

45. Plaintiff brings this action on behalf of herself 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 California Rules of Civil Procedure and pursuant to § 1781 of the California Civil Code. The class that Plaintiff seeks to represent is composed of and defined as follows:

All citizens of California who purchased one or more of the following 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 Camrys from Model Year (MY) 2002 though 2009
Toyota Tacoma pickup trucks from MY 2003 through 2008
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

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Toyota Corollas from MY 2005 through 2009

Toyota Highlanders from MY2004 through 2009

46. 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.

47. Excluded from the Class are any individuals who have suffered a bodily injury or wrongful death as a result of a runaway acceleration event.

48. 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.

49. 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.

50. 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 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 California 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. Was Toyota engaged in unfair business practices?

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D. Did Plaintiff and others similarly situated suffer ascertainable loss?

E. The extent of damages suffered by Plaintiff and the Class and the appropriate amount of compensation.

F. Was Toyota unjustly enriched?

G. Did Toyota act with malice, oppression and fraud so as to justify an award of punitive and exemplary damages?

H. Are the Plaintiff and the Class entitled to injunctive relief?

51. 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.

52. 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.

53. 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

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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)

54. Plaintiff realleges and incorporates by reference all preceding paragraphs as if fully set forth herein.

55. Plaintiff asserts these claims on behalf of herself and others similarly situated who have expended funds that Toyota should be required to pay or reimburse under California law.

56. 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.

57. Toyota was negligent, and breached this duty owed to the Plaintiffs.

58. 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

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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

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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;

59. 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.

60. Toyota's marketing of vehicles containing ETCS-i, without incorporating adequate electronic or mechanical fail safes, 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 California law.

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SECOND CLAIM FOR RELIEF

(Breach of Express and Implied Warranty)

61. Plaintiff realleges and incorporates by reference all preceding paragraphs as if fully set forth verbatim herein.

62. 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 both express and implied warranties that the vehicle was safe for use as public transportation, when in fact, it was not.

63. As a result of the foregoing, Plaintiff and the Class have suffered economic damages in an amount to be proven at trial.

THIRD CLAIM FOR RELIEF

(Unjust Enrichment)

64. Plaintiff realleges and incorporates by reference all preceding paragraphs as if fully set forth verbatim herein.

65. 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.

66. 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.

67. Toyota has been unjustly enriched at the expense of Plaintiff 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.

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FOURTH CLAIM FOR RELIEF

(Unlawful, Unfair and Fraudulent Business Acts and Practices in Violation of Sections 17200, *et seq.*, of the California Business & Professions Code)

68. Plaintiff realleges and incorporates by reference all preceding paragraphs as if fully set forth herein.

69. Plaintiff brings this claim on behalf of himself, and on behalf of the Class defined above, against Toyota for its unlawful, unfair, fraudulent, and/or deceptive business acts and/or practices pursuant to Sections 17200, *et seq.* of the California Business and Professions Code ("UCL") and other similar common and statutory law, which prohibit unlawful, unfair and/or fraudulent business acts and practices.

70. 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 the restitution remedy provided by Sections 17200, *et seq.* of the California Business & Professions Code and other similar common and statutory law.

71. 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.

72. Toyota's marketing of vehicles containing ETCS-i, without incorporating adequate electronic or mechanical fail safes, 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 Sections 17200,*et seq.*, of the California Business and Professions Code and other similar common and statutory law.

73. Toyota's attempts to cover up and hide from public and regulatory view the defects and the dangers posed by those defects, as well as its efforts to

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mislead Toyota owners by placing the focus on the floor mat, constitutes unlawful, unfair and/or fraudulent business acts and/or practices within the meaning of Sections 17200,*et seq.*, of the California Business and Professions Code and other similar common and statutory law.

74. Toyota's failure to warn the owners of its affected vehicles of the defects and the dangers posed by those defects constitutes unlawful, unfair and/or fraudulent business acts and/or practices within the meaning of Sections 17200,*et seq.*, of the California Business and Professions Code and other similar common and statutory law.

75. Pursuant to Section 17203 of the California Business and Professions Code and other similar common and statutory law, Plaintiff, on behalf of herself and the other Class members, seeks restitution of any moneys wrongfully acquired or retained by Toyota and disgorgement of Defendant Toyota's ill-gotten gains obtained by means of its unlawful, unfair, and/or fraudulent business acts and/or practices.

FIFTH CLAIM FOR RELIEF

(Violation of the California Consumer Legal Remedies Act)

76. Plaintiff realleges and incorporates by reference all preceding paragraphs as if fully set forth verbatim herein.

77. Plaintiff brings this claim on behalf of herself, on behalf of the Class defined above, and on behalf of the general public.

78. Toyota is a person as defined by Cal. Civ. Code § 1761(c).

79. Plaintiff and each member of the Class are "consumers" within the meaning of Cal. Civ. Code § 1761(d).

80. The California Consumer Legal Remedies Act ("CLRA"), codified at Cal. Civ. Code §§ 1750, *et seq.*, applies to Defendant Toyota's actions and conduct, as described herein, because it extends to transactions that are intended to

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result, or which have resulted, in the sale or lease of goods or services to consumers.

81. Prior to Plaintiff's purchase of the 2007 Toyota Camry, 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, in violation of Cal. Civ. Code § 1770(a)(5).

82. Prior to Plaintiff's purchase of her 2007 Toyota Camry, 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 the goods were of a particular style or model, when they were of another, in violation of Cal. Civ. Code § 1770(a)(7).

83. Plaintiff is informed and believes, and thereon alleges, that the above-mentioned misrepresentation and/or concealment in connection with the sale of vehicles containing ETCS-i, subjected Plaintiff and other consumers similarly situated to unfair, deceptive and misleading business practices in violation of Cal. Civ. Code § 1770(a).

84. This cause of action is brought pursuant to the CLRA. This cause of action does not seek monetary damages at this point, but is limited solely to injunctive relief.

85. Plaintiff intends to amend this Class Action Complaint to seek damages in accordance with the CLRA after providing Toyota with notice pursuant to Cal. Civ. Code §1782, if a satisfactory response to that notice is not made.

86. At the time of any amendment seeking damages under the CLRA, Plaintiff will demonstrate that the aforementioned violations of the CLRA by

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Toyota were willful, oppressive and fraudulent, thus supporting an award of punitive damages.

87. As a result, at the time of any amendment seeking damages under the CLRA as a result of Toyota's willful, oppressive and fraudulent actions, Plaintiff, on behalf of herself and all others similarly situated, will be entitled to actual and punitive damages against Toyota for its violations of the CLRA. In addition, pursuant to Cal. Civ. Code 1782(a)(2), Plaintiff and members of the Class will be entitled to an order enjoining the above-described acts and practices, providing restitution to the Plaintiff and the Class, ordering payment of costs and attorneys' fees, and any other relief deemed appropriate and proper by the Court pursuant to Cal. Civ. Code § 1780.

JURY DEMAND

88. Plaintiff hereby demands trial by jury of her claims against the Defendant Toyota.

THEREFORE, Plaintiff prays for relief as set forth below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on her own behalf, on behalf of all others similarly situated and on behalf of the general public, 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 other than the CLRA, as Plaintiff through this Complaint at this point expressly does not seek any monetary type of relief pursuant to the CLRA;

C. Awarding restitution and disgorgement as a result of Toyota's unfair business practices;

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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 pursuant to Cal. Civ. Code § 1780;

F. Awarding attorneys' fees, expenses and costs;

G. Punitive Damages

H. Awarding pre-and post-judgment interest; and

I. Providing such other and further relief as this Court may deem just and proper.

Dated: February 8, 2010

By: _____

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THOMAS MURRAY, ESQ
Thomas Murray & Associates, Inc.
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Pro Hac Vice Motion to Follow

Attorneys for Plaintiff Elaine Byrnes, individually and on behalf of all others similarly situated

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 pursuant to Cal. Civ. Code § 1780;

F. Awarding attorneys' fees, expenses and costs;

G. Punitive Damages

H. Awarding pre-and post-judgment interest; and

I. Providing such other and further relief as this Court may deem just and proper.

Dated: February 8, 2010

By: _____

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Attorneys for Plaintiff Elaine Byrnes, individually and on behalf of all others similarly situated

TOY-RQ-05E-00010103

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge George H. Wu and the assigned discovery Magistrate Judge is John E. McDermott.

The case number on all documents filed with the Court should read as follows:

CV10- 947 GW (JEMx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

==========

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

[X] **Western Division**
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

[ ] **Southern Division**
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

[ ] **Eastern Division**
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

COPY

Name & Address:
ACKERMANN & TILAJEF, P.C.
Craig J. Ackermann, State Bar No. 229832
1180 South Beverly Drive, Suite 610
Los Angeles, California 90035
(310) 277-0614 (phone), (310) 277-0635 (fax)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ELAINE BYRNES, individually and on behalf of all others similarly situated,

PLAINTIFF(S)

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,

DEFENDANT(S).

CASE NUMBER

CV10 0947 GW (JEMx)

SUMMONS

TO: DEFENDANT(S): 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,

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached ☑ complaint ☐ _____ amended complaint ☐ counterclaim ☐ cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Craig J. Ackermann, whose address is 1180 South Beverly Drive, Suite 610, Los Angeles, California 90035. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Dated: FEB - 8 2010

Clerk, U.S. District Court

By: CHRISTOPHER POWERS SEAL
Deputy Clerk

(Seal of the Court)

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☒ No ☐ Yes
If yes, list case number(s):

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☐ No ☒ Yes
If yes, list case number(s): CV09-8478

Civil cases are deemed related if a previously filed case and the present case:
(Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or
☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.
☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles	

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.
☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles	Kentucky, Japan

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.
Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles	

*** Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties**
Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER): Craig J. Akermann (O.K per Atty to Sign.) Date 2/8/10

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))

TOY-RQ-05E-00010106

COPY

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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
ELAINE BYRNES, et al.

(b) County of Residence of First Listed Plaintiff Los Angeles
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
Ackermann & Tilajef, P.C., 1180 S. Beverly Drive, Suite 610
Los Angeles, CA 90035 (310) 227-0614, (310) 277-0635 (fax)

DEFENDANTS
TOYOTA MOTOR NORTH AMERICA, INC., et al.

County of Residence of First Listed Defendant
(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 Judgement

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. §1332(d)
Brief description of cause: Class Action seeking relief for consumers who have purchased a Toyota or Lexus vehicle containing

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 A. Howard Matz DOCKET NUMBER 2:09-cv-08478

DATE SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

CV10 0947

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

FILED

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2010 FEB -8 PM 4:25

CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

BY

ACKERMANN & TILAJEF, P.C.
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cja@laborgators.com

Attorneys for Plaintiff Elaine Byrnes,
individually and on behalf of all others similarly situated

(SEE NEXT PAGE FOR
CONTINUED LIST OF ATTORNEYS)

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

FAXED

ELAINE BYRNES, individually and on behalf of all others similarly situated,

Plaintiff,

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,

Defendant.

Case No. CV10 0947 GW (JEMx)

CLASS ACTION

CLASS ACTION AND REPRESENTATIVE ACTION COMPLAINT FOR DAMAGES AND EQUITABLE AND INJUNCTIVE RELIEF

JURY TRIAL DEMANDED

TOY-RQ-05E-00010108

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TOY-RQ-05E-00010109

CLASS ACTION

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 fail safes 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.

Plaintiff ELAINE BYRNES by her undersigned counsel makes the allegations in this Class Action against TOYOTA MOTOR NORTH AMERICA, INC., TOYOTA MOTOR ENGINEERING AND MANUFACTURING NORTH AMERICA, INC., TOYOTA MOTOR SALES U.S.A., INC., and TOYOTA MOTOR CORPORATION, (hereinafter referred to collectively as "TOYOTA") as to her own acts and status upon actual knowledge, and as to all other matter upon information and belief and the investigation of her counsel.

JURISDICTION AND VENUE

1. This action asserts claims under California law, including the California Unfair Competition Law ("UCL"); Business and Professions Code § 17200 *et seq.*; the False Advertising Law; and the California Consumers Legal Remedies Act [Cal. Civ. Code §§ 1750, *et seq.*], and under similar common and statutory law in effect in California.

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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. The Plaintiff ELAINE BYRNES is a citizen of California. Defendant TOYOTA MOTOR CORPORATION is a Japanese corporation. 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.

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 California, 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 California has a substantial and paramount interest in preventing the practices alleged herein from occurring in California.

6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because, among other thing, a substantial portion of the acts and omissions complained of occurred in this judicial district.

PRELIMINARY STATEMENT

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7. The Plaintiff seeks damages, restitution and equitable relief for herself 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") as a result of 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 fail safes 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 is the owner of a 2007 Toyota Camry. The 2007 Toyota Camry is equipped with the ETCS-i.

9. Runaway accelerations 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 fail safe to allow the driver to return the vehicle safely under control when faced with such an emergency. Toyota has failed to provide such fail safe.

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

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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 fail safe 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 Camry, without incorporating an electronic or mechanical fail safe similar to those provided by Toyota's competitors, Toyota has misled and harmed the Plaintiffs and thousands of unsuspecting consumers throughout California.

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.

15. When the NHTSA opened an investigation1 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

[1] Defect Petition DP04-003; Investigation PE04-021

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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 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.

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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) 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 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

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identified at this time and further use of agency resources does not appear to be warranted."[2]

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 floor mats 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 purpose of the engineering analysis was to:

- Determine whether reported incidents of unintended acceleration were caused by a vehicle system malfunction or mechanical interference;
- 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," urgently supports this action under the Consumers Legal Remedies 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).

[2] ODI Resume, PE04-021, Date Closed 07/22/2004.

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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 fail safe.

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 recall in Toyota's history and the sixth largest in the United States.

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.

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27. Despite directing a high profile media campaign claiming that floor mat entrapment was the true cause for the high incidence of sudden acceleration in Toyota and Lexus vehicles, Toyota was aware by September 2009 that other potential causes for the problem existed, and had not ruled out electrical problems as the potential cause of the unintended acceleration events.

28. On January 21, 2010, Toyota issued a voluntary safety recall on select Toyota vehicles for sticking accelerator pedals. Toyota claimed that the problems with the accelerators were due to wear issues which could cause the pedals to be harder to depress, slow to return, or stuck in a partially depressed position. As part of its January 21, 2010 announcement, Toyota recalled a limited population of certain class vehicles. Toyota did not include any Lexus or Scion vehicles in its recall effort.

29. Toyota knew at the time of the January 21, 2010 recall that problems with the accelerator pedal were not limited to wear issues. On January 26, 2010, Toyota called an immediate halt of all sales of certain class vehicles. Toyota also announced plans to suspend production of a limited number of vehicles.

30. At the same time that Toyota was representing to the public that the only potential causes for unintended acceleration were floor mats or defective accelerator pedals, Toyota was aware that other potential causes, including electrical issues involving the ETCS-i module were to blame.

31. Toyota's public representations were contrary to the information Toyota shared with Congressional sub-committees that were investigating the problem with sudden acceleration of Toyota vehicles. On January 27, 2010, Toyota admitted to members of the House Committee on Energy and Commerce that sticking accelerator pedals could not explain certain sudden acceleration events involving high-speeds. Toyota also admitted that contrary to public statements claiming that Toyota first became aware of sticking pedals in October 2009, it had reports of sticking pedals from at least as early as April or May 2009.

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Toyota also admitted that it could not rule out an electrical cause for the problem despite public statements to the contrary.

32. On or about February 1, 2010, Toyota announced a plan to perform retro-fits to correct the performance of the defective pedals Toyota chose to include in its recall. Toyota also announced that it would begin installing a "brake pedal override," a fail safe of the type sought by class members in this suit, to a limited but undisclosed number of vehicles.

33. On February 3, 2010, Transportation Secretary Ray LaHood advised all owners of affected vehicles to stop driving them until the problem was corrected.

34. Without the remedies provided by California's CLRA 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 fail safe 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.

35. 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 Camrys from Model Year (MY) 2002 though 2009
Toyota FJ Cruisers from MY 2007 through 2008
Toyota Tacoma pickup trucks from MY 2003 through 2008
Lexus models from MY 1998 through 2009
Toyota Tundra pickup trucks MY 2000 through 2009

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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 PARTIES

36. The Plaintiff ELAINE BYRNES is an individual who, at all times relevant to the Complaint, resided in Las Angeles, California. Ms. Byrnes purchased a 2007 Toyota Camry as a new vehicle from Carson Toyota, located in the City of Carson, California. Ms. Byrnes paid a purchase price of $23,000 for the vehicle. In reality, the 2007 Toyota Camry is unreasonably dangerous as designed and manufactured by Toyota.

37. Plaintiff did not learn of the vehicle's unique propensity for runaway acceleration, or that Toyota failed to provide adequate fail safes until after Toyota issued a safety warning regarding the floor mats in certain Toyota vehicles.

38. 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.

39. Plaintiffs appears in this action on behalf of herself and on behalf of all others similarly situated.

40. Plaintiff appears in this action on behalf of herself and on behalf of all others similarly situated and, pursuant to Civil Code § 1781, on behalf of the general public in her capacity as a private attorney general.

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FACTS COMMON TO ALL CLAIMS FOR RELIEF

41. Toyota vehicles containing the ETCS-i system have been purchased throughout California, and are in wide use on California roads.

42. 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 fail safe into its design.

43. Toyota had actual knowledge that ETCS-i-equipped vehicles, as currently designed and manufactured, are unreasonably dangerous consumers expected to use them.

44. 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;

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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

45. Plaintiff brings this action on behalf of herself 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 California Rules of Civil Procedure and pursuant to § 1781 of the California Civil Code. The class that Plaintiff seeks to represent is composed of and defined as follows:

All citizens of California who purchased one or more of the following 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 Camrys from Model Year (MY) 2002 though 2009
Toyota Tacoma pickup trucks from MY 2003 through 2008
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

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Toyota Corollas from MY 2005 through 2009

Toyota Highlanders from MY2004 through 2009

46. 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.

47. Excluded from the Class are any individuals who have suffered a bodily injury or wrongful death as a result of a runaway acceleration event.

48. 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.

49. 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.

50. 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 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 California 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. Was Toyota engaged in unfair business practices?

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D. Did Plaintiff and others similarly situated suffer ascertainable loss?

E. The extent of damages suffered by Plaintiff and the Class and the appropriate amount of compensation.

F. Was Toyota unjustly enriched?

G. Did Toyota act with malice, oppression and fraud so as to justify an award of punitive and exemplary damages?

H. Are the Plaintiff and the Class entitled to injunctive relief?

51. 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.

52. 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.

53. 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

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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)

54. Plaintiff realleges and incorporates by reference all preceding paragraphs as if fully set forth herein.

55. Plaintiff asserts these claims on behalf of herself and others similarly situated who have expended funds that Toyota should be required to pay or reimburse under California law.

56. 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.

57. Toyota was negligent, and breached this duty owed to the Plaintiffs.

58. 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

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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

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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;

59. 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.

60. Toyota's marketing of vehicles containing ETCS-i, without incorporating adequate electronic or mechanical fail safes, 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 California law.

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SECOND CLAIM FOR RELIEF

(Breach of Express and Implied Warranty)

61. Plaintiff realleges and incorporates by reference all preceding paragraphs as if fully set forth verbatim herein.

62. 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 both express and implied warranties that the vehicle was safe for use as public transportation, when in fact, it was not.

63. As a result of the foregoing, Plaintiff and the Class have suffered economic damages in an amount to be proven at trial.

THIRD CLAIM FOR RELIEF

(Unjust Enrichment)

64. Plaintiff realleges and incorporates by reference all preceding paragraphs as if fully set forth verbatim herein.

65. 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.

66. 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.

67. Toyota has been unjustly enriched at the expense of Plaintiff 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.

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FOURTH CLAIM FOR RELIEF

(Unlawful, Unfair and Fraudulent Business Acts and Practices in Violation of Sections 17200, *et seq.*, of the California Business & Professions Code)

68. Plaintiff realleges and incorporates by reference all preceding paragraphs as if fully set forth herein.

69. Plaintiff brings this claim on behalf of himself, and on behalf of the Class defined above, against Toyota for its unlawful, unfair, fraudulent, and/or deceptive business acts and/or practices pursuant to Sections 17200, *et seq.* of the California Business and Professions Code ("UCL") and other similar common and statutory law, which prohibit unlawful, unfair and/or fraudulent business acts and practices.

70. 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 the restitution remedy provided by Sections 17200, *et seq.* of the California Business & Professions Code and other similar common and statutory law.

71. 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.

72. Toyota's marketing of vehicles containing ETCS-i, without incorporating adequate electronic or mechanical fail safes, 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 Sections 17200,*et seq.*, of the California Business and Professions Code and other similar common and statutory law.

73. Toyota's attempts to cover up and hide from public and regulatory view the defects and the dangers posed by those defects, as well as its efforts to

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mislead Toyota owners by placing the focus on the floor mat, constitutes unlawful, unfair and/or fraudulent business acts and/or practices within the meaning of Sections 17200,*et seq.*, of the California Business and Professions Code and other similar common and statutory law.

74. Toyota's failure to warn the owners of its affected vehicles of the defects and the dangers posed by those defects constitutes unlawful, unfair and/or fraudulent business acts and/or practices within the meaning of Sections 17200,*et seq.*, of the California Business and Professions Code and other similar common and statutory law.

75. Pursuant to Section 17203 of the California Business and Professions Code and other similar common and statutory law, Plaintiff, on behalf of herself and the other Class members, seeks restitution of any moneys wrongfully acquired or retained by Toyota and disgorgement of Defendant Toyota's ill-gotten gains obtained by means of its unlawful, unfair, and/or fraudulent business acts and/or practices.

FIFTH CLAIM FOR RELIEF

(Violation of the California Consumer Legal Remedies Act)

76. Plaintiff realleges and incorporates by reference all preceding paragraphs as if fully set forth verbatim herein.

77. Plaintiff brings this claim on behalf of herself, on behalf of the Class defined above, and on behalf of the general public.

78. Toyota is a person as defined by Cal. Civ. Code § 1761(c).

79. Plaintiff and each member of the Class are "consumers" within the meaning of Cal. Civ. Code § 1761(d).

80. The California Consumer Legal Remedies Act ("CLRA"), codified at Cal. Civ. Code §§ 1750, *et seq.*, applies to Defendant Toyota's actions and conduct, as described herein, because it extends to transactions that are intended to

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result, or which have resulted, in the sale or lease of goods or services to consumers.

81. Prior to Plaintiff's purchase of the 2007 Toyota Camry, 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, in violation of Cal. Civ. Code § 1770(a)(5).

82. Prior to Plaintiff's purchase of her 2007 Toyota Camry, 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 the goods were of a particular style or model, when they were of another, in violation of Cal. Civ. Code § 1770(a)(7).

83. Plaintiff is informed and believes, and thereon alleges, that the above-mentioned misrepresentation and/or concealment in connection with the sale of vehicles containing ETCS-i, subjected Plaintiff and other consumers similarly situated to unfair, deceptive and misleading business practices in violation of Cal. Civ. Code § 1770(a).

84. This cause of action is brought pursuant to the CLRA. This cause of action does not seek monetary damages at this point, but is limited solely to injunctive relief.

85. Plaintiff intends to amend this Class Action Complaint to seek damages in accordance with the CLRA after providing Toyota with notice pursuant to Cal. Civ. Code §1782, if a satisfactory response to that notice is not made.

86. At the time of any amendment seeking damages under the CLRA, Plaintiff will demonstrate that the aforementioned violations of the CLRA by

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Toyota were willful, oppressive and fraudulent, thus supporting an award of punitive damages.

87. As a result, at the time of any amendment seeking damages under the CLRA as a result of Toyota's willful, oppressive and fraudulent actions, Plaintiff, on behalf of herself and all others similarly situated, will be entitled to actual and punitive damages against Toyota for its violations of the CLRA. In addition, pursuant to Cal. Civ. Code 1782(a)(2), Plaintiff and members of the Class will be entitled to an order enjoining the above-described acts and practices, providing restitution to the Plaintiff and the Class, ordering payment of costs and attorneys' fees, and any other relief deemed appropriate and proper by the Court pursuant to Cal. Civ. Code § 1780.

JURY DEMAND

88. Plaintiff hereby demands trial by jury of her claims against the Defendant Toyota.

THEREFORE, Plaintiff prays for relief as set forth below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on her own behalf, on behalf of all others similarly situated and on behalf of the general public, 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 other than the CLRA, as Plaintiff through this Complaint at this point expressly does not seek any monetary type of relief pursuant to the CLRA;

C. Awarding restitution and disgorgement as a result of Toyota's unfair business practices;

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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 pursuant to Cal. Civ. Code § 1780;

F. Awarding attorneys' fees, expenses and costs;

G. Punitive Damages

H. Awarding pre-and post-judgment interest; and

I. Providing such other and further relief as this Court may deem just and proper.

Dated: February 8, 2010

By: _____

Craig Ackerman (CA Bar No. 229832)
ACKERMANN & TILAJEF, P.C.
1180 South Beverly Drive, Suite 600
Los Angeles, California 90035
Telephone: (310) 277-0614
Facsimile: (310) 277-0635

BAILEY & GLASSER, LLP
Benjamin L. Bailey (WVSB #6597)
Eric B. Snyder (WVSB #9143)
Robert P. Lorea (WVSB #7476)
209 Capitol Street
Charleston, West Virginia 25301
(304) 345-6555
(304) 342-1110 Facsimile
Pro Hac Vice Motion to Follow

EDGAR F. HEISKELL, ESQ.
Edgar F. Heiskell, III (WVSB #1668)
Attorney at Law
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Charleston, West Virginia 25332
Pro Hac Vice Motion to Follow

LEWIS & BABCOCK
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Keith M. Babcock
P.O. Box 11208
Columbia, South Carolina 29211
(803) 771-8000 (Phone)
Pro Hac Vice Motion to Follow

THOMAS MURRAY, ESQ
Thomas Murray & Associates, Inc.
11 1 East Shoreline Drive
Sandusky, OH 44870-25 17
Pro Hac Vice Motion to Follow

Attorneys for Plaintiff Elaine Byrnes, individually and on behalf of all others similarly situated

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 pursuant to Cal. Civ. Code § 1780;

F. Awarding attorneys' fees, expenses and costs;

G. Punitive Damages

H. Awarding pre-and post-judgment interest; and

I. Providing such other and further relief as this Court may deem just and proper.

Dated: February 8, 2010

By: _____

Craig Ackerman (CA Bar No. 229832)
ACKERMANN & TILAJEF, P.C.
1180 South Beverly Drive, Suite 610
Los Angeles, California 90035
Telephone: (310) 277-0614
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Pro Hac Vice Motion to Follow

THOMAS MURRAY, ESQ
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11 1 East Shoreline Drive
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Pro Hac Vice Motion to Follow

Attorneys for Plaintiff Elaine Byrnes, individually and on behalf of all others similarly situated

TOY-RQ-05E-00010135

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge George H. Wu and the assigned discovery Magistrate Judge is John E. McDermott.

The case number on all documents filed with the Court should read as follows:

CV10- 947 GW (JEMx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

==========

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

[X] **Western Division**
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

[ ] **Southern Division**
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

[ ] **Eastern Division**
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

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COPY

Name & Address:
ACKERMANN & TILAJEF, P.C.
Craig J. Ackermann, State Bar No. 229832
1180 South Beverly Drive, Suite 610
Los Angeles, California 90035
(310) 277-0614 (phone), (310) 277-0635 (fax)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ELAINE BYRNES, individually and on behalf of all others similarly situated,

PLAINTIFF(S)

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,

DEFENDANT(S).

CASE NUMBER

CV10 0947 GW (JEMx)

SUMMONS

TO: DEFENDANT(S): 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,

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached ☑ complaint ☐ _____ amended complaint ☐ counterclaim ☐ cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Craig J. Ackermann, whose address is 1180 South Beverly Drive, Suite 610, Los Angeles, California 90035. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Dated: FEB - 8 2010

Clerk, U.S. District Court

By: CHRISTOPHER POWERS SEAL
Deputy Clerk

(Seal of the Court)

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☒ No ☐ Yes
If yes, list case number(s):

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☐ No ☒ Yes
If yes, list case number(s): CV09-8478

Civil cases are deemed related if a previously filed case and the present case:
(Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or
☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.
☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles	

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.
☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles	Kentucky, Japan

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.
Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles	

*** Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties**
Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER): Craig J. Akermann (O.K per Atty to Sign.) Date 2/8/10

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))

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COPY

FAXED

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
ELAINE BYRNES, et al.

(b) County of Residence of First Listed Plaintiff Los Angeles
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
Ackermann & Tilajef, P.C., 1180 S. Beverly Drive, Suite 610
Los Angeles, CA 90035 (310) 227-0614, (310) 277-0635 (fax)

DEFENDANTS
TOYOTA MOTOR NORTH AMERICA, INC., et al.

County of Residence of First Listed Defendant
(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	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
☐ 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	☐ 610 Agriculture	☐ 422 Appeal 28 USC 158	☐ 400 State Reapportionment
☐ 120 Marine	☐ 310 Airplane	☐ 362 Personal Injury - Med. Malpractice	☐ 620 Other Food & Drug	☐ 423 Withdrawal 28 USC 157	☐ 410 Antitrust
☐ 130 Miller Act	☐ 315 Airplane Product Liability	☐ 365 Personal Injury - Product Liability	☐ 625 Drug Related Seizure of Property 21 USC 881	PROPERTY RIGHTS	☐ 430 Banks and Banking
☐ 140 Negotiable Instrument	☐ 320 Assault, Libel & Slander	☐ 368 Asbestos Personal Injury Product Liability	☐ 630 Liquor Laws	☐ 820 Copyrights	☐ 450 Commerce
☐ 150 Recovery of Overpayment & Enforcement of Judgment	☐ 330 Federal Employers' Liability	PERSONAL PROPERTY	☐ 640 R.R. & Truck	☐ 830 Patent	☐ 460 Deportation
☐ 151 Medicare Act	☐ 340 Marine	☐ 370 Other Fraud	☐ 650 Airline Regs.	☐ 840 Trademark	☐ 470 Racketeer Influenced and Corrupt Organizations
☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)	☐ 345 Marine Product Liability	☐ 371 Truth in Lending	☐ 660 Occupational Safety/Health	SOCIAL SECURITY	☐ 480 Consumer Credit
☐ 153 Recovery of Overpayment of Veteran's Benefits	☐ 350 Motor Vehicle	☐ 380 Other Personal Property Damage	☐ 690 Other	☐ 861 HIA (1395ff)	☐ 490 Cable/Sat TV
☐ 160 Stockholders' Suits	☒ 355 Motor Vehicle Product Liability	☐ 385 Property Damage Product Liability	LABOR	☐ 862 Black Lung (923)	☐ 810 Selective Service
☐ 190 Other Contract	☐ 360 Other Personal Injury		☐ 710 Fair Labor Standards Act	☐ 863 DIWC/DIWW (405(g))	☐ 850 Securities/Commodities/ Exchange
☐ 195 Contract Product Liability			☐ 720 Labor/Mgmt. Relations	☐ 864 SSID Title XVI	☐ 875 Customer Challenge 12 USC 3410
☐ 196 Franchise			☐ 730 Labor/Mgmt.Reporting & Disclosure Act	☐ 865 RSI (405(g))	☐ 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	☐ 740 Railway Labor Act	FEDERAL TAX SUITS	☐ 891 Agricultural Acts
☐ 210 Land Condemnation	☐ 441 Voting	☐ 510 Motions to Vacate Sentence	☐ 790 Other Labor Litigation	☐ 870 Taxes (U.S. Plaintiff or Defendant)	☐ 892 Economic Stabilization Act
☐ 220 Foreclosure	☐ 442 Employment	Habeas Corpus:	☐ 791 Empl. Ret. Inc. Security Act	☐ 871 IRS—Third Party 26 USC 7609	☐ 893 Environmental Matters
☐ 230 Rent Lease & Ejectment	☐ 443 Housing/ Accommodations	☐ 530 General	IMMIGRATION		☐ 894 Energy Allocation Act
☐ 240 Torts to Land	☐ 444 Welfare	☐ 535 Death Penalty	☐ 462 Naturalization Application		☐ 895 Freedom of Information Act
☐ 245 Tort Product Liability	☐ 445 Amer. w/Disabilities - Employment	☐ 540 Mandamus & Other	☐ 463 Habeas Corpus - Alien Detainee		☐ 900Appeal of Fee Determination Under Equal Access to Justice
☐ 290 All Other Real Property	☐ 446 Amer. w/Disabilities - Other	☐ 550 Civil Rights	☐ 465 Other Immigration Actions		☐ 950 Constitutionality of State Statutes
	☐ 440 Other Civil Rights	☐ 555 Prison Condition			

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 Judgement

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. §1332(d)
Brief description of cause: Class Action seeking relief for consumers who have purchased a Toyota or Lexus vehicle containing

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 A. Howard Matz DOCKET NUMBER 2:09-cv-08478

DATE SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

CV10 0947

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

FILED

2010 FEB -8 PM 4:26

CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

BY _____

NAME, ADDRESS & TELEPHONE NUMBER OF ATTORNEY(S) FOR, OR PLAINTIFF OR DEFENDANT IF PLAINTIFF OR DEFENDANT IS PRO PER

ACKERMANN & TILAJEF, P.C.
Craig J. Ackermann, State Bar No. 229832
1180 South Beverly Drive, Suite 610
Los Angeles, California 90035
(310) 277-0614 (phone)
(310) 277-0635 (fax)
cja@laborgators.com

ATTORNEYS FOR: George Anderson

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ELAINE BYRNES, individually and on behalf of all others similarly situated,

v.

Plaintiff(s),

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,

Defendant(s)

CASE NUMBER CV10 0947 GW (JEMx)

CERTIFICATION AND NOTICE OF INTERESTED PARTIES (Local Rule 7.1-1)

TO: THE COURT AND ALL PARTIES APPEARING OF RECORD:

The undersigned, counsel of record for GEORGE ANDERSON (or party appearing in pro per), certifies that the following listed party (or parties) has (have) a direct, pecuniary interest in the outcome of this case. These representations are made to enable the Court to evaluate possible disqualification or recusal. (Use additional sheet if necessary.)

PARTY (List the names of all such parties and identify their connection and interest.)	CONNECTION
GEORGE ANDERSON	Plaintiff
TOYOTA MOTOR NORTH AMERICA INC., a California corporation	Defendant
TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC., a Kentucky corporation	Defendant
TOYOTA MOTOR SALES U.S.A., INC., a CA corporation	Defendant
TOYOTA MOTOR CORPORATION, a Japanese corporation	Defendant

ERIC KMETZ and JOSEPH MORRIS, plaintiffs in *Kmetz v. Toyota Motor Sales U.S.A., Inc. Et al.*, Case No. 2:09-cv-08478 AHM (FMOx)

JOSEPH HAUTER and FRANK PALOMARES, plaintiffs in *Hauter v. Toyota Motor Sales U.S.A., Inc. et al.*, Case No. 2:10-cv-00105 CJC (ANx)

2/8/10
Date

Sign

Craig J. Ackermann
Attorney of record for or party appearing in pro per

TOY-RQ-05E-00010140

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

Elaine Byrnes, Plaintiff(s), v. Toyota Motor North America, Inc., et al., Defendant(s).	No. CV 10-947-GW(JEMx) **Standing Order Re Final Pre-Trial Conferences for Civil Jury Trials Before Judge George H. Wu**

1. You are instructed to read and to follow (unless otherwise superseded herein) the Central District of California Local Rules (henceforth "Local Rules") 16-1 through 16-15 regarding pre-trial requirements.

2. At least twenty-one (21) days prior to the Final Pre-Trial Conference (henceforth "FPTC"), counsel for each party and pro per litigants[1] must have prepared and exchanged with each other all of the following:

[1] While the Court does not expect pro per litigants to have any legal training or experience, most of the requirements in this Order either do not require legal knowledge per se or are matters which the pro per litigant will have to address anyway at the trial (e.g., knowing what witnesses and exhibits he or she will be presenting, selecting the jury instructions that he or she will be asking the Court to read to the jury, etc.). This Court believes that it would be as helpful for pro per litigants, as it is for attorneys, to address those matters prior to trial in order for all of the trial participants to be better prepared and the trial to proceed more smoothly. Therefore, contrary to Local Rule 16-12(c), this Court will require pro per litigants, to the extent they are able, to participate in meeting the pre-trial conference obligations for civil jury trials delineated in this Order.

a) a list of pre-marked exhibits which that party intends to use at trial,[2]
b) copies of the exhibits which are on the list (except that exhibits previously provided during discovery and Bates-stamped need not be produced again),
c) a list of witnesses which that litigant intends to call at trial,
d) marked deposition transcripts as required by paragraph 7, below,
e) an initial version of the short statement of the case to be read to the jury panel,
f) proposed jury instructions, and
g) any verdict forms that a party wishes to utilize.

3. At least ten (10) days before the FPTC, all counsel and pro se litigants will meet and confer in person so that at least five (5) days before the FPTC, the parties will have filed and provided to the Court "joint" versions of the following:

a) joint statement of the case,
b) joint exhibit list (with any concomitant objections),
c) joint witness list,
d) joint proposed jury instructions,
e) joint special verdict forms (if any), and
f) stipulation(s) of facts as per Local Rule 16-2.2.

By "joint", the Court means that the materials will be contained in a single document signed by all counsel and pro per litigants. In the preparation of said document, no party shall have the right to veto (i.e., exclude from the document) material proffered by any other party. However, areas of dispute or other differences shall be noted. For example, as to the joint statement of the case, the sections which are agreed upon by all parties would be in regular type while the portions submitted by one litigant and contested by one or more of the others would be denoted by *different fonts*, *italicized*, underlined, or **in bold**. Further, where there are disagreements, the bases for each dispute will be noted in a brief footnote to the relevant section of the joint submission in question.

---

[2] Rebuttal exhibits need not be placed on the list. However, actual rebuttal exhibits are (like hen's teeth) extremely rare. If the court determines that an undisclosed exhibit is not in fact a rebuttal exhibit, said item will be excluded from the trial.

TOY-RQ-05E-00010142

In addition to supplying the Court with a paper copy of the documents, all "joint" submissions are to be placed on a cd-rom disc using "Word Perfect" (7.0 or above) or "Word" and provided to the Court.

4. As to the joint exhibit list, the parties are to employ the following format:[3]

Exhibit Number	Party Offering	Description	If objection(s), briefly state the ground(s)	Response to objection(s)

If all the parties stipulate to the admissibility of an exhibit or if there are no objections to it on the exhibit list, it may be used by either side at any point in the trial after jury selection including the opening statements and closing arguments.

Any and all objections to an exhibit must be included in the joint exhibit list. Any objections not so included will be deemed by this Court to have been waived. Do not submit blanket or boilerplate objections as they will be disregarded and overruled.

In numbering and marking the exhibits, the parties are to follow Local Rules 16-6 and 26-3.

5. As to each witness on the joint witness list, the parties shall state the name of the witness, the party(s) calling the witness, and provide an estimate of the amounts of time for the witness's direct and cross-examinations. If there is an objection to the witness's being called at trial, the opposing party must file a motion in limine to resolve the dispute in advance of trial or the objection will be deemed to have been waived, unless the Court finds that the basis for the objection arose after the FPTC.

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[3] In order to fit all of the necessary information into the limited spaces on the form, for this document the parties can utilize as low as 9 point font, if they so desire.

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6. The proposed jury instructions are to be placed in the order in which they are to be read to the jury and printed in booklet form (i.e., fitting multiple instructions sequentially on each page). Normally, there should be: 1) a "Preliminary Instructions" section with items such as Ninth Circuit Manual of Model Jury Instructions - Civil (henceforth "9th Cir. Jury Instructions") Nos. 1.1C, 1.6, 1.7, 1.9 through 1.11, etc.[4]; 2) a "Cause(s) of Action/Affirmative Defense(s)" section which delineates the elements of each claim and defense; 3) a "Damages" section which describes the types of damages (e.g., economic, non-economic, future, punitive, etc.), and 4) a "Closing Instructions" section with items such as 9th Cir. Jury Instructions Nos. 3.1 through 3.4.

This Court has a preference for established/published jury instructions (such as the 9th Cir. Jury Instructions) over those specially prepared by counsel in the instant case because the former have usually survived some appellate review. As to the established form jury instructions, where the claim arises under federal law, counsel should initially refer to the applicable provisions in the 9th Cir. Jury Instructions. Where the claim is based on California law, either the Judicial Council of California Civil Jury Instructions (henceforth ("CACI") or California Jury Instructions - Civil (henceforth "BAJI") may be used. The Court has no objection to the parties' selection of various items from the different publications (i.e., mixing and matching) so long as each instruction is identified by its source and there are no overlaps or discrepancies. Where there is no applicable form instruction on a particular matter and counsel are drafting specific language, they are to include reference to the statutory, regulatory or case law which supports that language.

The most recent version of any form instruction is to be utilized. Any blanks or spaces are to be filled in by the parties. Modifications of established jury instructions from the various sources must specifically indicate the change(s) made to the original form instruction and cite to the authority supporting the modification(s).

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[4] The Court will usually give the jury an initial set of instructions (henceforth "Initial Set"), after the voir dire is completed and the actual panel is sworn in, just before opening statements of counsel. In addition to the standard instructions (such as 9th Cir. Jury Instruction Nos. 1.1A, 1.2, etc.), the parties may request that the Court include in the Initial Set those instructions which state the essential elements of the cause(s) of action or affirmative defenses on which the respective parties bear the burden of proof.

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In addition to the joint proposed jury instruction booklet, the parties are to provide the court with a table listing each proposed instruction and the following information (at the time of the FPTC, only the first two columns need to be filled out):

Jury Instruction Number and Source/Identification/Description	Party(s) Offering	Rejected	Given	Given as Modified	Date

Each juror will receive a written copy of the jury instructions at the close of the evidentiary phase of the trial. The jury will be instructed prior to closing arguments.

Before giving the instructions and/or verdict forms to the jury, the Court will meet with counsel and pro per litigants near the close of trial to finalize the versions of those documents.

7. Where a party seeks to present a witness's testimony at trial by way of a deposition, at least twenty-one (21) days prior to the FPTC, that party will provide the opposing side with a copy of the witness's deposition transcript with the parts it seeks to proffer marked in blue. Seven (7) days later, the opposing side will return the transcript indicating in red any objections it has to the parts selected by the originating party and also designating any portions which the opposing side wishes to have read to the jury. At least ten (10) days before the FPTC, the parties will meet and confer to resolve any differences regarding the deposition testimony. Should there be any disputes which the parties cannot resolve, at least five (5) days before the FPTC, the parties will lodge with the court: 1) a marked copy of the deposition transcript indicating the portions agreed upon and the parts in dispute, and 2) a joint filing delineating the parties' respective positions on the disputed parts. The Court will resolve those disputes at the FPTC.

At the trial, the marked deposition will be read to the jury by counsel unless some other method is agreed upon. If the deposition was taken by way of video, the edited videotape can be played to the jury.

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8. The parties are requested to reach as many stipulations of fact as they can before trial in order to reduce trial time, simplify the proceedings, and make the process more intelligible to the jurors. Such stipulations can be read to the jury or handed out in written form at the start of the trial if requested by the parties.

9. All motions in limine are to be filed and personally served no later than twenty-one (21) days before the FPTC. Any oppositions to said motions are to be filed and personally served ten (10) days before the FPTC. Any replies are to be filed and personally served four (4) days before the FPTC and courtesy copies are to be delivered to Court chambers.

Motions in limine would include making requests: 1) to exclude an item of evidence or a witness from the trial, 2) to bifurcate issues, 3) for the court to take judicial notice, or 4) for any unusual procedure during the trial such as having the jury visit a particular location or conducting an experiment in court, etc.[5] However, do not waste the Court's and your opponent's time by making general boilerplate motions in limine such as a "Motion to Exclude at Trial All Evidence Not Previously Produced During Discovery".[6]

Remember, motions in limine are covered by the meet and confer requirements of Local Rule 7-3.

10. On the first day of trial, parties will jointly present sets of binders containing all of the pre-marked documentary and photographic exhibits for: 1) the court, 2) the court clerk (who receives the originals), and 3) the witness box. Each exhibit shall be separated by a tabbed divider indicating the exhibit number on the right hand side.

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[5] Motions in limine are not meant to serve as a vehicle for resolving discovery disputes which should have already been decided before the close of discovery or for attempting to re-litigate prior judicial decisions. Further, motions in limine are not a substitute for a timely made motion for summary judgment or adjudication.

[6] Any motion to exclude evidence not produced during discovery would have to specify the particular exhibit(s) or witness(es) to be excluded, the exact discovery requests which required their revelation, and the opposing party's purported deficient response.

If the trial revolves around a limited set of key documents/exhibits and if the parties have stipulated to the admissibility of those items, the parties can request the jurors be provided with their own exhibit binders at the start of the trial.

Also, if any party potentially intends to use deposition testimony to impeach a witness (or for any other purpose), a copy of the deposition transcript is to be lodged with the court clerk on the first day of trial.

11. Courtroom 10 has an available Samsung SDP-950STA Digital Presenter (an "ELMO" like device with laptop computer connections), two 40 inch flat screen monitors for the jury, and concomitant desk top monitors for the judge, witness box and attorney tables. If a party elects to utilize the court's equipment, counsel are advised to learn how to operate the equipment before trial begins. If counsel are bringing their own audio/visual apparatus (or have any other logistical issue, *e.g.*, a large number of boxes or exhibits), they must make arrangements with the court clerk at least three (3) business days in advance of trial.

If interpreters are required for any witness, the party calling that witness bears the burden of supplying an interpreter.

12. At the FPTC, an inquiry will also be made as to any scheduling problems and an attempt will be made to accommodate parties, attorneys and witnesses at trial.[7] However, the failure to raise such a scheduling issue at the FPTC will normally mean that the problem will not be later considered by the Court.

During the trial, each party must advise its opponent(s) at least 24 hours in advance of the witnesses which it plans to call for the next day. Likewise, any chart or other item of demonstrative evidence (which is otherwise not a pre-marked exhibit) must be shown to the

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[7] Because trials are set with lengthy advance notice, it is expected that the parties, counsel and witnesses will have cleared their calendars for purposes of the trial. Nevertheless, it is understood that certain situations (e.g. a non-party doctor witness who is not a retained expert) may arise where accommodations will be necessary. At the FPTC, the parties should be knowledgeable as to their witnesses' schedules. Upon a proper showing, the Court will allow witnesses to be taken out of order.

opponent(s) at least 48 hours before its intended use so that a hearing can conveniently be heard outside the presence of the jury, if necessary.

The parties are expected to have their witnesses stacked such that there will be no delay between the time one witness is excused and the next one is called. Should there be any instance where a party is unable to call a witness for more than thirty (30) minutes, the Court will deem that side to have rested.

13. At the FPTC, the Court will discuss with the parties which of the causes of action and affirmative defenses will, in fact, need to be tried to the jury. At that time, the Court will review the time estimate for the trial and, if necessary, set a specified time table for each party to present its claims/defenses (including the imposition of time limits on opening statements and closing arguments). Since the Court's allotment of time to try the case will inevitably be less than the parties' estimate, the Court will allocate the time generally giving the plaintiff's side 55% to 60% and the defendant's side 45% to 40%.[8] The Court will keep track of the time taken by each side.

14. Voir dire examinations will primarily be conducted by the Court. See Federal Rules of Civil Procedure ("FRCP") 47(a). Each side will be allowed a brief period to ask follow-up questions. Parties are to submit at the FPTC any questions that they want the Court to ask the jurors. Prior to the voir dire, the Court will indicate if any of the proposed questions are objectionable or if the Court will decline to ask particular question(s) but will allow the counsel to ask it/them during their allotted time.

If the case is complex or raises "delicate issues" and if the parties stipulate in advance, they can submit a proposed written jury questionnaire form at the FPTC.

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[8] Because plaintiffs have the initial burden of proof and they also have to establish the factual background for the disputes, the Court normally will give them a little more than half the trial time to present their case. The Court will deviate from that normal course in such situations as where the defendants' counterclaims predominate or where there is only one plaintiff and a multitude of defendants.

15. It is this Court's normal practice to allow jurors to ask questions of witnesses during the trial using the procedure set forth in 9th Cir. Jury Instruction No. 1.15. If any party objects to such juror questioning, it should raise that issue at the FPTC.

16. Other Trial Matters

a) No speaking objections. If an attorney wishes to make an objection, say the word "objection" and the word or phrase that delineates its basis (e.g. "hearsay," "lack of foundation," etc.). The challenged attorney is not to give a response unless specifically asked to do so by the Court.

b) Court hours. Judge Wu hears motions on Mondays and Thursdays and therefore the starting time for those days will vary depending upon the number and nature of the matters on his morning calendar. Normal trial hours are from 8:30 a.m. to 12:00 p.m. and 1:15 p.m. to 5:00 p.m. There will be one morning and one afternoon break of about 10 to 15 minutes.

c) Punctuality. The first time a party's counsel is late, the Court will verbally admonish. The second time, the Court will have brought the jury into the courtroom and counsel can explain their whereabouts/tardiness directly to the jury. The third time, the court will sanction monetarily.

d) Use of podium. Counsel are expected to use the podium when questioning witnesses and may not approach the jury or witness boxes unless counsel has asked and obtained permission from the Court beforehand.

e) Moving exhibits. Counsel should move an exhibit into the record at the time the exhibit is initially shown to a witness (unless the exhibit list indicates that no party has objected to its admissibility). The Court will not allow parties to recall witnesses to remedy defects in the initial testimony as to the admissibility of exhibits.

f) Advising parties and witnesses. Counsel and pro per litigants are ordered to advise their parties and witnesses that, during the trial, they are not to have any contact either directly or indirectly with any juror. Should counsel fail to so advise those persons and one of them attempts to interface with a juror, the Court will hold the attorney in violation of this order.

Counsel are also instructed to advise their witnesses of any of this Court's applicable evidentiary rulings, so that witnesses do not blurt out previously excluded evidence in front of the jury. Counsel will also admonish their clients, witnesses and related persons that they are not to respond to particular testimony or to any ruling of this Court with observable facial expressions, body movements (such as head nodding or shaking) or commentary indicating their agreement or non-agreement.

g) Multiple counsel. If a party has more than one trial counsel, the Court will start/resume the trial once any one of the attorneys is present. Also, only one attorney may question or cross-examine a witness, and/or make objections to questions or answers of a particular witness. "Double teaming" will not be allowed.

17. The Court will re-address the topic of settlement at the FPTC.

IT IS SO ORDERED.

DATED: February 10, 2010

GEORGE H. WU
United States District Judge

TOY-RQ-05E-00010150

(FMOx), DISCOVERY, RELATED-G

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
(Western Division - Los Angeles)
CIVIL DOCKET FOR CASE #: 2:10-cv-00947-AHM-FMO

Elaine Byrnes v. Toyota Motor North America Inc. et al
Assigned to: Judge A. Howard Matz
Referred to: Magistrate Judge Fernando M. Olguin
Related Case: 2:09-cv-08143-AHM-FMO
Cause: 28:1332 Diversity-Motor Vehicle Product Liability

Date Filed: 02/08/2010
Jury Demand: Plaintiff
Nature of Suit: 355 Motor Vehicle Prod. Liability
Jurisdiction: Diversity

Plaintiff

Elaine Byrnes
individually and on behalf of all others similarly situated

represented by **Arthur Camden Lewis**
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TOY-RQ-05E-00010151

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V.

Defendant

Toyota Motor North America Inc.
a California corporation

Defendant

Toyota Motor Engineering & Manufacturing North America, Inc.
a Kentucky corporation

Defendant

Toyota Motor Sales, U.S.A., Inc.
a California corporation

Defendant

TOY-RQ-05E-00010152

Toyota Motor Corporation
a Japanese corporation

Date Filed	#	Docket Text
02/08/2010	1	COMPLAINT against Defendants Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Sales, U.S.A., Inc., Toyota Motor Corporation, Toyota Motor North America Inc.(Filing fee $ 350 PAID) Jury Demanded., filed by plaintiff Elaine Byrnes.(car) (ds). (Entered: 02/09/2010)
02/08/2010		21 DAY Summons Issued re Complaint - (Discovery), 1 as to Defendants Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Sales, U.S.A., Inc., Toyota Motor Corporation, Toyota Motor North America Inc. (car) (Entered: 02/09/2010)
02/08/2010	2	CERTIFICATION AND NOTICE of Interested Parties filed by Plaintiff Elaine Byrnes, identifying Other Affiliate Joseph Hauter, Other Affiliate Frank Palomares, Other Affiliate George Anderson, Other Affiliate Eric Kmetz, Other Affiliate Joseph Morris for Elaine Byrnes. (car) (ds). (Entered: 02/09/2010)
02/08/2010	3	NOTICE OF FILING FEE DUE on Pro Hac Vice Application mailed to attorney Benjamin L Bailey for Plaintiff Elaine Byrnes. Your Pro Hac Vice application has not been received by the court. Please return your completed Application of Non-Resident Attorney to Appear in a Specific Case, form G-64, or a copy of the Notice of Electronic Filing of your application and the $185.00 fee and this notice immediately. Out-of-state federal government attorneys who are not employed by the U. S. Department of Justice are required to file a Pro Hac Vice application; no filing fee is required (car) (Entered: 02/09/2010)
02/08/2010	4	NOTICE OF FILING FEE DUE on Pro Hac Vice Application mailed to attorney Camden A Lewis for Plaintiff Elaine Byrnes. Your Pro Hac Vice application has not been received by the court. Please return your completed Application of Non-Resident Attorney to Appear in a Specific Case, form G-64, or a copy of the Notice of Electronic Filing of your application and the $185.00 fee and this notice immediately. Out-of-state federal government attorneys who are not employed by the U. S. Department of Justice are required to file a Pro Hac Vice application; no filing fee is required. (car) (Entered: 02/09/2010)
02/08/2010	5	NOTICE OF FILING FEE DUE on Pro Hac Vice Application mailed to attorney Edgar F Heiskell, III for Plaintiff Elaine Byrnes. Your Pro Hac Vice application has not been received by the court. Please return your completed Application of Non-Resident Attorney to Appear in a Specific Case, form G-64, or a copy of the Notice of Electronic Filing of your application and the $185.00 fee and this notice immediately. Out-of-state federal government attorneys who are not employed by the U. S. Department of Justice are required to file a Pro Hac Vice application; no filing fee is required. (car) (Entered: 02/09/2010)
02/08/2010	6	NOTICE OF FILING FEE DUE on Pro Hac Vice Application mailed to attorney Eric B Snyder for Plaintiff Elaine Byrnes. Your Pro Hac Vice application has not been received by the court. Please return your completed Application of Non-Resident Attorney to Appear in a Specific Case, form G-64, or a copy of the Notice of Electronic Filing of your application and the $185.00 fee and this notice immediately. Out-of-state

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		federal government attorneys who are not employed by the U. S. Department of Justice are required to file a Pro Hac Vice application; no filing fee is required. (car) (Entered: 02/09/2010)
02/08/2010	7	NOTICE OF FILING FEE DUE on Pro Hac Vice Application mailed to attorney Keith M Babcock for Plaintiff Elaine Byrnes. Your Pro Hac Vice application has not been received by the court. Please return your completed Application of Non-Resident Attorney to Appear in a Specific Case, form G-64, or a copy of the Notice of Electronic Filing of your application and the $185.00 fee and this notice immediately. Out-of-state federal government attorneys who are not employed by the U. S. Department of Justice are required to file a Pro Hac Vice application; no filing fee is required. (car) (Entered: 02/09/2010)
02/08/2010	8	NOTICE OF FILING FEE DUE on Pro Hac Vice Application mailed to attorney Thomas Murray for Plaintiff Elaine Byrnes. Your Pro Hac Vice application has not been received by the court. Please return your completed Application of Non-Resident Attorney to Appear in a Specific Case, form G-64, or a copy of the Notice of Electronic Filing of your application and the $185.00 fee and this notice immediately. Out-of-state federal government attorneys who are not employed by the U. S. Department of Justice are required to file a Pro Hac Vice application; no filing fee is required. (car) (Entered: 02/09/2010)
02/10/2010	9	STANDING ORDER RE FINAL PRE-TRIAL CONFERENCES FOR CIVIL JURY TRIALS BEFORE JUDGE GEORGE H. WU by Judge George H Wu: You are instructed to read and to follow (unless otherwise superseded herein) the Central District of California Local Rules (henceforth Local Rules) 16-1 through 16-15 regarding pre-trial requirements. 2. At least twenty-one (21) days prior to the Final Pre-Trial Conference (henceforth FPTC), counsel for each party and pro per litigants1 must have prepared and exchanged with each other all of the following: [See document for details] (ake) (Entered: 02/10/2010)
02/17/2010	10	ORDER RE TRANSFER PURSUANT TO GENERAL ORDER 08-05 -Related Case- filed. Related Case No: CV 09-08143 AHM (FMOx). Case transferred from Magistrate Judge John E. McDermott and Judge George H Wu to Judge A. Howard Matz and Magistrate Judge Fernando M. Olguin for all further proceedings. The case number will now reflect the initials of the transferee Judge CV 10-00947 AHM(FMOx).Signed by Judge A. Howard Matz (rn) (Entered: 02/17/2010)
02/18/2010	11	APPLICATION for attorney Keith M. Babcock to Appear Pro Hac Vice (PHV FEE NOT PAID.) filed by plaintiff Elaine Byrnes. (Ackermann, Craig) (Entered: 02/18/2010)
02/18/2010	12	APPLICATION for attorney Arthur Camden Lewis to Appear Pro Hac Vice (PHV FEE NOT PAID.) filed by plaintiff Elaine Byrnes. (Ackermann, Craig) (Entered: 02/18/2010)
02/19/2010	13	NOTICE TO FILER OF DEFICIENCIES in Electronically Filed Documents RE: APPLICATION for attorney Keith M. Babcock to Appear Pro Hac Vice 11 , APPLICATION for attorney Arthur Camden Lewis to Appear Pro Hac Vice 12 . The following error(s) was found: Proposed Orders were not submitted as separate attachments. In response to this notice the court may order (1) an amended or correct document to be filed (2) the document stricken or (3) take other action as the court deems appropriate. You need not take any action in response to this notice unless and

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		until the court directs you to do so. (kbr) (Entered: 02/19/2010)
02/19/2010	14	RESPONSE BY THE COURT TO NOTICE TO FILER OF DEFICIENCIES IN ELECTRONICALLY FILED DOCUMENTS. In accordance with the Notice to Filer Of Deficiencies In Electronically Filed Documents, the Applications for Attorney to Appear 11 , 12 are accepted as filed. Lodge the missing proposed orders as attachments to a Notice of Lodging. (mg) (Entered: 02/19/2010)
02/19/2010	15	NOTICE OF LODGING filed *Proposed Order Granting* re APPLICATION for attorney Arthur Camden Lewis to Appear Pro Hac Vice (PHV FEE NOT PAID.) 12 (Attachments: # 1 Proposed Order Granting Pro Hav Vice Motion)(Ackermann, Craig) (Entered: 02/19/2010)
02/19/2010	16	NOTICE OF LODGING filed *Proposed Order Granting* re APPLICATION for attorney Keith M. Babcock to Appear Pro Hac Vice (PHV FEE NOT PAID.) 11 (Attachments: # 1 Proposed Order Granting Pro Hac Vice motion)(Ackermann, Craig) (Entered: 02/19/2010)
02/22/2010	17	INITIAL ORDER by Judge A. Howard Matz (se) (Entered: 02/22/2010)
02/23/2010	18	APPLICATION for attorney Eric B. Snyder to Appear Pro Hac Vice (PHV FEE NOT PAID.) filed by plaintiff Elaine Byrnes. (Attachments: # 1 Proposed Order) (Ackermann, Craig) (Entered: 02/23/2010)
02/23/2010	19	APPLICATION for attorney Robert B. Lorea to Appear Pro Hac Vice (PHV Fee of $185 receipt number 0973-6570704 paid.) filed by plaintiff Elaine Byrnes. (Attachments: # 1 Proposed Order)(Ackermann, Craig) (Entered: 02/23/2010)
02/23/2010	20	ORDER by Judge A. Howard Matz granting Application to Appear Pro Hac Vice by Attorney Arthur Camden Lewis on behalf of Plaintiff Elaine Byrnes, designating Craig J. Ackermann as local counsel (PHV FEE PAID) 12 . (jp) (Entered: 02/23/2010)
02/23/2010	21	ORDER by Judge A. Howard Matz granting Application to Appear Pro Hac Vice by Attorney Keith M. Balcock on behalf of Plaintiff Elaine Byrnes, designating Craig J. Ackermann as local counsel (PHV FEE PAID) 11 . (jp) (Entered: 02/23/2010)
02/23/2010	22	APPLICATION for attorney Benjamin L. Bailey to Appear Pro Hac Vice (PHV Fee of $185 receipt number 0973-6570869 paid.) filed by plaintiff Elaine Byrnes. (Attachments: # 1 Proposed Order)(Ackermann, Craig) (Entered: 02/23/2010)

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PACER Login:	wb0242	**Client Code:**	056707-383593
Description:	Docket Report	**Search Criteria:**	2:10-cv-00947-AHM-FMO End date: 2/25/2010
Billable Pages:	4	**Cost:**	0.32

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FILE START

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Barbara Iglesias, Individually and On Behalf Of All Others Similarly Situated, Plaintiff, vs. TOYOTA MOTOR CORPORATION, TOYOTA MOTOR SALES, U.S.A., INC., TOYOTA MOTOR NORTH AMERICA, INC., TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC., 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. Defendants.	Civil Action No. **CLASS ACTION COMPLAINT AND JURY TRIAL DEMAND**

FILED
U.S. DISTRICT COURT
2010 FEB -8 PM 3:59
S.D. OF N.Y.

Plaintiff Barbara Iglesias ("Plaintiff"), by and through her undersigned attorneys, alleges as follows:

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d) because this action involves citizens of different states. The amount in controversy exceeds $5,000,000, exclusive of interest and costs.

2. Venue is proper in this District pursuant to 28 U.S.C. §1391, because Defendants do business in this District, and a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this District.

THE PARTIES

3. Plaintiff is a resident of the Bronx, New York. On December 1, 2009, Plaintiff bought a 2010 model year Toyota Camry in the Bronx, New York.

4. Defendant Toyota Motor Corporation ("TMC") is and was, at all relevant times, a Japanese limited liability, joint-stock company which operates through numerous subsidiaries and affiliated companies. Its principal executive office is located at 1 Toyota-cho, Toyota City, Aichi Prefecture 471-8571, Japan. Its automotive operations include the design, manufacture, assembly and sale of passenger cars, minivans and commercial vehicles. TMC's financial services business consists primarily of providing financing to dealers and their customers for the purchase or lease of Toyota vehicles. Its financial services also provide retail leasing through the purchase of lease contracts originated by Toyota dealers. North America is one of Toyota's primary automobile markets. In the U.S., Toyota vehicles are marketed through distributors and through these distributors, Toyota maintains networks of dealers.

5. Defendant Toyota Motor Sales, U.S.A., Inc. ("TMS") is and was, at all relevant times, a California corporation. It is a wholly owned subsidiary of TMC and responsible for the

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manufacture, distribution and sales of Toyota automobiles and trucks in the U.S. It is located at 19001 South Western Avenue, Torrance, CA.

6. Defendant Toyota Motor North America, Inc. ("TMNA") is the holding company for, and oversees, Toyota's manufacturing, financing, sales research and development, and marketing operations in the U.S., Canada and Mexico and is based in New York at 9 West 57th Street, Suite 4900, New York, New York.

7. Defendant Toyota Motor Engineering & Manufacturing North America ("TMEMNA") is the parent company for Toyota's manufacturing operations in the U.S. and Canada. It operates as a subsidiary of TMC and provides centralized support in the areas of purchasing, production, production control, engineering, quality control, and administration. It is headquartered at 25 Atlantic Avenue, Erlanger, Kentucky.

8. Defendant Lexus ("Lexus") is the luxury vehicle division of TMC. Lexus operates its own design, engineering, and manufacturing centers, solely responsible for the division's vehicles. Lexus' headquarters are located in Toyota City, Aichi Prefecture, Japan. Lexus' design facilities are located in California, among other places. The Lexus ES is assembled at the Miyata plant Miyawaka City, Fukuoka Prefecture, Japan, which is owned by Toyota Motor Kyusha, Inc., a wholly owned subsidiary of TMC. The Lexus IS is assembled at the Tahara plant in Tahara City, Aichi Prefecture, which is owned by TMC. Lexus ES and IS automobiles are sold throughout the United States.

9. Defendant Toyota Motor Manufacturing, Indiana, Inc. ("TMMI") manufactured the 2007 to 2008 model year ("MY") Toyota Tundra, 2008 to 2010 MY Toyota Sequoia, and the 2010 MY Toyota Highlander. TMMI is a wholly-owned subsidiary of TMC. It is located at 4000 South Tulip Tree Drive, Princeton, IN 47670-4000.

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10. Defendant Toyota Motor Manufacturing, Texas, Inc. ("TMMTX") manufactured the 2007 to 2010 MY Toyota Tundra. TMMTX is a wholly-owned subsidiary of TMC. It is located at 1 Lone Star Pass San Antonio, Texas, 78264-3413.

11. Defendant Toyota Motor Manufacturing, Kentucky, Inc. ("TMMK") manufactured the 2005 to 2010 MY Toyota Avalon and the 2007 to 2010 MY Toyota Camry. TMMK is a wholly-owned subsidiary of TMC. It is located at 1001 Cherry Blossom Way, Georgetown, KY 40324.

12. Defendant New United Motor Manufacturing, Inc. ("NUMMI") manufactured the 2009 to 2010 MY Toyota Corolla and the 2009 to 2010 MY Pontiac Vibe. NUMMI is located at 45500 Fremont Boulevard Fremont, CA 94538-6368.

13. Defendant Subaru of Indiana Automotive, Inc. ("SIA") manufactured the 2007 to 2010 MY Toyota Camry. It is located at 5500 State Road 38 East, Lafayette, Indiana 47905.

14. At all relevant times, TMC has owned and controlled TMS, TMNA, TMEMNA, Lexus, TMMI, TMMTX, TMMK, NUMMI and SIA and thereby conducted business in the U.S. These defendants and their subsidiaries and agents, are collectively referred to as "Toyota".

15. Defendant CTS Corporation ("CTS") is an Indiana corporation located at 905 West Boulevard, Elkhart, Indiana. CTS designs and manufactures electronic components and at all relevant times made the accelerator assemblies for Toyota vehicles that are subject of the claims herein (except for Lexus vehicles) beginning with model year 2005.

16. TMC, TMS, TMNA, TMEMNA, Lexus, TMMI, TMMTX, TMMK, NUMMI, SIA, and CTS may sometimes be collectively referred to as "Defendants".

17. The true names and capacities of the defendants sued herein as Doe Defendants 1 through 10, inclusive, are currently unknown to plaintiff, who therefore sues such defendants by

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fictitious names. Each of the defendants designated herein as a Doe is legally responsible for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend this Complaint to reflect the true names and capacities of the Doe Defendants when such identities become known.

BACKGROUND

18. "Toyota received field technical information regarding reports of accelerator pedals demonstrating symptoms such as rough operation or being slow to return to the idle position" at least as early as March 2007, according to a January 21, 2010 letter from Chris Santucci, TMNA Manager, Technical & Regulatory Affairs, to the National Highway Traffic Safety Administration ("NHTSA"). Santucci formerly worked for the NHTSA, which sets safety standards for motor vehicles and associated equipment, investigates possible safety defects, assures that products meet safety standards and are not defective (through recalls if necessary), and tracks safety-related recalls. Toyota sought to "minimize" the problem, according to The New York Times. Toyota quietly substituted one material used in the affected accelerator pedal assemblies for another as a fix and, in June 2008, reported that the slow return to the idle position of accelerator pedals in some of its vehicles was merely "a drivability issue unrelated to safety".

19. Toyota continued to receive complaints. In December 2008, Toyota received more "field technical information", this time from the European market, which indicated that accelerator pedals sticking on vehicles there. In March 2009, Toyota began another investigation that, in August 2009, also resulted in a quiet fix for some of its vehicles. However, despite the fact that accelerator pedal assemblies on some Toyota vehicles produced in the United States are of a similar design and composed of the same materials that were subject to the December 2008 reports from Europe, the August 2009 changes were limited to vehicles produced in Europe.

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20. The March 2007 and December 2008 reports indicate that Toyota knew at least a year prior to the January 21 Recall, as defined below, that some Toyota vehicles had defective accelerator pedal assemblies. In fact, Santucci later identified those very reports and subsequent investigations as the first "principal events" in the chronology leading to the January 21 Recall.

21. Toyota may have known about the problem even earlier. The Los Angeles Times reported, in a November 8, 2009 article, that "[m]ore than 1,000 Toyota and Lexus owners have reported since 2001 that their vehicles suddenly accelerated on their own" and that these crashes "resulted in at least 19 deaths and scores of injuries over the last decade"—far more than any other automaker has experienced. The Los Angeles Times, and other news reporting agencies, report further that independent safety experts have identified nearly 2,000 sudden-acceleration cases for Toyota vehicles built since 2001 and that experts say the actual numbers may be far higher.

22. According to the Los Angeles Times, Toyota owner complaints helped trigger at least eight investigations into "sudden acceleration" in Toyota and Lexus vehicles by the NHTSA since 2001, but that those investigations "systematically excluded or dismissed the majority of complaints", including cases in which drivers said they were unable to stop runaway cars using their brakes; incidents of unintended acceleration lasting more than a few seconds; and reports in which owners did not identify the possible causes of the problem. According to the Los Angeles Times, when Toyota was asked to submit its own complaint data to the NHTSA, it eliminated reports claiming that sudden acceleration occurred for more than a few seconds or when drivers said they were unable to control a runaway engine by applying the brakes, which contributed to an appearance that the problem was much smaller than the total number of complaints suggested.

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TOYOTA ATTRIBUTES REPORTS OF SUDDEN AND UNINTEDED ACCELEREATION TO "FLOOR PEDAL ENTRAPMENT" AND ATTEMPTS TO MIMIMIZE SERIOUSNESS OF THREAT TO SAFETY

23. In September 2007, Toyota recalled 55,000 accessory all-weather floor mats sold for use in some 2007 and 2008 model year Lexus ES 350 and Toyota Camry vehicles because, as reported by the NHTSA, if the mat were to "interfere with the accelerator pedal", it would "increase the possibility of a crash." However, Toyota was in the midst of investigating the March 2007 reports concerning sticking accelerator pedal assemblies at that time and following the September 2007 recall both Toyota and the NHTSA continued to receive complaints of unintended acceleration in the models affected recall, as well as in others vehicles not affected by the recall.

24. On August 28, 2009, "[f]our people were killed outside San Diego when the Lexus ES 350 sedan they were traveling in accelerated to 120 miles per hour and crashed, despite efforts by the driver to apply the brakes," according to The New York Times. The New York Times reported further that, "[t]he 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.

25. Toyota stated in a September 14, 2009 press release that, "[w]e believe our vehicles to be among the safest on the road today." Toyota stated further that preliminary investigations, "[d]river's floor mat interference with the accelerator pedal is possible in *any vehicle make* with *any combination floor mats* when the floor mat is not properly secured or if it is not the factory designed floor mat for the vehicle" (emphasis added).

26. Toyota issued a consumer safety advisory on September 29, 2009, instructing owners of specific Toyota and Lexus model vehicles to remove their driver's floor mat:

> Recent events have prompted Toyota to take a closer look at the potential for an accelerator pedal to get stuck in the full open position due to an unsecured or incompatible driver's floor mat. A stuck open accelerator pedal may result in very high vehicle speeds and make it difficult to stop the vehicle, which could cause a crash, serious injury or death.
>
> * * *
>
> Until Toyota develops a remedy, it is asking owners of specific Toyota and Lexus models to take out any removable driver's floor mat and NOT replace it with any other floor mat. The following models are affected:
>
> - 2007 – 2010 Camry
> - 2005 – 2010 Avalon
> - 2004 – 2009 Prius
> - 2005 – 2010 Tacoma
> - 2007 – 2010 Tundra
> - 2007 – 2010 ES350
> - 2006 – 2010 IS250 and IS350
>
> Should the vehicle continue to accelerate rapidly after releasing the accelerator pedal, this could be an indication of floor mat interference.

27. In connection with the safety campaign that followed, Santucci, then-Assistant Manager, Technical & Regulatory Affairs of TMNA, wrote to the NHTSA that, "[a]lthough Toyota is willing to identify this campaign as a safety recall in the owner communication about the campaign, Toyota has not determined that the vehicles identified [in the safety advisory] contain a 'safety-related defect'".

28. On November 2, 2009, Toyota attempted to further minimize the seriousness of this defect in certain of its vehicles by stating that "no defect exists in vehicles in which the driver's floor mat is compatible with the vehicle and properly secured" and that the company's finding was consistent with "a recent decision by the NHTSA". Toyota stated that, "[t]his is the sixth time in the past six years that NHTSA has undertaken such an exhaustive review of the allegations of unintended acceleration on Toyota and Lexus vehicles and the sixth time the agency has found no *vehicle based* cause for the unwanted acceleration allegations" (emphasis added).

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29. These statements were untrue. On November 4, 2009, the NHTSA issued a press release "correcting inaccurate and misleading information put out by Toyota". NHTSA spokeswoman Karen Aldana said that the problem with the design of Toyota and Lexus accelerators was, in fact, "very dangerous" and that removing the floor mats was "simply an interim measure" that would "*not correct the underlying defect in the vehicles*" (emphasis added). Aldana stated further that the "matter [was] not closed" and would remain open until Toyota "effectively addressed the defect by providing a suitable *vehicle based* solution" (emphasis added). Toyota responded to the public rebuke in a November 6, 2009 press release by acknowledging that removal of the driver's floor mat is merely "an interim measure and that further vehicle-based action is required".

30. On November 25, 2009, Toyota issued an announcement of "details of the vehicle-based remedy to address the root cause of the potential risk for floor mat entrapment of accelerator pedals in certain Toyota and Lexus models" ("November 25 Announcement"). These vehicles are subject to what Toyota termed its "floor pedal entrapment recall." The initial list of vehicles affected by the November 25 Announcement was expanded by Toyota on January 26, 2010. The following list of vehicles affected by the November 25 Announcement, totaling approximately 5.3 million vehicles, reflects the January amendment:

a. 2009 to 2010 model year ("MY") Pontiac Vibe;
b. 2005 to 2010 MY Toyota Avalon;
c. 2007 to 2010 MY Toyota Camry;
d. 2009 to 2010 MY Toyota Corolla;
e. 2008 to 2010 MY Toyota Highlander;
f. 2009 to 2010 MY Toyota Matrix;
g. 2004 to 2009 MY Toyota Prius;
h. 2005 to 2010 MY Toyota Tacoma;
i. 2007 to 2010 MY Toyota Tundra;
j. 2009 to 2010 MY Toyota Venza;
k. 2007 to 2010 MY Lexus ES 350;
l. 2006 to 2010 MY Lexus IS 250; and

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m. 2006 to 2010 MY Lexus IS 350.

TOYOTA FINALLY ACKNOWLEDGES "VEHICLE-BASED" PROBLEM WITH ACCELERATOR PEDAL ASSEMBLIES IN SOME TOYOTA VEHICLES

31. The remedy Toyota described in the November 25 Announcement, purportedly to "address the root cause" behind accounts of sudden and unintended acceleration, was to "reconfigure" the shape of the accelerator pedal or floor surface underneath the accelerator pedal:

> The specific measures of the vehicle-based remedy are as follows:
>
> 1. The shape of the accelerator pedal will be reconfigured to address the risk of floor mat entrapment, even when an older-design all-weather floor mat or other inappropriate floor mat is improperly attached, or is placed on top of another floor mat. For the ES350, Camry, and Avalon models involved, the shape of the floor surface underneath will also be reconfigured to increase the space between the accelerator pedal and the floor.
>
> 2. Vehicles with any genuine Toyota or Lexus accessory all-weather floor mat will be provided with newly-designed replacement driver- and front passenger-side all-weather floor mats.

However, Toyota did not recall the affected vehicles at that time. Instead, it said,

> In the meantime, owners of the involved vehicles are asked to take out any removable driver's floor mat and not replace it with any other floor mat until they are notified of the vehicle-based remedy, as notified in the consumer safety advisory and the interim notice.
>
> * * *
>
> The safety of our owners and the public is our utmost concern and Toyota has and will continue to thoroughly investigate and take appropriate measures to address any defect trends that are identified.

Thus, Toyota misled current owners and lessees to believe that the vehicles' issues were adequately addressed by Toyota.

32. The New York Times reported, in its February 1, 2010 article that, on December 26, 2009, four people died near Dallas when a Toyota Avalon sped off a road and into a pond.

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The police found that the floor mats were removed and in the Avalon's trunk. The New York Times further reported that, on December 28, 2009, a New Jersey man managed, by shifting in and out of neutral, to drive a 2007 Avalon to a dealership after it began speeding out of control. After parking, the motor continued racing and the brakes and tires started smoking.

33. In January 21, 2010, Toyota finally began a recall for a "vehicle-based" defect; namely, defective accelerator pedal assemblies ("January 21 Recall"). Approximately 2.3 million vehicles are affected by the January 21 Recall, which involved the following models:

a. 2005 to 2010 MY Toyota Avalon;
b. certain 2009 to 2010 MY Toyota Corolla;
c. certain 2007 to 2010 MY Toyota Camry;
d. certain 2010 MY Toyota Highlander;
e. 2009 to 2010 MY Toyota Matrix;
f. certain 2009 to 2010 MY Toyota RAV4;
g. 2008 to 2010 MY Toyota Sequoia; and
h. 2007 to 2010 MY Toyota Tundra.

34. According to the New York Times, the vehicles affected by the January 21 Recall represented over 60% of Toyota's total monthly U.S. sales from 2004 to 2009, based on a 12-month moving average. The New York Times reported further that Toyota's total U.S. sales ranged from well over 100,000 to nearly 200,000 vehicles per month during that time.

35. In a letter to the NHTSA dated January 21, 2010, Santucci described the defect in the accelerator pedal assemblies resulting in sudden and unintended acceleration reported in some of its vehicles:

> In accordance with the requirements of the National Traffic and Motor Vehicle Safety Act of 1966 and 49 CFR Part 573, on behalf of Toyota Motor Corporation ["TMC"], we hereby submit the attached Defect Information Report Concerning a voluntary safety recall of certain Toyota Tundra, Sequoia, Avalon, Camry, Corolla, Matrix, RAV4, Highlander, and Pontiac Vibe vehicles. *Toyota has determined that a defect exists in the accelerator pedal assembly which may result in the accelerator pedal becoming harder to depress, slower to return, or, in the worst case, mechanically stuck in a partially depressed position.*

(emphasis added).

36. In its Defect Information Report referenced in the January 21, 2010 letter, Toyota describes what it purports is the underlying cause of defect:

> Description of Problem:
>
> Due to the manner in which the friction lever interacts with the sliding surface of the accelerator pedal inside the pedal sensor assembly, the sliding surface of the lever may become smooth during vehicle operation. In this condition, if condensation occurs on the surface, as may occur from heater operation (without A/C) when the pedal assembly is cold, the friction when the accelerator pedal is operated may increase, which may result in the accelerator pedal becoming harder to depress, slower to return, or, in the worst case, mechanically stuck in a partially depressed position. In addition, some of the affected vehicles' pedals were manufactured with friction levers made of a different material (PA46), which may be susceptible to humidity when parked for a long period in hot temperatures. In this condition, the friction when the accelerator pedal is operated may increase, which may result in the accelerator pedal movement becoming rough or slow to return. In light of the similarity with one of the symptoms described above that are associated with the PPS material, Toyota has decided to include these vehicles in the defect determination.

37. On January 28, 2010, issued a statement that Toyota had "identified the cause of the problem" and had been working closely with CTS, the manufacturer of the accelerator pedal assemblies found on the vehicles affected by the January 21 Recall, on a revised pedal design. According to a January 28, 2010 statement by Chris Nielsen, TMEMNA's Vice President of Purchasing, "CTS is a long-term and valued supplier to us."

38. According to Toyota, the January 21 Recall is separate and unrelated to the November 25 Announcement that involved approximately 5.3 million vehicles. However, Toyota also announced that approximately 1.3 vehicles are part of both the November 25 Announcement and the January 21 Recall. Reportedly, it is Toyota's position that this significant overlap is merely coincidence. A total of approximately 6.3 million vehicles are part of both the November 25 Announcement and January 21 Recall in the United States ("Recalled

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Vehicles"). On January 29, 2010, Toyota expanded the January 21 Recall to China and to eight Toyota models in Europe. Reportedly, over 9 million vehicles are affected worldwide.

THE TRUE CAUSE OF SUDDEN AND UNINTEDED ACCELERATION IN SOME TOYOTA VEHICLES REMAINS UNCLEAR

39. The public may still not know the true cause of sudden and unintended acceleration. According to the New York Times, on April 19, 2008, witnesses saw a 2005 Toyota Camry accelerate out of control, jumped a curb and fly through the air before crashing into a tree. The driver, Guadalupe Alberto, was killed instantly. The 2005 Camry is not among the millions of Recalled Vehicles and also did not have floor mats at the time of the accident. Reportedly, the crash is now being looked at as a possible example of problems with the electronic system that controls the throttle and engine speed in Toyotas.

40. Despite yet another accident, Toyota has been telling customers, since as early as January 22, 2010, that it is "confident that your vehicle is safe to drive, and no action is required at this time", for drivers not experiencing an accelerator pedal that is "hard to depress, slow to return or is unsmooth during operation". On February 1, 2010, Toyota described the reason it believes the accelerator pedals in recalled vehicles stick in a partially open position and announced that, "[a] precision-cut steel reinforcement bar will be installed into the assembly that will reduce the surface tension between the friction shoe and the adjoining surface". According to Toyota, "[w]ith this reinforcement in place, the excess friction that can cause the pedal to stick is eliminated."

41. Toyota's "solution" does not address the potential problem with electronic throttles, which mounting evidence suggests is the true cause of reports of sudden and unintended acceleration.

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42. Both Toyota and the NHTSA acknowledge that a standard braking system cannot always counter a wide-open throttle, as is the case in sudden acceleration. Toyota stated in the November 25 Announcement that it would install a failsafe in some affected vehicles, saying, "as a separate measure independent of the vehicle-based remedy, Toyota will install a brake override system onto the involved Camry, Avalon, and Lexus ES 350, IS 350 and IS 250 models as an extra measure of confidence. This system cuts engine power in case of simultaneous application of both the accelerator and brake pedals." The November 25 Announcement stated further that, "[t]he brake override system will be made standard equipment throughout the Toyota and Lexus product lines starting with January 2010 production of ES 350 and Camry and is scheduled to be incorporated into new production of most models by the end of 2010."

43. According to The New York Times, Santucci was deposed in December 2009 concerning a 2004 NHTSA investigation of certain Toyota vehicles. During that testimony, Santucci testified that the electronic throttle control system in Alberto's 2005 Camry was similar to the computer equipment in other Toyotas now under recall for sticky pedals and unsecured floor mats.

PAST NHTSA FINDINGS ARE NOT RELIABLE

44. Toyota stated on November 2, 2009, that it had been investigated six times in the past and that the agency found no vehicle-based cause for reports of sudden and unintended acceleration. However, Santucci reportedly testified Toyota and the NHTSA had discussions about limiting the type of acceleration incidents to be investigated. Santucci's testimony is that, "I recall them saying to us, Toyota, myself,that they were not interested in reports alleging uncontrolled acceleration that occurred for a long duration." The New York Times reported that the NHTSA, in fact, decided to look only at cases of unintended acceleration in which drivers

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had not applied their brakes to rule out potential braking concerns from the scope of the investigation. Santucci testified that, "I think it worked out well for both the agency and Toyota, meaning Toyota provided what they were looking for". The NHTSA ultimately found, "[a] defect trend has not been identified at this time, and further use of agency resources does not appear to be warranted."

45. The NHTSA investigations, and Toyota's handling of the problem, will be the subject of Congressional hearings. The House Energy and Commerce Committee has scheduled a February 25, 2010 hearing to focus on why several years elapsed after the NHTSA began to get complaints about runaway Toyotas before TMC recalled several of its models to fix a defect that could cause their accelerator pedals to stick. "Like many consumers, I am concerned by the seriousness and scope of Toyota's recent recall announcements," said Representative Henry Waxman, the California Democrat who chairs the Energy and Commerce Committee. In a January 28, 2010 letter to Yoshimi Inaba, President and COO of TMNA, Waxman asked Inaba to produce information and documents dating back to 2001, including information "relating to sudden unintended acceleration, acceleration pedals, or *electronic throttle control*" (emphasis added).

46. The NHTSA is considering civil penalties against Toyota for the automaker's handling of both recalls.

CLASS ACTION ALLEGATIONS

47. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3), on behalf of himself and the following Class and Sub-Class:

Nationwide Class:

All owners and lessees in the United States of the Recalled Vehicles (the "Nationwide Class").

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New York Sub-Class

All owners and lessees in New York of Recalled Vehicles that were sold or leased in the State of New York (the "Sub-Class").

48. Excluded from the Nationwide Class and the Sub-Class are Defendants, as well as Defendants',subsidiaries, employees, officers, directors, or other person, firm trust or corporation or other entity related to or affiliated with Toyota and any person who has experienced physical injury as a result of the defects at issue in this litigation. Plaintiff reserve the right to amend the definition of the Nationwide Class and the Sub-Class, if discovery and/or further investigation reveal that the Nationwide Class and/or Sub-Class should be expanded or otherwise modified.

49. Numerosity/Impracticability of Joinder: The members of the Nationwide Class and Sub-Class are so numerous that joinder of all members would be impracticable. The members of the Nationwide Class and the Sub-Class are readily identifiable from information and records in Defendants' possession, custody or control.

50. The number of class members is approximately 6.3 million. There are millions of Nationwide Class members who purchased or leased Toyota vehicles and at least thousands, if not hundreds of thousands, of members of the Sub-Class.

51. Commonality and Predominance: Common questions of law and fact predominate over any questions affecting only individual members of the Nationwide Class and the Sub-Class. These common legal and factual questions, which do not vary from one Nationwide Class or Sub-Class member to another, and which may be determined without reference to the individual circumstances of any Nationwide Class or Sub-Class member, include, but are not limited, to the following:

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a. Whether Defendants omitted and/or concealed material facts from Plaintiff and the members of the Classes regarding Recalled Vehicles;

b. Whether, by the misconduct set forth in this Complaint, Defendants have engaged in deceptive or unlawful business practices with respect to the sale or lease of the Recalled Vehicles;

c. Whether Defendants had a duty to disclose the defects in Recalled Vehicles to Plaintiff and the Classes;

d. Whether, by their conduct, Defendants violated Magnuson-Moss Act, 15 U.S.C. §§ 2301, *et seq.*;

e. Whether, by their conduct, Defendants violated NY GBL §§349 and 350;

f. Whether, by their conduct described herein, Defendants breached their implied warranties to Plaintiff and the Classes;

g. Whether, by its conduct described herein, Defendants breached its express warranties to Plaintiff and the Classes;

h. Whether, by their conduct described herein, Defendants breached their contracts with Plaintiff and the Sub-Class;

i. Whether, by their conduct described herein, Defendants breached their duty of good faith and fair dealing;

j. Whether the Recalled Vehicles are defective;

k. Whether, as a result of Defendants' misconduct, Plaintiff and the Classes are entitled to damages; and

l. Whether, as a result of Defendants' misconduct, Plaintiff and the Classes are entitled to equitable relief and/or other relief, and, if so, the nature of such relief.

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52. Typicality: Plaintiff's claims are typical of the claims of the Nationwide Class and the Sub-Class, because Plaintiff and all Class members were injured by the same wrongful practices in which Defendants engaged. Plaintiff's claims arise from the same practice and course of conduct that gives rise to the claims of the Nationwide Class and Sub-Class members, and are based on the same or similar legal theories.

53. Adequacy: Plaintiff will fully and adequately protect the interests of the members of the Nationwide Class and the Sub-Class, and has retained class counsel who are experienced and qualified in prosecuting class actions, including consumer class actions and other forms of complex litigation. Neither Plaintiff nor her counsel has interests that are contrary to or conflicting with those of the Nationwide Class or the Sub-Class. Defendants have no defenses unique to Plaintiff.

54. Superiority: A class action is superior to all other available methods for the fair and efficient adjudication of this controversy for, *inter alia*, the following reasons:

a. It is economically impractical for members of the Classes to prosecute individual actions;

b. The Classes are readily definable;

c. Prosecution as a class action will eliminate the possibility of repetitious litigation; and

d. A class action will enable claims to be handled in an orderly and expeditious manner. A class action will save time and expense and will ensure uniformity of decisions.

55. Plaintiff does not anticipate any difficulty in the management of this litigation.

56. Defendants have, or have access to, address information for the Class members,

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which may be used for the purpose of providing notice of the pendency of this action.

COUNT I

Asserted On Behalf Of The Nationwide Class Against Toyota and CTS (Violations Of Magnuson-Moss Act (15 U.S.C. §§ 2301-2312) - Implied Warranty)

57. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

58. The Recalled Vehicles are "consumer products" as that term is defined by 15 U.S.C. § 2301(1).

59. Plaintiff and Nationwide Class members are "consumers" as that term is defined by 15 U.S.C. § 2301(3).

60. Toyota and CTS are "suppliers" as that term is defined by 15 U.S.C. § 2301(4).

61. Toyota and CTS are "warrantors" as that term is defined by 15 U.S.C. § 2301(5).

62. Toyota and CTS provided Plaintiff and Class members with "implied warranties" as that term is defined by 15 U.S.C. § 2301(7). When the Recalled Vehicles were sold or leased to Plaintiff and the Nationwide Class, implied warranties under state law attached, specifically the implied warranty of merchantability.

63. Toyota sold the Recalled Vehicles with defective accelerator pedal assemblies and floor mats (hereinafter collectively referred to as "accelerator pedal assemblies"), and CTS made the defective accelerator pedals as described hereinabove, which rendered the Recalled Vehicles unfit for their ordinary purpose. Toyota has acknowledged that such a defect exists and that the Recalled Vehicles are unfit for their ordinary purpose.

64. Any attempt by Toyota or CTS to disclaim the implied warranty of merchantability with respect to the Recalled Vehicles is void due to Toyota and CTS's

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knowledge or failure to know that the accelerator pedal assemblies were defective when sold or leased to Plaintiff and the Nationwide Class.

65. Toyota and CTS cannot disclaim the implied warranty of merchantability that attaches to the Recalled Vehicles, because Toyota provided Plaintiff and the Nationwide Class with written warranties as that term is defined by 15 U.S.C. § 2301(6).

66. Plaintiff has given Toyota a reasonable opportunity to cure its failures with respect to its warranties, and Toyota failed to do so.

67. Plaintiff and the Nationwide Class were damaged by Toyota and CTS' breach of their warranties.

68. As a result of Toyota and CTS' breach of implied warranties, Plaintiff and Nationwide Class members are entitled to revoke their acceptance of the Recalled Vehicles, obtain damages and equitable relief, and obtain attorneys' fees and costs pursuant to 15 U.S.C. § 2310.

COUNT II

Asserted On Behalf Of The Nationwide Class Against Toyota (Breach Of Express Warranty)

69. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

70. Toyota warranted that the Recalled Vehicles were free of defects in workmanship and materials. Providing defective accelerator pedal assemblies with the Recalled Vehicles, as explained herein, is a breach of this warranty.

71. As a direct and proximate cause of Toyota's breach of express warranties, Plaintiff and the Nationwide Class members have been damaged.

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72. Plaintiff has given Toyota a reasonable opportunity to cure its failure with respect to its warranty, and Toyota has failed to do so.

73. As a result of Toyota's breach of express warranty, Plaintiff and the Nationwide Class members have suffered damages.

COUNT III

Asserted On Behalf Of The Nationwide Class Against Toyota and CTS (Breach Of Implied Warranty Of Merchantability)

74. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

75. Toyota and CTS are "merchants" within the meaning of the Uniform Commercial Code § 2-104.

76. The Recalled Vehicles and defective accelerator pedal assemblies are "goods" within the meaning of Uniform Commercial Code § 2-105.

77. Toyota and CTS's implied warranty of merchantability accompanied the sale of the Recalled Vehicles and/or the defective accelerator pedal assemblies to Plaintiff and members of the Nationwide Class.

78. Toyota and CTS, by implication, warranted that the Recalled Vehicles and/or the accelerator pedal assemblies were fit for ordinary use.

79. The frequent failure of the accelerator pedal assemblies in the Recalled Vehicles made the Recalled Vehicles and accelerator pedal assemblies defective and, thus, unfit for the ordinary purposes for which the goods are used. The Recalled Vehicles are not fit for ordinary use because the accelerator pedal assemblies have a dangerous propensity to stick in the full-open position resulting in sudden and unintended acceleration.

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80. As set forth herein, any effort by Toyota and CTS to disclaim or otherwise limit its responsibility for the Recalled Vehicles was unconscionable under all of the circumstances. Toyota and CTS knew that the Recalled Vehicles were unfit for normal use.. Toyota and CTS' attempt to disclaim any warranty on the Recalled Vehicles is therefore unjust and cannot stand.

81. Through the conduct described herein, Toyota and CTS has breached their implied warranty of merchantability and are liable to Plaintiff and the Nationwide Class.

82. Plaintiff and the other members of the Nationwide Class have sustained damages as a result of Toyota and CTS' breaches.

83. Plaintiff has provided timely notice to Toyota regarding the problems she was experiencing with her 2010 Toyota Camry and, notwithstanding such notice, Toyota has failed and refused to offer Plaintiff a remedy.

COUNT IV

Asserted on Behalf of the Nationwide Class Against Toyota and CTS (Breach of Contract)

84. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

85. Plaintiff and Nationwide Class members entered into agreements to purchase or lease the Recalled Vehicles, and were in contractual privity with Toyota and CTS as a result of the express warranty described herein, as well as the specifications included with the purchase or lease of the Recalled Vehicles. Such privity likewise existed because the dealers from which Plaintiff and the Nationwide Class purchased or leased the Recalled Vehicles acted as Toyota's agents through franchise agreements, distribution agreements, and any other agreement governing the relationship between Toyota and any such dealer.

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86. Regardless of whether Plaintiff and the Classes were in contractual privity with Toyota or CTS, Toyota and CTS still may be held to have breached their contracts with Plaintiff and the Nationwide Class. As alleged herein, Toyota and CTS committed acts and omissions which were actuated by actual malice and accompanied by a wanton and willful disregard of persons, including Plaintiff and Nationwide Class members, who foreseeably might be harmed by those acts and omissions.

87. Toyota and CTS failed to disclose the true nature of the accelerator pedal assemblies, and the fact that the accelerator pedal assemblies would render the Recalled Vehicles unfit for use. Toyota and CTS knew or recklessly disregarded the fact that Plaintiff and the Nationwide Class were not knowledgeable with regard to the frequent failures, cost, and true nature of the accelerator pedal assemblies as alleged herein, and did not disclose that information to Plaintiff and the Nationwide Class.

88. Plaintiff and the Nationwide Class members performed all of their obligations under the contracts. Toyota breached its obligations under the contracts as alleged herein.

89. As a direct and proximate result of Toyota and CTS's breach of contract, Plaintiff and Nationwide Class members have been damaged.

COUNT V

Asserted On Behalf Of The Nationwide Class Against Toyota and CTS (Breach Of Implied Covenant Of Good Faith And Fair Dealing)

90. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

91. Plaintiff and Nationwide Class members entered into agreements to purchase or lease the Recalled Vehicles, or otherwise were in contractual privity with Toyota as a result of the express warranty described herein, as well as the specifications included with the purchase or

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lease of the Recalled Vehicles. Contractual privity likewise existed because the dealers from which Plaintiff and the Nationwide Class purchased or leased the Recalled Vehicles acted as Toyota's agent through franchise agreements, distribution agreements, and any other agreement governing the relationship between Toyota and any such dealer. Although CTS was not a party to these contracts, CTS had a duty to act in good faith due to the contractual relationship with Plaintiff and the Nationwide Class as alleged herein.

92. The contracts and warranties were subject to the implied covenant that Toyota would conduct business with Plaintiff and Nationwide Class members in good faith and would deal fairly with Plaintiff and Nationwide Class members. CTS' contracts and warranties were subject to the implied covenant that Toyota would conduct business with Plaintiff and Nationwide Class members in good faith and would deal fairly with Plaintiff and Nationwide Class members.

93. Regardless whether Plaintiff and the Nationwide Class were in contractual privity with Toyota and CTS, Toyota and CTS still had a duty of good faith and fair dealing. As alleged herein, Toyota and CTS committed acts and omissions which were actuated by malice and/or accompanied by a wanton and willful disregard of persons, including Plaintiff and the members of the Nationwide Class, who foreseeably might be harmed by those acts and omissions.

94. Toyota and CTS breached those implied covenants via the sale or lease to Plaintiff and members of the Nationwide Class of the Recalled Vehicles that were not fit for ordinary use and that were equipped with defective accelerator pedal assemblies that were inherently defective when Toyota and CTS knew, or should have known, that the accelerator pedal assemblies were defective. Toyota and CTS failed to disclose the true nature of the accelerator pedal assemblies, and the fact that the accelerator pedal assemblies would render the

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Recalled Vehicles unfit for use. Toyota and CTS knew or recklessly disregarded the fact that Plaintiff and the Nationwide Class were not knowledgeable with regard to the frequent failures, cost, and true nature of the accelerator pedal assemblies as alleged herein, and did not disclose that information to Plaintiff and the Nationwide Class. Defendants also breached those covenants by refusing to provide Plaintiff and the Nationwide Class with an adequate remedy.

95. Defendants behaved inequitably and acted in total disregard of the harm caused to Plaintiff and the Nationwide Class, and unjustly enriched themselves at the expense of Plaintiff and the Nationwide Class.

96. As a direct and proximate result of Toyota and CTS's breach of its implied covenants, Plaintiff and Nationwide Class members have been damaged.

COUNT VI

Asserted On Behalf Of The Sub-Class Against Toyota and CTS (Violation Of N.Y. G.B.L. §349)

97. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

98. Plaintiff and other members of the Sub-Class are "consumers" in accordance with GBL §349.

99. At all relevant times material hereto, Toyota and CTS conducted trade and commerce in New York and elsewhere within the meaning of GBL §349.

100. Toyota and CTS' acts materially misled Plaintiff and the Sub-Class in that Toyota and CTS misrepresented or failed to disclose the following material facts:

a. The Recalled Vehicles are not fit for normal use;

b. The accelerator pedal assemblies have a dangerous propensity to stick in the full-open position resulting in sudden and unintended acceleration;

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c. The Recalled Vehicles are not equipped with a failsafe to protect against sudden and unintended acceleration; and

d. The consequences of sudden and unintended acceleration are serious and potentially deadly.

101. Toyota and CTS consciously omitted to disclose material facts from Plaintiff and other members of the Sub-Class with respect to the accelerator pedal assemblies on the Recalled Vehicles.

102. Toyota intended that Plaintiff and the Sub-Class rely on Toyota and CTS' acts of concealment and omission, so that Plaintiff and other Sub-Class members would purchase and/or lease the Recalled Vehicles equipped with the defective accelerator pedal assemblies.

103. Had Toyota and CTS disclosed all material information regarding the defective accelerator pedal assemblies in the Recalled Vehicles to Plaintiff and the Sub-Class, they would not have purchased and/or leased the Recalled Vehicles, or would have paid less for the Recalled Vehicles.

104. The foregoing acts, omissions and practices proximately caused Plaintiff and other members of the Classes to suffer actual injury and damage including, *inter alia,* the loss of use of the Recalled Vehicles and diminution of value of those vehicles.

COUNT VII

Asserted On Behalf of the Sub-Class Against Toyota (Violations of N.Y. G.B.L. §350)

105. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

106. Toyota, in marketing the Recalled Vehicles, failed to disclose the following facts to Plaintiff and the Sub-Class:

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a. The Recalled Vehicles are not fit for normal use;

b. The accelerator pedal assemblies have a dangerous propensity to stick in the full-open position resulting in sudden and unintended acceleration;

c. The Recalled Vehicles are not equipped with a failsafe to protect against sudden and unintended acceleration; and

d. The consequences of sudden and unintended acceleration are serious and potentially deadly.

107. Plaintiff and the Sub-Class were misled and/or deceived by the omission of these material facts. Toyota, due to its superior knowledge of the facts herein, was required to disclose these facts to Plaintiff and the Sub-Class.

108. The foregoing acts, omissions and practices proximately caused Plaintiff and other members of the Sub-Class to suffer actual injury and damage.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff on behalf of herself and on behalf of the Classes prays:

A. For an order certifying this action as a class action, appointing Plaintiff as representative of the Classes and appointing her attorneys as counsel for the Classes;

B. For Defendants to pay lease and car loan payments until Toyota repairs or replaces the defective accelerator pedal assemblies in the Recalled Vehicles;

C. For all compensatory and other appropriate damages on all applicable claims in an amount to be proven at trial, including the diminution in value of the Recalled Vehicles as a result of the acts complained of herein;

D. For an order permanently enjoining Defendants from engaging in the unlawful practices alleged herein;

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E. For an award of attorneys' fees, costs and expenses; and

F. For such other and further relief that the Court deems appropriate and just under the circumstances.

JURY TRIAL DEMAND

Plaintiff demands a trial by jury.

Dated: February 8, 2010

ABBEY SPANIER RODD
& ABRAMS, LLP

By: _____
Jill Abrams (JA 1578)
jabrams@abbeyspanier.com
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JS 44C/SDNY
REV. 1/2008

JUDGE CASTEL

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 use of the Clerk of Court for the purpose of initiating the civil docket sheet.

FEB 08 2010

PLAINTIFFS	DEFENDANTS
Barbara Iglesias, Individually And On Behalf Of All Others Similarly Situated	Toyota Motor Corporation, et al.
ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)	ATTORNEYS (IF KNOWN)
Jill S. Abrams, Esq., Abbey Spanier Rodd & Abrams, LLP 212 East 39th Street, New York, NY 10016 212-889-3700	

CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)
(DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

Claims arise under 15 U.S.C. §§2301-2312, NY GBL §§349 & 350 and breach of contract, express and implied warranties

Has this or a similar case been previously filed in SDNY at any time? No? ☑ Yes? ☐ Judge Previously Assigned _____

If yes, was this case Vol.☐ Invol. ☐ Dismissed. No☐ Yes ☐ If yes, give date _____ & Case No. _____

(PLACE AN [x] IN ONE BOX ONLY) NATURE OF SUIT

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

ACTIONS UNDER STATUTES

CIVIL RIGHTS

[ ] 441 VOTING
[ ] 442 EMPLOYMENT
[ ] 443 HOUSING/ ACCOMMODATIONS
[ ] 444 WELFARE
[ ] 445 AMERICANS WITH DISABILITIES - EMPLOYMENT
[ ] 446 AMERICANS WITH DISABILITIES -OTHER
[ ] 440 OTHER CIVIL RIGHTS

PRISONER PETITIONS

[ ] 510 MOTIONS TO VACATE SENTENCE 28 USC 2255
[ ] 530 HABEAS CORPUS
[ ] 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 RR & 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

ACTIONS UNDER STATUTES

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 & BANKING
[ ] 450 COMMERCE
[ ] 460 DEPORTATION
[ ] 470 RACKETEER INFLUENCED & CORRUPT ORGANIZATION ACT (RICO)
[ ] 480 CONSUMER CREDIT
[ ] 490 CABLE/SATELLITE TV
[ ] 810 SELECTIVE SERVICE
[ ] 850 SECURITIES/ COMMODITIES/ EXCHANGE
[ ] 875 CUSTOMER CHALLENGE 12 USC 3410
[X] 890 OTHER STATUTORY ACTIONS
[ ] 891 AGRICULTURAL ACTS
[ ] 892 ECONOMIC STABILIZATION ACT
[ ] 893 ENVIRONMENTAL MATTERS
[ ] 894 ENERGY ALLOCATION ACT
[ ] 895 FREEDOM OF INFORMATION ACT
[ ] 900 APPEAL OF FEE DETERMINATION UNDER EQUAL ACCESS TO JUSTICE
[ ] 950 CONSTITUTIONALITY OF STATE STATUTES

$40.00

Check if demanded in complaint:

☒ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DO YOU CLAIM THIS CASE IS RELATED TO A CIVIL CASE NOW PENDING IN S.D.N.Y.? IF SO, STATE:

DEMAND $_____ OTHER _____ JUDGE _____ DOCKET NUMBER_____

Check YES only if demanded in complaint
JURY DEMAND: ☑ YES ☐ NO

NOTE: Please submit at the time of filing an explanation of why cases are deemed related.

(PLACE AN x IN ONE BOX ONLY)

ORIGIN

☑ 1 Original Proceeding ☐ 2a. Removed from State Court ☐ 2b. Removed from State Court AND at least one party is pro se. ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from (Specify District) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judge Judgment

(PLACE AN x IN ONE BOX ONLY)

BASIS OF JURISDICTION

1 U.S. PLAINTIFF ☐ 2 U.S. DEFENDANT ☒ 3 FEDERAL QUESTION (U.S. NOT A PARTY) ☐ 4 DIVERSITY

IF DIVERSITY, INDICATE CITIZENSHIP BELOW. (28 USC 1322, 1441)

CITIZENSHIP OF PRINCIPAL PARTIES (FOR DIVERSITY CASES ONLY)

(Place an [X] in one box for Plaintiff and one box for Defendant)

	PTF	DEF		PTF	DEF		PTF	DEF
CITIZEN OF THIS STATE	[ ]1	[ ]1	CITIZEN OR SUBJECT OF A FOREIGN COUNTRY	[ ]3	[ ]3	INCORPORATED and PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE	[ ]5	[ ]5
CITIZEN OF ANOTHER STATE	[ ]2	[ ]2	INCORPORATED or PRINCIPAL PLACE OF BUSINESS IN THIS STATE	[ ]4	[ ]4	FOREIGN NATION	[ ]6	[ ]6

PLAINTIFF(S) ADDRESS(ES) AND COUNTY(IES)

Barbara Iglesias
825 East 170th Street
Apt. 3L
Bronx, New York 10459

DEFENDANT(S) ADDRESS(ES) AND COUNTY(IES)

See Attached Sheet.

DEFENDANT(S) ADDRESS UNKNOWN

REPRESENTATION IS HEREBY MADE THAT, AT THIS TIME, I HAVE BEEN UNABLE, WITH REASONABLE DILIGENCE, TO ASCERTAIN THE RESIDENCE ADDRESSES OF THE FOLLOWING DEFENDANTS:

Check one: THIS ACTION SHOULD BE ASSIGNED TO: ☐ WHITE PLAINS ☑ MANHATTAN
(DO NOT check either box if this a PRISONER PETITION.)

DATE 2/8/2010 SIGNATURE OF ATTORNEY OF RECORD

RECEIPT #

ADMITTED TO PRACTICE IN THIS DISTRICT
[ ] NO
[X] YES (DATE ADMITTED Mo. 09 Yr. 1983)
Attorney Bar Code # JA-1578

Magistrate Judge is to be designated by the Clerk of the Court.

Magistrate Judge MAG. PECK is so Designated.

J. Michael McMahon, Clerk of Court by _____ Deputy Clerk, DATED _____.

UNITED STATES DISTRICT COURT (NEW YORK SOUTHERN)

IGLESIAS V. TOYOTA MOTOR CORPORATION, ET AL.

DEFENDANTS' ADDRESSES

Toyota Motor Corporation 1 Toyota-cho Toyota City, Aichi Prefecture 471-8571, Japan	Toyota Motor Manufacturing, Indiana, Inc. 4000 South Tulip Tree Drive Princeton, IN 47670-4000
Toyota Motor Sales, U.S.A., Inc. 19001 South Western Avenue Torrance, California	Toyota Motor Manufacturing, Texas, Inc. 1 Lone Star Pass San Antonio, TX 78264-3413
Toyota Motor North America, Inc. 9 West 57th Street, Suite 4900 New York, New York	Toyota Motor Manufacturing, Kentucky, Inc. 1001 Cherry Blossom Way Georgetown, KY 40324
Toyota Motor Engineering & Manufacturing North America, Inc. 25 Atlantic Avenue Erlanger, Kentucky	New United Motor Manufacturing, Inc. 45500 Fremont Boulevard Fremont, CA 94538-6368
Lexus Toyota City Aichi Prefecture, Japan	Subaru of Indiana Automotive, Inc. 5500 State Road 38 East Lafayette, IN 47905
CTS Corporation 905 West Boulevard Elkhart, Indiana	

JUDGE CASTEL

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(212) 889-3700

Attorneys for Plaintiff

10 CIV 1014

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Barbara Iglesias, Individually and On Behalf Of All Others Similarly Situated, Plaintiff, vs. TOYOTA MOTOR CORPORATION, TOYOTA MOTOR SALES, U.S.A., INC., TOYOTA MOTOR NORTH AMERICA, INC., TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC., 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. Defendants.	Civil Action No. **CLASS ACTION COMPLAINT AND JURY TRIAL DEMAND**

FILED
U.S. DISTRICT COURT
2010 FEB -8 PM 3:59
S.D. OF N.Y.

Plaintiff Barbara Iglesias ("Plaintiff"), by and through her undersigned attorneys, alleges as follows:

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d) because this action involves citizens of different states. The amount in controversy exceeds $5,000,000, exclusive of interest and costs.

2. Venue is proper in this District pursuant to 28 U.S.C. §1391, because Defendants do business in this District, and a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this District.

THE PARTIES

3. Plaintiff is a resident of the Bronx, New York. On December 1, 2009, Plaintiff bought a 2010 model year Toyota Camry in the Bronx, New York.

4. Defendant Toyota Motor Corporation ("TMC") is and was, at all relevant times, a Japanese limited liability, joint-stock company which operates through numerous subsidiaries and affiliated companies. Its principal executive office is located at 1 Toyota-cho, Toyota City, Aichi Prefecture 471-8571, Japan. Its automotive operations include the design, manufacture, assembly and sale of passenger cars, minivans and commercial vehicles. TMC's financial services business consists primarily of providing financing to dealers and their customers for the purchase or lease of Toyota vehicles. Its financial services also provide retail leasing through the purchase of lease contracts originated by Toyota dealers. North America is one of Toyota's primary automobile markets. In the U.S., Toyota vehicles are marketed through distributors and through these distributors, Toyota maintains networks of dealers.

5. Defendant Toyota Motor Sales, U.S.A., Inc. ("TMS") is and was, at all relevant times, a California corporation. It is a wholly owned subsidiary of TMC and responsible for the

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manufacture, distribution and sales of Toyota automobiles and trucks in the U.S. It is located at 19001 South Western Avenue, Torrance, CA.

6. Defendant Toyota Motor North America, Inc. ("TMNA") is the holding company for, and oversees, Toyota's manufacturing, financing, sales research and development, and marketing operations in the U.S., Canada and Mexico and is based in New York at 9 West 57th Street, Suite 4900, New York, New York.

7. Defendant Toyota Motor Engineering & Manufacturing North America ("TMEMNA") is the parent company for Toyota's manufacturing operations in the U.S. and Canada. It operates as a subsidiary of TMC and provides centralized support in the areas of purchasing, production, production control, engineering, quality control, and administration. It is headquartered at 25 Atlantic Avenue, Erlanger, Kentucky.

8. Defendant Lexus ("Lexus") is the luxury vehicle division of TMC. Lexus operates its own design, engineering, and manufacturing centers, solely responsible for the division's vehicles. Lexus' headquarters are located in Toyota City, Aichi Prefecture, Japan. Lexus' design facilities are located in California, among other places. The Lexus ES is assembled at the Miyata plant Miyawaka City, Fukuoka Prefecture, Japan, which is owned by Toyota Motor Kyusha, Inc., a wholly owned subsidiary of TMC. The Lexus IS is assembled at the Tahara plant in Tahara City, Aichi Prefecture, which is owned by TMC. Lexus ES and IS automobiles are sold throughout the United States.

9. Defendant Toyota Motor Manufacturing, Indiana, Inc. ("TMMI") manufactured the 2007 to 2008 model year ("MY") Toyota Tundra, 2008 to 2010 MY Toyota Sequoia, and the 2010 MY Toyota Highlander. TMMI is a wholly-owned subsidiary of TMC. It is located at 4000 South Tulip Tree Drive, Princeton, IN 47670-4000.

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10. Defendant Toyota Motor Manufacturing, Texas, Inc. ("TMMTX") manufactured the 2007 to 2010 MY Toyota Tundra. TMMTX is a wholly-owned subsidiary of TMC. It is located at 1 Lone Star Pass San Antonio, Texas, 78264-3413.

11. Defendant Toyota Motor Manufacturing, Kentucky, Inc. ("TMMK") manufactured the 2005 to 2010 MY Toyota Avalon and the 2007 to 2010 MY Toyota Camry. TMMK is a wholly-owned subsidiary of TMC. It is located at 1001 Cherry Blossom Way, Georgetown, KY 40324.

12. Defendant New United Motor Manufacturing, Inc. ("NUMMI") manufactured the 2009 to 2010 MY Toyota Corolla and the 2009 to 2010 MY Pontiac Vibe. NUMMI is located at 45500 Fremont Boulevard Fremont, CA 94538-6368.

13. Defendant Subaru of Indiana Automotive, Inc. ("SIA") manufactured the 2007 to 2010 MY Toyota Camry. It is located at 5500 State Road 38 East, Lafayette, Indiana 47905.

14. At all relevant times, TMC has owned and controlled TMS, TMNA, TMEMNA, Lexus, TMMI, TMMTX, TMMK, NUMMI and SIA and thereby conducted business in the U.S. These defendants and their subsidiaries and agents, are collectively referred to as "Toyota".

15. Defendant CTS Corporation ("CTS") is an Indiana corporation located at 905 West Boulevard, Elkhart, Indiana. CTS designs and manufactures electronic components and at all relevant times made the accelerator assemblies for Toyota vehicles that are subject of the claims herein (except for Lexus vehicles) beginning with model year 2005.

16. TMC, TMS, TMNA, TMEMNA, Lexus, TMMI, TMMTX, TMMK, NUMMI, SIA, and CTS may sometimes be collectively referred to as "Defendants".

17. The true names and capacities of the defendants sued herein as Doe Defendants 1 through 10, inclusive, are currently unknown to plaintiff, who therefore sues such defendants by

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fictitious names. Each of the defendants designated herein as a Doe is legally responsible for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend this Complaint to reflect the true names and capacities of the Doe Defendants when such identities become known.

BACKGROUND

18. "Toyota received field technical information regarding reports of accelerator pedals demonstrating symptoms such as rough operation or being slow to return to the idle position" at least as early as March 2007, according to a January 21, 2010 letter from Chris Santucci, TMNA Manager, Technical & Regulatory Affairs, to the National Highway Traffic Safety Administration ("NHTSA"). Santucci formerly worked for the NHTSA, which sets safety standards for motor vehicles and associated equipment, investigates possible safety defects, assures that products meet safety standards and are not defective (through recalls if necessary), and tracks safety-related recalls. Toyota sought to "minimize" the problem, according to The New York Times. Toyota quietly substituted one material used in the affected accelerator pedal assemblies for another as a fix and, in June 2008, reported that the slow return to the idle position of accelerator pedals in some of its vehicles was merely "a drivability issue unrelated to safety".

19. Toyota continued to receive complaints. In December 2008, Toyota received more "field technical information", this time from the European market, which indicated that accelerator pedals sticking on vehicles there. In March 2009, Toyota began another investigation that, in August 2009, also resulted in a quiet fix for some of its vehicles. However, despite the fact that accelerator pedal assemblies on some Toyota vehicles produced in the United States are of a similar design and composed of the same materials that were subject to the December 2008 reports from Europe, the August 2009 changes were limited to vehicles produced in Europe.

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20. The March 2007 and December 2008 reports indicate that Toyota knew at least a year prior to the January 21 Recall, as defined below, that some Toyota vehicles had defective accelerator pedal assemblies. In fact, Santucci later identified those very reports and subsequent investigations as the first "principal events" in the chronology leading to the January 21 Recall.

21. Toyota may have known about the problem even earlier. The Los Angeles Times reported, in a November 8, 2009 article, that "[m]ore than 1,000 Toyota and Lexus owners have reported since 2001 that their vehicles suddenly accelerated on their own" and that these crashes "resulted in at least 19 deaths and scores of injuries over the last decade"—far more than any other automaker has experienced. The Los Angeles Times, and other news reporting agencies, report further that independent safety experts have identified nearly 2,000 sudden-acceleration cases for Toyota vehicles built since 2001 and that experts say the actual numbers may be far higher.

22. According to the Los Angeles Times, Toyota owner complaints helped trigger at least eight investigations into "sudden acceleration" in Toyota and Lexus vehicles by the NHTSA since 2001, but that those investigations "systematically excluded or dismissed the majority of complaints", including cases in which drivers said they were unable to stop runaway cars using their brakes; incidents of unintended acceleration lasting more than a few seconds; and reports in which owners did not identify the possible causes of the problem. According to the Los Angeles Times, when Toyota was asked to submit its own complaint data to the NHTSA, it eliminated reports claiming that sudden acceleration occurred for more than a few seconds or when drivers said they were unable to control a runaway engine by applying the brakes, which contributed to an appearance that the problem was much smaller than the total number of complaints suggested.

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TOYOTA ATTRIBUTES REPORTS OF SUDDEN AND UNINTEDED ACCELEREATION TO "FLOOR PEDAL ENTRAPMENT" AND ATTEMPTS TO MIMIMIZE SERIOUSNESS OF THREAT TO SAFETY

23. In September 2007, Toyota recalled 55,000 accessory all-weather floor mats sold for use in some 2007 and 2008 model year Lexus ES 350 and Toyota Camry vehicles because, as reported by the NHTSA, if the mat were to "interfere with the accelerator pedal", it would "increase the possibility of a crash." However, Toyota was in the midst of investigating the March 2007 reports concerning sticking accelerator pedal assemblies at that time and following the September 2007 recall both Toyota and the NHTSA continued to receive complaints of unintended acceleration in the models affected recall, as well as in others vehicles not affected by the recall.

24. On August 28, 2009, "[f]our people were killed outside San Diego when the Lexus ES 350 sedan they were traveling in accelerated to 120 miles per hour and crashed, despite efforts by the driver to apply the brakes," according to The New York Times. The New York Times reported further that, "[t]he 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.

25. Toyota stated in a September 14, 2009 press release that, "[w]e believe our vehicles to be among the safest on the road today." Toyota stated further that preliminary investigations, "[d]river's floor mat interference with the accelerator pedal is possible in *any vehicle make* with *any combination floor mats* when the floor mat is not properly secured or if it is not the factory designed floor mat for the vehicle" (emphasis added).

26. Toyota issued a consumer safety advisory on September 29, 2009, instructing owners of specific Toyota and Lexus model vehicles to remove their driver's floor mat:

> Recent events have prompted Toyota to take a closer look at the potential for an accelerator pedal to get stuck in the full open position due to an unsecured or incompatible driver's floor mat. A stuck open accelerator pedal may result in very high vehicle speeds and make it difficult to stop the vehicle, which could cause a crash, serious injury or death.
>
> * * *
>
> Until Toyota develops a remedy, it is asking owners of specific Toyota and Lexus models to take out any removable driver's floor mat and NOT replace it with any other floor mat. The following models are affected:
>
> - 2007 – 2010 Camry
> - 2005 – 2010 Avalon
> - 2004 – 2009 Prius
> - 2005 – 2010 Tacoma
> - 2007 – 2010 Tundra
> - 2007 – 2010 ES350
> - 2006 – 2010 IS250 and IS350
>
> Should the vehicle continue to accelerate rapidly after releasing the accelerator pedal, this could be an indication of floor mat interference.

27. In connection with the safety campaign that followed, Santucci, then-Assistant Manager, Technical & Regulatory Affairs of TMNA, wrote to the NHTSA that, "[a]lthough Toyota is willing to identify this campaign as a safety recall in the owner communication about the campaign, Toyota has not determined that the vehicles identified [in the safety advisory] contain a 'safety-related defect'".

28. On November 2, 2009, Toyota attempted to further minimize the seriousness of this defect in certain of its vehicles by stating that "no defect exists in vehicles in which the driver's floor mat is compatible with the vehicle and properly secured" and that the company's finding was consistent with "a recent decision by the NHTSA". Toyota stated that, "[t]his is the sixth time in the past six years that NHTSA has undertaken such an exhaustive review of the allegations of unintended acceleration on Toyota and Lexus vehicles and the sixth time the agency has found no *vehicle based* cause for the unwanted acceleration allegations" (emphasis added).

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29. These statements were untrue. On November 4, 2009, the NHTSA issued a press release "correcting inaccurate and misleading information put out by Toyota". NHTSA spokeswoman Karen Aldana said that the problem with the design of Toyota and Lexus accelerators was, in fact, "very dangerous" and that removing the floor mats was "simply an interim measure" that would "*not correct the underlying defect in the vehicles*" (emphasis added). Aldana stated further that the "matter [was] not closed" and would remain open until Toyota "effectively addressed the defect by providing a suitable *vehicle based* solution" (emphasis added). Toyota responded to the public rebuke in a November 6, 2009 press release by acknowledging that removal of the driver's floor mat is merely "an interim measure and that further vehicle-based action is required".

30. On November 25, 2009, Toyota issued an announcement of "details of the vehicle-based remedy to address the root cause of the potential risk for floor mat entrapment of accelerator pedals in certain Toyota and Lexus models" ("November 25 Announcement"). These vehicles are subject to what Toyota termed its "floor pedal entrapment recall." The initial list of vehicles affected by the November 25 Announcement was expanded by Toyota on January 26, 2010. The following list of vehicles affected by the November 25 Announcement, totaling approximately 5.3 million vehicles, reflects the January amendment:

a. 2009 to 2010 model year ("MY") Pontiac Vibe;
b. 2005 to 2010 MY Toyota Avalon;
c. 2007 to 2010 MY Toyota Camry;
d. 2009 to 2010 MY Toyota Corolla;
e. 2008 to 2010 MY Toyota Highlander;
f. 2009 to 2010 MY Toyota Matrix;
g. 2004 to 2009 MY Toyota Prius;
h. 2005 to 2010 MY Toyota Tacoma;
i. 2007 to 2010 MY Toyota Tundra;
j. 2009 to 2010 MY Toyota Venza;
k. 2007 to 2010 MY Lexus ES 350;
l. 2006 to 2010 MY Lexus IS 250; and

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m. 2006 to 2010 MY Lexus IS 350.

TOYOTA FINALLY ACKNOWLEDGES "VEHICLE-BASED" PROBLEM WITH ACCELERATOR PEDAL ASSEMBLIES IN SOME TOYOTA VEHICLES

31. The remedy Toyota described in the November 25 Announcement, purportedly to "address the root cause" behind accounts of sudden and unintended acceleration, was to "reconfigure" the shape of the accelerator pedal or floor surface underneath the accelerator pedal:

> The specific measures of the vehicle-based remedy are as follows:
>
> 1. The shape of the accelerator pedal will be reconfigured to address the risk of floor mat entrapment, even when an older-design all-weather floor mat or other inappropriate floor mat is improperly attached, or is placed on top of another floor mat. For the ES350, Camry, and Avalon models involved, the shape of the floor surface underneath will also be reconfigured to increase the space between the accelerator pedal and the floor.
>
> 2. Vehicles with any genuine Toyota or Lexus accessory all-weather floor mat will be provided with newly-designed replacement driver- and front passenger-side all-weather floor mats.

However, Toyota did not recall the affected vehicles at that time. Instead, it said,

> In the meantime, owners of the involved vehicles are asked to take out any removable driver's floor mat and not replace it with any other floor mat until they are notified of the vehicle-based remedy, as notified in the consumer safety advisory and the interim notice.
>
> * * *
>
> The safety of our owners and the public is our utmost concern and Toyota has and will continue to thoroughly investigate and take appropriate measures to address any defect trends that are identified.

Thus, Toyota misled current owners and lessees to believe that the vehicles' issues were adequately addressed by Toyota.

32. The New York Times reported, in its February 1, 2010 article that, on December 26, 2009, four people died near Dallas when a Toyota Avalon sped off a road and into a pond.

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The police found that the floor mats were removed and in the Avalon's trunk. The New York Times further reported that, on December 28, 2009, a New Jersey man managed, by shifting in and out of neutral, to drive a 2007 Avalon to a dealership after it began speeding out of control. After parking, the motor continued racing and the brakes and tires started smoking.

33. In January 21, 2010, Toyota finally began a recall for a "vehicle-based" defect; namely, defective accelerator pedal assemblies ("January 21 Recall"). Approximately 2.3 million vehicles are affected by the January 21 Recall, which involved the following models:

a. 2005 to 2010 MY Toyota Avalon;
b. certain 2009 to 2010 MY Toyota Corolla;
c. certain 2007 to 2010 MY Toyota Camry;
d. certain 2010 MY Toyota Highlander;
e. 2009 to 2010 MY Toyota Matrix;
f. certain 2009 to 2010 MY Toyota RAV4;
g. 2008 to 2010 MY Toyota Sequoia; and
h. 2007 to 2010 MY Toyota Tundra.

34. According to the New York Times, the vehicles affected by the January 21 Recall represented over 60% of Toyota's total monthly U.S. sales from 2004 to 2009, based on a 12-month moving average. The New York Times reported further that Toyota's total U.S. sales ranged from well over 100,000 to nearly 200,000 vehicles per month during that time.

35. In a letter to the NHTSA dated January 21, 2010, Santucci described the defect in the accelerator pedal assemblies resulting in sudden and unintended acceleration reported in some of its vehicles:

> In accordance with the requirements of the National Traffic and Motor Vehicle Safety Act of 1966 and 49 CFR Part 573, on behalf of Toyota Motor Corporation ["TMC"], we hereby submit the attached Defect Information Report Concerning a voluntary safety recall of certain Toyota Tundra, Sequoia, Avalon, Camry, Corolla, Matrix, RAV4, Highlander, and Pontiac Vibe vehicles. *Toyota has determined that a defect exists in the accelerator pedal assembly which may result in the accelerator pedal becoming harder to depress, slower to return, or, in the worst case, mechanically stuck in a partially depressed position.*

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(emphasis added).

36. In its Defect Information Report referenced in the January 21, 2010 letter, Toyota describes what it purports is the underlying cause of defect:

> Description of Problem:
>
> Due to the manner in which the friction lever interacts with the sliding surface of the accelerator pedal inside the pedal sensor assembly, the sliding surface of the lever may become smooth during vehicle operation. In this condition, if condensation occurs on the surface, as may occur from heater operation (without A/C) when the pedal assembly is cold, the friction when the accelerator pedal is operated may increase, which may result in the accelerator pedal becoming harder to depress, slower to return, or, in the worst case, mechanically stuck in a partially depressed position. In addition, some of the affected vehicles' pedals were manufactured with friction levers made of a different material (PA46), which may be susceptible to humidity when parked for a long period in hot temperatures. In this condition, the friction when the accelerator pedal is operated may increase, which may result in the accelerator pedal movement becoming rough or slow to return. In light of the similarity with one of the symptoms described above that are associated with the PPS material, Toyota has decided to include these vehicles in the defect determination.

37. On January 28, 2010, issued a statement that Toyota had "identified the cause of the problem" and had been working closely with CTS, the manufacturer of the accelerator pedal assemblies found on the vehicles affected by the January 21 Recall, on a revised pedal design. According to a January 28, 2010 statement by Chris Nielsen, TMEMNA's Vice President of Purchasing, "CTS is a long-term and valued supplier to us."

38. According to Toyota, the January 21 Recall is separate and unrelated to the November 25 Announcement that involved approximately 5.3 million vehicles. However, Toyota also announced that approximately 1.3 vehicles are part of both the November 25 Announcement and the January 21 Recall. Reportedly, it is Toyota's position that this significant overlap is merely coincidence. A total of approximately 6.3 million vehicles are part of both the November 25 Announcement and January 21 Recall in the United States ("Recalled

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Vehicles"). On January 29, 2010, Toyota expanded the January 21 Recall to China and to eight Toyota models in Europe. Reportedly, over 9 million vehicles are affected worldwide.

THE TRUE CAUSE OF SUDDEN AND UNINTEDED ACCELERATION IN SOME TOYOTA VEHICLES REMAINS UNCLEAR

39. The public may still not know the true cause of sudden and unintended acceleration. According to the New York Times, on April 19, 2008, witnesses saw a 2005 Toyota Camry accelerate out of control, jumped a curb and fly through the air before crashing into a tree. The driver, Guadalupe Alberto, was killed instantly. The 2005 Camry is not among the millions of Recalled Vehicles and also did not have floor mats at the time of the accident. Reportedly, the crash is now being looked at as a possible example of problems with the electronic system that controls the throttle and engine speed in Toyotas.

40. Despite yet another accident, Toyota has been telling customers, since as early as January 22, 2010, that it is "confident that your vehicle is safe to drive, and no action is required at this time", for drivers not experiencing an accelerator pedal that is "hard to depress, slow to return or is unsmooth during operation". On February 1, 2010, Toyota described the reason it believes the accelerator pedals in recalled vehicles stick in a partially open position and announced that, "[a] precision-cut steel reinforcement bar will be installed into the assembly that will reduce the surface tension between the friction shoe and the adjoining surface". According to Toyota, "[w]ith this reinforcement in place, the excess friction that can cause the pedal to stick is eliminated."

41. Toyota's "solution" does not address the potential problem with electronic throttles, which mounting evidence suggests is the true cause of reports of sudden and unintended acceleration.

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42. Both Toyota and the NHTSA acknowledge that a standard braking system cannot always counter a wide-open throttle, as is the case in sudden acceleration. Toyota stated in the November 25 Announcement that it would install a failsafe in some affected vehicles, saying, "as a separate measure independent of the vehicle-based remedy, Toyota will install a brake override system onto the involved Camry, Avalon, and Lexus ES 350, IS 350 and IS 250 models as an extra measure of confidence. This system cuts engine power in case of simultaneous application of both the accelerator and brake pedals." The November 25 Announcement stated further that, "[t]he brake override system will be made standard equipment throughout the Toyota and Lexus product lines starting with January 2010 production of ES 350 and Camry and is scheduled to be incorporated into new production of most models by the end of 2010."

43. According to The New York Times, Santucci was deposed in December 2009 concerning a 2004 NHTSA investigation of certain Toyota vehicles. During that testimony, Santucci testified that the electronic throttle control system in Alberto's 2005 Camry was similar to the computer equipment in other Toyotas now under recall for sticky pedals and unsecured floor mats.

PAST NHTSA FINDINGS ARE NOT RELIABLE

44. Toyota stated on November 2, 2009, that it had been investigated six times in the past and that the agency found no vehicle-based cause for reports of sudden and unintended acceleration. However, Santucci reportedly testified Toyota and the NHTSA had discussions about limiting the type of acceleration incidents to be investigated. Santucci's testimony is that, "I recall them saying to us, Toyota, myself,that they were not interested in reports alleging uncontrolled acceleration that occurred for a long duration." The New York Times reported that the NHTSA, in fact, decided to look only at cases of unintended acceleration in which drivers

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had not applied their brakes to rule out potential braking concerns from the scope of the investigation. Santucci testified that, "I think it worked out well for both the agency and Toyota, meaning Toyota provided what they were looking for". The NHTSA ultimately found, "[a] defect trend has not been identified at this time, and further use of agency resources does not appear to be warranted."

45. The NHTSA investigations, and Toyota's handling of the problem, will be the subject of Congressional hearings. The House Energy and Commerce Committee has scheduled a February 25, 2010 hearing to focus on why several years elapsed after the NHTSA began to get complaints about runaway Toyotas before TMC recalled several of its models to fix a defect that could cause their accelerator pedals to stick. "Like many consumers, I am concerned by the seriousness and scope of Toyota's recent recall announcements," said Representative Henry Waxman, the California Democrat who chairs the Energy and Commerce Committee. In a January 28, 2010 letter to Yoshimi Inaba, President and COO of TMNA, Waxman asked Inaba to produce information and documents dating back to 2001, including information "relating to sudden unintended acceleration, acceleration pedals, or *electronic throttle control*" (emphasis added).

46. The NHTSA is considering civil penalties against Toyota for the automaker's handling of both recalls.

CLASS ACTION ALLEGATIONS

47. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3), on behalf of himself and the following Class and Sub-Class:

Nationwide Class:

All owners and lessees in the United States of the Recalled Vehicles (the "Nationwide Class").

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New York Sub-Class

All owners and lessees in New York of Recalled Vehicles that were sold or leased in the State of New York (the "Sub-Class").

48. Excluded from the Nationwide Class and the Sub-Class are Defendants, as well as Defendants',subsidiaries, employees, officers, directors, or other person, firm trust or corporation or other entity related to or affiliated with Toyota and any person who has experienced physical injury as a result of the defects at issue in this litigation. Plaintiff reserve the right to amend the definition of the Nationwide Class and the Sub-Class, if discovery and/or further investigation reveal that the Nationwide Class and/or Sub-Class should be expanded or otherwise modified.

49. Numerosity/Impracticability of Joinder: The members of the Nationwide Class and Sub-Class are so numerous that joinder of all members would be impracticable. The members of the Nationwide Class and the Sub-Class are readily identifiable from information and records in Defendants' possession, custody or control.

50. The number of class members is approximately 6.3 million. There are millions of Nationwide Class members who purchased or leased Toyota vehicles and at least thousands, if not hundreds of thousands, of members of the Sub-Class.

51. Commonality and Predominance: Common questions of law and fact predominate over any questions affecting only individual members of the Nationwide Class and the Sub-Class. These common legal and factual questions, which do not vary from one Nationwide Class or Sub-Class member to another, and which may be determined without reference to the individual circumstances of any Nationwide Class or Sub-Class member, include, but are not limited, to the following:

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a. Whether Defendants omitted and/or concealed material facts from Plaintiff and the members of the Classes regarding Recalled Vehicles;

b. Whether, by the misconduct set forth in this Complaint, Defendants have engaged in deceptive or unlawful business practices with respect to the sale or lease of the Recalled Vehicles;

c. Whether Defendants had a duty to disclose the defects in Recalled Vehicles to Plaintiff and the Classes;

d. Whether, by their conduct, Defendants violated Magnuson-Moss Act, 15 U.S.C. §§ 2301, *et seq.*;

e. Whether, by their conduct, Defendants violated NY GBL §§349 and 350;

f. Whether, by their conduct described herein, Defendants breached their implied warranties to Plaintiff and the Classes;

g. Whether, by its conduct described herein, Defendants breached its express warranties to Plaintiff and the Classes;

h. Whether, by their conduct described herein, Defendants breached their contracts with Plaintiff and the Sub-Class;

i. Whether, by their conduct described herein, Defendants breached their duty of good faith and fair dealing;

j. Whether the Recalled Vehicles are defective;

k. Whether, as a result of Defendants' misconduct, Plaintiff and the Classes are entitled to damages; and

l. Whether, as a result of Defendants' misconduct, Plaintiff and the Classes are entitled to equitable relief and/or other relief, and, if so, the nature of such relief.

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52. Typicality: Plaintiff's claims are typical of the claims of the Nationwide Class and the Sub-Class, because Plaintiff and all Class members were injured by the same wrongful practices in which Defendants engaged. Plaintiff's claims arise from the same practice and course of conduct that gives rise to the claims of the Nationwide Class and Sub-Class members, and are based on the same or similar legal theories.

53. Adequacy: Plaintiff will fully and adequately protect the interests of the members of the Nationwide Class and the Sub-Class, and has retained class counsel who are experienced and qualified in prosecuting class actions, including consumer class actions and other forms of complex litigation. Neither Plaintiff nor her counsel has interests that are contrary to or conflicting with those of the Nationwide Class or the Sub-Class. Defendants have no defenses unique to Plaintiff.

54. Superiority: A class action is superior to all other available methods for the fair and efficient adjudication of this controversy for, *inter alia*, the following reasons:

a. It is economically impractical for members of the Classes to prosecute individual actions;

b. The Classes are readily definable;

c. Prosecution as a class action will eliminate the possibility of repetitious litigation; and

d. A class action will enable claims to be handled in an orderly and expeditious manner. A class action will save time and expense and will ensure uniformity of decisions.

55. Plaintiff does not anticipate any difficulty in the management of this litigation.

56. Defendants have, or have access to, address information for the Class members,

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which may be used for the purpose of providing notice of the pendency of this action.

COUNT I

Asserted On Behalf Of The Nationwide Class Against Toyota and CTS (Violations Of Magnuson-Moss Act (15 U.S.C. §§ 2301-2312) - Implied Warranty)

57. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

58. The Recalled Vehicles are "consumer products" as that term is defined by 15 U.S.C. § 2301(1).

59. Plaintiff and Nationwide Class members are "consumers" as that term is defined by 15 U.S.C. § 2301(3).

60. Toyota and CTS are "suppliers" as that term is defined by 15 U.S.C. § 2301(4).

61. Toyota and CTS are "warrantors" as that term is defined by 15 U.S.C. § 2301(5).

62. Toyota and CTS provided Plaintiff and Class members with "implied warranties" as that term is defined by 15 U.S.C. § 2301(7). When the Recalled Vehicles were sold or leased to Plaintiff and the Nationwide Class, implied warranties under state law attached, specifically the implied warranty of merchantability.

63. Toyota sold the Recalled Vehicles with defective accelerator pedal assemblies and floor mats (hereinafter collectively referred to as "accelerator pedal assemblies"), and CTS made the defective accelerator pedals as described hereinabove, which rendered the Recalled Vehicles unfit for their ordinary purpose. Toyota has acknowledged that such a defect exists and that the Recalled Vehicles are unfit for their ordinary purpose.

64. Any attempt by Toyota or CTS to disclaim the implied warranty of merchantability with respect to the Recalled Vehicles is void due to Toyota and CTS's

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knowledge or failure to know that the accelerator pedal assemblies were defective when sold or leased to Plaintiff and the Nationwide Class.

65. Toyota and CTS cannot disclaim the implied warranty of merchantability that attaches to the Recalled Vehicles, because Toyota provided Plaintiff and the Nationwide Class with written warranties as that term is defined by 15 U.S.C. § 2301(6).

66. Plaintiff has given Toyota a reasonable opportunity to cure its failures with respect to its warranties, and Toyota failed to do so.

67. Plaintiff and the Nationwide Class were damaged by Toyota and CTS' breach of their warranties.

68. As a result of Toyota and CTS' breach of implied warranties, Plaintiff and Nationwide Class members are entitled to revoke their acceptance of the Recalled Vehicles, obtain damages and equitable relief, and obtain attorneys' fees and costs pursuant to 15 U.S.C. § 2310.

COUNT II

Asserted On Behalf Of The Nationwide Class Against Toyota (Breach Of Express Warranty)

69. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

70. Toyota warranted that the Recalled Vehicles were free of defects in workmanship and materials. Providing defective accelerator pedal assemblies with the Recalled Vehicles, as explained herein, is a breach of this warranty.

71. As a direct and proximate cause of Toyota's breach of express warranties, Plaintiff and the Nationwide Class members have been damaged.

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72. Plaintiff has given Toyota a reasonable opportunity to cure its failure with respect to its warranty, and Toyota has failed to do so.

73. As a result of Toyota's breach of express warranty, Plaintiff and the Nationwide Class members have suffered damages.

COUNT III

Asserted On Behalf Of The Nationwide Class Against Toyota and CTS (Breach Of Implied Warranty Of Merchantability)

74. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

75. Toyota and CTS are "merchants" within the meaning of the Uniform Commercial Code § 2-104.

76. The Recalled Vehicles and defective accelerator pedal assemblies are "goods" within the meaning of Uniform Commercial Code § 2-105.

77. Toyota and CTS's implied warranty of merchantability accompanied the sale of the Recalled Vehicles and/or the defective accelerator pedal assemblies to Plaintiff and members of the Nationwide Class.

78. Toyota and CTS, by implication, warranted that the Recalled Vehicles and/or the accelerator pedal assemblies were fit for ordinary use.

79. The frequent failure of the accelerator pedal assemblies in the Recalled Vehicles made the Recalled Vehicles and accelerator pedal assemblies defective and, thus, unfit for the ordinary purposes for which the goods are used. The Recalled Vehicles are not fit for ordinary use because the accelerator pedal assemblies have a dangerous propensity to stick in the full-open position resulting in sudden and unintended acceleration.

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80. As set forth herein, any effort by Toyota and CTS to disclaim or otherwise limit its responsibility for the Recalled Vehicles was unconscionable under all of the circumstances. Toyota and CTS knew that the Recalled Vehicles were unfit for normal use.. Toyota and CTS' attempt to disclaim any warranty on the Recalled Vehicles is therefore unjust and cannot stand.

81. Through the conduct described herein, Toyota and CTS has breached their implied warranty of merchantability and are liable to Plaintiff and the Nationwide Class.

82. Plaintiff and the other members of the Nationwide Class have sustained damages as a result of Toyota and CTS' breaches.

83. Plaintiff has provided timely notice to Toyota regarding the problems she was experiencing with her 2010 Toyota Camry and, notwithstanding such notice, Toyota has failed and refused to offer Plaintiff a remedy.

COUNT IV

Asserted on Behalf of the Nationwide Class Against Toyota and CTS (Breach of Contract)

84. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

85. Plaintiff and Nationwide Class members entered into agreements to purchase or lease the Recalled Vehicles, and were in contractual privity with Toyota and CTS as a result of the express warranty described herein, as well as the specifications included with the purchase or lease of the Recalled Vehicles. Such privity likewise existed because the dealers from which Plaintiff and the Nationwide Class purchased or leased the Recalled Vehicles acted as Toyota's agents through franchise agreements, distribution agreements, and any other agreement governing the relationship between Toyota and any such dealer.

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86. Regardless of whether Plaintiff and the Classes were in contractual privity with Toyota or CTS, Toyota and CTS still may be held to have breached their contracts with Plaintiff and the Nationwide Class. As alleged herein, Toyota and CTS committed acts and omissions which were actuated by actual malice and accompanied by a wanton and willful disregard of persons, including Plaintiff and Nationwide Class members, who foreseeably might be harmed by those acts and omissions.

87. Toyota and CTS failed to disclose the true nature of the accelerator pedal assemblies, and the fact that the accelerator pedal assemblies would render the Recalled Vehicles unfit for use. Toyota and CTS knew or recklessly disregarded the fact that Plaintiff and the Nationwide Class were not knowledgeable with regard to the frequent failures, cost, and true nature of the accelerator pedal assemblies as alleged herein, and did not disclose that information to Plaintiff and the Nationwide Class.

88. Plaintiff and the Nationwide Class members performed all of their obligations under the contracts. Toyota breached its obligations under the contracts as alleged herein.

89. As a direct and proximate result of Toyota and CTS's breach of contract, Plaintiff and Nationwide Class members have been damaged.

COUNT V

Asserted On Behalf Of The Nationwide Class Against Toyota and CTS (Breach Of Implied Covenant Of Good Faith And Fair Dealing)

90. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

91. Plaintiff and Nationwide Class members entered into agreements to purchase or lease the Recalled Vehicles, or otherwise were in contractual privity with Toyota as a result of the express warranty described herein, as well as the specifications included with the purchase or

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lease of the Recalled Vehicles. Contractual privity likewise existed because the dealers from which Plaintiff and the Nationwide Class purchased or leased the Recalled Vehicles acted as Toyota's agent through franchise agreements, distribution agreements, and any other agreement governing the relationship between Toyota and any such dealer. Although CTS was not a party to these contracts, CTS had a duty to act in good faith due to the contractual relationship with Plaintiff and the Nationwide Class as alleged herein.

92. The contracts and warranties were subject to the implied covenant that Toyota would conduct business with Plaintiff and Nationwide Class members in good faith and would deal fairly with Plaintiff and Nationwide Class members. CTS' contracts and warranties were subject to the implied covenant that Toyota would conduct business with Plaintiff and Nationwide Class members in good faith and would deal fairly with Plaintiff and Nationwide Class members.

93. Regardless whether Plaintiff and the Nationwide Class were in contractual privity with Toyota and CTS, Toyota and CTS still had a duty of good faith and fair dealing. As alleged herein, Toyota and CTS committed acts and omissions which were actuated by malice and/or accompanied by a wanton and willful disregard of persons, including Plaintiff and the members of the Nationwide Class, who foreseeably might be harmed by those acts and omissions.

94. Toyota and CTS breached those implied covenants via the sale or lease to Plaintiff and members of the Nationwide Class of the Recalled Vehicles that were not fit for ordinary use and that were equipped with defective accelerator pedal assemblies that were inherently defective when Toyota and CTS knew, or should have known, that the accelerator pedal assemblies were defective. Toyota and CTS failed to disclose the true nature of the accelerator pedal assemblies, and the fact that the accelerator pedal assemblies would render the

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Recalled Vehicles unfit for use. Toyota and CTS knew or recklessly disregarded the fact that Plaintiff and the Nationwide Class were not knowledgeable with regard to the frequent failures, cost, and true nature of the accelerator pedal assemblies as alleged herein, and did not disclose that information to Plaintiff and the Nationwide Class. Defendants also breached those covenants by refusing to provide Plaintiff and the Nationwide Class with an adequate remedy.

95. Defendants behaved inequitably and acted in total disregard of the harm caused to Plaintiff and the Nationwide Class, and unjustly enriched themselves at the expense of Plaintiff and the Nationwide Class.

96. As a direct and proximate result of Toyota and CTS's breach of its implied covenants, Plaintiff and Nationwide Class members have been damaged.

COUNT VI

Asserted On Behalf Of The Sub-Class Against Toyota and CTS (Violation Of N.Y. G.B.L. §349)

97. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

98. Plaintiff and other members of the Sub-Class are "consumers" in accordance with GBL §349.

99. At all relevant times material hereto, Toyota and CTS conducted trade and commerce in New York and elsewhere within the meaning of GBL §349.

100. Toyota and CTS' acts materially misled Plaintiff and the Sub-Class in that Toyota and CTS misrepresented or failed to disclose the following material facts:

a. The Recalled Vehicles are not fit for normal use;

b. The accelerator pedal assemblies have a dangerous propensity to stick in the full-open position resulting in sudden and unintended acceleration;

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c. The Recalled Vehicles are not equipped with a failsafe to protect against sudden and unintended acceleration; and

d. The consequences of sudden and unintended acceleration are serious and potentially deadly.

101. Toyota and CTS consciously omitted to disclose material facts from Plaintiff and other members of the Sub-Class with respect to the accelerator pedal assemblies on the Recalled Vehicles.

102. Toyota intended that Plaintiff and the Sub-Class rely on Toyota and CTS' acts of concealment and omission, so that Plaintiff and other Sub-Class members would purchase and/or lease the Recalled Vehicles equipped with the defective accelerator pedal assemblies.

103. Had Toyota and CTS disclosed all material information regarding the defective accelerator pedal assemblies in the Recalled Vehicles to Plaintiff and the Sub-Class, they would not have purchased and/or leased the Recalled Vehicles, or would have paid less for the Recalled Vehicles.

104. The foregoing acts, omissions and practices proximately caused Plaintiff and other members of the Classes to suffer actual injury and damage including, *inter alia,* the loss of use of the Recalled Vehicles and diminution of value of those vehicles.

COUNT VII

Asserted On Behalf of the Sub-Class Against Toyota (Violations of N.Y. G.B.L. §350)

105. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

106. Toyota, in marketing the Recalled Vehicles, failed to disclose the following facts to Plaintiff and the Sub-Class:

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a. The Recalled Vehicles are not fit for normal use;

b. The accelerator pedal assemblies have a dangerous propensity to stick in the full-open position resulting in sudden and unintended acceleration;

c. The Recalled Vehicles are not equipped with a failsafe to protect against sudden and unintended acceleration; and

d. The consequences of sudden and unintended acceleration are serious and potentially deadly.

107. Plaintiff and the Sub-Class were misled and/or deceived by the omission of these material facts. Toyota, due to its superior knowledge of the facts herein, was required to disclose these facts to Plaintiff and the Sub-Class.

108. The foregoing acts, omissions and practices proximately caused Plaintiff and other members of the Sub-Class to suffer actual injury and damage.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff on behalf of herself and on behalf of the Classes prays:

A. For an order certifying this action as a class action, appointing Plaintiff as representative of the Classes and appointing her attorneys as counsel for the Classes;

B. For Defendants to pay lease and car loan payments until Toyota repairs or replaces the defective accelerator pedal assemblies in the Recalled Vehicles;

C. For all compensatory and other appropriate damages on all applicable claims in an amount to be proven at trial, including the diminution in value of the Recalled Vehicles as a result of the acts complained of herein;

D. For an order permanently enjoining Defendants from engaging in the unlawful practices alleged herein;

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E. For an award of attorneys' fees, costs and expenses; and

F. For such other and further relief that the Court deems appropriate and just under the circumstances.

JURY TRIAL DEMAND

Plaintiff demands a trial by jury.

Dated: February 8, 2010

ABBEY SPANIER RODD
& ABRAMS, LLP

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Barbara Iglesias, Individually and On Behalf Of All Others Similarly Situated, Plaintiff, vs. TOYOTA MOTOR CORPORATION, TOYOTA MOTOR SALES, U.S.A., INC., TOYOTA MOTOR NORTH AMERICA, INC., TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC., 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. Defendants.	Civil Action No. **CLASS ACTION COMPLAINT AND JURY TRIAL DEMAND**

Plaintiff Barbara Iglesias ("Plaintiff"), by and through her undersigned attorneys, alleges as follows:

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d) because this action involves citizens of different states. The amount in controversy exceeds $5,000,000, exclusive of interest and costs.

2. Venue is proper in this District pursuant to 28 U.S.C. §1391, because Defendants do business in this District, and a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this District.

THE PARTIES

3. Plaintiff is a resident of the Bronx, New York. On December 1, 2009, Plaintiff bought a 2010 model year Toyota Camry in the Bronx, New York.

4. Defendant Toyota Motor Corporation ("TMC") is and was, at all relevant times, a Japanese limited liability, joint-stock company which operates through numerous subsidiaries and affiliated companies. Its principal executive office is located at 1 Toyota-cho, Toyota City, Aichi Prefecture 471-8571, Japan. Its automotive operations include the design, manufacture, assembly and sale of passenger cars, minivans and commercial vehicles. TMC's financial services business consists primarily of providing financing to dealers and their customers for the purchase or lease of Toyota vehicles. Its financial services also provide retail leasing through the purchase of lease contracts originated by Toyota dealers. North America is one of Toyota's primary automobile markets. In the U.S., Toyota vehicles are marketed through distributors and through these distributors, Toyota maintains networks of dealers.

5. Defendant Toyota Motor Sales, U.S.A., Inc. ("TMS") is and was, at all relevant times, a California corporation. It is a wholly owned subsidiary of TMC and responsible for the

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manufacture, distribution and sales of Toyota automobiles and trucks in the U.S. It is located at 19001 South Western Avenue, Torrance, CA.

6. Defendant Toyota Motor North America, Inc. ("TMNA") is the holding company for, and oversees, Toyota's manufacturing, financing, sales research and development, and marketing operations in the U.S., Canada and Mexico and is based in New York at 9 West 57th Street, Suite 4900, New York, New York.

7. Defendant Toyota Motor Engineering & Manufacturing North America ("TMEMNA") is the parent company for Toyota's manufacturing operations in the U.S. and Canada. It operates as a subsidiary of TMC and provides centralized support in the areas of purchasing, production, production control, engineering, quality control, and administration. It is headquartered at 25 Atlantic Avenue, Erlanger, Kentucky.

8. Defendant Lexus ("Lexus") is the luxury vehicle division of TMC. Lexus operates its own design, engineering, and manufacturing centers, solely responsible for the division's vehicles. Lexus' headquarters are located in Toyota City, Aichi Prefecture, Japan. Lexus' design facilities are located in California, among other places. The Lexus ES is assembled at the Miyata plant Miyawaka City, Fukuoka Prefecture, Japan, which is owned by Toyota Motor Kyusha, Inc., a wholly owned subsidiary of TMC. The Lexus IS is assembled at the Tahara plant in Tahara City, Aichi Prefecture, which is owned by TMC. Lexus ES and IS automobiles are sold throughout the United States.

9. Defendant Toyota Motor Manufacturing, Indiana, Inc. ("TMMI") manufactured the 2007 to 2008 model year ("MY") Toyota Tundra, 2008 to 2010 MY Toyota Sequoia, and the 2010 MY Toyota Highlander. TMMI is a wholly-owned subsidiary of TMC. It is located at 4000 South Tulip Tree Drive, Princeton, IN 47670-4000.

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10. Defendant Toyota Motor Manufacturing, Texas, Inc. ("TMMTX") manufactured the 2007 to 2010 MY Toyota Tundra. TMMTX is a wholly-owned subsidiary of TMC. It is located at 1 Lone Star Pass San Antonio, Texas, 78264-3413.

11. Defendant Toyota Motor Manufacturing, Kentucky, Inc. ("TMMK") manufactured the 2005 to 2010 MY Toyota Avalon and the 2007 to 2010 MY Toyota Camry. TMMK is a wholly-owned subsidiary of TMC. It is located at 1001 Cherry Blossom Way, Georgetown, KY 40324.

12. Defendant New United Motor Manufacturing, Inc. ("NUMMI") manufactured the 2009 to 2010 MY Toyota Corolla and the 2009 to 2010 MY Pontiac Vibe. NUMMI is located at 45500 Fremont Boulevard Fremont, CA 94538-6368.

13. Defendant Subaru of Indiana Automotive, Inc. ("SIA") manufactured the 2007 to 2010 MY Toyota Camry. It is located at 5500 State Road 38 East, Lafayette, Indiana 47905.

14. At all relevant times, TMC has owned and controlled TMS, TMNA, TMEMNA, Lexus, TMMI, TMMTX, TMMK, NUMMI and SIA and thereby conducted business in the U.S. These defendants and their subsidiaries and agents, are collectively referred to as "Toyota".

15. Defendant CTS Corporation ("CTS") is an Indiana corporation located at 905 West Boulevard, Elkhart, Indiana. CTS designs and manufactures electronic components and at all relevant times made the accelerator assemblies for Toyota vehicles that are subject of the claims herein (except for Lexus vehicles) beginning with model year 2005.

16. TMC, TMS, TMNA, TMEMNA, Lexus, TMMI, TMMTX, TMMK, NUMMI, SIA, and CTS may sometimes be collectively referred to as "Defendants".

17. The true names and capacities of the defendants sued herein as Doe Defendants 1 through 10, inclusive, are currently unknown to plaintiff, who therefore sues such defendants by

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fictitious names. Each of the defendants designated herein as a Doe is legally responsible for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend this Complaint to reflect the true names and capacities of the Doe Defendants when such identities become known.

BACKGROUND

18. "Toyota received field technical information regarding reports of accelerator pedals demonstrating symptoms such as rough operation or being slow to return to the idle position" at least as early as March 2007, according to a January 21, 2010 letter from Chris Santucci, TMNA Manager, Technical & Regulatory Affairs, to the National Highway Traffic Safety Administration ("NHTSA"). Santucci formerly worked for the NHTSA, which sets safety standards for motor vehicles and associated equipment, investigates possible safety defects, assures that products meet safety standards and are not defective (through recalls if necessary), and tracks safety-related recalls. Toyota sought to "minimize" the problem, according to The New York Times. Toyota quietly substituted one material used in the affected accelerator pedal assemblies for another as a fix and, in June 2008, reported that the slow return to the idle position of accelerator pedals in some of its vehicles was merely "a drivability issue unrelated to safety".

19. Toyota continued to receive complaints. In December 2008, Toyota received more "field technical information", this time from the European market, which indicated that accelerator pedals sticking on vehicles there. In March 2009, Toyota began another investigation that, in August 2009, also resulted in a quiet fix for some of its vehicles. However, despite the fact that accelerator pedal assemblies on some Toyota vehicles produced in the United States are of a similar design and composed of the same materials that were subject to the December 2008 reports from Europe, the August 2009 changes were limited to vehicles produced in Europe.

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20. The March 2007 and December 2008 reports indicate that Toyota knew at least a year prior to the January 21 Recall, as defined below, that some Toyota vehicles had defective accelerator pedal assemblies. In fact, Santucci later identified those very reports and subsequent investigations as the first "principal events" in the chronology leading to the January 21 Recall.

21. Toyota may have known about the problem even earlier. The Los Angeles Times reported, in a November 8, 2009 article, that "[m]ore than 1,000 Toyota and Lexus owners have reported since 2001 that their vehicles suddenly accelerated on their own" and that these crashes "resulted in at least 19 deaths and scores of injuries over the last decade"—far more than any other automaker has experienced. The Los Angeles Times, and other news reporting agencies, report further that independent safety experts have identified nearly 2,000 sudden-acceleration cases for Toyota vehicles built since 2001 and that experts say the actual numbers may be far higher.

22. According to the Los Angeles Times, Toyota owner complaints helped trigger at least eight investigations into "sudden acceleration" in Toyota and Lexus vehicles by the NHTSA since 2001, but that those investigations "systematically excluded or dismissed the majority of complaints", including cases in which drivers said they were unable to stop runaway cars using their brakes; incidents of unintended acceleration lasting more than a few seconds; and reports in which owners did not identify the possible causes of the problem. According to the Los Angeles Times, when Toyota was asked to submit its own complaint data to the NHTSA, it eliminated reports claiming that sudden acceleration occurred for more than a few seconds or when drivers said they were unable to control a runaway engine by applying the brakes, which contributed to an appearance that the problem was much smaller than the total number of complaints suggested.

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TOYOTA ATTRIBUTES REPORTS OF SUDDEN AND UNINTEDED ACCELEREATION TO "FLOOR PEDAL ENTRAPMENT" AND ATTEMPTS TO MIMIMIZE SERIOUSNESS OF THREAT TO SAFETY

23. In September 2007, Toyota recalled 55,000 accessory all-weather floor mats sold for use in some 2007 and 2008 model year Lexus ES 350 and Toyota Camry vehicles because, as reported by the NHTSA, if the mat were to "interfere with the accelerator pedal", it would "increase the possibility of a crash." However, Toyota was in the midst of investigating the March 2007 reports concerning sticking accelerator pedal assemblies at that time and following the September 2007 recall both Toyota and the NHTSA continued to receive complaints of unintended acceleration in the models affected recall, as well as in others vehicles not affected by the recall.

24. On August 28, 2009, "[f]our people were killed outside San Diego when the Lexus ES 350 sedan they were traveling in accelerated to 120 miles per hour and crashed, despite efforts by the driver to apply the brakes," according to The New York Times. The New York Times reported further that, "[t]he 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.

25. Toyota stated in a September 14, 2009 press release that, "[w]e believe our vehicles to be among the safest on the road today." Toyota stated further that preliminary investigations, "[d]river's floor mat interference with the accelerator pedal is possible in *any vehicle make* with *any combination floor mats* when the floor mat is not properly secured or if it is not the factory designed floor mat for the vehicle" (emphasis added).

26. Toyota issued a consumer safety advisory on September 29, 2009, instructing owners of specific Toyota and Lexus model vehicles to remove their driver's floor mat:

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> Recent events have prompted Toyota to take a closer look at the potential for an accelerator pedal to get stuck in the full open position due to an unsecured or incompatible driver's floor mat. A stuck open accelerator pedal may result in very high vehicle speeds and make it difficult to stop the vehicle, which could cause a crash, serious injury or death.
>
> * * *
>
> Until Toyota develops a remedy, it is asking owners of specific Toyota and Lexus models to take out any removable driver's floor mat and NOT replace it with any other floor mat. The following models are affected:
>
> - 2007 – 2010 Camry
> - 2005 – 2010 Avalon
> - 2004 – 2009 Prius
> - 2005 – 2010 Tacoma
> - 2007 – 2010 Tundra
> - 2007 – 2010 ES350
> - 2006 – 2010 IS250 and IS350
>
> Should the vehicle continue to accelerate rapidly after releasing the accelerator pedal, this could be an indication of floor mat interference.

27. In connection with the safety campaign that followed, Santucci, then-Assistant Manager, Technical & Regulatory Affairs of TMNA, wrote to the NHTSA that, "[a]lthough Toyota is willing to identify this campaign as a safety recall in the owner communication about the campaign, Toyota has not determined that the vehicles identified [in the safety advisory] contain a 'safety-related defect'".

28. On November 2, 2009, Toyota attempted to further minimize the seriousness of this defect in certain of its vehicles by stating that "no defect exists in vehicles in which the driver's floor mat is compatible with the vehicle and properly secured" and that the company's finding was consistent with "a recent decision by the NHTSA". Toyota stated that, "[t]his is the sixth time in the past six years that NHTSA has undertaken such an exhaustive review of the allegations of unintended acceleration on Toyota and Lexus vehicles and the sixth time the agency has found no *vehicle based* cause for the unwanted acceleration allegations" (emphasis added).

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29. These statements were untrue. On November 4, 2009, the NHTSA issued a press release "correcting inaccurate and misleading information put out by Toyota". NHTSA spokeswoman Karen Aldana said that the problem with the design of Toyota and Lexus accelerators was, in fact, "very dangerous" and that removing the floor mats was "simply an interim measure" that would "*not correct the underlying defect in the vehicles*" (emphasis added). Aldana stated further that the "matter [was] not closed" and would remain open until Toyota "effectively addressed the defect by providing a suitable *vehicle based* solution" (emphasis added). Toyota responded to the public rebuke in a November 6, 2009 press release by acknowledging that removal of the driver's floor mat is merely "an interim measure and that further vehicle-based action is required".

30. On November 25, 2009, Toyota issued an announcement of "details of the vehicle-based remedy to address the root cause of the potential risk for floor mat entrapment of accelerator pedals in certain Toyota and Lexus models" ("November 25 Announcement"). These vehicles are subject to what Toyota termed its "floor pedal entrapment recall." The initial list of vehicles affected by the November 25 Announcement was expanded by Toyota on January 26, 2010. The following list of vehicles affected by the November 25 Announcement, totaling approximately 5.3 million vehicles, reflects the January amendment:

a. 2009 to 2010 model year ("MY") Pontiac Vibe;
b. 2005 to 2010 MY Toyota Avalon;
c. 2007 to 2010 MY Toyota Camry;
d. 2009 to 2010 MY Toyota Corolla;
e. 2008 to 2010 MY Toyota Highlander;
f. 2009 to 2010 MY Toyota Matrix;
g. 2004 to 2009 MY Toyota Prius;
h. 2005 to 2010 MY Toyota Tacoma;
i. 2007 to 2010 MY Toyota Tundra;
j. 2009 to 2010 MY Toyota Venza;
k. 2007 to 2010 MY Lexus ES 350;
l. 2006 to 2010 MY Lexus IS 250; and

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m. 2006 to 2010 MY Lexus IS 350.

TOYOTA FINALLY ACKNOWLEDGES "VEHICLE-BASED" PROBLEM WITH ACCELERATOR PEDAL ASSEMBLIES IN SOME TOYOTA VEHICLES

31. The remedy Toyota described in the November 25 Announcement, purportedly to "address the root cause" behind accounts of sudden and unintended acceleration, was to "reconfigure" the shape of the accelerator pedal or floor surface underneath the accelerator pedal:

> The specific measures of the vehicle-based remedy are as follows:
>
> 1. The shape of the accelerator pedal will be reconfigured to address the risk of floor mat entrapment, even when an older-design all-weather floor mat or other inappropriate floor mat is improperly attached, or is placed on top of another floor mat. For the ES350, Camry, and Avalon models involved, the shape of the floor surface underneath will also be reconfigured to increase the space between the accelerator pedal and the floor.
>
> 2. Vehicles with any genuine Toyota or Lexus accessory all-weather floor mat will be provided with newly-designed replacement driver- and front passenger-side all-weather floor mats.

However, Toyota did not recall the affected vehicles at that time. Instead, it said,

> In the meantime, owners of the involved vehicles are asked to take out any removable driver's floor mat and not replace it with any other floor mat until they are notified of the vehicle-based remedy, as notified in the consumer safety advisory and the interim notice.
>
> * * *
>
> The safety of our owners and the public is our utmost concern and Toyota has and will continue to thoroughly investigate and take appropriate measures to address any defect trends that are identified.

Thus, Toyota misled current owners and lessees to believe that the vehicles' issues were adequately addressed by Toyota.

32. The New York Times reported, in its February 1, 2010 article that, on December 26, 2009, four people died near Dallas when a Toyota Avalon sped off a road and into a pond.

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The police found that the floor mats were removed and in the Avalon's trunk. The New York Times further reported that, on December 28, 2009, a New Jersey man managed, by shifting in and out of neutral, to drive a 2007 Avalon to a dealership after it began speeding out of control. After parking, the motor continued racing and the brakes and tires started smoking.

33. In January 21, 2010, Toyota finally began a recall for a "vehicle-based" defect; namely, defective accelerator pedal assemblies ("January 21 Recall"). Approximately 2.3 million vehicles are affected by the January 21 Recall, which involved the following models:

a. 2005 to 2010 MY Toyota Avalon;
b. certain 2009 to 2010 MY Toyota Corolla;
c. certain 2007 to 2010 MY Toyota Camry;
d. certain 2010 MY Toyota Highlander;
e. 2009 to 2010 MY Toyota Matrix;
f. certain 2009 to 2010 MY Toyota RAV4;
g. 2008 to 2010 MY Toyota Sequoia; and
h. 2007 to 2010 MY Toyota Tundra.

34. According to the New York Times, the vehicles affected by the January 21 Recall represented over 60% of Toyota's total monthly U.S. sales from 2004 to 2009, based on a 12-month moving average. The New York Times reported further that Toyota's total U.S. sales ranged from well over 100,000 to nearly 200,000 vehicles per month during that time.

35. In a letter to the NHTSA dated January 21, 2010, Santucci described the defect in the accelerator pedal assemblies resulting in sudden and unintended acceleration reported in some of its vehicles:

> In accordance with the requirements of the National Traffic and Motor Vehicle Safety Act of 1966 and 49 CFR Part 573, on behalf of Toyota Motor Corporation ["TMC"], we hereby submit the attached Defect Information Report Concerning a voluntary safety recall of certain Toyota Tundra, Sequoia, Avalon, Camry, Corolla, Matrix, RAV4, Highlander, and Pontiac Vibe vehicles. *Toyota has determined that a defect exists in the accelerator pedal assembly which may result in the accelerator pedal becoming harder to depress, slower to return, or, in the worst case, mechanically stuck in a partially depressed position.*

(emphasis added).

36. In its Defect Information Report referenced in the January 21, 2010 letter, Toyota describes what it purports is the underlying cause of defect:

> Description of Problem:
>
> Due to the manner in which the friction lever interacts with the sliding surface of the accelerator pedal inside the pedal sensor assembly, the sliding surface of the lever may become smooth during vehicle operation. In this condition, if condensation occurs on the surface, as may occur from heater operation (without A/C) when the pedal assembly is cold, the friction when the accelerator pedal is operated may increase, which may result in the accelerator pedal becoming harder to depress, slower to return, or, in the worst case, mechanically stuck in a partially depressed position. In addition, some of the affected vehicles' pedals were manufactured with friction levers made of a different material (PA46), which may be susceptible to humidity when parked for a long period in hot temperatures. In this condition, the friction when the accelerator pedal is operated may increase, which may result in the accelerator pedal movement becoming rough or slow to return. In light of the similarity with one of the symptoms described above that are associated with the PPS material, Toyota has decided to include these vehicles in the defect determination.

37. On January 28, 2010, issued a statement that Toyota had "identified the cause of the problem" and had been working closely with CTS, the manufacturer of the accelerator pedal assemblies found on the vehicles affected by the January 21 Recall, on a revised pedal design. According to a January 28, 2010 statement by Chris Nielsen, TMEMNA's Vice President of Purchasing, "CTS is a long-term and valued supplier to us."

38. According to Toyota, the January 21 Recall is separate and unrelated to the November 25 Announcement that involved approximately 5.3 million vehicles. However, Toyota also announced that approximately 1.3 vehicles are part of both the November 25 Announcement and the January 21 Recall. Reportedly, it is Toyota's position that this significant overlap is merely coincidence. A total of approximately 6.3 million vehicles are part of both the November 25 Announcement and January 21 Recall in the United States ("Recalled

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Vehicles"). On January 29, 2010, Toyota expanded the January 21 Recall to China and to eight Toyota models in Europe. Reportedly, over 9 million vehicles are affected worldwide.

THE TRUE CAUSE OF SUDDEN AND UNINTEDED ACCELERATION IN SOME TOYOTA VEHICLES REMAINS UNCLEAR

39. The public may still not know the true cause of sudden and unintended acceleration. According to the New York Times, on April 19, 2008, witnesses saw a 2005 Toyota Camry accelerate out of control, jumped a curb and fly through the air before crashing into a tree. The driver, Guadalupe Alberto, was killed instantly. The 2005 Camry is not among the millions of Recalled Vehicles and also did not have floor mats at the time of the accident. Reportedly, the crash is now being looked at as a possible example of problems with the electronic system that controls the throttle and engine speed in Toyotas.

40. Despite yet another accident, Toyota has been telling customers, since as early as January 22, 2010, that it is "confident that your vehicle is safe to drive, and no action is required at this time", for drivers not experiencing an accelerator pedal that is "hard to depress, slow to return or is unsmooth during operation". On February 1, 2010, Toyota described the reason it believes the accelerator pedals in recalled vehicles stick in a partially open position and announced that, "[a] precision-cut steel reinforcement bar will be installed into the assembly that will reduce the surface tension between the friction shoe and the adjoining surface". According to Toyota, "[w]ith this reinforcement in place, the excess friction that can cause the pedal to stick is eliminated."

41. Toyota's "solution" does not address the potential problem with electronic throttles, which mounting evidence suggests is the true cause of reports of sudden and unintended acceleration.

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42. Both Toyota and the NHTSA acknowledge that a standard braking system cannot always counter a wide-open throttle, as is the case in sudden acceleration. Toyota stated in the November 25 Announcement that it would install a failsafe in some affected vehicles, saying, "as a separate measure independent of the vehicle-based remedy, Toyota will install a brake override system onto the involved Camry, Avalon, and Lexus ES 350, IS 350 and IS 250 models as an extra measure of confidence. This system cuts engine power in case of simultaneous application of both the accelerator and brake pedals." The November 25 Announcement stated further that, "[t]he brake override system will be made standard equipment throughout the Toyota and Lexus product lines starting with January 2010 production of ES 350 and Camry and is scheduled to be incorporated into new production of most models by the end of 2010."

43. According to The New York Times, Santucci was deposed in December 2009 concerning a 2004 NHTSA investigation of certain Toyota vehicles. During that testimony, Santucci testified that the electronic throttle control system in Alberto's 2005 Camry was similar to the computer equipment in other Toyotas now under recall for sticky pedals and unsecured floor mats.

PAST NHTSA FINDINGS ARE NOT RELIABLE

44. Toyota stated on November 2, 2009, that it had been investigated six times in the past and that the agency found no vehicle-based cause for reports of sudden and unintended acceleration. However, Santucci reportedly testified Toyota and the NHTSA had discussions about limiting the type of acceleration incidents to be investigated. Santucci's testimony is that, "I recall them saying to us, Toyota, myself,that they were not interested in reports alleging uncontrolled acceleration that occurred for a long duration." The New York Times reported that the NHTSA, in fact, decided to look only at cases of unintended acceleration in which drivers

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had not applied their brakes to rule out potential braking concerns from the scope of the investigation. Santucci testified that, "I think it worked out well for both the agency and Toyota, meaning Toyota provided what they were looking for". The NHTSA ultimately found, "[a] defect trend has not been identified at this time, and further use of agency resources does not appear to be warranted."

45. The NHTSA investigations, and Toyota's handling of the problem, will be the subject of Congressional hearings. The House Energy and Commerce Committee has scheduled a February 25, 2010 hearing to focus on why several years elapsed after the NHTSA began to get complaints about runaway Toyotas before TMC recalled several of its models to fix a defect that could cause their accelerator pedals to stick. "Like many consumers, I am concerned by the seriousness and scope of Toyota's recent recall announcements," said Representative Henry Waxman, the California Democrat who chairs the Energy and Commerce Committee. In a January 28, 2010 letter to Yoshimi Inaba, President and COO of TMNA, Waxman asked Inaba to produce information and documents dating back to 2001, including information "relating to sudden unintended acceleration, acceleration pedals, or *electronic throttle control*" (emphasis added).

46. The NHTSA is considering civil penalties against Toyota for the automaker's handling of both recalls.

CLASS ACTION ALLEGATIONS

47. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3), on behalf of himself and the following Class and Sub-Class:

Nationwide Class:

All owners and lessees in the United States of the Recalled Vehicles (the "Nationwide Class").

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New York Sub-Class

All owners and lessees in New York of Recalled Vehicles that were sold or leased in the State of New York (the "Sub-Class").

48. Excluded from the Nationwide Class and the Sub-Class are Defendants, as well as Defendants',subsidiaries, employees, officers, directors, or other person, firm trust or corporation or other entity related to or affiliated with Toyota and any person who has experienced physical injury as a result of the defects at issue in this litigation. Plaintiff reserve the right to amend the definition of the Nationwide Class and the Sub-Class, if discovery and/or further investigation reveal that the Nationwide Class and/or Sub-Class should be expanded or otherwise modified.

49. Numerosity/Impracticability of Joinder: The members of the Nationwide Class and Sub-Class are so numerous that joinder of all members would be impracticable. The members of the Nationwide Class and the Sub-Class are readily identifiable from information and records in Defendants' possession, custody or control.

50. The number of class members is approximately 6.3 million. There are millions of Nationwide Class members who purchased or leased Toyota vehicles and at least thousands, if not hundreds of thousands, of members of the Sub-Class.

51. Commonality and Predominance: Common questions of law and fact predominate over any questions affecting only individual members of the Nationwide Class and the Sub-Class. These common legal and factual questions, which do not vary from one Nationwide Class or Sub-Class member to another, and which may be determined without reference to the individual circumstances of any Nationwide Class or Sub-Class member, include, but are not limited, to the following:

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a. Whether Defendants omitted and/or concealed material facts from Plaintiff and the members of the Classes regarding Recalled Vehicles;

b. Whether, by the misconduct set forth in this Complaint, Defendants have engaged in deceptive or unlawful business practices with respect to the sale or lease of the Recalled Vehicles;

c. Whether Defendants had a duty to disclose the defects in Recalled Vehicles to Plaintiff and the Classes;

d. Whether, by their conduct, Defendants violated Magnuson-Moss Act, 15 U.S.C. §§ 2301, *et seq.*;

e. Whether, by their conduct, Defendants violated NY GBL §§349 and 350;

f. Whether, by their conduct described herein, Defendants breached their implied warranties to Plaintiff and the Classes;

g. Whether, by its conduct described herein, Defendants breached its express warranties to Plaintiff and the Classes;

h. Whether, by their conduct described herein, Defendants breached their contracts with Plaintiff and the Sub-Class;

i. Whether, by their conduct described herein, Defendants breached their duty of good faith and fair dealing;

j. Whether the Recalled Vehicles are defective;

k. Whether, as a result of Defendants' misconduct, Plaintiff and the Classes are entitled to damages; and

l. Whether, as a result of Defendants' misconduct, Plaintiff and the Classes are entitled to equitable relief and/or other relief, and, if so, the nature of such relief.

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52. Typicality: Plaintiff's claims are typical of the claims of the Nationwide Class and the Sub-Class, because Plaintiff and all Class members were injured by the same wrongful practices in which Defendants engaged. Plaintiff's claims arise from the same practice and course of conduct that gives rise to the claims of the Nationwide Class and Sub-Class members, and are based on the same or similar legal theories.

53. Adequacy: Plaintiff will fully and adequately protect the interests of the members of the Nationwide Class and the Sub-Class, and has retained class counsel who are experienced and qualified in prosecuting class actions, including consumer class actions and other forms of complex litigation. Neither Plaintiff nor her counsel has interests that are contrary to or conflicting with those of the Nationwide Class or the Sub-Class. Defendants have no defenses unique to Plaintiff.

54. Superiority: A class action is superior to all other available methods for the fair and efficient adjudication of this controversy for, *inter alia*, the following reasons:

a. It is economically impractical for members of the Classes to prosecute individual actions;

b. The Classes are readily definable;

c. Prosecution as a class action will eliminate the possibility of repetitious litigation; and

d. A class action will enable claims to be handled in an orderly and expeditious manner. A class action will save time and expense and will ensure uniformity of decisions.

55. Plaintiff does not anticipate any difficulty in the management of this litigation.

56. Defendants have, or have access to, address information for the Class members,

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which may be used for the purpose of providing notice of the pendency of this action.

COUNT I

Asserted On Behalf Of The Nationwide Class Against Toyota and CTS
(Violations Of Magnuson-Moss Act (15 U.S.C. §§ 2301-2312) - Implied Warranty)

57. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

58. The Recalled Vehicles are "consumer products" as that term is defined by 15 U.S.C. § 2301(1).

59. Plaintiff and Nationwide Class members are "consumers" as that term is defined by 15 U.S.C. § 2301(3).

60. Toyota and CTS are "suppliers" as that term is defined by 15 U.S.C. § 2301(4).

61. Toyota and CTS are "warrantors" as that term is defined by 15 U.S.C. § 2301(5).

62. Toyota and CTS provided Plaintiff and Class members with "implied warranties" as that term is defined by 15 U.S.C. § 2301(7). When the Recalled Vehicles were sold or leased to Plaintiff and the Nationwide Class, implied warranties under state law attached, specifically the implied warranty of merchantability.

63. Toyota sold the Recalled Vehicles with defective accelerator pedal assemblies and floor mats (hereinafter collectively referred to as "accelerator pedal assemblies"), and CTS made the defective accelerator pedals as described hereinabove, which rendered the Recalled Vehicles unfit for their ordinary purpose. Toyota has acknowledged that such a defect exists and that the Recalled Vehicles are unfit for their ordinary purpose.

64. Any attempt by Toyota or CTS to disclaim the implied warranty of merchantability with respect to the Recalled Vehicles is void due to Toyota and CTS's

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knowledge or failure to know that the accelerator pedal assemblies were defective when sold or leased to Plaintiff and the Nationwide Class.

65. Toyota and CTS cannot disclaim the implied warranty of merchantability that attaches to the Recalled Vehicles, because Toyota provided Plaintiff and the Nationwide Class with written warranties as that term is defined by 15 U.S.C. § 2301(6).

66. Plaintiff has given Toyota a reasonable opportunity to cure its failures with respect to its warranties, and Toyota failed to do so.

67. Plaintiff and the Nationwide Class were damaged by Toyota and CTS' breach of their warranties.

68. As a result of Toyota and CTS' breach of implied warranties, Plaintiff and Nationwide Class members are entitled to revoke their acceptance of the Recalled Vehicles, obtain damages and equitable relief, and obtain attorneys' fees and costs pursuant to 15 U.S.C. § 2310.

COUNT II

Asserted On Behalf Of The Nationwide Class Against Toyota (Breach Of Express Warranty)

69. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

70. Toyota warranted that the Recalled Vehicles were free of defects in workmanship and materials. Providing defective accelerator pedal assemblies with the Recalled Vehicles, as explained herein, is a breach of this warranty.

71. As a direct and proximate cause of Toyota's breach of express warranties, Plaintiff and the Nationwide Class members have been damaged.

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72. Plaintiff has given Toyota a reasonable opportunity to cure its failure with respect to its warranty, and Toyota has failed to do so.

73. As a result of Toyota's breach of express warranty, Plaintiff and the Nationwide Class members have suffered damages.

COUNT III

Asserted On Behalf Of The Nationwide Class Against Toyota and CTS (Breach Of Implied Warranty Of Merchantability)

74. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

75. Toyota and CTS are "merchants" within the meaning of the Uniform Commercial Code § 2-104.

76. The Recalled Vehicles and defective accelerator pedal assemblies are "goods" within the meaning of Uniform Commercial Code § 2-105.

77. Toyota and CTS's implied warranty of merchantability accompanied the sale of the Recalled Vehicles and/or the defective accelerator pedal assemblies to Plaintiff and members of the Nationwide Class.

78. Toyota and CTS, by implication, warranted that the Recalled Vehicles and/or the accelerator pedal assemblies were fit for ordinary use.

79. The frequent failure of the accelerator pedal assemblies in the Recalled Vehicles made the Recalled Vehicles and accelerator pedal assemblies defective and, thus, unfit for the ordinary purposes for which the goods are used. The Recalled Vehicles are not fit for ordinary use because the accelerator pedal assemblies have a dangerous propensity to stick in the full-open position resulting in sudden and unintended acceleration.

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80. As set forth herein, any effort by Toyota and CTS to disclaim or otherwise limit its responsibility for the Recalled Vehicles was unconscionable under all of the circumstances. Toyota and CTS knew that the Recalled Vehicles were unfit for normal use.. Toyota and CTS' attempt to disclaim any warranty on the Recalled Vehicles is therefore unjust and cannot stand.

81. Through the conduct described herein, Toyota and CTS has breached their implied warranty of merchantability and are liable to Plaintiff and the Nationwide Class.

82. Plaintiff and the other members of the Nationwide Class have sustained damages as a result of Toyota and CTS' breaches.

83. Plaintiff has provided timely notice to Toyota regarding the problems she was experiencing with her 2010 Toyota Camry and, notwithstanding such notice, Toyota has failed and refused to offer Plaintiff a remedy.

COUNT IV

Asserted on Behalf of the Nationwide Class Against Toyota and CTS (Breach of Contract)

84. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

85. Plaintiff and Nationwide Class members entered into agreements to purchase or lease the Recalled Vehicles, and were in contractual privity with Toyota and CTS as a result of the express warranty described herein, as well as the specifications included with the purchase or lease of the Recalled Vehicles. Such privity likewise existed because the dealers from which Plaintiff and the Nationwide Class purchased or leased the Recalled Vehicles acted as Toyota's agents through franchise agreements, distribution agreements, and any other agreement governing the relationship between Toyota and any such dealer.

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86. Regardless of whether Plaintiff and the Classes were in contractual privity with Toyota or CTS, Toyota and CTS still may be held to have breached their contracts with Plaintiff and the Nationwide Class. As alleged herein, Toyota and CTS committed acts and omissions which were actuated by actual malice and accompanied by a wanton and willful disregard of persons, including Plaintiff and Nationwide Class members, who foreseeably might be harmed by those acts and omissions.

87. Toyota and CTS failed to disclose the true nature of the accelerator pedal assemblies, and the fact that the accelerator pedal assemblies would render the Recalled Vehicles unfit for use. Toyota and CTS knew or recklessly disregarded the fact that Plaintiff and the Nationwide Class were not knowledgeable with regard to the frequent failures, cost, and true nature of the accelerator pedal assemblies as alleged herein, and did not disclose that information to Plaintiff and the Nationwide Class.

88. Plaintiff and the Nationwide Class members performed all of their obligations under the contracts. Toyota breached its obligations under the contracts as alleged herein.

89. As a direct and proximate result of Toyota and CTS's breach of contract, Plaintiff and Nationwide Class members have been damaged.

COUNT V

Asserted On Behalf Of The Nationwide Class Against Toyota and CTS (Breach Of Implied Covenant Of Good Faith And Fair Dealing)

90. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

91. Plaintiff and Nationwide Class members entered into agreements to purchase or lease the Recalled Vehicles, or otherwise were in contractual privity with Toyota as a result of the express warranty described herein, as well as the specifications included with the purchase or

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lease of the Recalled Vehicles. Contractual privity likewise existed because the dealers from which Plaintiff and the Nationwide Class purchased or leased the Recalled Vehicles acted as Toyota's agent through franchise agreements, distribution agreements, and any other agreement governing the relationship between Toyota and any such dealer. Although CTS was not a party to these contracts, CTS had a duty to act in good faith due to the contractual relationship with Plaintiff and the Nationwide Class as alleged herein.

92. The contracts and warranties were subject to the implied covenant that Toyota would conduct business with Plaintiff and Nationwide Class members in good faith and would deal fairly with Plaintiff and Nationwide Class members. CTS' contracts and warranties were subject to the implied covenant that Toyota would conduct business with Plaintiff and Nationwide Class members in good faith and would deal fairly with Plaintiff and Nationwide Class members.

93. Regardless whether Plaintiff and the Nationwide Class were in contractual privity with Toyota and CTS, Toyota and CTS still had a duty of good faith and fair dealing. As alleged herein, Toyota and CTS committed acts and omissions which were actuated by malice and/or accompanied by a wanton and willful disregard of persons, including Plaintiff and the members of the Nationwide Class, who foreseeably might be harmed by those acts and omissions.

94. Toyota and CTS breached those implied covenants via the sale or lease to Plaintiff and members of the Nationwide Class of the Recalled Vehicles that were not fit for ordinary use and that were equipped with defective accelerator pedal assemblies that were inherently defective when Toyota and CTS knew, or should have known, that the accelerator pedal assemblies were defective. Toyota and CTS failed to disclose the true nature of the accelerator pedal assemblies, and the fact that the accelerator pedal assemblies would render the

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Recalled Vehicles unfit for use. Toyota and CTS knew or recklessly disregarded the fact that Plaintiff and the Nationwide Class were not knowledgeable with regard to the frequent failures, cost, and true nature of the accelerator pedal assemblies as alleged herein, and did not disclose that information to Plaintiff and the Nationwide Class. Defendants also breached those covenants by refusing to provide Plaintiff and the Nationwide Class with an adequate remedy.

95. Defendants behaved inequitably and acted in total disregard of the harm caused to Plaintiff and the Nationwide Class, and unjustly enriched themselves at the expense of Plaintiff and the Nationwide Class.

96. As a direct and proximate result of Toyota and CTS's breach of its implied covenants, Plaintiff and Nationwide Class members have been damaged.

COUNT VI

Asserted On Behalf Of The Sub-Class Against Toyota and CTS (Violation Of N.Y. G.B.L. §349)

97. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

98. Plaintiff and other members of the Sub-Class are "consumers" in accordance with GBL §349.

99. At all relevant times material hereto, Toyota and CTS conducted trade and commerce in New York and elsewhere within the meaning of GBL §349.

100. Toyota and CTS' acts materially misled Plaintiff and the Sub-Class in that Toyota and CTS misrepresented or failed to disclose the following material facts:

a. The Recalled Vehicles are not fit for normal use;

b. The accelerator pedal assemblies have a dangerous propensity to stick in the full-open position resulting in sudden and unintended acceleration;

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c. The Recalled Vehicles are not equipped with a failsafe to protect against sudden and unintended acceleration; and

d. The consequences of sudden and unintended acceleration are serious and potentially deadly.

101. Toyota and CTS consciously omitted to disclose material facts from Plaintiff and other members of the Sub-Class with respect to the accelerator pedal assemblies on the Recalled Vehicles.

102. Toyota intended that Plaintiff and the Sub-Class rely on Toyota and CTS' acts of concealment and omission, so that Plaintiff and other Sub-Class members would purchase and/or lease the Recalled Vehicles equipped with the defective accelerator pedal assemblies.

103. Had Toyota and CTS disclosed all material information regarding the defective accelerator pedal assemblies in the Recalled Vehicles to Plaintiff and the Sub-Class, they would not have purchased and/or leased the Recalled Vehicles, or would have paid less for the Recalled Vehicles.

104. The foregoing acts, omissions and practices proximately caused Plaintiff and other members of the Classes to suffer actual injury and damage including, *inter alia,* the loss of use of the Recalled Vehicles and diminution of value of those vehicles.

COUNT VII

Asserted On Behalf of the Sub-Class Against Toyota
(Violations of N.Y. G.B.L. §350)

105. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

106. Toyota, in marketing the Recalled Vehicles, failed to disclose the following facts to Plaintiff and the Sub-Class:

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a. The Recalled Vehicles are not fit for normal use;

b. The accelerator pedal assemblies have a dangerous propensity to stick in the full-open position resulting in sudden and unintended acceleration;

c. The Recalled Vehicles are not equipped with a failsafe to protect against sudden and unintended acceleration; and

d. The consequences of sudden and unintended acceleration are serious and potentially deadly.

107. Plaintiff and the Sub-Class were misled and/or deceived by the omission of these material facts. Toyota, due to its superior knowledge of the facts herein, was required to disclose these facts to Plaintiff and the Sub-Class.

108. The foregoing acts, omissions and practices proximately caused Plaintiff and other members of the Sub-Class to suffer actual injury and damage.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff on behalf of herself and on behalf of the Classes prays:

A. For an order certifying this action as a class action, appointing Plaintiff as representative of the Classes and appointing her attorneys as counsel for the Classes;

B. For Defendants to pay lease and car loan payments until Toyota repairs or replaces the defective accelerator pedal assemblies in the Recalled Vehicles;

C. For all compensatory and other appropriate damages on all applicable claims in an amount to be proven at trial, including the diminution in value of the Recalled Vehicles as a result of the acts complained of herein;

D. For an order permanently enjoining Defendants from engaging in the unlawful practices alleged herein;

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E. For an award of attorneys' fees, costs and expenses; and

F. For such other and further relief that the Court deems appropriate and just under the circumstances.

JURY TRIAL DEMAND

Plaintiff demands a trial by jury.

Dated: February 8, 2010

ABBEY SPANIER RODD
& ABRAMS, LLP

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JUDGE CASTEL

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Barbara Iglesias, Individually and On Behalf Of All Others Similarly Situated, Plaintiff, vs. TOYOTA MOTOR CORPORATION, TOYOTA MOTOR SALES, U.S.A., INC., TOYOTA MOTOR NORTH AMERICA, INC., TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC., 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. Defendants.	Civil Action No. **CLASS ACTION COMPLAINT AND JURY TRIAL DEMAND**

FILED
2012 FEB -8 PM 3:59
U.S. DISTRICT COURT

Plaintiff Barbara Iglesias ("Plaintiff"), by and through her undersigned attorneys, alleges as follows:

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d) because this action involves citizens of different states. The amount in controversy exceeds $5,000,000, exclusive of interest and costs.

2. Venue is proper in this District pursuant to 28 U.S.C. §1391, because Defendants do business in this District, and a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this District.

THE PARTIES

3. Plaintiff is a resident of the Bronx, New York. On December 1, 2009, Plaintiff bought a 2010 model year Toyota Camry in the Bronx, New York.

4. Defendant Toyota Motor Corporation ("TMC") is and was, at all relevant times, a Japanese limited liability, joint-stock company which operates through numerous subsidiaries and affiliated companies. Its principal executive office is located at 1 Toyota-cho, Toyota City, Aichi Prefecture 471-8571, Japan. Its automotive operations include the design, manufacture, assembly and sale of passenger cars, minivans and commercial vehicles. TMC's financial services business consists primarily of providing financing to dealers and their customers for the purchase or lease of Toyota vehicles. Its financial services also provide retail leasing through the purchase of lease contracts originated by Toyota dealers. North America is one of Toyota's primary automobile markets. In the U.S., Toyota vehicles are marketed through distributors and through these distributors, Toyota maintains networks of dealers.

5. Defendant Toyota Motor Sales, U.S.A., Inc. ("TMS") is and was, at all relevant times, a California corporation. It is a wholly owned subsidiary of TMC and responsible for the

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manufacture, distribution and sales of Toyota automobiles and trucks in the U.S. It is located at 19001 South Western Avenue, Torrance, CA.

6. Defendant Toyota Motor North America, Inc. ("TMNA") is the holding company for, and oversees, Toyota's manufacturing, financing, sales research and development, and marketing operations in the U.S., Canada and Mexico and is based in New York at 9 West 57th Street, Suite 4900, New York, New York.

7. Defendant Toyota Motor Engineering & Manufacturing North America ("TMEMNA") is the parent company for Toyota's manufacturing operations in the U.S. and Canada. It operates as a subsidiary of TMC and provides centralized support in the areas of purchasing, production, production control, engineering, quality control, and administration. It is headquartered at 25 Atlantic Avenue, Erlanger, Kentucky.

8. Defendant Lexus ("Lexus") is the luxury vehicle division of TMC. Lexus operates its own design, engineering, and manufacturing centers, solely responsible for the division's vehicles. Lexus' headquarters are located in Toyota City, Aichi Prefecture, Japan. Lexus' design facilities are located in California, among other places. The Lexus ES is assembled at the Miyata plant Miyawaka City, Fukuoka Prefecture, Japan, which is owned by Toyota Motor Kyusha, Inc., a wholly owned subsidiary of TMC. The Lexus IS is assembled at the Tahara plant in Tahara City, Aichi Prefecture, which is owned by TMC. Lexus ES and IS automobiles are sold throughout the United States.

9. Defendant Toyota Motor Manufacturing, Indiana, Inc. ("TMMI") manufactured the 2007 to 2008 model year ("MY") Toyota Tundra, 2008 to 2010 MY Toyota Sequoia, and the 2010 MY Toyota Highlander. TMMI is a wholly-owned subsidiary of TMC. It is located at 4000 South Tulip Tree Drive, Princeton, IN 47670-4000.

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10. Defendant Toyota Motor Manufacturing, Texas, Inc. ("TMMTX") manufactured the 2007 to 2010 MY Toyota Tundra. TMMTX is a wholly-owned subsidiary of TMC. It is located at 1 Lone Star Pass San Antonio, Texas, 78264-3413.

11. Defendant Toyota Motor Manufacturing, Kentucky, Inc. ("TMMK") manufactured the 2005 to 2010 MY Toyota Avalon and the 2007 to 2010 MY Toyota Camry. TMMK is a wholly-owned subsidiary of TMC. It is located at 1001 Cherry Blossom Way, Georgetown, KY 40324.

12. Defendant New United Motor Manufacturing, Inc. ("NUMMI") manufactured the 2009 to 2010 MY Toyota Corolla and the 2009 to 2010 MY Pontiac Vibe. NUMMI is located at 45500 Fremont Boulevard Fremont, CA 94538-6368.

13. Defendant Subaru of Indiana Automotive, Inc. ("SIA") manufactured the 2007 to 2010 MY Toyota Camry. It is located at 5500 State Road 38 East, Lafayette, Indiana 47905.

14. At all relevant times, TMC has owned and controlled TMS, TMNA, TMEMNA, Lexus, TMMI, TMMTX, TMMK, NUMMI and SIA and thereby conducted business in the U.S. These defendants and their subsidiaries and agents, are collectively referred to as "Toyota".

15. Defendant CTS Corporation ("CTS") is an Indiana corporation located at 905 West Boulevard, Elkhart, Indiana. CTS designs and manufactures electronic components and at all relevant times made the accelerator assemblies for Toyota vehicles that are subject of the claims herein (except for Lexus vehicles) beginning with model year 2005.

16. TMC, TMS, TMNA, TMEMNA, Lexus, TMMI, TMMTX, TMMK, NUMMI, SIA, and CTS may sometimes be collectively referred to as "Defendants".

17. The true names and capacities of the defendants sued herein as Doe Defendants 1 through 10, inclusive, are currently unknown to plaintiff, who therefore sues such defendants by

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fictitious names. Each of the defendants designated herein as a Doe is legally responsible for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend this Complaint to reflect the true names and capacities of the Doe Defendants when such identities become known.

BACKGROUND

18. "Toyota received field technical information regarding reports of accelerator pedals demonstrating symptoms such as rough operation or being slow to return to the idle position" at least as early as March 2007, according to a January 21, 2010 letter from Chris Santucci, TMNA Manager, Technical & Regulatory Affairs, to the National Highway Traffic Safety Administration ("NHTSA"). Santucci formerly worked for the NHTSA, which sets safety standards for motor vehicles and associated equipment, investigates possible safety defects, assures that products meet safety standards and are not defective (through recalls if necessary), and tracks safety-related recalls. Toyota sought to "minimize" the problem, according to The New York Times. Toyota quietly substituted one material used in the affected accelerator pedal assemblies for another as a fix and, in June 2008, reported that the slow return to the idle position of accelerator pedals in some of its vehicles was merely "a drivability issue unrelated to safety".

19. Toyota continued to receive complaints. In December 2008, Toyota received more "field technical information", this time from the European market, which indicated that accelerator pedals sticking on vehicles there. In March 2009, Toyota began another investigation that, in August 2009, also resulted in a quiet fix for some of its vehicles. However, despite the fact that accelerator pedal assemblies on some Toyota vehicles produced in the United States are of a similar design and composed of the same materials that were subject to the December 2008 reports from Europe, the August 2009 changes were limited to vehicles produced in Europe.

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20. The March 2007 and December 2008 reports indicate that Toyota knew at least a year prior to the January 21 Recall, as defined below, that some Toyota vehicles had defective accelerator pedal assemblies. In fact, Santucci later identified those very reports and subsequent investigations as the first "principal events" in the chronology leading to the January 21 Recall.

21. Toyota may have known about the problem even earlier. The Los Angeles Times reported, in a November 8, 2009 article, that "[m]ore than 1,000 Toyota and Lexus owners have reported since 2001 that their vehicles suddenly accelerated on their own" and that these crashes "resulted in at least 19 deaths and scores of injuries over the last decade"—far more than any other automaker has experienced. The Los Angeles Times, and other news reporting agencies, report further that independent safety experts have identified nearly 2,000 sudden-acceleration cases for Toyota vehicles built since 2001 and that experts say the actual numbers may be far higher.

22. According to the Los Angeles Times, Toyota owner complaints helped trigger at least eight investigations into "sudden acceleration" in Toyota and Lexus vehicles by the NHTSA since 2001, but that those investigations "systematically excluded or dismissed the majority of complaints", including cases in which drivers said they were unable to stop runaway cars using their brakes; incidents of unintended acceleration lasting more than a few seconds; and reports in which owners did not identify the possible causes of the problem. According to the Los Angeles Times, when Toyota was asked to submit its own complaint data to the NHTSA, it eliminated reports claiming that sudden acceleration occurred for more than a few seconds or when drivers said they were unable to control a runaway engine by applying the brakes, which contributed to an appearance that the problem was much smaller than the total number of complaints suggested.

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TOYOTA ATTRIBUTES REPORTS OF SUDDEN AND UNINTEDED ACCELEREATION TO "FLOOR PEDAL ENTRAPMENT" AND ATTEMPTS TO MIMIMIZE SERIOUSNESS OF THREAT TO SAFETY

23. In September 2007, Toyota recalled 55,000 accessory all-weather floor mats sold for use in some 2007 and 2008 model year Lexus ES 350 and Toyota Camry vehicles because, as reported by the NHTSA, if the mat were to "interfere with the accelerator pedal", it would "increase the possibility of a crash." However, Toyota was in the midst of investigating the March 2007 reports concerning sticking accelerator pedal assemblies at that time and following the September 2007 recall both Toyota and the NHTSA continued to receive complaints of unintended acceleration in the models affected recall, as well as in others vehicles not affected by the recall.

24. On August 28, 2009, "[f]our people were killed outside San Diego when the Lexus ES 350 sedan they were traveling in accelerated to 120 miles per hour and crashed, despite efforts by the driver to apply the brakes," according to The New York Times. The New York Times reported further that, "[t]he 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.

25. Toyota stated in a September 14, 2009 press release that, "[w]e believe our vehicles to be among the safest on the road today." Toyota stated further that preliminary investigations, "[d]river's floor mat interference with the accelerator pedal is possible in *any vehicle make* with *any combination floor mats* when the floor mat is not properly secured or if it is not the factory designed floor mat for the vehicle" (emphasis added).

26. Toyota issued a consumer safety advisory on September 29, 2009, instructing owners of specific Toyota and Lexus model vehicles to remove their driver's floor mat:

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> Recent events have prompted Toyota to take a closer look at the potential for an accelerator pedal to get stuck in the full open position due to an unsecured or incompatible driver's floor mat. A stuck open accelerator pedal may result in very high vehicle speeds and make it difficult to stop the vehicle, which could cause a crash, serious injury or death.
>
> * * *
>
> Until Toyota develops a remedy, it is asking owners of specific Toyota and Lexus models to take out any removable driver's floor mat and NOT replace it with any other floor mat. The following models are affected:
>
> - 2007 – 2010 Camry
> - 2005 – 2010 Avalon
> - 2004 – 2009 Prius
> - 2005 – 2010 Tacoma
> - 2007 – 2010 Tundra
> - 2007 – 2010 ES350
> - 2006 – 2010 IS250 and IS350
>
> Should the vehicle continue to accelerate rapidly after releasing the accelerator pedal, this could be an indication of floor mat interference.

27. In connection with the safety campaign that followed, Santucci, then-Assistant Manager, Technical & Regulatory Affairs of TMNA, wrote to the NHTSA that, "[a]lthough Toyota is willing to identify this campaign as a safety recall in the owner communication about the campaign, Toyota has not determined that the vehicles identified [in the safety advisory] contain a 'safety-related defect'".

28. On November 2, 2009, Toyota attempted to further minimize the seriousness of this defect in certain of its vehicles by stating that "no defect exists in vehicles in which the driver's floor mat is compatible with the vehicle and properly secured" and that the company's finding was consistent with "a recent decision by the NHTSA". Toyota stated that, "[t]his is the sixth time in the past six years that NHTSA has undertaken such an exhaustive review of the allegations of unintended acceleration on Toyota and Lexus vehicles and the sixth time the agency has found no *vehicle based* cause for the unwanted acceleration allegations" (emphasis added).

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29. These statements were untrue. On November 4, 2009, the NHTSA issued a press release "correcting inaccurate and misleading information put out by Toyota". NHTSA spokeswoman Karen Aldana said that the problem with the design of Toyota and Lexus accelerators was, in fact, "very dangerous" and that removing the floor mats was "simply an interim measure" that would "*not correct the underlying defect in the vehicles*" (emphasis added). Aldana stated further that the "matter [was] not closed" and would remain open until Toyota "effectively addressed the defect by providing a suitable *vehicle based* solution" (emphasis added). Toyota responded to the public rebuke in a November 6, 2009 press release by acknowledging that removal of the driver's floor mat is merely "an interim measure and that further vehicle-based action is required".

30. On November 25, 2009, Toyota issued an announcement of "details of the vehicle-based remedy to address the root cause of the potential risk for floor mat entrapment of accelerator pedals in certain Toyota and Lexus models" ("November 25 Announcement"). These vehicles are subject to what Toyota termed its "floor pedal entrapment recall." The initial list of vehicles affected by the November 25 Announcement was expanded by Toyota on January 26, 2010. The following list of vehicles affected by the November 25 Announcement, totaling approximately 5.3 million vehicles, reflects the January amendment:

a. 2009 to 2010 model year ("MY") Pontiac Vibe;
b. 2005 to 2010 MY Toyota Avalon;
c. 2007 to 2010 MY Toyota Camry;
d. 2009 to 2010 MY Toyota Corolla;
e. 2008 to 2010 MY Toyota Highlander;
f. 2009 to 2010 MY Toyota Matrix;
g. 2004 to 2009 MY Toyota Prius;
h. 2005 to 2010 MY Toyota Tacoma;
i. 2007 to 2010 MY Toyota Tundra;
j. 2009 to 2010 MY Toyota Venza;
k. 2007 to 2010 MY Lexus ES 350;
l. 2006 to 2010 MY Lexus IS 250; and

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m. 2006 to 2010 MY Lexus IS 350.

TOYOTA FINALLY ACKNOWLEDGES "VEHICLE-BASED" PROBLEM WITH ACCELERATOR PEDAL ASSEMBLIES IN SOME TOYOTA VEHICLES

31. The remedy Toyota described in the November 25 Announcement, purportedly to "address the root cause" behind accounts of sudden and unintended acceleration, was to "reconfigure" the shape of the accelerator pedal or floor surface underneath the accelerator pedal:

> The specific measures of the vehicle-based remedy are as follows:
>
> 1. The shape of the accelerator pedal will be reconfigured to address the risk of floor mat entrapment, even when an older-design all-weather floor mat or other inappropriate floor mat is improperly attached, or is placed on top of another floor mat. For the ES350, Camry, and Avalon models involved, the shape of the floor surface underneath will also be reconfigured to increase the space between the accelerator pedal and the floor.
>
> 2. Vehicles with any genuine Toyota or Lexus accessory all-weather floor mat will be provided with newly-designed replacement driver- and front passenger-side all-weather floor mats.

However, Toyota did not recall the affected vehicles at that time. Instead, it said,

> In the meantime, owners of the involved vehicles are asked to take out any removable driver's floor mat and not replace it with any other floor mat until they are notified of the vehicle-based remedy, as notified in the consumer safety advisory and the interim notice.
>
> * * *
>
> The safety of our owners and the public is our utmost concern and Toyota has and will continue to thoroughly investigate and take appropriate measures to address any defect trends that are identified.

Thus, Toyota misled current owners and lessees to believe that the vehicles' issues were adequately addressed by Toyota.

32. The New York Times reported, in its February 1, 2010 article that, on December 26, 2009, four people died near Dallas when a Toyota Avalon sped off a road and into a pond.

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The police found that the floor mats were removed and in the Avalon's trunk. The New York Times further reported that, on December 28, 2009, a New Jersey man managed, by shifting in and out of neutral, to drive a 2007 Avalon to a dealership after it began speeding out of control. After parking, the motor continued racing and the brakes and tires started smoking.

33. In January 21, 2010, Toyota finally began a recall for a "vehicle-based" defect; namely, defective accelerator pedal assemblies ("January 21 Recall"). Approximately 2.3 million vehicles are affected by the January 21 Recall, which involved the following models:

a. 2005 to 2010 MY Toyota Avalon;
b. certain 2009 to 2010 MY Toyota Corolla;
c. certain 2007 to 2010 MY Toyota Camry;
d. certain 2010 MY Toyota Highlander;
e. 2009 to 2010 MY Toyota Matrix;
f. certain 2009 to 2010 MY Toyota RAV4;
g. 2008 to 2010 MY Toyota Sequoia; and
h. 2007 to 2010 MY Toyota Tundra.

34. According to the New York Times, the vehicles affected by the January 21 Recall represented over 60% of Toyota's total monthly U.S. sales from 2004 to 2009, based on a 12-month moving average. The New York Times reported further that Toyota's total U.S. sales ranged from well over 100,000 to nearly 200,000 vehicles per month during that time.

35. In a letter to the NHTSA dated January 21, 2010, Santucci described the defect in the accelerator pedal assemblies resulting in sudden and unintended acceleration reported in some of its vehicles:

> In accordance with the requirements of the National Traffic and Motor Vehicle Safety Act of 1966 and 49 CFR Part 573, on behalf of Toyota Motor Corporation ["TMC"], we hereby submit the attached Defect Information Report Concerning a voluntary safety recall of certain Toyota Tundra, Sequoia, Avalon, Camry, Corolla, Matrix, RAV4, Highlander, and Pontiac Vibe vehicles. *Toyota has determined that a defect exists in the accelerator pedal assembly which may result in the accelerator pedal becoming harder to depress, slower to return, or, in the worst case, mechanically stuck in a partially depressed position.*

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(emphasis added).

36. In its Defect Information Report referenced in the January 21, 2010 letter, Toyota describes what it purports is the underlying cause of defect:

> Description of Problem:
>
> Due to the manner in which the friction lever interacts with the sliding surface of the accelerator pedal inside the pedal sensor assembly, the sliding surface of the lever may become smooth during vehicle operation. In this condition, if condensation occurs on the surface, as may occur from heater operation (without A/C) when the pedal assembly is cold, the friction when the accelerator pedal is operated may increase, which may result in the accelerator pedal becoming harder to depress, slower to return, or, in the worst case, mechanically stuck in a partially depressed position. In addition, some of the affected vehicles' pedals were manufactured with friction levers made of a different material (PA46), which may be susceptible to humidity when parked for a long period in hot temperatures. In this condition, the friction when the accelerator pedal is operated may increase, which may result in the accelerator pedal movement becoming rough or slow to return. In light of the similarity with one of the symptoms described above that are associated with the PPS material, Toyota has decided to include these vehicles in the defect determination.

37. On January 28, 2010, issued a statement that Toyota had "identified the cause of the problem" and had been working closely with CTS, the manufacturer of the accelerator pedal assemblies found on the vehicles affected by the January 21 Recall, on a revised pedal design. According to a January 28, 2010 statement by Chris Nielsen, TMEMNA's Vice President of Purchasing, "CTS is a long-term and valued supplier to us."

38. According to Toyota, the January 21 Recall is separate and unrelated to the November 25 Announcement that involved approximately 5.3 million vehicles. However, Toyota also announced that approximately 1.3 vehicles are part of both the November 25 Announcement and the January 21 Recall. Reportedly, it is Toyota's position that this significant overlap is merely coincidence. A total of approximately 6.3 million vehicles are part of both the November 25 Announcement and January 21 Recall in the United States ("Recalled

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Vehicles"). On January 29, 2010, Toyota expanded the January 21 Recall to China and to eight Toyota models in Europe. Reportedly, over 9 million vehicles are affected worldwide.

THE TRUE CAUSE OF SUDDEN AND UNINTEDED ACCELERATION IN SOME TOYOTA VEHICLES REMAINS UNCLEAR

39. The public may still not know the true cause of sudden and unintended acceleration. According to the New York Times, on April 19, 2008, witnesses saw a 2005 Toyota Camry accelerate out of control, jumped a curb and fly through the air before crashing into a tree. The driver, Guadalupe Alberto, was killed instantly. The 2005 Camry is not among the millions of Recalled Vehicles and also did not have floor mats at the time of the accident. Reportedly, the crash is now being looked at as a possible example of problems with the electronic system that controls the throttle and engine speed in Toyotas.

40. Despite yet another accident, Toyota has been telling customers, since as early as January 22, 2010, that it is "confident that your vehicle is safe to drive, and no action is required at this time", for drivers not experiencing an accelerator pedal that is "hard to depress, slow to return or is unsmooth during operation". On February 1, 2010, Toyota described the reason it believes the accelerator pedals in recalled vehicles stick in a partially open position and announced that, "[a] precision-cut steel reinforcement bar will be installed into the assembly that will reduce the surface tension between the friction shoe and the adjoining surface". According to Toyota, "[w]ith this reinforcement in place, the excess friction that can cause the pedal to stick is eliminated."

41. Toyota's "solution" does not address the potential problem with electronic throttles, which mounting evidence suggests is the true cause of reports of sudden and unintended acceleration.

TOY-RQ-05E-00010256

42. Both Toyota and the NHTSA acknowledge that a standard braking system cannot always counter a wide-open throttle, as is the case in sudden acceleration. Toyota stated in the November 25 Announcement that it would install a failsafe in some affected vehicles, saying, "as a separate measure independent of the vehicle-based remedy, Toyota will install a brake override system onto the involved Camry, Avalon, and Lexus ES 350, IS 350 and IS 250 models as an extra measure of confidence. This system cuts engine power in case of simultaneous application of both the accelerator and brake pedals." The November 25 Announcement stated further that, "[t]he brake override system will be made standard equipment throughout the Toyota and Lexus product lines starting with January 2010 production of ES 350 and Camry and is scheduled to be incorporated into new production of most models by the end of 2010."

43. According to The New York Times, Santucci was deposed in December 2009 concerning a 2004 NHTSA investigation of certain Toyota vehicles. During that testimony, Santucci testified that the electronic throttle control system in Alberto's 2005 Camry was similar to the computer equipment in other Toyotas now under recall for sticky pedals and unsecured floor mats.

PAST NHTSA FINDINGS ARE NOT RELIABLE

44. Toyota stated on November 2, 2009, that it had been investigated six times in the past and that the agency found no vehicle-based cause for reports of sudden and unintended acceleration. However, Santucci reportedly testified Toyota and the NHTSA had discussions about limiting the type of acceleration incidents to be investigated. Santucci's testimony is that, "I recall them saying to us, Toyota, myself,that they were not interested in reports alleging uncontrolled acceleration that occurred for a long duration." The New York Times reported that the NHTSA, in fact, decided to look only at cases of unintended acceleration in which drivers

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had not applied their brakes to rule out potential braking concerns from the scope of the investigation. Santucci testified that, "I think it worked out well for both the agency and Toyota, meaning Toyota provided what they were looking for". The NHTSA ultimately found, "[a] defect trend has not been identified at this time, and further use of agency resources does not appear to be warranted."

45. The NHTSA investigations, and Toyota's handling of the problem, will be the subject of Congressional hearings. The House Energy and Commerce Committee has scheduled a February 25, 2010 hearing to focus on why several years elapsed after the NHTSA began to get complaints about runaway Toyotas before TMC recalled several of its models to fix a defect that could cause their accelerator pedals to stick. "Like many consumers, I am concerned by the seriousness and scope of Toyota's recent recall announcements," said Representative Henry Waxman, the California Democrat who chairs the Energy and Commerce Committee. In a January 28, 2010 letter to Yoshimi Inaba, President and COO of TMNA, Waxman asked Inaba to produce information and documents dating back to 2001, including information "relating to sudden unintended acceleration, acceleration pedals, or *electronic throttle control*" (emphasis added).

46. The NHTSA is considering civil penalties against Toyota for the automaker's handling of both recalls.

CLASS ACTION ALLEGATIONS

47. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3), on behalf of himself and the following Class and Sub-Class:

Nationwide Class:

All owners and lessees in the United States of the Recalled Vehicles (the "Nationwide Class").

TOY-RQ-05E-00010258

New York Sub-Class

All owners and lessees in New York of Recalled Vehicles that were sold or leased in the State of New York (the "Sub-Class").

48. Excluded from the Nationwide Class and the Sub-Class are Defendants, as well as Defendants',subsidiaries, employees, officers, directors, or other person, firm trust or corporation or other entity related to or affiliated with Toyota and any person who has experienced physical injury as a result of the defects at issue in this litigation. Plaintiff reserve the right to amend the definition of the Nationwide Class and the Sub-Class, if discovery and/or further investigation reveal that the Nationwide Class and/or Sub-Class should be expanded or otherwise modified.

49. Numerosity/Impracticability of Joinder: The members of the Nationwide Class and Sub-Class are so numerous that joinder of all members would be impracticable. The members of the Nationwide Class and the Sub-Class are readily identifiable from information and records in Defendants' possession, custody or control.

50. The number of class members is approximately 6.3 million. There are millions of Nationwide Class members who purchased or leased Toyota vehicles and at least thousands, if not hundreds of thousands, of members of the Sub-Class.

51. Commonality and Predominance: Common questions of law and fact predominate over any questions affecting only individual members of the Nationwide Class and the Sub-Class. These common legal and factual questions, which do not vary from one Nationwide Class or Sub-Class member to another, and which may be determined without reference to the individual circumstances of any Nationwide Class or Sub-Class member, include, but are not limited, to the following:

TOY-RQ-05E-00010259

a. Whether Defendants omitted and/or concealed material facts from Plaintiff and the members of the Classes regarding Recalled Vehicles;

b. Whether, by the misconduct set forth in this Complaint, Defendants have engaged in deceptive or unlawful business practices with respect to the sale or lease of the Recalled Vehicles;

c. Whether Defendants had a duty to disclose the defects in Recalled Vehicles to Plaintiff and the Classes;

d. Whether, by their conduct, Defendants violated Magnuson-Moss Act, 15 U.S.C. §§ 2301, *et seq.*;

e. Whether, by their conduct, Defendants violated NY GBL §§349 and 350;

f. Whether, by their conduct described herein, Defendants breached their implied warranties to Plaintiff and the Classes;

g. Whether, by its conduct described herein, Defendants breached its express warranties to Plaintiff and the Classes;

h. Whether, by their conduct described herein, Defendants breached their contracts with Plaintiff and the Sub-Class;

i. Whether, by their conduct described herein, Defendants breached their duty of good faith and fair dealing;

j. Whether the Recalled Vehicles are defective;

k. Whether, as a result of Defendants' misconduct, Plaintiff and the Classes are entitled to damages; and

l. Whether, as a result of Defendants' misconduct, Plaintiff and the Classes are entitled to equitable relief and/or other relief, and, if so, the nature of such relief.

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52. Typicality: Plaintiff's claims are typical of the claims of the Nationwide Class and the Sub-Class, because Plaintiff and all Class members were injured by the same wrongful practices in which Defendants engaged. Plaintiff's claims arise from the same practice and course of conduct that gives rise to the claims of the Nationwide Class and Sub-Class members, and are based on the same or similar legal theories.

53. Adequacy: Plaintiff will fully and adequately protect the interests of the members of the Nationwide Class and the Sub-Class, and has retained class counsel who are experienced and qualified in prosecuting class actions, including consumer class actions and other forms of complex litigation. Neither Plaintiff nor her counsel has interests that are contrary to or conflicting with those of the Nationwide Class or the Sub-Class. Defendants have no defenses unique to Plaintiff.

54. Superiority: A class action is superior to all other available methods for the fair and efficient adjudication of this controversy for, *inter alia*, the following reasons:

a. It is economically impractical for members of the Classes to prosecute individual actions;

b. The Classes are readily definable;

c. Prosecution as a class action will eliminate the possibility of repetitious litigation; and

d. A class action will enable claims to be handled in an orderly and expeditious manner. A class action will save time and expense and will ensure uniformity of decisions.

55. Plaintiff does not anticipate any difficulty in the management of this litigation.

56. Defendants have, or have access to, address information for the Class members,

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which may be used for the purpose of providing notice of the pendency of this action.

COUNT I

Asserted On Behalf Of The Nationwide Class Against Toyota and CTS (Violations Of Magnuson-Moss Act (15 U.S.C. §§ 2301-2312) - Implied Warranty)

57. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

58. The Recalled Vehicles are "consumer products" as that term is defined by 15 U.S.C. § 2301(1).

59. Plaintiff and Nationwide Class members are "consumers" as that term is defined by 15 U.S.C. § 2301(3).

60. Toyota and CTS are "suppliers" as that term is defined by 15 U.S.C. § 2301(4).

61. Toyota and CTS are "warrantors" as that term is defined by 15 U.S.C. § 2301(5).

62. Toyota and CTS provided Plaintiff and Class members with "implied warranties" as that term is defined by 15 U.S.C. § 2301(7). When the Recalled Vehicles were sold or leased to Plaintiff and the Nationwide Class, implied warranties under state law attached, specifically the implied warranty of merchantability.

63. Toyota sold the Recalled Vehicles with defective accelerator pedal assemblies and floor mats (hereinafter collectively referred to as "accelerator pedal assemblies"), and CTS made the defective accelerator pedals as described hereinabove, which rendered the Recalled Vehicles unfit for their ordinary purpose. Toyota has acknowledged that such a defect exists and that the Recalled Vehicles are unfit for their ordinary purpose.

64. Any attempt by Toyota or CTS to disclaim the implied warranty of merchantability with respect to the Recalled Vehicles is void due to Toyota and CTS's

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knowledge or failure to know that the accelerator pedal assemblies were defective when sold or leased to Plaintiff and the Nationwide Class.

65. Toyota and CTS cannot disclaim the implied warranty of merchantability that attaches to the Recalled Vehicles, because Toyota provided Plaintiff and the Nationwide Class with written warranties as that term is defined by 15 U.S.C. § 2301(6).

66. Plaintiff has given Toyota a reasonable opportunity to cure its failures with respect to its warranties, and Toyota failed to do so.

67. Plaintiff and the Nationwide Class were damaged by Toyota and CTS' breach of their warranties.

68. As a result of Toyota and CTS' breach of implied warranties, Plaintiff and Nationwide Class members are entitled to revoke their acceptance of the Recalled Vehicles, obtain damages and equitable relief, and obtain attorneys' fees and costs pursuant to 15 U.S.C. § 2310.

COUNT II

Asserted On Behalf Of The Nationwide Class Against Toyota (Breach Of Express Warranty)

69. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

70. Toyota warranted that the Recalled Vehicles were free of defects in workmanship and materials. Providing defective accelerator pedal assemblies with the Recalled Vehicles, as explained herein, is a breach of this warranty.

71. As a direct and proximate cause of Toyota's breach of express warranties, Plaintiff and the Nationwide Class members have been damaged.

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72. Plaintiff has given Toyota a reasonable opportunity to cure its failure with respect to its warranty, and Toyota has failed to do so.

73. As a result of Toyota's breach of express warranty, Plaintiff and the Nationwide Class members have suffered damages.

COUNT III

Asserted On Behalf Of The Nationwide Class Against Toyota and CTS (Breach Of Implied Warranty Of Merchantability)

74. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

75. Toyota and CTS are "merchants" within the meaning of the Uniform Commercial Code § 2-104.

76. The Recalled Vehicles and defective accelerator pedal assemblies are "goods" within the meaning of Uniform Commercial Code § 2-105.

77. Toyota and CTS's implied warranty of merchantability accompanied the sale of the Recalled Vehicles and/or the defective accelerator pedal assemblies to Plaintiff and members of the Nationwide Class.

78. Toyota and CTS, by implication, warranted that the Recalled Vehicles and/or the accelerator pedal assemblies were fit for ordinary use.

79. The frequent failure of the accelerator pedal assemblies in the Recalled Vehicles made the Recalled Vehicles and accelerator pedal assemblies defective and, thus, unfit for the ordinary purposes for which the goods are used. The Recalled Vehicles are not fit for ordinary use because the accelerator pedal assemblies have a dangerous propensity to stick in the full-open position resulting in sudden and unintended acceleration.

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80. As set forth herein, any effort by Toyota and CTS to disclaim or otherwise limit its responsibility for the Recalled Vehicles was unconscionable under all of the circumstances. Toyota and CTS knew that the Recalled Vehicles were unfit for normal use.. Toyota and CTS' attempt to disclaim any warranty on the Recalled Vehicles is therefore unjust and cannot stand.

81. Through the conduct described herein, Toyota and CTS has breached their implied warranty of merchantability and are liable to Plaintiff and the Nationwide Class.

82. Plaintiff and the other members of the Nationwide Class have sustained damages as a result of Toyota and CTS' breaches.

83. Plaintiff has provided timely notice to Toyota regarding the problems she was experiencing with her 2010 Toyota Camry and, notwithstanding such notice, Toyota has failed and refused to offer Plaintiff a remedy.

COUNT IV

Asserted on Behalf of the Nationwide Class Against Toyota and CTS (Breach of Contract)

84. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

85. Plaintiff and Nationwide Class members entered into agreements to purchase or lease the Recalled Vehicles, and were in contractual privity with Toyota and CTS as a result of the express warranty described herein, as well as the specifications included with the purchase or lease of the Recalled Vehicles. Such privity likewise existed because the dealers from which Plaintiff and the Nationwide Class purchased or leased the Recalled Vehicles acted as Toyota's agents through franchise agreements, distribution agreements, and any other agreement governing the relationship between Toyota and any such dealer.

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86. Regardless of whether Plaintiff and the Classes were in contractual privity with Toyota or CTS, Toyota and CTS still may be held to have breached their contracts with Plaintiff and the Nationwide Class. As alleged herein, Toyota and CTS committed acts and omissions which were actuated by actual malice and accompanied by a wanton and willful disregard of persons, including Plaintiff and Nationwide Class members, who foreseeably might be harmed by those acts and omissions.

87. Toyota and CTS failed to disclose the true nature of the accelerator pedal assemblies, and the fact that the accelerator pedal assemblies would render the Recalled Vehicles unfit for use. Toyota and CTS knew or recklessly disregarded the fact that Plaintiff and the Nationwide Class were not knowledgeable with regard to the frequent failures, cost, and true nature of the accelerator pedal assemblies as alleged herein, and did not disclose that information to Plaintiff and the Nationwide Class.

88. Plaintiff and the Nationwide Class members performed all of their obligations under the contracts. Toyota breached its obligations under the contracts as alleged herein.

89. As a direct and proximate result of Toyota and CTS's breach of contract, Plaintiff and Nationwide Class members have been damaged.

COUNT V

Asserted On Behalf Of The Nationwide Class Against Toyota and CTS (Breach Of Implied Covenant Of Good Faith And Fair Dealing)

90. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

91. Plaintiff and Nationwide Class members entered into agreements to purchase or lease the Recalled Vehicles, or otherwise were in contractual privity with Toyota as a result of the express warranty described herein, as well as the specifications included with the purchase or

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lease of the Recalled Vehicles. Contractual privity likewise existed because the dealers from which Plaintiff and the Nationwide Class purchased or leased the Recalled Vehicles acted as Toyota's agent through franchise agreements, distribution agreements, and any other agreement governing the relationship between Toyota and any such dealer. Although CTS was not a party to these contracts, CTS had a duty to act in good faith due to the contractual relationship with Plaintiff and the Nationwide Class as alleged herein.

92. The contracts and warranties were subject to the implied covenant that Toyota would conduct business with Plaintiff and Nationwide Class members in good faith and would deal fairly with Plaintiff and Nationwide Class members. CTS' contracts and warranties were subject to the implied covenant that Toyota would conduct business with Plaintiff and Nationwide Class members in good faith and would deal fairly with Plaintiff and Nationwide Class members.

93. Regardless whether Plaintiff and the Nationwide Class were in contractual privity with Toyota and CTS, Toyota and CTS still had a duty of good faith and fair dealing. As alleged herein, Toyota and CTS committed acts and omissions which were actuated by malice and/or accompanied by a wanton and willful disregard of persons, including Plaintiff and the members of the Nationwide Class, who foreseeably might be harmed by those acts and omissions.

94. Toyota and CTS breached those implied covenants via the sale or lease to Plaintiff and members of the Nationwide Class of the Recalled Vehicles that were not fit for ordinary use and that were equipped with defective accelerator pedal assemblies that were inherently defective when Toyota and CTS knew, or should have known, that the accelerator pedal assemblies were defective. Toyota and CTS failed to disclose the true nature of the accelerator pedal assemblies, and the fact that the accelerator pedal assemblies would render the

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Recalled Vehicles unfit for use. Toyota and CTS knew or recklessly disregarded the fact that Plaintiff and the Nationwide Class were not knowledgeable with regard to the frequent failures, cost, and true nature of the accelerator pedal assemblies as alleged herein, and did not disclose that information to Plaintiff and the Nationwide Class. Defendants also breached those covenants by refusing to provide Plaintiff and the Nationwide Class with an adequate remedy.

95. Defendants behaved inequitably and acted in total disregard of the harm caused to Plaintiff and the Nationwide Class, and unjustly enriched themselves at the expense of Plaintiff and the Nationwide Class.

96. As a direct and proximate result of Toyota and CTS's breach of its implied covenants, Plaintiff and Nationwide Class members have been damaged.

COUNT VI

Asserted On Behalf Of The Sub-Class Against Toyota and CTS (Violation Of N.Y. G.B.L. §349)

97. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

98. Plaintiff and other members of the Sub-Class are "consumers" in accordance with GBL §349.

99. At all relevant times material hereto, Toyota and CTS conducted trade and commerce in New York and elsewhere within the meaning of GBL §349.

100. Toyota and CTS' acts materially misled Plaintiff and the Sub-Class in that Toyota and CTS misrepresented or failed to disclose the following material facts:

a. The Recalled Vehicles are not fit for normal use;

b. The accelerator pedal assemblies have a dangerous propensity to stick in the full-open position resulting in sudden and unintended acceleration;

TOY-RQ-05E-00010268

c. The Recalled Vehicles are not equipped with a failsafe to protect against sudden and unintended acceleration; and

d. The consequences of sudden and unintended acceleration are serious and potentially deadly.

101. Toyota and CTS consciously omitted to disclose material facts from Plaintiff and other members of the Sub-Class with respect to the accelerator pedal assemblies on the Recalled Vehicles.

102. Toyota intended that Plaintiff and the Sub-Class rely on Toyota and CTS' acts of concealment and omission, so that Plaintiff and other Sub-Class members would purchase and/or lease the Recalled Vehicles equipped with the defective accelerator pedal assemblies.

103. Had Toyota and CTS disclosed all material information regarding the defective accelerator pedal assemblies in the Recalled Vehicles to Plaintiff and the Sub-Class, they would not have purchased and/or leased the Recalled Vehicles, or would have paid less for the Recalled Vehicles.

104. The foregoing acts, omissions and practices proximately caused Plaintiff and other members of the Classes to suffer actual injury and damage including, *inter alia,* the loss of use of the Recalled Vehicles and diminution of value of those vehicles.

COUNT VII

Asserted On Behalf of the Sub-Class Against Toyota (Violations of N.Y. G.B.L. §350)

105. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

106. Toyota, in marketing the Recalled Vehicles, failed to disclose the following facts to Plaintiff and the Sub-Class:

TOY-RQ-05E-00010269

a. The Recalled Vehicles are not fit for normal use;

b. The accelerator pedal assemblies have a dangerous propensity to stick in the full-open position resulting in sudden and unintended acceleration;

c. The Recalled Vehicles are not equipped with a failsafe to protect against sudden and unintended acceleration; and

d. The consequences of sudden and unintended acceleration are serious and potentially deadly.

107. Plaintiff and the Sub-Class were misled and/or deceived by the omission of these material facts. Toyota, due to its superior knowledge of the facts herein, was required to disclose these facts to Plaintiff and the Sub-Class.

108. The foregoing acts, omissions and practices proximately caused Plaintiff and other members of the Sub-Class to suffer actual injury and damage.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff on behalf of herself and on behalf of the Classes prays:

A. For an order certifying this action as a class action, appointing Plaintiff as representative of the Classes and appointing her attorneys as counsel for the Classes;

B. For Defendants to pay lease and car loan payments until Toyota repairs or replaces the defective accelerator pedal assemblies in the Recalled Vehicles;

C. For all compensatory and other appropriate damages on all applicable claims in an amount to be proven at trial, including the diminution in value of the Recalled Vehicles as a result of the acts complained of herein;

D. For an order permanently enjoining Defendants from engaging in the unlawful practices alleged herein;

TOY-RQ-05E-00010270

E. For an award of attorneys' fees, costs and expenses; and

F. For such other and further relief that the Court deems appropriate and just under the circumstances.

JURY TRIAL DEMAND

Plaintiff demands a trial by jury.

Dated: February 8, 2010

ABBEY SPANIER RODD
& ABRAMS, LLP

By: _____
Jill Abrams (JA 1578)
jabrams@abbeyspanier.com
Orin Kurtz (OK 7334)
okurtz@abbeyspanier.com
Jeremy Nash
jnash@abbeyspanier.com (JN 2857)
212 East 39th Street
New York, New York 10016
(212) 889-3700

TOY-RQ-05E-00010271

FedEx Packing Slip

Package # : 5703048892

Created By : Phyllis Farmer

Created On : 02/12/2010 08:09 AM

FedEx Tracking # : 799442739538

Recipient :

Patrick Nepute

Title : General Counsel
Customer : Toyota Motor Engineering & Manufacturing North America, Inc.
Address : 25 ATLANTIC AVE., ERLANGER, KY - 41018
Email : pat.nepute@tema.toyota.com
Phone : 859-746-4132 Fax : -

FedEx Account : 134930624

Shipment Type : FedEx 2Day

PackageType : Envelope

Items Shipped : 3

Log #	Case #	Entity Name	Assigned To
516149320	10 CIV 1014	Toyota Motor Engineering & Manufacturing North America, Inc.	Phyllis Farmer
516149330	10 CIV 1014	Toyota Motor Manufacturing, Kentucky, Inc.	Phyllis Farmer
516151035	09-91973	Toyota Motor Manufacturing, Kentucky, Inc.	Phyllis Farmer

FROM: Phyllis Farmer (502)721-0133
Kentucky CT Reps
4189 Westport Road

Louisville, KY 40207

FedEx Revenue Barcode

TO: **Patrick Nepute (859)746-4132**
Toyota Motor Engineering & Manufact
25 ATLANTIC AVE.

ERLANGER, KY 41018

CAD#: 8279300
SHIP DATE: 12FEB10
WEIGHT: 1 LB

Ref: SOP/0610800/516149320/Phyllis Farmer

DELIVERY ADDRESS (FedEx-EDR)

** 2DAY **

TUE
A1
Deliver by:
16FEB10

TRK # 7994 4273 9538

FORM
0201

CVG

41018 -KY-US

SA FFTA

CLS101009121

CT Corporation

Service of Process Transmittal

02/12/2010
CT Log Number 516149320

TO: Patrick Nepute, General Counsel
Toyota Motor Engineering & Manufacturing North America, Inc.
25 ATLANTIC AVE.
ERLANGER, KY 41018-

RE: **Process Served in Kentucky**

FOR: Toyota Motor Engineering & Manufacturing North America, Inc. (Domestic State: KY)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION:	Barbara Iglesias, et. al., Pltfs. vs. toyota Motor Corporation, et al. including Toyota Motor Engineering & Manufacturing North America, Inc., Dfts.
DOCUMENT(S) SERVED:	Summons, Class Action Complaint, Attachments
COURT/AGENCY:	USDC, KY Case # 10 CIV 1014
NATURE OF ACTION:	Product Liability Litigation - Manufacturing Defect - Claim is about Faulty Acceleration
ON WHOM PROCESS WAS SERVED:	C T Corporation System, Louisville, KY
DATE AND HOUR OF SERVICE:	By Process Server on 02/12/2010 at 09:00
APPEARANCE OR ANSWER DUE:	Within 20 days
ATTORNEY(S) / SENDER(S):	Jill Abrams Abbey Spainer Rodd & Abrams, LLP 212 East 39th Street New York, NY 10016 212-889-3700
ACTION ITEMS:	SOP Papers with Transmittal, via Fed Ex 2 Day , 799442739538 Email Notification, Patrick Nepute pat.nepute@tema.toyota.com Email Notification, Tanya Herbert tanya.herbert@tema.toyota.com
SIGNED: **ADDRESS:** **TELEPHONE:**	C T Corporation System 4169 Westport Road Louisville, KY 40207 502-721-0133

RECEIVED

FEB 18 2010

LEGAL DEPARTMENT

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.

AO440 (Rev 8/01) Summons in a Civil Action

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JUDGE CASTEL

Barbara Iglesias, Individually and On Behalf Of All Others Similarly Situated,

Plaintiff,

vs.

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

Defendants.

SUMMONS IN A CIVILACTION

CASE NO.:

10 CIV 1014

RECEIVED
FEB 18 2010
LEGAL DEPARTMENT

TO: Toyota Motor Engineering & Manufacturing North America, Inc.
c/o CT Corporation System
4169 Westport Road
Louisville, KY 40207

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY, (name and address)

JILL S. ABRAMS, ESQ.
ABBEY SPANIER RODD & ABRAMS, LLP
212 East 39th Street,
New York, New York 10016
(212) 889-3700

an answer to the complaint which is herewith served upon you, within twenty (20) days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

J. MICHAEL McMAHON

CLERK

DEPUTY CLERK

DATE FEB 08 2010

AO440 (Rev 8/01) Summons in a Civil Action

RETURN OF SERVICE

Service of the Summons and Complaint was made by me[1]	DATE
NAME OF SERVER	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: _____

☒ Other (specify): _____

_____

_____

STATEMENT OF SERVICE FEES

TRAVEL	SERVICES	TOTAL
		$0.00

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.

JUDGE CASTEL

10 CIV 1014

ABBEY SPANIER RODD & ABRAMS, LLP
Jill Abrams (JA 1578)
jabrams@abbeyspanier.com
Orin Kurtz (OK 7334)
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Attorneys for Plaintiff

RECEIVED
FEB 08 2010
U.S.D.C. S.D. N.Y.
CASHIERS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Barbara Iglesias, Individually and On Behalf Of All Others Similarly Situated,

Plaintiff,

vs.

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

Defendants.

Civil Action No.

RECEIVED
FEB 18 2010
LEGAL DEPARTMENT

CLASS ACTION COMPLAINT
AND JURY TRIAL DEMAND

Plaintiff Barbara Iglesias ("Plaintiff"), by and through her undersigned attorneys, alleges as follows:

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d) because this action involves citizens of different states. The amount in controversy exceeds $5,000,000, exclusive of interest and costs.

2. Venue is proper in this District pursuant to 28 U.S.C. §1391, because Defendants do business in this District, and a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this District.

THE PARTIES

3. Plaintiff is a resident of the Bronx, New York. On December 1, 2009, Plaintiff bought a 2010 model year Toyota Camry in the Bronx, New York.

4. Defendant Toyota Motor Corporation ("TMC") is and was, at all relevant times, a Japanese limited liability, joint-stock company which operates through numerous subsidiaries and affiliated companies. Its principal executive office is located at 1 Toyota-cho, Toyota City, Aichi Prefecture 471-8571, Japan. Its automotive operations include the design, manufacture, assembly and sale of passenger cars, minivans and commercial vehicles. TMC's financial services business consists primarily of providing financing to dealers and their customers for the purchase or lease of Toyota vehicles. Its financial services also provide retail leasing through the purchase of lease contracts originated by Toyota dealers. North America is one of Toyota's primary automobile markets. In the U.S., Toyota vehicles are marketed through distributors and through these distributors, Toyota maintains networks of dealers.

5. Defendant Toyota Motor Sales, U.S.A., Inc. ("TMS") is and was, at all relevant times, a California corporation. It is a wholly owned subsidiary of TMC and responsible for the

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manufacture, distribution and sales of Toyota automobiles and trucks in the U.S. It is located at 19001 South Western Avenue, Torrance, CA.

6. Defendant Toyota Motor North America, Inc. ("TMNA") is the holding company for, and oversees, Toyota's manufacturing, financing, sales research and development, and marketing operations in the U.S., Canada and Mexico and is based in New York at 9 West 57th Street, Suite 4900, New York, New York.

7. Defendant Toyota Motor Engineering & Manufacturing North America ("TMEMNA") is the parent company for Toyota's manufacturing operations in the U.S. and Canada. It operates as a subsidiary of TMC and provides centralized support in the areas of purchasing, production, production control, engineering, quality control, and administration. It is headquartered at 25 Atlantic Avenue, Erlanger, Kentucky.

8. Defendant Lexus ("Lexus") is the luxury vehicle division of TMC. Lexus operates its own design, engineering, and manufacturing centers, solely responsible for the division's vehicles. Lexus' headquarters are located in Toyota City, Aichi Prefecture, Japan. Lexus' design facilities are located in California, among other places. The Lexus ES is assembled at the Miyata plant Miyawaka City, Fukuoka Prefecture, Japan, which is owned by Toyota Motor Kyusha, Inc., a wholly owned subsidiary of TMC. The Lexus IS is assembled at the Tahara plant in Tahara City, Aichi Prefecture, which is owned by TMC. Lexus ES and IS automobiles are sold throughout the United States.

9. Defendant Toyota Motor Manufacturing, Indiana, Inc. ("TMMI") manufactured the 2007 to 2008 model year ("MY") Toyota Tundra, 2008 to 2010 MY Toyota Sequoia, and the 2010 MY Toyota Highlander. TMMI is a wholly-owned subsidiary of TMC. It is located at 4000 South Tulip Tree Drive, Princeton, IN 47670-4000.

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10. Defendant Toyota Motor Manufacturing, Texas, Inc. ("TMMTX") manufactured the 2007 to 2010 MY Toyota Tundra. TMMTX is a wholly-owned subsidiary of TMC. It is located at 1 Lone Star Pass San Antonio, Texas, 78264-3413.

11. Defendant Toyota Motor Manufacturing, Kentucky, Inc. ("TMMK") manufactured the 2005 to 2010 MY Toyota Avalon and the 2007 to 2010 MY Toyota Camry. TMMK is a wholly-owned subsidiary of TMC. It is located at 1001 Cherry Blossom Way, Georgetown, KY 40324.

12. Defendant New United Motor Manufacturing, Inc. ("NUMMI") manufactured the 2009 to 2010 MY Toyota Corolla and the 2009 to 2010 MY Pontiac Vibe. NUMMI is located at 45500 Fremont Boulevard Fremont, CA 94538-6368.

13. Defendant Subaru of Indiana Automotive, Inc. ("SIA") manufactured the 2007 to 2010 MY Toyota Camry. It is located at 5500 State Road 38 East, Lafayette, Indiana 47905.

14. At all relevant times, TMC has owned and controlled TMS, TMNA, TMEMNA, Lexus, TMMI, TMMTX, TMMK, NUMMI and SIA and thereby conducted business in the U.S. These defendants and their subsidiaries and agents, are collectively referred to as "Toyota".

15. Defendant CTS Corporation ("CTS") is an Indiana corporation located at 905 West Boulevard, Elkhart, Indiana. CTS designs and manufactures electronic components and at all relevant times made the accelerator assemblies for Toyota vehicles that are subject of the claims herein (except for Lexus vehicles) beginning with model year 2005.

16. TMC, TMS, TMNA, TMEMNA, Lexus, TMMI, TMMTX, TMMK, NUMMI, SIA, and CTS may sometimes be collectively referred to as "Defendants".

17. The true names and capacities of the defendants sued herein as Doe Defendants 1 through 10, inclusive, are currently unknown to plaintiff, who therefore sues such defendants by

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fictitious names. Each of the defendants designated herein as a Doe is legally responsible for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend this Complaint to reflect the true names and capacities of the Doe Defendants when such identities become known.

BACKGROUND

18. "Toyota received field technical information regarding reports of accelerator pedals demonstrating symptoms such as rough operation or being slow to return to the idle position" at least as early as March 2007, according to a January 21, 2010 letter from Chris Santucci, TMNA Manager, Technical & Regulatory Affairs, to the National Highway Traffic Safety Administration ("NHTSA"). Santucci formerly worked for the NHTSA, which sets safety standards for motor vehicles and associated equipment, investigates possible safety defects, assures that products meet safety standards and are not defective (through recalls if necessary), and tracks safety-related recalls. Toyota sought to "minimize" the problem, according to The New York Times. Toyota quietly substituted one material used in the affected accelerator pedal assemblies for another as a fix and, in June 2008, reported that the slow return to the idle position of accelerator pedals in some of its vehicles was merely "a drivability issue unrelated to safety".

19. Toyota continued to receive complaints. In December 2008, Toyota received more "field technical information", this time from the European market, which indicated that accelerator pedals sticking on vehicles there. In March 2009, Toyota began another investigation that, in August 2009, also resulted in a quiet fix for some of its vehicles. However, despite the fact that accelerator pedal assemblies on some Toyota vehicles produced in the United States are of a similar design and composed of the same materials that were subject to the December 2008 reports from Europe, the August 2009 changes were limited to vehicles produced in Europe.

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20. The March 2007 and December 2008 reports indicate that Toyota knew at least a year prior to the January 21 Recall, as defined below, that some Toyota vehicles had defective accelerator pedal assemblies. In fact, Santucci later identified those very reports and subsequent investigations as the first "principal events" in the chronology leading to the January 21 Recall.

21. Toyota may have known about the problem even earlier. The Los Angeles Times reported, in a November 8, 2009 article, that "[m]ore than 1,000 Toyota and Lexus owners have reported since 2001 that their vehicles suddenly accelerated on their own" and that these crashes "resulted in at least 19 deaths and scores of injuries over the last decade"—far more than any other automaker has experienced. The Los Angeles Times, and other news reporting agencies, report further that independent safety experts have identified nearly 2,000 sudden-acceleration cases for Toyota vehicles built since 2001 and that experts say the actual numbers may be far higher.

22. According to the Los Angeles Times, Toyota owner complaints helped trigger at least eight investigations into "sudden acceleration" in Toyota and Lexus vehicles by the NHTSA since 2001, but that those investigations "systematically excluded or dismissed the majority of complaints", including cases in which drivers said they were unable to stop runaway cars using their brakes; incidents of unintended acceleration lasting more than a few seconds; and reports in which owners did not identify the possible causes of the problem. According to the Los Angeles Times, when Toyota was asked to submit its own complaint data to the NHTSA, it eliminated reports claiming that sudden acceleration occurred for more than a few seconds or when drivers said they were unable to control a runaway engine by applying the brakes, which contributed to an appearance that the problem was much smaller than the total number of complaints suggested.

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TOYOTA ATTRIBUTES REPORTS OF SUDDEN AND UNINTEDED ACCELEREATION TO "FLOOR PEDAL ENTRAPMENT" AND ATTEMPTS TO MIMIMIZE SERIOUSNESS OF THREAT TO SAFETY

23. In September 2007, Toyota recalled 55,000 accessory all-weather floor mats sold for use in some 2007 and 2008 model year Lexus ES 350 and Toyota Camry vehicles because, as reported by the NHTSA, if the mat were to "interfere with the accelerator pedal", it would "increase the possibility of a crash." However, Toyota was in the midst of investigating the March 2007 reports concerning sticking accelerator pedal assemblies at that time and following the September 2007 recall both Toyota and the NHTSA continued to receive complaints of unintended acceleration in the models affected recall, as well as in others vehicles not affected by the recall.

24. On August 28, 2009, "[f]our people were killed outside San Diego when the Lexus ES 350 sedan they were traveling in accelerated to 120 miles per hour and crashed, despite efforts by the driver to apply the brakes," according to The New York Times. The New York Times reported further that, "[t]he 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.

25. Toyota stated in a September 14, 2009 press release that, "[w]e believe our vehicles to be among the safest on the road today." Toyota stated further that preliminary investigations, "[d]river's floor mat interference with the accelerator pedal is possible in *any vehicle make* with *any combination floor mats* when the floor mat is not properly secured or if it is not the factory designed floor mat for the vehicle" (emphasis added).

26. Toyota issued a consumer safety advisory on September 29, 2009, instructing owners of specific Toyota and Lexus model vehicles to remove their driver's floor mat:

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> Recent events have prompted Toyota to take a closer look at the potential for an accelerator pedal to get stuck in the full open position due to an unsecured or incompatible driver's floor mat. A stuck open accelerator pedal may result in very high vehicle speeds and make it difficult to stop the vehicle, which could cause a crash, serious injury or death.
>
> * * *
>
> Until Toyota develops a remedy, it is asking owners of specific Toyota and Lexus models to take out any removable driver's floor mat and NOT replace it with any other floor mat. The following models are affected:
>
> - 2007 – 2010 Camry
> - 2005 – 2010 Avalon
> - 2004 – 2009 Prius
> - 2005 – 2010 Tacoma
> - 2007 – 2010 Tundra
> - 2007 – 2010 ES350
> - 2006 – 2010 IS250 and IS350
>
> Should the vehicle continue to accelerate rapidly after releasing the accelerator pedal, this could be an indication of floor mat interference.

27. In connection with the safety campaign that followed, Santucci, then-Assistant Manager, Technical & Regulatory Affairs of TMNA, wrote to the NHTSA that, "[a]lthough Toyota is willing to identify this campaign as a safety recall in the owner communication about the campaign, Toyota has not determined that the vehicles identified [in the safety advisory] contain a 'safety-related defect'".

28. On November 2, 2009, Toyota attempted to further minimize the seriousness of this defect in certain of its vehicles by stating that "no defect exists in vehicles in which the driver's floor mat is compatible with the vehicle and properly secured" and that the company's finding was consistent with "a recent decision by the NHTSA". Toyota stated that, "[t]his is the sixth time in the past six years that NHTSA has undertaken such an exhaustive review of the allegations of unintended acceleration on Toyota and Lexus vehicles and the sixth time the agency has found no *vehicle based* cause for the unwanted acceleration allegations" (emphasis added).

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29. These statements were untrue. On November 4, 2009, the NHTSA issued a press release "correcting inaccurate and misleading information put out by Toyota". NHTSA spokeswoman Karen Aldana said that the problem with the design of Toyota and Lexus accelerators was, in fact, "very dangerous" and that removing the floor mats was "simply an interim measure" that would "*not correct the underlying defect in the vehicles*" (emphasis added). Aldana stated further that the "matter [was] not closed" and would remain open until Toyota "effectively addressed the defect by providing a suitable *vehicle based* solution" (emphasis added). Toyota responded to the public rebuke in a November 6, 2009 press release by acknowledging that removal of the driver's floor mat is merely "an interim measure and that further vehicle-based action is required".

30. On November 25, 2009, Toyota issued an announcement of "details of the vehicle-based remedy to address the root cause of the potential risk for floor mat entrapment of accelerator pedals in certain Toyota and Lexus models" ("November 25 Announcement"). These vehicles are subject to what Toyota termed its "floor pedal entrapment recall." The initial list of vehicles affected by the November 25 Announcement was expanded by Toyota on January 26, 2010. The following list of vehicles affected by the November 25 Announcement, totaling approximately 5.3 million vehicles, reflects the January amendment:

a. 2009 to 2010 model year ("MY") Pontiac Vibe;
b. 2005 to 2010 MY Toyota Avalon;
c. 2007 to 2010 MY Toyota Camry;
d. 2009 to 2010 MY Toyota Corolla;
e. 2008 to 2010 MY Toyota Highlander;
f. 2009 to 2010 MY Toyota Matrix;
g. 2004 to 2009 MY Toyota Prius;
h. 2005 to 2010 MY Toyota Tacoma;
i. 2007 to 2010 MY Toyota Tundra;
j. 2009 to 2010 MY Toyota Venza;
k. 2007 to 2010 MY Lexus ES 350;
l. 2006 to 2010 MY Lexus IS 250; and

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m. 2006 to 2010 MY Lexus IS 350.

TOYOTA FINALLY ACKNOWLEDGES "VEHICLE-BASED" PROBLEM WITH ACCELERATOR PEDAL ASSEMBLIES IN SOME TOYOTA VEHICLES

31. The remedy Toyota described in the November 25 Announcement, purportedly to "address the root cause" behind accounts of sudden and unintended acceleration, was to "reconfigure" the shape of the accelerator pedal or floor surface underneath the accelerator pedal:

> The specific measures of the vehicle-based remedy are as follows:
>
> 1. The shape of the accelerator pedal will be reconfigured to address the risk of floor mat entrapment, even when an older-design all-weather floor mat or other inappropriate floor mat is improperly attached, or is placed on top of another floor mat. For the ES350, Camry, and Avalon models involved, the shape of the floor surface underneath will also be reconfigured to increase the space between the accelerator pedal and the floor.
>
> 2. Vehicles with any genuine Toyota or Lexus accessory all-weather floor mat will be provided with newly-designed replacement driver- and front passenger-side all-weather floor mats.

However, Toyota did not recall the affected vehicles at that time. Instead, it said,

> In the meantime, owners of the involved vehicles are asked to take out any removable driver's floor mat and not replace it with any other floor mat until they are notified of the vehicle-based remedy, as notified in the consumer safety advisory and the interim notice.
>
> * * *
>
> The safety of our owners and the public is our utmost concern and Toyota has and will continue to thoroughly investigate and take appropriate measures to address any defect trends that are identified.

Thus, Toyota misled current owners and lessees to believe that the vehicles' issues were adequately addressed by Toyota.

32. The New York Times reported, in its February 1, 2010 article that, on December 26, 2009, four people died near Dallas when a Toyota Avalon sped off a road and into a pond.

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The police found that the floor mats were removed and in the Avalon's trunk. The New York Times further reported that, on December 28, 2009, a New Jersey man managed, by shifting in and out of neutral, to drive a 2007 Avalon to a dealership after it began speeding out of control. After parking, the motor continued racing and the brakes and tires started smoking.

33. In January 21, 2010, Toyota finally began a recall for a "vehicle-based" defect; namely, defective accelerator pedal assemblies ("January 21 Recall"). Approximately 2.3 million vehicles are affected by the January 21 Recall, which involved the following models:

a. 2005 to 2010 MY Toyota Avalon;
b. certain 2009 to 2010 MY Toyota Corolla;
c. certain 2007 to 2010 MY Toyota Camry;
d. certain 2010 MY Toyota Highlander;
e. 2009 to 2010 MY Toyota Matrix;
f. certain 2009 to 2010 MY Toyota RAV4;
g. 2008 to 2010 MY Toyota Sequoia; and
h. 2007 to 2010 MY Toyota Tundra.

34. According to the New York Times, the vehicles affected by the January 21 Recall represented over 60% of Toyota's total monthly U.S. sales from 2004 to 2009, based on a 12-month moving average. The New York Times reported further that Toyota's total U.S. sales ranged from well over 100,000 to nearly 200,000 vehicles per month during that time.

35. In a letter to the NHTSA dated January 21, 2010, Santucci described the defect in the accelerator pedal assemblies resulting in sudden and unintended acceleration reported in some of its vehicles:

> In accordance with the requirements of the National Traffic and Motor Vehicle Safety Act of 1966 and 49 CFR Part 573, on behalf of Toyota Motor Corporation ["TMC"], we hereby submit the attached Defect Information Report Concerning a voluntary safety recall of certain Toyota Tundra, Sequoia, Avalon, Camry, Corolla, Matrix, RAV4, Highlander, and Pontiac Vibe vehicles. *Toyota has determined that a defect exists in the accelerator pedal assembly which may result in the accelerator pedal becoming harder to depress, slower to return, or, in the worst case, mechanically stuck in a partially depressed position.*

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(emphasis added).

36. In its Defect Information Report referenced in the January 21, 2010 letter, Toyota describes what it purports is the underlying cause of defect:

> Description of Problem:
>
> Due to the manner in which the friction lever interacts with the sliding surface of the accelerator pedal inside the pedal sensor assembly, the sliding surface of the lever may become smooth during vehicle operation. In this condition, if condensation occurs on the surface, as may occur from heater operation (without A/C) when the pedal assembly is cold, the friction when the accelerator pedal is operated may increase, which may result in the accelerator pedal becoming harder to depress, slower to return, or, in the worst case, mechanically stuck in a partially depressed position. In addition, some of the affected vehicles' pedals were manufactured with friction levers made of a different material (PA46), which may be susceptible to humidity when parked for a long period in hot temperatures. In this condition, the friction when the accelerator pedal is operated may increase, which may result in the accelerator pedal movement becoming rough or slow to return. In light of the similarity with one of the symptoms described above that are associated with the PPS material, Toyota has decided to include these vehicles in the defect determination.

37. On January 28, 2010, issued a statement that Toyota had "identified the cause of the problem" and had been working closely with CTS, the manufacturer of the accelerator pedal assemblies found on the vehicles affected by the January 21 Recall, on a revised pedal design. According to a January 28, 2010 statement by Chris Nielsen, TMEMNA's Vice President of Purchasing, "CTS is a long-term and valued supplier to us."

38. According to Toyota, the January 21 Recall is separate and unrelated to the November 25 Announcement that involved approximately 5.3 million vehicles. However, Toyota also announced that approximately 1.3 vehicles are part of both the November 25 Announcement and the January 21 Recall. Reportedly, it is Toyota's position that this significant overlap is merely coincidence. A total of approximately 6.3 million vehicles are part of both the November 25 Announcement and January 21 Recall in the United States ("Recalled

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Vehicles"). On January 29, 2010, Toyota expanded the January 21 Recall to China and to eight Toyota models in Europe. Reportedly, over 9 million vehicles are affected worldwide.

THE TRUE CAUSE OF SUDDEN AND UNINTEDED ACCELERATION IN SOME TOYOTA VEHICLES REMAINS UNCLEAR

39. The public may still not know the true cause of sudden and unintended acceleration. According to the New York Times, on April 19, 2008, witnesses saw a 2005 Toyota Camry accelerate out of control, jumped a curb and fly through the air before crashing into a tree. The driver, Guadalupe Alberto, was killed instantly. The 2005 Camry is not among the millions of Recalled Vehicles and also did not have floor mats at the time of the accident. Reportedly, the crash is now being looked at as a possible example of problems with the electronic system that controls the throttle and engine speed in Toyotas.

40. Despite yet another accident, Toyota has been telling customers, since as early as January 22, 2010, that it is "confident that your vehicle is safe to drive, and no action is required at this time", for drivers not experiencing an accelerator pedal that is "hard to depress, slow to return or is unsmooth during operation". On February 1, 2010, Toyota described the reason it believes the accelerator pedals in recalled vehicles stick in a partially open position and announced that, "[a] precision-cut steel reinforcement bar will be installed into the assembly that will reduce the surface tension between the friction shoe and the adjoining surface". According to Toyota, "[w]ith this reinforcement in place, the excess friction that can cause the pedal to stick is eliminated."

41. Toyota's "solution" does not address the potential problem with electronic throttles, which mounting evidence suggests is the true cause of reports of sudden and unintended acceleration.

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42. Both Toyota and the NHTSA acknowledge that a standard braking system cannot always counter a wide-open throttle, as is the case in sudden acceleration. Toyota stated in the November 25 Announcement that it would install a failsafe in some affected vehicles, saying, "as a separate measure independent of the vehicle-based remedy, Toyota will install a brake override system onto the involved Camry, Avalon, and Lexus ES 350, IS 350 and IS 250 models as an extra measure of confidence. This system cuts engine power in case of simultaneous application of both the accelerator and brake pedals." The November 25 Announcement stated further that, "[t]he brake override system will be made standard equipment throughout the Toyota and Lexus product lines starting with January 2010 production of ES 350 and Camry and is scheduled to be incorporated into new production of most models by the end of 2010."

43. According to The New York Times, Santucci was deposed in December 2009 concerning a 2004 NHTSA investigation of certain Toyota vehicles. During that testimony, Santucci testified that the electronic throttle control system in Alberto's 2005 Camry was similar to the computer equipment in other Toyotas now under recall for sticky pedals and unsecured floor mats.

PAST NHTSA FINDINGS ARE NOT RELIABLE

44. Toyota stated on November 2, 2009, that it had been investigated six times in the past and that the agency found no vehicle-based cause for reports of sudden and unintended acceleration. However, Santucci reportedly testified Toyota and the NHTSA had discussions about limiting the type of acceleration incidents to be investigated. Santucci's testimony is that, "I recall them saying to us, Toyota, myself,that they were not interested in reports alleging uncontrolled acceleration that occurred for a long duration." The New York Times reported that the NHTSA, in fact, decided to look only at cases of unintended acceleration in which drivers

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had not applied their brakes to rule out potential braking concerns from the scope of the investigation. Santucci testified that, "I think it worked out well for both the agency and Toyota, meaning Toyota provided what they were looking for". The NHTSA ultimately found, "[a] defect trend has not been identified at this time, and further use of agency resources does not appear to be warranted."

45. The NHTSA investigations, and Toyota's handling of the problem, will be the subject of Congressional hearings. The House Energy and Commerce Committee has scheduled a February 25, 2010 hearing to focus on why several years elapsed after the NHTSA began to get complaints about runaway Toyotas before TMC recalled several of its models to fix a defect that could cause their accelerator pedals to stick. "Like many consumers, I am concerned by the seriousness and scope of Toyota's recent recall announcements," said Representative Henry Waxman, the California Democrat who chairs the Energy and Commerce Committee. In a January 28, 2010 letter to Yoshimi Inaba, President and COO of TMNA, Waxman asked Inaba to produce information and documents dating back to 2001, including information "relating to sudden unintended acceleration, acceleration pedals, or *electronic throttle control*" (emphasis added).

46. The NHTSA is considering civil penalties against Toyota for the automaker's handling of both recalls.

CLASS ACTION ALLEGATIONS

47. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3), on behalf of himself and the following Class and Sub-Class:

Nationwide Class:

All owners and lessees in the United States of the Recalled Vehicles (the "Nationwide Class").

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New York Sub-Class

All owners and lessees in New York of Recalled Vehicles that were sold or leased in the State of New York (the "Sub-Class").

48. Excluded from the Nationwide Class and the Sub-Class are Defendants, as well as Defendants',subsidiaries, employees, officers, directors, or other person, firm trust or corporation or other entity related to or affiliated with Toyota and any person who has experienced physical injury as a result of the defects at issue in this litigation. Plaintiff reserve the right to amend the definition of the Nationwide Class and the Sub-Class, if discovery and/or further investigation reveal that the Nationwide Class and/or Sub-Class should be expanded or otherwise modified.

49. Numerosity/Impracticability of Joinder: The members of the Nationwide Class and Sub-Class are so numerous that joinder of all members would be impracticable. The members of the Nationwide Class and the Sub-Class are readily identifiable from information and records in Defendants' possession, custody or control.

50. The number of class members is approximately 6.3 million. There are millions of Nationwide Class members who purchased or leased Toyota vehicles and at least thousands, if not hundreds of thousands, of members of the Sub-Class.

51. Commonality and Predominance: Common questions of law and fact predominate over any questions affecting only individual members of the Nationwide Class and the Sub-Class. These common legal and factual questions, which do not vary from one Nationwide Class or Sub-Class member to another, and which may be determined without reference to the individual circumstances of any Nationwide Class or Sub-Class member, include, but are not limited, to the following:

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a. Whether Defendants omitted and/or concealed material facts from Plaintiff and the members of the Classes regarding Recalled Vehicles;

b. Whether, by the misconduct set forth in this Complaint, Defendants have engaged in deceptive or unlawful business practices with respect to the sale or lease of the Recalled Vehicles;

c. Whether Defendants had a duty to disclose the defects in Recalled Vehicles to Plaintiff and the Classes;

d. Whether, by their conduct, Defendants violated Magnuson-Moss Act, 15 U.S.C. §§ 2301, *et seq.*;

e. Whether, by their conduct, Defendants violated NY GBL §§349 and 350;

f. Whether, by their conduct described herein, Defendants breached their implied warranties to Plaintiff and the Classes;

g. Whether, by its conduct described herein, Defendants breached its express warranties to Plaintiff and the Classes;

h. Whether, by their conduct described herein, Defendants breached their contracts with Plaintiff and the Sub-Class;

i. Whether, by their conduct described herein, Defendants breached their duty of good faith and fair dealing;

j. Whether the Recalled Vehicles are defective;

k. Whether, as a result of Defendants' misconduct, Plaintiff and the Classes are entitled to damages; and

l. Whether, as a result of Defendants' misconduct, Plaintiff and the Classes are entitled to equitable relief and/or other relief, and, if so, the nature of such relief.

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52. Typicality: Plaintiff's claims are typical of the claims of the Nationwide Class and the Sub-Class, because Plaintiff and all Class members were injured by the same wrongful practices in which Defendants engaged. Plaintiff's claims arise from the same practice and course of conduct that gives rise to the claims of the Nationwide Class and Sub-Class members, and are based on the same or similar legal theories.

53. Adequacy: Plaintiff will fully and adequately protect the interests of the members of the Nationwide Class and the Sub-Class, and has retained class counsel who are experienced and qualified in prosecuting class actions, including consumer class actions and other forms of complex litigation. Neither Plaintiff nor her counsel has interests that are contrary to or conflicting with those of the Nationwide Class or the Sub-Class. Defendants have no defenses unique to Plaintiff.

54. Superiority: A class action is superior to all other available methods for the fair and efficient adjudication of this controversy for, *inter alia*, the following reasons:

a. It is economically impractical for members of the Classes to prosecute individual actions;

b. The Classes are readily definable;

c. Prosecution as a class action will eliminate the possibility of repetitious litigation; and

d. A class action will enable claims to be handled in an orderly and expeditious manner. A class action will save time and expense and will ensure uniformity of decisions.

55. Plaintiff does not anticipate any difficulty in the management of this litigation.

56. Defendants have, or have access to, address information for the Class members,

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which may be used for the purpose of providing notice of the pendency of this action.

COUNT I

Asserted On Behalf Of The Nationwide Class Against Toyota and CTS
(Violations Of Magnuson-Moss Act (15 U.S.C. §§ 2301-2312) - Implied Warranty)

57. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

58. The Recalled Vehicles are "consumer products" as that term is defined by 15 U.S.C. § 2301(1).

59. Plaintiff and Nationwide Class members are "consumers" as that term is defined by 15 U.S.C. § 2301(3).

60. Toyota and CTS are "suppliers" as that term is defined by 15 U.S.C. § 2301(4).

61. Toyota and CTS are "warrantors" as that term is defined by 15 U.S.C. § 2301(5).

62. Toyota and CTS provided Plaintiff and Class members with "implied warranties" as that term is defined by 15 U.S.C. § 2301(7). When the Recalled Vehicles were sold or leased to Plaintiff and the Nationwide Class, implied warranties under state law attached, specifically the implied warranty of merchantability.

63. Toyota sold the Recalled Vehicles with defective accelerator pedal assemblies and floor mats (hereinafter collectively referred to as "accelerator pedal assemblies"), and CTS made the defective accelerator pedals as described hereinabove, which rendered the Recalled Vehicles unfit for their ordinary purpose. Toyota has acknowledged that such a defect exists and that the Recalled Vehicles are unfit for their ordinary purpose.

64. Any attempt by Toyota or CTS to disclaim the implied warranty of merchantability with respect to the Recalled Vehicles is void due to Toyota and CTS's

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knowledge or failure to know that the accelerator pedal assemblies were defective when sold or leased to Plaintiff and the Nationwide Class.

65. Toyota and CTS cannot disclaim the implied warranty of merchantability that attaches to the Recalled Vehicles, because Toyota provided Plaintiff and the Nationwide Class with written warranties as that term is defined by 15 U.S.C. § 2301(6).

66. Plaintiff has given Toyota a reasonable opportunity to cure its failures with respect to its warranties, and Toyota failed to do so.

67. Plaintiff and the Nationwide Class were damaged by Toyota and CTS' breach of their warranties.

68. As a result of Toyota and CTS' breach of implied warranties, Plaintiff and Nationwide Class members are entitled to revoke their acceptance of the Recalled Vehicles, obtain damages and equitable relief, and obtain attorneys' fees and costs pursuant to 15 U.S.C. § 2310.

COUNT II

Asserted On Behalf Of The Nationwide Class Against Toyota (Breach Of Express Warranty)

69. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

70. Toyota warranted that the Recalled Vehicles were free of defects in workmanship and materials. Providing defective accelerator pedal assemblies with the Recalled Vehicles, as explained herein, is a breach of this warranty.

71. As a direct and proximate cause of Toyota's breach of express warranties, Plaintiff and the Nationwide Class members have been damaged.

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72. Plaintiff has given Toyota a reasonable opportunity to cure its failure with respect to its warranty, and Toyota has failed to do so.

73. As a result of Toyota's breach of express warranty, Plaintiff and the Nationwide Class members have suffered damages.

COUNT III

Asserted On Behalf Of The Nationwide Class Against Toyota and CTS (Breach Of Implied Warranty Of Merchantability)

74. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

75. Toyota and CTS are "merchants" within the meaning of the Uniform Commercial Code § 2-104.

76. The Recalled Vehicles and defective accelerator pedal assemblies are "goods" within the meaning of Uniform Commercial Code § 2-105.

77. Toyota and CTS's implied warranty of merchantability accompanied the sale of the Recalled Vehicles and/or the defective accelerator pedal assemblies to Plaintiff and members of the Nationwide Class.

78. Toyota and CTS, by implication, warranted that the Recalled Vehicles and/or the accelerator pedal assemblies were fit for ordinary use.

79. The frequent failure of the accelerator pedal assemblies in the Recalled Vehicles made the Recalled Vehicles and accelerator pedal assemblies defective and, thus, unfit for the ordinary purposes for which the goods are used. The Recalled Vehicles are not fit for ordinary use because the accelerator pedal assemblies have a dangerous propensity to stick in the full-open position resulting in sudden and unintended acceleration.

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80. As set forth herein, any effort by Toyota and CTS to disclaim or otherwise limit its responsibility for the Recalled Vehicles was unconscionable under all of the circumstances. Toyota and CTS knew that the Recalled Vehicles were unfit for normal use.. Toyota and CTS' attempt to disclaim any warranty on the Recalled Vehicles is therefore unjust and cannot stand.

81. Through the conduct described herein, Toyota and CTS has breached their implied warranty of merchantability and are liable to Plaintiff and the Nationwide Class.

82. Plaintiff and the other members of the Nationwide Class have sustained damages as a result of Toyota and CTS' breaches.

83. Plaintiff has provided timely notice to Toyota regarding the problems she was experiencing with her 2010 Toyota Camry and, notwithstanding such notice, Toyota has failed and refused to offer Plaintiff a remedy.

COUNT IV

Asserted on Behalf of the Nationwide Class Against Toyota and CTS (Breach of Contract)

84. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

85. Plaintiff and Nationwide Class members entered into agreements to purchase or lease the Recalled Vehicles, and were in contractual privity with Toyota and CTS as a result of the express warranty described herein, as well as the specifications included with the purchase or lease of the Recalled Vehicles. Such privity likewise existed because the dealers from which Plaintiff and the Nationwide Class purchased or leased the Recalled Vehicles acted as Toyota's agents through franchise agreements, distribution agreements, and any other agreement governing the relationship between Toyota and any such dealer.

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86. Regardless of whether Plaintiff and the Classes were in contractual privity with Toyota or CTS, Toyota and CTS still may be held to have breached their contracts with Plaintiff and the Nationwide Class. As alleged herein, Toyota and CTS committed acts and omissions which were actuated by actual malice and accompanied by a wanton and willful disregard of persons, including Plaintiff and Nationwide Class members, who foreseeably might be harmed by those acts and omissions.

87. Toyota and CTS failed to disclose the true nature of the accelerator pedal assemblies, and the fact that the accelerator pedal assemblies would render the Recalled Vehicles unfit for use. Toyota and CTS knew or recklessly disregarded the fact that Plaintiff and the Nationwide Class were not knowledgeable with regard to the frequent failures, cost, and true nature of the accelerator pedal assemblies as alleged herein, and did not disclose that information to Plaintiff and the Nationwide Class.

88. Plaintiff and the Nationwide Class members performed all of their obligations under the contracts. Toyota breached its obligations under the contracts as alleged herein.

89. As a direct and proximate result of Toyota and CTS's breach of contract, Plaintiff and Nationwide Class members have been damaged.

COUNT V

Asserted On Behalf Of The Nationwide Class Against Toyota and CTS (Breach Of Implied Covenant Of Good Faith And Fair Dealing)

90. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

91. Plaintiff and Nationwide Class members entered into agreements to purchase or lease the Recalled Vehicles, or otherwise were in contractual privity with Toyota as a result of the express warranty described herein, as well as the specifications included with the purchase or

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lease of the Recalled Vehicles. Contractual privity likewise existed because the dealers from which Plaintiff and the Nationwide Class purchased or leased the Recalled Vehicles acted as Toyota's agent through franchise agreements, distribution agreements, and any other agreement governing the relationship between Toyota and any such dealer. Although CTS was not a party to these contracts, CTS had a duty to act in good faith due to the contractual relationship with Plaintiff and the Nationwide Class as alleged herein.

92. The contracts and warranties were subject to the implied covenant that Toyota would conduct business with Plaintiff and Nationwide Class members in good faith and would deal fairly with Plaintiff and Nationwide Class members. CTS' contracts and warranties were subject to the implied covenant that Toyota would conduct business with Plaintiff and Nationwide Class members in good faith and would deal fairly with Plaintiff and Nationwide Class members.

93. Regardless whether Plaintiff and the Nationwide Class were in contractual privity with Toyota and CTS, Toyota and CTS still had a duty of good faith and fair dealing. As alleged herein, Toyota and CTS committed acts and omissions which were actuated by malice and/or accompanied by a wanton and willful disregard of persons, including Plaintiff and the members of the Nationwide Class, who foreseeably might be harmed by those acts and omissions.

94. Toyota and CTS breached those implied covenants via the sale or lease to Plaintiff and members of the Nationwide Class of the Recalled Vehicles that were not fit for ordinary use and that were equipped with defective accelerator pedal assemblies that were inherently defective when Toyota and CTS knew, or should have known, that the accelerator pedal assemblies were defective. Toyota and CTS failed to disclose the true nature of the accelerator pedal assemblies, and the fact that the accelerator pedal assemblies would render the

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Recalled Vehicles unfit for use. Toyota and CTS knew or recklessly disregarded the fact that Plaintiff and the Nationwide Class were not knowledgeable with regard to the frequent failures, cost, and true nature of the accelerator pedal assemblies as alleged herein, and did not disclose that information to Plaintiff and the Nationwide Class. Defendants also breached those covenants by refusing to provide Plaintiff and the Nationwide Class with an adequate remedy.

95. Defendants behaved inequitably and acted in total disregard of the harm caused to Plaintiff and the Nationwide Class, and unjustly enriched themselves at the expense of Plaintiff and the Nationwide Class.

96. As a direct and proximate result of Toyota and CTS's breach of its implied covenants, Plaintiff and Nationwide Class members have been damaged.

COUNT VI

Asserted On Behalf Of The Sub-Class Against Toyota and CTS (Violation Of N.Y. G.B.L. §349)

97. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

98. Plaintiff and other members of the Sub-Class are "consumers" in accordance with GBL §349.

99. At all relevant times material hereto, Toyota and CTS conducted trade and commerce in New York and elsewhere within the meaning of GBL §349.

100. Toyota and CTS' acts materially misled Plaintiff and the Sub-Class in that Toyota and CTS misrepresented or failed to disclose the following material facts:

a. The Recalled Vehicles are not fit for normal use;

b. The accelerator pedal assemblies have a dangerous propensity to stick in the full-open position resulting in sudden and unintended acceleration;

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c. The Recalled Vehicles are not equipped with a failsafe to protect against sudden and unintended acceleration; and

d. The consequences of sudden and unintended acceleration are serious and potentially deadly.

101. Toyota and CTS consciously omitted to disclose material facts from Plaintiff and other members of the Sub-Class with respect to the accelerator pedal assemblies on the Recalled Vehicles.

102. Toyota intended that Plaintiff and the Sub-Class rely on Toyota and CTS' acts of concealment and omission, so that Plaintiff and other Sub-Class members would purchase and/or lease the Recalled Vehicles equipped with the defective accelerator pedal assemblies.

103. Had Toyota and CTS disclosed all material information regarding the defective accelerator pedal assemblies in the Recalled Vehicles to Plaintiff and the Sub-Class, they would not have purchased and/or leased the Recalled Vehicles, or would have paid less for the Recalled Vehicles.

104. The foregoing acts, omissions and practices proximately caused Plaintiff and other members of the Classes to suffer actual injury and damage including, *inter alia,* the loss of use of the Recalled Vehicles and diminution of value of those vehicles.

COUNT VII

Asserted On Behalf of the Sub-Class Against Toyota
(Violations of N.Y. G.B.L. §350)

105. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

106. Toyota, in marketing the Recalled Vehicles, failed to disclose the following facts to Plaintiff and the Sub-Class:

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a. The Recalled Vehicles are not fit for normal use;

b. The accelerator pedal assemblies have a dangerous propensity to stick in the full-open position resulting in sudden and unintended acceleration;

c. The Recalled Vehicles are not equipped with a failsafe to protect against sudden and unintended acceleration; and

d. The consequences of sudden and unintended acceleration are serious and potentially deadly.

107. Plaintiff and the Sub-Class were misled and/or deceived by the omission of these material facts. Toyota, due to its superior knowledge of the facts herein, was required to disclose these facts to Plaintiff and the Sub-Class.

108. The foregoing acts, omissions and practices proximately caused Plaintiff and other members of the Sub-Class to suffer actual injury and damage.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff on behalf of herself and on behalf of the Classes prays:

A. For an order certifying this action as a class action, appointing Plaintiff as representative of the Classes and appointing her attorneys as counsel for the Classes;

B. For Defendants to pay lease and car loan payments until Toyota repairs or replaces the defective accelerator pedal assemblies in the Recalled Vehicles;

C. For all compensatory and other appropriate damages on all applicable claims in an amount to be proven at trial, including the diminution in value of the Recalled Vehicles as a result of the acts complained of herein;

D. For an order permanently enjoining Defendants from engaging in the unlawful practices alleged herein;

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E. For an award of attorneys' fees, costs and expenses; and

F. For such other and further relief that the Court deems appropriate and just under the circumstances.

JURY TRIAL DEMAND

Plaintiff demands a trial by jury.

Dated: February 8, 2010

ABBEY SPANIER RODD
& ABRAMS, LLP

By: _____
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TOY-RQ-05E-00010304

Amended: October 3, 2008

INDIVIDUAL PRACTICES OF JUDGE P. KEVIN CASTEL

United States Courthouse
500 Pearl Street
New York, New York 10007
web site: www.nysd.uscourts.gov

Unless otherwise ordered, matters before Judge Castel shall be conducted in accordance with the following practices:

1. Communications with Chambers

A. Letters. Except as otherwise provided below, communications with chambers shall be by letter, with copies simultaneously delivered to all counsel. Letters may be sent to chambers via fax, (212) 805-7949, provided they do not exceed five pages in length. If a fax is transmitted to chambers, it should not also be mailed or delivered to chambers. Letters should not be filed on ECF.

B. Telephone Calls. For docketing, scheduling and calendar matters, call the Courtroom Deputy, Florence Nacanther, at (212) 805-0131 between 8:30 A.M. and 5:00 P.M. Telephone calls to chambers are permitted only in emergency situations requiring immediate attention, (212) 805-0262.

C. Requests for Adjournments or Extensions of Time. All requests for adjournments or extensions of time must state (1) the original date, (2) the number of previous requests for adjournment or extension, (3) whether these previous requests were granted or denied, and (4) whether the adversary consents, and, if not, the reasons given by the adversary for refusing to consent. If the requested adjournment or extension affects any other scheduled dates, the request (in a civil case) must attach a proposed Revised Case Management Plan and Scheduling Order (reflecting dates which are business days). If the request is for an adjournment of a court appearance, absent an emergency, it shall be made at least 48 hours prior to the scheduled appearance. Requests for adjournments should be transmitted to chambers and not filed on ECF.

D. ECF. Counsel for all parties, are required to register as ECF users in accordance with the Procedures for Electronic Case Filing and file a Notice of Appearance in each case.

2. Motions

A.

1. Pre-Motion Conferences in Civil Cases. For discovery motions, follow Local Civil Rule 37.2 Southern District. For motions other than discovery motions in a civil case, a pre-motion conference with the court is required, except for motions described in Sub-paragraph A(2). To arrange a pre-motion conference, the moving party shall submit a letter not to exceed five pages in length setting forth in detail the basis for the anticipated motion and other parties may respond in a letter not to exceed five pages within three business days.

2. No Pre-Motion Conference Required. Sub-paragraph A(1) above does not apply to any of the motions described in Rule 6(b), Federal Rules of Civil Procedure, Rules

4(a)(4)(A), Federal Rules of Appellate Procedure, or section 1447 of title 28 nor does it apply to motions brought on by order to show cause, motions by incarcerated pro se litigants, motions for a default judgment, motions for appointment of lead counsel under the PSLRA, motions for admission pro hac vice and motions for reconsideration or reargument. A pre-motion conference is not required before making such motions.

B. Courtesy Copies.

1. Pleadings: Courtesy copies of pleadings, marked as such, shall be submitted to chambers as soon as practical after filing, in accordance with the SDNY policies regarding mail deliveries.

2. Motion Papers: Courtesy copies of all motion papers (in both ECF and non-ECF cases), marked as such, shall be submitted to chambers at the time the papers are served, in accordance with the SDNY policies regarding mail deliveries.

C. Memoranda of Law. Unless prior permission has been granted, memoranda of law in support of and in opposition to motions are limited to 25 pages, and reply memoranda are limited to 10 pages. Memoranda of 10 pages or more shall contain a table of contents.

D. Filing of Motion Papers. Motion papers shall be filed promptly after service.

E. Oral Argument on Motions. Parties may request oral argument by letter at the time their moving, opposing or reply papers are filed. The court will determine whether argument will be heard and, if so, will advise counsel of the argument date.

F. Summary Judgment. The Local Rule 56.1(a)(2) Statement by the party opposing summary judgment shall set forth verbatim the text of each paragraph of the Local Rule 56.1(a)(1) Statement immediately preceding its response thereto.

3. Pretrial Procedures

A. Joint Pretrial Orders in Civil Cases. Unless otherwise ordered by the Court, within 30 days following completion of discovery in a civil case, the parties shall submit to the Court for its approval a Joint Pretrial Order, that includes the information required by Federal Rule of Civil Procedure 26(a)(3), and the following:

i. The names, addresses (including firm names), and telephone and fax numbers of trial counsel.

ii. A brief summary by each party of the claims and defenses that the party has asserted which remain to be tried, without recital of evidentiary matter, but including citations to all statutes relied on. Any claim or defense not so identified is deemed withdrawn.

iii. A statement by each party as to whether the case is to be tried with or without a jury, and the number of trial days needed.

iv. A page and line designation by each party of deposition testimony to be offered in its case in chief, with any cross-designations and objections by any other party.

v. A list by each party of exhibits to be offered in its case in chief, with one star indicating exhibits to which no party objects on grounds of authenticity, and two stars indicating exhibits to which no party objects on any ground.

vi. A statement confirming that trial counsel have met and conferred face-to-face with a view towards reaching stipulations of fact and setting forth the content of any stipulation.

vii. A statement of the damages claimed and any relief sought, including the manner and method used to calculate the claimed damages and a breakdown of its elements.

B. Filings Prior to Trial in Civil Cases. Unless otherwise ordered by the Court, the parties shall file with the Joint Pretrial Order:

i. In jury cases, proposed voir dire questions, verdict form and requests to charge;

ii. In non-jury cases, proposed findings of fact and conclusions of law;

iii. The parties are required to meet and confer regarding items i. or ii. and make a joint submission in areas where agreement is reached and separate submissions in areas where no agreement is reached. Unless otherwise agreed upon by the parties, the party with the burden of proof should prepare the initial draft in sufficient time for the other side to respond; only the final result of this meet and conferral process should be submitted to the Court. When feasible, items i. and ii. should be submitted, in addition to hard copy, on a 3.5" diskette or CD-Rom in Microsoft Word version Office 2000 or WordPerfect version 9 or higher format;

iv. Motions in limine addressing any evidentiary or other issues that should be resolved prior to empanelling a jury.

J. MICHAEL McMAHON
CLERK OF COURT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
500 PEARL STREET, NEW YORK, NY 10007
300 QUARROPAS STREET, WHITE PLAINS, NY 10601

WWW.NYSD.USCOURTS.GOV

Electronic Case Filing Rules & Instructions

August 1, 2008 Edition

IMPORTANT INFORMATION FOR NEW CASES

A party filing a new civil case assigned to the Electronic Case Filing (ECF) system must do the following after obtaining a civil case number:

(1) E-mail a pdf copy of the case initiating documents to the Clerk's Office within 24 hours of delivering the paper documents to the Court; and

(2) Serve each party to the action with the initiating documents and a copy of:

(a) SDNY Electronic Case Filing Rules & Instructions (attached); and

(b) The assigned Judge's Individual Practices.

For complete instructions and e-mail addresses see Section 14 - Opening a Civil Action.

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Introduction

The United States District Court for the Southern District of New York implemented an Electronic Case Filing (ECF) system in December 2003. Electronic versions of documents filed by attorneys over the Internet have largely replaced paper documents in the Court's files. Almost all new civil and criminal cases filed in this Court after December 2, 2003 are Electronic Case Filing (ECF) cases. Cases filed before December 2, 2003, Pro se cases (unless the pro se litigant is a member of the bar), Social Security cases and habeas corpus cases however are not ECF cases and must be filed on paper. The information in this document applies only to cases assigned to the ECF system.

Electronic Case Filing has several advantages for both the attorney and the Court:

- Twenty-four hour concurrent access to case files from any location over the Internet
- Remote document filing from any Internet connection worldwide
- Secure access to the ECF system via unique user password
- Immediate e-mail notification of case activity to parties and the Court
- Storage of documents in a reliable and secure electronic format

In addition to the Federal Rules of Civil and Criminal Procedure, the following govern Electronic Case Filing in this District (available at www.nysd.uscourts.gov):

- **SDNY Electronic Case Filing Rules & Instructions (this document):**

  Part I. Electronic Case Filing Rules (ECF Rules), approved by the Board of Judges of this Court, provide the broad outline of the rules of Electronic Case Filing.

  Part II. Electronic Case Filing Instructions (ECF Instructions), written by the Clerk of Court under the authority of the ECF Rules, provide step by step instructions for Electronic Case Filing.

- **The Judge's Individual Practices**

  Each Judge's Individual Practices outline their own specific filing requirements.

The Court is prepared to assist you in filing electronically in several ways:

- The SDNY Electronic Case Filing Rules & Instructions will answer many of your ECF questions.
- Training in Electronic Case Filing (ECF) is available both in person at the courthouse and on-line at www.nysd.uscourts.gov (*See section 24 - ECF Help Desk and Training*).
- ECF Help Desk operators are available by telephone to answer your electronic filing questions (*See section 24 - ECF Help Desk and Training*).

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What's New

Updated August 1, 2008:

This edition of the ECF Rules & Instructions contains new material.

Effective August 1, 2008, in cases assigned to the Electronic Case Filing (ECF) system, all notices and stipulations of voluntary dismissal pursuant to Federal Rule of Civil Procedure 41(a)(1)(A) must be filed electronically on the ECF system.

Paper versions of notices and stipulations pursuant to Rule 41(a)(1)(A) in ECF cases will no longer be accepted for filing effective August 1, 2008.

Please use the following ECF filing events:

NOTICE OF VOLUNTARY DISMISSAL to file a notice pursuant to Rule 41(a)(1)(A)(i); and

STIPULATION OF VOLUNTARY DISMISSAL to file a stipulation pursuant to Rule 41(a)(1)(A)(ii).

In accordance with Rule 41(a)(1)(A)(ii), stipulations of voluntary dismissal require the signature of all parties who have appeared in the action. Only partial stipulations of voluntary dismissal, seeking to dismiss some but not all parties, must continue to be submitted by e-mail to the Judgment Clerk to be conformed for the Court's approval.

In cases not assigned to the ECF system, notices and stipulations filed pursuant to Rule 41(a)(1)(A) must continue to be filed in paper form with the Judgment Clerk.

Accordingly, revisions have been made to the following items:

Section 18 - Non ECF Documents

18.1 In an ECF case are there documents that I should not file electronically?

18.4 Are Proposed Orders, Proposed Judgments, Stipulations, Voluntary Notices of Dismissal or Consents filed electronically?

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Part I. Electronic Case Filing Rules

The Court will accept for filing documents submitted, signed or verified by electronic means that comply with the following rules.

Section 1. Scope of Electronic Filing

1.1 The Court will designate which cases will be assigned to the Electronic Case Filing (ECF) system. Except as expressly provided and in exceptional circumstances preventing a Filing User from filing electronically, all petitions, motions, memoranda of law, or other pleadings and documents required to be filed with the Court in a case assigned to the ECF system must be filed electronically. A paper may be filed electronically (a) from a remote location, (b) by bringing it to the Clerk's office during regular business hours, in a form or electronic format prescribed by the Clerk, for input into the system, or (c) by bringing the paper and the Filing User's SDNY ECF password and log-in to the Clerk's Office during regular business hours to be scanned into the system by the Filing User.

1.2 Unless limited by their terms to civil cases, the provisions of these procedures relating to electronic filing apply in criminal cases that are initiated by the filing of an indictment or information. Electronic filing procedures shall not apply to applications for arrest, search or electronic surveillance warrants; for other orders in aid of or ancillary to a criminal investigation; or to proceedings relating to the grand jury.

1.3 Electronic filing procedures shall not apply to Social Security cases, Pro Se cases (unless the pro se litigant is a member of the bar), Habeas Corpus cases or cases initiated before December 2, 2003.

(*See section 13 - ECF Basics*).

1.4 The filing and service of the initial papers in a civil case, including the complaint, the issuance of the summons and the proof of service of the summons and complaint, as well as service of non-party subpoenas, will be accomplished in the traditional manner on paper in accordance with the Federal Rules of Civil Procedure and applicable Local Rules governing service, rather than electronically. In a criminal case, the indictment or information, including any superseders, shall also be filed and given to the defendant in the traditional manner on paper in accordance with the Federal Rules of Criminal Procedure and applicable Local Rules rather than electronically; in addition, service of subpoenas shall be made in the traditional manner on paper in accordance with the Federal Rules of Criminal Procedure and applicable Local Rules. In a case assigned to the ECF system after it has been opened, parties must promptly provide the Clerk with electronic copies of all documents previously provided in paper form. All subsequent documents must be filed electronically except as provided in these Rules & Instructions or as ordered by the Court.

(*See section 14 - Opening a Civil Action*).

1.5 The Clerk shall write and revise as necessary Instructions to guide Filing Users and maximize the efficiency of the Electronic Case Filing system.

(*See Part II - Electronic Case Filing Instructions*)

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Section 2. Eligibility, Registration, Passwords

2.1 Attorneys admitted to the bar of this Court, including those admitted pro hac vice and attorneys authorized to represent the United States, may register and may be required to register as Filing Users of the Court's ECF system. Unless excused by the Court, attorneys not already Filing Users appearing in cases assigned to the ECF system must register as Filing Users forthwith upon the case being so designated. Registration is in a form prescribed by the Clerk and requires the Filing User's name, address, telephone number, Internet e-mail address, and a declaration that the attorney is admitted to the bar of this Court or authorized to represent the United States.

2.2 If the Court permits or requires, a party to a pending civil action who is not represented by an attorney may register as a Filing User in the ECF system solely for purposes of the action. Registration is in a form prescribed by the Clerk and requires identification of the action as well as the name, address, telephone number and Internet e-mail address of the party. The Court may require the party to attend in-person training for Electronic Case Filing as a condition of registering as a Filing User. If, during the course of the proceeding, the party retains an attorney who appears on the party's behalf, the attorney must advise the Clerk to terminate the party's registration as a Filing User upon the attorney's appearance.

2.3 Once registration is completed, the Filing User will receive notification of the user log-in and password. Filing Users agree to protect the security of their passwords and immediately notify the Clerk if they learn that their password has been compromised. Users may be subject to sanctions for failure to comply with this provision.

2.4 In a civil action, the Clerk will enter, as Filing Users to whom Notices of Electronic Filing will be transmitted, (a) each attorney identified on the Civil Cover Sheet, as well as (b) each additional attorney who subsequently appears in the action and files a Notice of Appearance (which must be filed electronically). In a criminal case, the Clerk will enter, as Filing Users to whom Notices of Electronic Filing will be transmitted and who will be granted access to electronically file and retrieve documents in the case, the attorney(s) for the United States identified on the Criminal Designation Form or subsequently identified as representing the United States in the case and each attorney filing a Notice of Appearance on behalf of a defendant. Notices of Appearance on behalf of a criminal defendant will be filed in the traditional manner on paper.

2.5 An attorney of record may, by written or electronic request to the Clerk, have transmission of Notices of Electronic Filing to another attorney in his or her firm terminated.

(*See section 22 - ECF Passwords*).

Section 3. Consequences of Electronic Filing

3.1 Except as otherwise provided in Rule 4 herein, electronic filing of a document in the ECF system consistent with these procedures, together with the transmission of a Notice of Electronic Filing from the Court, constitutes filing of the document for all purposes of the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, and the Local Rules of this Court and constitutes entry of the document on the docket kept by the Clerk under Fed. R. Civ. P. 58 and 79 and Fed. R. Crim. P. 49 and 55.

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3.2 When a document has been filed electronically, the official record is the electronic recording of the document as stored by the Court (subject to the exception set out in Rule 4 below), and the filing party is bound by the document as filed. Except in the case of documents first filed in paper form and subsequently submitted electronically under Rule 1, a document filed electronically is deemed filed on the date and time stated on the Notice of Electronic Filing from the Court.

3.3 Electronic filing must be completed before midnight local time where the Court is located in order to be considered timely filed that day.

3.4 Individual Judges' Practices should continue to be followed with respect to delivery of courtesy copies.

(*See section 19 - Service of Electronically Filed Documents*).

Section 4. Entry of Court Orders

4.1 All orders, decrees, judgments and proceedings of the Court will be filed in accordance with these procedures and entered on the docket kept by the Clerk under Fed. R. Civ. P. 58 and 79 and Fed. R. Crim. P. 49 and 55. Each document signed by a judge shall be scanned so as to contain an image of the judge's signature and shall be filed electronically by the Court, and the manually signed original shall be filed by the Clerk. In the event of a discrepancy between the electronically filed copy and the manually signed original, the manually signed original shall control.

4.2 A Filing User submitting a document electronically that requires a judge's signature must promptly deliver the document in such other form as the Court requires, if any.

Section 5. Attachments and Exhibits

5.1 Filing Users must submit in electronic form all documents referenced as exhibits or attachments, unless the Court permits paper filing.

5.2 A Filing User must submit as exhibits or attachments only those excerpts of the referenced documents that are relevant to the matter under consideration by the Court. Excerpted material must be clearly and prominently identified as such. Filing Users who file excerpts of documents as exhibits or attachments under this procedure do so without prejudice to their right to file timely additional excerpts or the complete document. Responding parties may file timely additional excerpts that they believe are relevant or the complete document. A party may move for permission to serve and file in hard copy documents that cannot reasonably be scanned.

5.3 In cases where the record of an administrative or other prior proceeding must be filed with the Court, such record may be served and filed in hard copy without prior motion and order of the Court.

(*See section 15 - Motions*).

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Section 6. Sealed Documents

6.1 Documents ordered to be placed under seal may not be filed electronically.

6.2 A motion to file documents under seal should be filed electronically unless prohibited by law, in redacted form if necessary; however, a motion to file under seal that includes a statement of why the filing should not be made electronically may be made in paper copy. The order of the Court authorizing the filing of documents under seal may be filed electronically unless prohibited by law.

6.3 A paper copy of the sealing order must be attached to the outside of the envelope containing the documents under seal and be delivered to the Clerk's Office.

(*See section 18 - Non-Electronic Documents*).

Section 7. Retention Requirements

Documents that are electronically filed and require original signatures other than that of the Filing User must be maintained in paper form by the Filing User until one year after all time periods for appeals expire, except that affidavits, declarations and proofs of service must be maintained in paper form by the Filing User until five years after all time periods for appeals expire. On request of the Court, the Filing User must provide original documents for review.

(*See section 13 - ECF Basics*).

Section 8. Signatures

8.1 The user log-in and password required to submit documents to the ECF system serve as the Filing User's signature on all electronic documents filed with the Court. They also serve as a signature for purposes of the Federal Rules of Civil Procedure, including Rule 11, the Federal Rules of Criminal Procedure, the Local Rules of this Court, and any other purpose for which a signature is required in connection with proceedings before the Court. Each document filed electronically must indicate that it has been electronically filed.

8.2 Electronically filed documents must include a signature block and must set forth the name, address, telephone number and e-mail address all in compliance with the Federal Rules of Civil Procedure and Local Civil Rule 11.1. In addition, the name of the Filing User under whose log-in and password the document is submitted must be preceded by an "s/" typed in the space where the signature would otherwise appear.

8.3 No Filing User or other person may knowingly permit or cause to permit a Filing User's password to be used by anyone other than an authorized agent of the Filing User.

8.4 A document requiring the signature of a defendant in a criminal case may be electronically filed only in a scanned format that contains an image of the defendant's signature.

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8.5 Documents requiring signatures of more than one party must be electronically filed either by: (a) submitting a scanned document containing all necessary signatures; (b) representing the consent of the other parties on the document; (c) identifying on the document the parties whose signatures are required and by the submission of a notice of endorsement by the other parties no later than three business days after filing; or (d) in any other manner approved by the Court.

(*See section 13 - ECF Basics*).

Section 9. Service of Documents by Electronic Means

Transmission of the Clerk's Notice of Electronic Filing of a document shall constitute service of such document upon any Filing User in that case. It remains the duty of the attorney for a party to review regularly the docket sheet of the case. Attorneys and pro se parties who are not Filing Users shall be served with a paper copy of any electronically filed pleading or other document. Service of such paper copy must be made according to the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure and the Local Rules.

(*See section 19 - Service of Electronically Filed Documents*).

Section 10. Notice of Court Orders and Judgments

Immediately upon the entry of an order or judgment in a proceeding assigned to the ECF system, the Clerk will transmit to all Filing Users in the case, in electronic form, a Notice of Electronic Filing. Electronic transmission of the Notice of Electronic Filing constitutes the notice required by Fed.R.Crim.P. 49(c) and Fed.R.Civ.P. 77(d). It remains the duty of the attorney for a party to review regularly the docket sheet of the case. The Clerk must give notice in paper form to a person who is not a Filing User in accordance with the Federal Rules of Civil Procedure or the Federal Rules of Criminal Procedure.

(*See section 19 - Service of Electronically Filed Documents*).

Section 11. Technical Failures

A Filing User whose filing is made untimely as the result of a technical failure may seek appropriate relief from the Court.

(*See section 23 - ECF Computer System Information*).

Section 12. Public Access

A person may review at the Clerk's Office filings that have not been sealed by the Court. A person also may access the ECF system at the Court's Internet site www.nysd.uscourts.gov by obtaining a PACER log-in and

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password. A person who has PACER access may retrieve docket sheets in civil and criminal cases, documents in a civil case assigned to the ECF System, and documents in a criminal case filed after November 1, 2004. Only counsel for the government and for a defendant may retrieve documents in a criminal case filed prior to November 1, 2004. Only a Filing User under Rule 2 herein may file documents.

(*See section 13 - ECF Basics*).

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Part II. Electronic Case Filing Instructions

Section 13. ECF Basics

13.1 May letters be filed electronically?

No. Letters are submitted in the traditional manner on paper. An attorney should not file a letter electronically on the ECF system. The Judge may direct the Clerk to place a letter on the docket if it is deemed appropriate.

13.2 In brief, how do I file a document electronically?

(a) Use your secure SDNY ECF password (*see section 22 - ECF Passwords*) to log-in to the ECF system from any Internet connection.

(b) Select the appropriate category, CIVIL or CRIMINAL.

(c) Find the appropriate ECF Filing Event, or title, for your document. (*See below*).

(d) Indicate the party filing the document (hold down the control key to designate more than one party).

(e) Upload a PDF copy (*see section 23 - ECF Computer System Information*) of your document. Include any exhibits as attachments to the main document. File supporting documents separately.

(f) Print the final screen, the Notice of Electronic Filing (NEF), for your records.

(g) Service is complete provided all parties receive electronic notice of the filing (via the NEF email sent automatically by the Court - see the NEF for a list of who was/was not served electronically). If a party will not receive electronic notice via the NEF email, you must serve him/her in the traditional manner, on paper, then electronically file an affidavit of service (*see section 19 - Service of Electronically Filed Documents*).

(h) Submit a paper courtesy copy to the Judge if required (*see the Judge's Individual Practices at www.nysd.uscourts.gov*).

13.3 What is the secure website for electronic filing on the SDNY ECF system?

To file electronically go to **https://ecf.nysd.uscourts.gov**, or link to the filing website via the Court's public website (see below). You will need your SDNY ECF log-in and password to file electronically.

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13.4 What is the public website for information about the Court?

For publicly available information go to **www.nysd.uscourts.gov** (no password required). From the homepage click on ECF for information on Electronic Case Filing.

13.5 What are the mailing addresses for the Court?

United States District Court, 500 Pearl Street, New York, NY 10007; or United States District Court, 300 Quarropas Street, White Plains, NY 10601.

13.6 Is an electronically filed document filed in accordance with the Federal Rules of Civil Procedure?

Yes. Local Civil Rule 5.2 provides:

> A paper filed by electronic means in accordance with procedures promulgated by the Court is, for purposes of Federal Rule of Civil Procedure 5(e), filed in compliance with the local civil rules of the Southern and Eastern Districts of New York.

(*See section 3 - Consequences of Electronic Case Filing*).

13.7 Which cases are ECF cases?

Civil and criminal cases filed after December 2, 2003, are subject to electronic filing. Cases filed before that date, Social Security cases, habeas corpus cases and pro se cases will not be assigned to the ECF system and must be filed on paper.

(*See section 1 - Scope of Electronic Filing*).

13.8 Which Judges entertain ECF cases?

All of the Court's District Judges and Magistrate Judges are able to entertain ECF cases.

13.9 How can I tell if my case is an ECF case?

The docket sheet will include the letters "ECF" in the upper right corner and an entry titled "CASE DESIGNATED ECF". If you are not sure if you are required to file electronically, call the ECF Help Desk at (212)805-0800.

13.10 If a case is deemed an ECF case, am I required to file documents electronically?

Yes. In an ECF case the attorney is responsible for electronically filing documents over the Internet using a secure SDNY log-in and password. With certain exceptions outlined below the Clerk's Office will not accept paper filings in an ECF case.

(*See section 1 - Scope of Electronic Case Filing* and *section 18 -Non-Electronic Documents*).

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13.11 May I file documents electronically in a non-ECF (paper) case?

No. Do not file documents electronically in non ECF (paper) case. Only those cases filed after December 2, 2003 are subject to electronic filing. Pro Se cases, Social Security cases, habeas corpus cases and cases filed before December 2, 2003, will not be assigned to the ECF system and must be filed on paper.

(*See section 1 - Scope of Electronic Case Filing*).

13.12 Will the Court file documents electronically in a non-ECF (paper) case?

Yes, the Court may file Orders and Opinions in electronic format (pdf) in a non-ECF (paper) case. This will not convert a non-ECF case to an ECF case, and parties should continue to file documents on paper.

13.13 Can I file electronically at any time?

Yes. You can file electronically 24 hours a day, 7 days a week, 365 days a year from any Internet connection worldwide. Filing must be completed before midnight local time where the Court is located in order to be considered timely filed that day.

(*See section 3 - Consequences of Electronic Case Filing*).

13.14 When is an electronically filed document deemed filed?

An electronically filed document is deemed filed on the date and time stated on the Notice of Electronic Filing (also referred to herein as the "filing receipt") from the Court.

(*See section 3 - Consequences of Electronic Case Filing*).

13.15 What is a docket sheet, and how can I view one?

The docket sheet is the official record of all filings in a case. You can view the docket sheet, including images of electronically filed documents, via the PACER public access system (for details go to http://pacer.psc.uscourts.gov or call 800-676-6856). Or you can use one of the public access computers available in the Clerk's Office.

(*See section 12 - Public Access*).

13.16 Should I routinely view the docket sheet in my case?

Yes. In ECF cases, service is accomplished by an e-mail sent by the Court. However e-mail is not foolproof, and you may miss an e-mail message. Therefore it remains the duty of the attorney for a party to review regularly the docket sheet of the case in order not to miss a filing.

(*See section 9 - Service of Documents by Electronic Means*).

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13.17 How do I view an electronically filed document in an ECF case?

Click on Query, enter the case number, go to Docket Report, find the document and click on the blue number (hyperlink) next to that entry. A pdf copy of the complete document will then appear. If there is no blue hyperlink, then there is no electronic version of that document. In non-ECF (paper) cases you will not be able to view documents, only document summaries.

13.18 How will I know if it's appropriate to electronically file my document?

First, determine if your case is an ECF case - not all cases are ECF cases. When filing in an ECF case if you can find an ECF Filing Event that directly matches your document then it should be electronically filed. If you cannot find a matching ECF Filing Event it probably should not be electronically filed. The ECF Event Dictionary (a PDF document available on our public website at www.nysd.uscourts.gov) is very useful for finding your event and the category in which it is listed. See the list of non-ECF documents below or call the ECF Help Desk at (212)805-0800.

(*See section 24 - ECF Help Desk and Training*).

13.19 Must the caption indicate the case is an electronic (ECF) case?

Yes. The case number must be followed by the judge's initials in parenthesis, and "ECF CASE" below the case number. For example:

06 cv 1234 (ABC)
ECF Case

(*See section 8 - Signatures*).

13.20 How do I sign an electronically filed document?

The ECF log-in and password of the filing attorney serve as his/her electronic signature. The filing attorney may place an S/ in place of his/her signature. The attorney's name and contact information, including e-mail address, must appear below the signature line. Signatures for all other persons (clients, witnesses etc.) must be scanned in order to capture the actual ink signature.

(*See section 8 - Signatures*).

13.21 When filing must I choose a name for my document on the ECF Docket Sheet?

Yes. When filing electronically you will be asked to name your document by selecting the appropriate ECF Filing Event. The ECF Filing Event is essentially the title of the document on the docket sheet, such as Motion for Summary Judgment or Affidavit in Support of Motion.

13.22 How do I find the correct ECF Filing Event for my document?

ECF Filing Events are listed by category on the ECF system. Within each category is an alphabetical listing of available ECF Filing Events. You may use the search function to find your Filing Event. The ECF Event

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Dictionary (a pdf document available on our public website at www.nysd.uscourts.gov) is also very useful for finding your event and the category in which it's listed. Print the dictionary for future reference. If you cannot find the appropriate event for your document do not file it using the wrong event. Call the ECF Help Desk at (212)805-0800 for assistance if necessary.

(*See section 24 - ECF Help Desk and Training*).

13.23 Must I retain paper originals of documents I electronically file?

Yes. Filing Users must retain original versions of electronically filed documents for a period of time after filing. On request of the Court, the Filing User must provide original documents for review.

(*See section 7 - Retention Requirements*).

13.24 Should I continue to submit courtesy copies?

Yes, continue your current practice. In the past if you would have submitted a paper courtesy copy of a document, you should now submit a paper courtesy copy of the document in an ECF case. For example, most Judges require courtesy copies of motion papers. Read the Judge's Individual Practices for specific practices.

(*See section 3 - Consequences of Electronic Case Filing*).

13.25 Are Administrative Records filed electronically?

Yes, if possible. However, if the administrative record is too large to be scanned it may be served and filed in hard copy without prior motion and order of the Court.

(*See section 5 - Attachments and Exhibits*).

13.26 In Consolidated and MDL cases can I file simultaneously in member cases?

Yes. When filing in Consolidated and Multi-District Litigation (MDL) cases you can save time by electronically filing a document simultaneously in the member case(s) using the computer function titled "Spread Text and Effects" (not available in related cases). Please observe the following MDL filing rules:

- In consolidated and MDL cases you must file all documents first under the Lead or MDL case number.

- You may then precisely designate the member case(s) in which you wish to simultaneously file.

- Do not file in all cases unless it is appropriate. Your document may not relate to all member cases.

- The case caption must include all the case numbers in which your document will be filed.

- Instructions for Spread Text and Effects and information on in-person training are available on-line at www.nysd.uscourts.gov

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13.27 What if I make a mistake in electronic filing?

Call the ECF Help Desk immediately at (212)805-0800.

(*See section 24 - ECF Help Desk and Training*).

Section 14. Opening a Civil Action

14.1 Electronically filed (ECF) cases are opened and service of the initiating documents (complaint, notice of removal, etc.) is accomplished in the traditional manner, on paper.

14.2 In order to alert your adversary(s) to the requirements of Electronic Case Filing and the Judge's Individual Practices you are required to deliver paper copies of the following documents to all parties (available at the courthouse, and www.nysd.uscourts.gov):

- **Electronic Case Filing Rules & Instructions** (this document)
- **The Individual Practices** of the assigned Judge

14.3 Then within 24 hours of the assignment of a case number, you are required to e-mail to the Clerk's Office (e-mail is not ECF filing) the initiating documents in PDF format only (such as Adobe Acrobat PDF, see section 21). Include a F.R.C.P. Rule 7.1 Statement (if applicable) and all exhibits. The case number followed by the Judge's initials and "ECF CASE" must appear in the case caption. Failure to do so within 24 hours will delay adding your PDF documents to the computerized ECF docket.

Each document must be in a separate PDF file no larger than 2.5 megabytes (separate large computer files into smaller parts if necessary, and label accordingly). The subject line of the e-mail and the name of the PDF file should list the case number followed by a brief document description (ex. "Re: 01cv1234 KMW-complaint").

Send a PDF copy of the initiating documents by e-mail (do not file on the ECF system) to:

- For new civil cases assigned to a Manhattan Judge e-mail to:
  caseopenings@nysd.uscourts.gov
  or **case_openings@nysd.uscourts.gov**
- For new civil cases assigned to a White Plains Judge e-mail to:
  wpclerk@nysd.uscourts.gov

14.4 File the Affidavit of Service (or the Acknowledgment of Service, Certificate of Service, Request for Waiver of Service, Summons Returned Executed/Unexecuted, Waiver of Service Executed/Unexecuted) for the initiating document (complaint, notice of removal, etc.) in the following manner:

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(a) Electronically file the Affidavit of Service for the initiating document on the ECF system (do not e-mail), and

(b) Deliver the original paper Affidavit of Service, with summons attached, to the Clerk's Office. Include a copy of the ECF Notice of Electronic Filing for this document (the filing receipt),

(See section 19 - Service of Electronically Filed Documents).

14.5 Subsequent documents, including the Defendant's Answer, must be filed electronically on the ECF system at **https://ecf.nysd.uscourts.gov**. With certain exceptions outlined below, the Clerk's Office will not accept a paper document for filing in an ECF case.

(See section 1 - Scope of Electronic Filing and *section 18 - Non-electronic Documents).*

Section 15. Motions

15.1 What ECF Filing Event should be used to file a motion?

A motion must be filed using an ECF Filing Event beginning with the word "Motion". The ECF system contains over 160 separate motion Filing Events for your use, all beginning with the word "Motion" (eg. "Motion for Summary Judgment", etc.). See the ECF Events Dictionary at www.nysd.uscourts.gov for a complete list of motions and supporting documents. Do not use the "Notice" filing event to file a motion.

15.2 Should I file supporting papers as attachments to the motion?

No. File supporting or response documents separately under the appropriate ECF Filing Event found in the category "Replies, Opposition and Supporting Documents". For example, a motion, an affidavit in support and a memorandum of law in support must be filed separately.

15.3 What ECF Filing Event should be used to file supporting papers?

Use the appropriate ECF Filing Events for supporting papers found in the category "Replies, Opposition and Supporting Documents" (eg. Affidavit in Support of Motion, Memorandum of Law in Support of Motion, etc.). Never use the ECF Filing Event for Motion to file supporting papers. For example, filing a motion, an affidavit in support and a memorandum of law in support, and labeling each one "Motion" would make it appear incorrectly that three motions were filed instead of one.

15.4 How do I file exhibits?

Exhibits shall be filed only as attachments to a document, such as a motion or an affidavit. Do not use the ECF Filing Event for "Motion" to file exhibits separately. Exhibits are the only items that should be attached to electronically filed documents. You are limited to electronically filing only relevant excerpts of exhibits.

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Excerpts must be clearly identified as such. If the exhibit is too large to be scanned and electronically filed call the ECF Help Desk at (212)805-0800.

(See section 5 - Attachments and Exhibits; see also section 24 - ECF Help Desk and Training).

Section 16. Default Judgments

16.1 How do I file a Default Judgment?

In one of the three ways outlined below. Consult the Individual Practices of the Judge to determine the appropriate method (at www.nysd.uscourts.gov). If the Judge's Individual Practices contain no specific rules regarding Default Judgments you should follow section 16.4 below.

If you wish to electronically file a Request to Enter Default Judgment before submitting a Default Judgment, you must file an unsigned Clerk's Certificate as an attachment to the Request. Then submit a paper copy of the proposed Clerk's Certificate to the Orders, Appeals & Judgments Clerk. The clerk will sign and return the Clerk's Certificate, and you may then move for a Default Judgment using the appropriate method outlined below.

When necessary, submit paper documents to the Orders, Appeals & Judgements Clerk in Manhattan (212-805-0143) or White Plains (914-390-4000) depending upon where the Judge sits. If sending documents by mail, enclose a return envelope with postage. For mailing addresses *see section 13 - ECF Basics*.

16.2 Default Judgment brought by Motion:

(a) Submit to the Orders, Appeals & Judgment Clerk two paper Clerk's Certificates. The clerk will sign and return both Certificates to the filing party.

(b) Electronically file the Motion for Default Judgment on the ECF system. The following items should be filed as attachments to the Motion: the signed Clerk's Certificate; and a copy of the Summons and Complaint with proof of service. The following supporting documents should be filed as separate ECF Filing Events: Affidavit in Support; and Statement of Damages (unless requesting an inquest).

(c) Electronically file an Affidavit of Service for the Motion for Default Judgment.

(d) Submit a courtesy copy of the Motion to the Judge, including the original signed Clerk's Certificate and a copy of the Affidavit of Service.

16.3 Default Judgment brought by Order to Show Cause (OSC):

(a) Submit to the Orders, Appeals & Judgments Clerk a paper original of the OSC. Include as exhibits to the Affidavit in Support a Clerk's Certificate and a proposed Default Judgment.

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Include courtesy copies of all documents.

(b) If signed by the Court, the Clerk's Office will electronically file only the Order. After the Order appears on the docket sheet, the attorney must electronically file all supporting papers.

(c) Electronically file an Affidavit of Service for the Order to Show Cause.

16.4 Default Judgment brought on by Default Judgment and Order:

(a) Submit to the Orders, Appeals & Judgments Clerk: a paper original of the proposed Default Judgment and Order; the Affidavit in Support; a Statement of Damages (unless requesting an inquest); a copy of the Summons and Complaint with proof of service; and a Clerk's Certificate. The papers will be forwarded to the Judge for signature.

(b) If signed by the Court, the Clerk's Office will electronically file only the Order. After the Order appears on the docket sheet, the attorney must electronically file all supporting papers.

Section 17. Appeals

17.1 Are appeals filed electronically?

No. Appeals in ECF and non-ECF cases must be filed in the traditional manner, on paper.

17.2 How do I file an appeal in an ECF case?

File the appeal in the traditional manner, on paper either at the courthouse or by mail. Include the filing fee if necessary. Then within 24 hours of filing the paper copy of your Appeal, you are required to e-mail to the Clerk's Office an electronic copy of the Appeal in PDF format. Include any exhibits. Each document must be in a separate PDF file no larger than 2.5 megabytes. The District Court case number followed by the Judge's initials and "ECF CASE" must appear in the document's case caption. When sending e-mail, the subject line of the e-mail should always list the case number followed by a document description (ex. "Re: 01cv1234-appeal"). Questions may be directed to the Orders, Appeals & Judgments Clerk in Manhattan at (212)805-0636, or in White Plains at (914)390-4000. Send the e-mail (do not file on the ECF system) to:

- For appeals from an ECF case assigned to a Manhattan Judge e-mail to:

  appeals@nysd.uscourts.gov

- For appeals from an ECF case assigned to a White Plains Judge e-mail to:

  wpclerk@nysd.uscourts.gov

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Section 18. Non-Electronic Documents

18.1 In an ECF case are there documents that I should not file electronically?

Yes, including:

- Letters, see instruction 18.2 below.
- Case initiating documents (complaint, notice of removal, etc.), see section 14;
- All types of complaints (3rd party, Interpleader etc.), see instruction 18.3 below;
- Proposed orders; proposed judgments, stipulations; consents, see instruction 18.4 below;
- Orders to show cause (with or without a temporary restraining order), see instruction 18.6 below;
- Motions for Admission pro hac vice, see instruction 18.7 below;
- Miscellaneous cases, see instruction 18.8 below;
- Sealed documents, see instruction 18.9 below;
- Surety bonds, see instruction 18.10 below;
- Bill of Costs, see instruction 18.11 below;
- Notices of Appeal, see section 17;

18.2 May letters be filed electronically?

No. Letters are submitted in the traditional manner on paper. An attorney should not file a letter electronically on the ECF system. The Judge may direct the Clerk to place a letter on the docket if it is deemed appropriate.

18.3 Are Amended Complaints, Third Party Complaints, Interpleader Complaints, etc. filed electronically?

No. All complaints, no matter what type, are filed the same way:

(a) Deliver the paper original to the appropriate Clerk's Office (Manhattan or White Plains), and

(b) E-mail a PDF copy of the document within 24 hours, including exhibits and Rule 7.1 Disclosure Statement (if required) to the Clerk's Office. Send the e-mail to:

- For cases assigned to a Manhattan Judge e-mail to:

caseopenings@nysd.uscourts.gov

or **case_openings@nysd.uscourts.gov**

- For cases assigned to a White Plains Judge e-mail to:

wpclerk@nysd.uscourts.gov

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18.4 Are Proposed Orders, Proposed Judgments, Stipulations or Consents filed electronically?

No. Any document that requires the signature of a Judge should not be electronically filed. Proposed orders, judgments, stipulations and consents should not be submitted through the ECF system. Instead they should be sent by e-mail to the Clerk. Proposed orders should be submitted in word processing format (WordPerfect or Word) rather than as a pdf document. Stipulations should be submitted in pdf format. Stipulations must contain ink signatures. Faxed signatures are acceptable, the last person to sign may e-mail it to the clerk. [Please note, effective August 1, 2008, Stipulations of Voluntary Dismissal pursuant to F.R.C.P. Rule 41(a)(1)(A)(ii) do not require the signature of a Judge, and should be electronically filed in ECF cases.] Questions may be directed to the Orders, Appeals & Judgments Clerk in Manhattan at (212)805-0143 or in White Plains at (914)390-4000. E-mail the proposed order, judgment or stipulation to:

- For cases assigned to a Manhattan Judge e-mail to:

  judgments@nysd.uscourts.gov

- For cases assigned to a White Plains Judge e-mail to:

  wpclerk@nysd.uscourts.gov

18.5 Must a Stipulation or Consent include a traditional ink signature?

Yes. You cannot substitute s/ for a traditional ink signature for these documents. Faxed signatures are acceptable.

(*See section 8 - Signatures*).

18.6 Are Orders to Show Cause filed electronically?

No. An Order to Show Cause (with or without a Temporary Restraining Order) must be submitted in the traditional manner, on paper, to the Orders, Appeals & Judgments clerk. If signed by the Court, the Clerk's Office will electronically file only the Order. After the Order appears on the docket sheet, the attorney must electronically file all supporting papers

18.7 Are Motions for Admission pro hac vice filed electronically?

No. A Motion for Admission pro hac vice is filed in the traditional manner, on paper. See the Attorney Admissions page at www.nysd.uscourts.gov for details and sample forms.

18.8 Are Miscellaneous cases filed electronically?

No. Miscellaneous cases are filed in the traditional manner, in paper form. Miscellaneous cases are those that use an "M" docket number (eg. "M 8-85") instead of a traditional case number, and require payment of a Miscellaneous filing fee for each document.

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18.9 Are sealed documents filed electronically?

No. Sealed documents are filed in the traditional manner, in paper form. The sealed envelope must contain the paper document and a CD-ROM containing a pdf copy of the document. A copy of the Judge's sealing order must be attached to the outside of the envelope.

(*See section 6 - Sealed Documents*).

18.10 Are surety bonds filed electronically?

No. Surety bonds are filed in the traditional manner, on paper. Include a copy of the Court's Order regarding the bond.

18.11 Is a Bill of Costs filed electronically?

No. A Bill of Costs should be filed in the traditional manner, in paper form. See Local Civil Rule 54.1 for details. See also the required Bill of Costs form at www.nysd.uscourts.gov.

Section 19. Service of Electronically Filed Documents

19.1 How is service accomplished for electronically filed documents?

After you register for an ECF password (*see section 22 - ECF Passwords*) you will receive a Notice of Electronic Filing (NEF) by e-mail whenever there is activity in your case, including court orders and filings by your adversary. That e-mail from the Court constitutes service. A hyperlink to a PDF image of any electronically filed document will be included (not all activity includes a PDF document). Print a copy of the document and the NEF for your records. The Clerk's Office will no longer mail paper copies of electronically filed documents.

(See section 9 - Service of Documents by Electronic Means).

19.2 Am I required to serve a paper copy of an electronically filed document?

Maybe. If all parties will receive electronic notification of the filing, then service is complete upon transmission by the Court of the Notice of Electronic Filing email (NEF) and you are not required to serve a paper copy.

If any party will not receive a NEF, you are required to accomplish service on that party in the traditional manner, on paper. Then you must electronically file an Affidavit of Service (see below).

The Notice of Electronic Filing receipt will inform you who will receive notice of the filing "electronically" (by e-mail from the Court) and who will receive notice "by other means" (traditional service on paper).

(*See section 9 - Service of Documents by Electronic Means*).

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19.3 Am I required to electronically file an Affidavit of Service in an ECF case?

Only two circumstances require the electronic filing of an Affidavit of Service in an ECF case:

(a) The Affidavit of Service for the initiating document (complaint, notice of removal, etc.) must be filed as follows:

(1) Electronically file the Affidavit of Service for the initiating document on the ECF system (do not send by e-mail), and

(2) Deliver the original paper Affidavit of Service with summons attached to the Clerk's Office. Attach a copy of the ECF filing receipt for this document. And

(b) An Affidavit of Service must be electronically filed anytime a party is served with a paper document. This usually occurs when a party will not receive electronic notice of the filing (via e-mail) from the Court. See the Notice of Electronic Filing (NEF) for a list of who was or was not served electronically.

(*See section 9 - Service of Documents by Electronic Means*).

19.4 Is a filing timely if it is completed before midnight?

Yes. Filing must be completed before midnight local time where the Court is located in order to be considered timely filed that day.

(*See section 3 - Consequences of Electronic Case Filing*).

19.5 Do I receive a receipt (Notice of Electronic Filing) when I file electronically?

Yes. When you successfully complete an electronic filing the final screen will display a NOTICE OF ELECTRONIC FILING (NEF), or filing receipt. Print a copy for your records. The NEF receipt will tell you what was filed, by whom, when it was filed and if a document number was assigned on the docket sheet (not all case activity merits a document number). If you do not see the NEF screen your filing may not have been successful and you are advised to check the docket sheet.

19.6 Should I routinely view the docket sheet in my case?

Yes. Although service is accomplished in ECF cases by an e-mail sent by the Court, e-mail is not foolproof and you risk missing an e-mail message. Therefore it remains the duty of the attorney for a party to review regularly the docket sheet of the case in order not to miss a filing.

(*See section 9 - Service of Documents by Electronic Means*).

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Section 20. Attorney Appearances

20.1 How does an attorney's name appear on the docket sheet?

The attorney who signs the initiating document will be added to the docket sheet when the Clerk's Office opens the case on the ECF system. The attorney responding to that filing must add his or her own name to the docket sheet the first time he or she appears in the case. When electronically filing the first document, the responding attorney must: (a) click to create an "Association" with the client (i.e. represent the client); (b) click the "Notice" box to receive electronic notice of case activity; and (c) click the "Lead" attorney box if applicable. If the responding attorney is not offered the opportunity to create an "association" with the client on his/her first electronic filing, he/she must electronically file a Notice of Appearance in order to appear on the docket.

20.2 If the attorney's name is on the docket sheet why doesn't he/she receive e-mail notification of filings?

It could be because his or her name was added to the docket sheet before the attorney obtained an ECF password. In that case the attorney's name and firm address will appear at the top of the docket sheet, but the e-mail address will be missing. If this is the case the solution is to obtain an ECF password. Or it could be because the attorney filed a Notice of Appearance but failed to check the "Notice" box when creating an association with the client to indicate that he or she would like to receive e-mail notification of activity in the case. In this case, call the ECF Help Desk at (212)805-0800.

(*See section 24 - ECF Help Desk and Training*).

20.3 How do I electronically file a Notice of Appearance in an ECF case?

If an attorney joins a case already in progress he or she must electronically file a Notice of Appearance. When electronically filing the Notice of Appearance, the attorney must: (a) click to create an "Association" with the client (i.e. represent the client); (b) click the "Notice" box to receive electronic notice of case activity; and (c) click the "Lead" attorney box if applicable. Please note the ECF system will not allow an attorney to electronically file a Notice of Appearance on behalf of another attorney. The Notice of Appearance and the ECF password must belong to the same attorney.

(*See section 2 - Eligibility, Registration, Passwords*).

20.4 How do I file a Motion for Admission pro hac vice in an ECF case?

In the traditional manner, on paper. After the Order of Admission pro hac vice is signed, the attorney must apply for an ECF password. See the Attorney Admissions page at www.nysd.uscourts.gov for details and sample forms.

20.5 Am I required to notify the Court when my contact information changes?

Yes. Local Civil Rule 1.3 requires an attorney to notify the court when his/her contact information changes.

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For information go to www.nysd.uscourts.gov or call the Attorney Admissions Clerk at (212) 805-0645. Follow the steps below to change your contact information:

(a) If you have a pending case provide notice to the Court and your adversary(s) by electronically filing a NOTICE OF CHANGE OF ADDRESS in each open case where you remain the attorney of record, or

(b) If you do not have a pending case mail written notice of the change to: Attorney Admissions Clerk, United States District Court, 500 Pearl Street, NY, NY 10007.

20.6 What if only my e-mail address has changed?

You can make a simple change of your e-mail address yourself on the ECF system. To update your primary e-mail address click on Maintain Your Account and E-mail Information. However, if your other contact information has changed you must follow the directions above to update your full contact information.

20.7 Can I specify additional e-mail addresses to receive notification of activity in my cases?

Yes. You can add an alternate e-mail address for yourself, or add a colleague's e-mail address. On the ECF system click on Utilities, Maintain Your Account, and E-mail Information.

20.8 Can I receive electronic notification of activity in cases where I do not represent a party?

Yes. You can add cases to your e-mail notification list on the SDNY ECF system even if you don't represent a party to the case. Click on Utilities, Maintain Your Account, and E-mail Information.

Section 21. Privacy and Public Access to ECF Cases

21.1 Has electronic filing expanded public access to documents?

Yes, documents filed electronically on the ECF system are more widely available than ever before. Electronic documents can now be viewed over the Internet via a PACER account. In order to protect people's privacy and reduce the threat of identity theft, parties should be cautious when filing sensitive information.

21.2 Who is responsible for redacting sensitive information from filed documents?

It is the sole responsibility of counsel and the parties to be sure that all documents comply with the rules of this Court requiring redaction of personal identifiers. Neither the judge nor the Clerk of Court will review documents for compliance with this rule.

21.3 Am I required to redact certain sensitive information in a document?

Yes. Amendments to Federal Rule of Civil Procedure 5.2 and Criminal Procedure 49.1 require that personal

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identification information be redacted from documents filed with the court. You should not include sensitive information in any document filed with the Court unless such inclusion is necessary and relevant to the case. This applies to both ECF cases and non-ECF (paper) cases. In compliance with the E-Government Act of 2002, a party wishing to file a document containing the personal data identifiers listed below must file a redacted version in the public file:

- Social Security Numbers: include only the last four digits of the number.
- Names of Minor Children: include only the initials of the child.
- Dates of Birth: include only the year.
- Financial Account #'s: include only the last four digits of these numbers.
- Home Addresses: include only the City and State.

21.4 Is there other sensitive information that I should consider redacting?

Yes. Caution should be exercised when filing documents that contain the following:

- Personal identifying numbers (PIN #'s), such as a driver's license number
- Medical records, treatment and diagnosis
- Employment history
- Individual financial information
- Proprietary or trade secret information
- Information regarding an individual's cooperation with the government

21.5 Am I required to file sensitive information under seal?

No. In addition to the redacted public filing a party may file, but is not required to file, the personal data identifiers listed above by filing under seal.

You may file under seal either: (a) a reference list, or (b) an original, unredacted version of the document.

If you find it necessary to file sensitive information, the Court prefers a reference list to the filing of a complete document. The reference list shall contain the complete personal data identifier(s) and the redacted identifier(s) used in its (their) place in the filing. The reference list may be amended as of right.

21.6 Are sealed documents filed electronically?

No. Sealed documents are filed in the traditional manner, in paper form. The sealed envelope must contain the paper document and a CD-ROM containing a pdf copy of the document. A copy of the Judge's sealing order must be attached to the outside of the envelope.

(*See section 6 - Sealed Documents*).

21.7 Who should maintain custody of original unredacted documents?

Parties are responsible for maintaining possession of original, unredacted documents, and information redacted

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from publicly filed documents. The Court may later require counsel to furnish the unredacted information.

21.8 What if I mistakenly file sensitive or confidential information?

(a) Immediately contact the ECF Help Desk at (212)805-0800. The filing will be temporarily sealed and made invisible to the public.

(b) After notifying the ECF Help Desk, the filing party must ask the Judge, in writing, for the entry to be formally sealed by the Court.

(c) Electronically file a redacted version of the mistaken filing.

Section 22. ECF Passwords

22.1 To file electronically in this Court, do I need an ECF password from the United States District Court for the Southern District of New York?

Yes. To file electronically in this District Court you must have an ECF log-in and password issued by this Court. This password is unique, and is not the same as a password from another District or Bankruptcy Court, or a PACER password. Protect the security of your password by reporting a lost or stolen password immediately to the ECF Help Desk at (212)805-0800.

(*See section 2 - Eligibility, Registration , Passwords*).

22.2 Is my SDNY ECF password the same as my PACER password?

No. Your SDNY ECF password is unique and is not the same as your password for the PACER public access system. For information on PACER go to http://pacer.psc.uscourts.gov or call 800-676-6856.

22.3 Must I be an attorney admitted to this Court to obtain an ECF password?

Yes. ECF passwords are available only to attorneys in good standing with this Court.

22.4 How do I obtain an ECF password if I am already admitted to practice in this Court?

An attorney admitted to practice in this court may register for an ECF password on-line at www.nysd.uscourts.gov. From the homepage click on CM/ECF, then Attorney Registration. You will need your SDNY bar code (your first and last initials followed by four numbers of your own choosing), and the exact date you were admitted to practice in this Court (the date is printed on your Certificate of Good Standing). Contact the Attorney Admissions Office at (212) 805-0645 if you have forgotten any of this information. Click to submit your application on-line, and wait for your ECF password to arrive by e-mail.

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22.5 How do I obtain an ECF password if I am not yet admitted to practice in this Court?

The application to be fully admitted to the bar of this court includes a request for an ECF password. Go to www.nysd.uscourts.gov and from the homepage click on Attorney Admission. The application to the bar of this Court requires you to: **(a)** submit your application on-line, and **(b)** deliver a paper copy of that application and the appropriate fee to the Clerk's Office. Your ECF password will be sent by e-mail after you are sworn-in. If you wish to practice in one case only, you should move for admission Pro Hac Vice (see instructions below).

22.6 How do I obtain an ECF password if I am admitted to practice pro hac vice?

An attorney may be admitted to practice in one case by moving for admission pro hac vice. For complete pro hac vice motion instructions go to www.nysd.uscourts.gov, then click on Attorney Admission. Immediately after a motion to be admitted pro hac vice is granted, the attorney is required to register on-line for an ECF password at www.nysd.uscourts.gov. Enter the date the order was signed and enter XXXXXX for the bar code. Click to submit your application on-line, and wait for your ECF password to arrive by e-mail.

22.7 Do I need a new ECF password if I change law firms?

No. Your ECF password will remain the same even if you change your contact information. Local Civil Rule 1.3 requires an attorney to notify the court when his/her contact information changes. For information go to www.nysd.uscourts.gov or call the Attorney Admissions Clerk at (212) 805-0645. Follow the steps below to change your contact information:

(a) If you have a pending case provide notice to the Court and your adversary(s) by electronically filing a NOTICE OF CHANGE OF ADDRESS in each open case where you remain the attorney of record, or

(b) If you do not have a pending case mail written notice of the change to: Attorney Admissions Clerk, United States District Court, 500 Pearl Street, NY, NY 10007.

22.8 How will I know if my ECF password application was submitted successfully on-line?

When you are ready click the "Submit" button on the bottom of the form. The screen will turn red and you will be asked to review your answers for accuracy. After review click "Proceed". If the screen turns green your application was successfully submitted.

22.9 How long does it take to obtain an ECF password?

Your ECF password will be sent to you by e-mail, within 48 hours of your on-line request. Print a copy for your records.

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Section 23. ECF Computer System Information

23.1 What Internet browser should I use to file electronically on the ECF system?

Each new version of ECF is tested with specific Internet browsers before release. Check the ECF log-in page for a list of approved Internet browsers.

23.2 What is a PDF file and how do I create one?

All documents filed on the ECF system must be PDF computer files (portable document format). A PDF file is created by scanning a printed document using PDF writer software such as Adobe Acrobat (go to Adobe.com for details). PDF files cannot be altered, providing security to the filer and the Court.

23.3 Can I file electronically at the courthouse?

Yes, you may scan and electronically file documents using the document scanners and computers available at the ECF Help Desk in the Clerk's Office. Bring your paper documents and your SDNY ECF log-in and password.

23.4 Is there a limit to the size of a document that can be filed on ECF?

Yes. No single PDF computer file may be larger than 2.5 megabytes (2.5 mb). No single filing event including attachments (eg. Affidavit in Support with exhibits attached) may be larger than 15 megabytes. If the filing is too large, the ECF system will not allow it to be filed, and you will not see a Notice of Electronic Filing (filing receipt) screen. To determine the size of an Adobe Acrobat PDF file click on File, Document Properties, Summary.

23.5 What if my document exceeds the file size limit?

Scan your documents at low resolution. Within the Adobe Acrobat program, on the "Scan Manager" screen, adjust the settings for black and white and 200 dpi (dots per inch). This creates a good quality picture and allows you to fit more pages into a single PDF file. If that doesn't work, separate an oversized file into 2 or more parts. Simply label each file 1a, 1b, 1c, etc. Only relevant excerpts of exhibits should be electronically filed (see below). Finally, if you still experience problems call the ECF Help Desk at (212)805-0800.

(*See section 24 - ECF Help Desk and Training*).

23.6 Do I need the Court's permission to file on paper in an ECF case?

Yes. If your document is too large to file electronically after following the directions above, you may seek permission from the Judge to file on paper. Call the ECF Help Desk first for guidance at (212)805-0800.

(*See section 5 - Attachments and Exhibits*).

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23.7 Must I file only relevant excerpts of exhibits?

Yes. You are limited to electronically filing only relevant excerpts of exhibits. Excerpts must be clearly identified as such.

(*See section 5 - Attachments and Exhibits*).

23.8 What if a technical failure prevents me from filing electronically?

If a technical failure prevents you from filing electronically, follow the steps below:

(a) Do not attempt to file paper documents in ECF cases except for emergency filings (eg. Temporary Restraining Order).

(b) If the problem concerns the Filing User's equipment or Internet Service Provider (ISP), and the Court's ECF system remains in service, the Filing User may use the document scanners at the ECF Help Desk in the Clerk's Office to file electronically. Bring your paper documents and your SDNY ECF password.

(c) If the Court's ECF system is out of order you should electronically file your document as soon as the system is restored.

(d) If you missed a filing deadline when the ECF system was out of order, attach a statement to your filing explaining how the interruption in service prevented you from filing in a timely fashion.

(*See section 11 - Technical Failures*)

Section 24. ECF Help Desk & Training

24.1 How can I learn how to file electronically?

The Court offers several options for ECF training. Details are available on the CM/ECF page at www.nysd.uscourts.gov

(a) In-person training classes are offered weekly for attorneys and support staff (approx. 2 hours).

(b) Step by step filing instructions can be found on-line in the course materials for our in-person training. From the CM/ECF page click on Training. Then click on Instructor Led Training, and click on the course title.

(c) "ECF 101" is a short interactive web-based introduction to electronic filing available on-line.

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24.2 How do I sign up for free e-mail alerts concerning ECF news?

Sign up for free e-mail alerts from the Court at www.nysd.uscourts.gov. From the homepage click on CM/ECF, then POC. You will receive periodic e-mails alerting you to planned ECF service interruptions for maintenance, and unplanned interruptions due to technical difficulties. You will also receive periodic ECF Newsletter e-mails containing news and helpful filing hints. You do not need to be an attorney to sign up for free e-mail alerts.

24.3 How do I contact the ECF Help Desk?

The ECF telephone Help Desk is available from 8:30 AM to 7:00 PM Monday through Friday at (212) 805-0800. Or you can e-mail your ECF questions to **helpdesk@nysd.uscourts.gov**

The preceding Rules for Electronic Case Filing were approved by the Board of Judges of the Southern District of New York on May 28, 2008.

The preceding Electronic Case Filing Instructions were written by the Clerk of Court under the authority of the ECF Rules and were last revised on August 1, 2008.

TOY-RQ-05E-00010338

FROM: Cheryl Burwell (317)396-9747
Indiana CT Reps
251 E. Ohio Street
Suite 1100
Indianapolis, IN 46204

FedEx Revenue Barcode

TO: **Patrick Nepute (859)746-4132**
Toyota Motor Engineering & Manufact
25 ATLANTIC AVE.

ERLANGER, KY 41018

CAD#: 8279535
SHIP DATE: 12FEB10
WEIGHT: 1 LB

Ref: SOP/0607600/516151633/Cheryl Burwell

DELIVERY ADDRESS (FedEx-EDR)

** 2DAY **

TUE
A1
Deliver by:
16FEB10

TRK # 7921 7543 9506

FORM
0201

CVG

41018 -KY-US

SA FFTA

CLS101009121

CT Corporation

Service of Process Transmittal

02/12/2010
CT Log Number 516151633

TO: Patrick Nepute, General Counsel
Toyota Motor Engineering & Manufacturing North America, Inc.
25 ATLANTIC AVE.
ERLANGER, KY 41018-

RECEIVED
FEB 18 2010
LEGAL DEPARTMENT

RE: **Process Served in Indiana**

FOR: Toyota Motor Manufacturing, Indiana, Inc. (Domestic State: IN)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION:	Barbara Iglesias, Individually and On Behalf of All Others Similarly Situated, Pltf. vs. Toyota Motor Corporation, et al. including Toyota Motor Manufacturing, Indiana, Inc., Dfts.
DOCUMENT(S) SERVED:	Summons, Return Form, Class Action Complaint and Jury Trial Demand, Attachment(s)
COURT/AGENCY:	Southern District of New York, NY Case # 10CIV1014
NATURE OF ACTION:	Product Liability Litigation - Manufacturing Defect - Accelerator pedals sticking
ON WHOM PROCESS WAS SERVED:	C T Corporation System, Indianapolis, IN
DATE AND HOUR OF SERVICE:	By Process Server on 02/12/2010 at 13:50
APPEARANCE OR ANSWER DUE:	Within 20 days after service of summons exclusive of day of service
ATTORNEY(S) / SENDER(S):	Jill S. Abrams Abbey Spainer Rodd & Abrams LLP 212 East 39th street New York, NY 10016 212-889-3700
ACTION ITEMS:	SOP Papers with Transmittal, via Fed Ex 2 Day , 792175439506 Email Notification, Patrick Nepute pat.nepute@tema.toyota.com Email Notification, Tanya Herbert tanya.herbert@tema.toyota.com
SIGNED:	C T Corporation System
ADDRESS:	251 E. Ohio Street Suite 1100 Indianapolis, IN 46204
TELEPHONE:	317-396-9747

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.

AO440 (Rev 8/01) Summons in a Civil Action

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JUDGE CASTEL

Barbara Iglesias, Individually and On Behalf Of All Others Similarly Situated,

Plaintiff,

vs.

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

Defendants.

SUMMONS IN A CIVILACTION

CASE NO.:

10 CIV 1014

RECEIVED
FEB 18 2010
LEGAL DEPARTMENT

TO: Toyota Motor Manufacturing, Indiana, Inc.
c/o CT Corporation System
251 E. Ohio Street, Suite 1100
Indianapolis, IN 46204

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY, (name and address)

JILL S. ABRAMS, ESQ.
ABBEY SPANIER RODD & ABRAMS, LLP
212 East 39th Street,
New York, New York 10016
(212) 889-3700

an answer to the complaint which is herewith served upon you, within twenty (20) days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

J. MICHAEL McMAHON

CLERK

DEPUTY CLERK

DATE FEB 08 2010

AO440 (Rev 8/01) Summons in a Civil Action

RETURN OF SERVICE

Service of the Summons and Complaint was made by me[1]	DATE
NAME OF SERVER	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: _____

☐ Other (specify): _____

STATEMENT OF SERVICE FEES

TRAVEL	SERVICES	TOTAL
		$0.00

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.

JUDGE CASTEL

10 CIV 1014

ABBEY SPANIER RODD & ABRAMS, LLP
Jill Abrams (JA 1578)
jabrams@abbeyspanier.com
Orin Kurtz (OK 7334)
okurtz@abbeyspanier.com
Jeremy Nash
jnash@abbeyspanier.com (JN 2857)
212 East 39th Street
New York, New York 10016
(212) 889-3700

Attorneys for Plaintiff

RECEIVED
FEB 08 2010
U.S.D.C. S.D. N.Y.
CASHIERS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Barbara Iglesias, Individually and On Behalf Of All Others Similarly Situated,

Plaintiff,

vs.

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

Defendants.

Civil Action No.

RECEIVED
FEB 18 2010
LEGAL DEPARTMENT

CLASS ACTION COMPLAINT
AND JURY TRIAL DEMAND

Plaintiff Barbara Iglesias ("Plaintiff"), by and through her undersigned attorneys, alleges as follows:

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d) because this action involves citizens of different states. The amount in controversy exceeds $5,000,000, exclusive of interest and costs.

2. Venue is proper in this District pursuant to 28 U.S.C. §1391, because Defendants do business in this District, and a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this District.

THE PARTIES

3. Plaintiff is a resident of the Bronx, New York. On December 1, 2009, Plaintiff bought a 2010 model year Toyota Camry in the Bronx, New York.

4. Defendant Toyota Motor Corporation ("TMC") is and was, at all relevant times, a Japanese limited liability, joint-stock company which operates through numerous subsidiaries and affiliated companies. Its principal executive office is located at 1 Toyota-cho, Toyota City, Aichi Prefecture 471-8571, Japan. Its automotive operations include the design, manufacture, assembly and sale of passenger cars, minivans and commercial vehicles. TMC's financial services business consists primarily of providing financing to dealers and their customers for the purchase or lease of Toyota vehicles. Its financial services also provide retail leasing through the purchase of lease contracts originated by Toyota dealers. North America is one of Toyota's primary automobile markets. In the U.S., Toyota vehicles are marketed through distributors and through these distributors, Toyota maintains networks of dealers.

5. Defendant Toyota Motor Sales, U.S.A., Inc. ("TMS") is and was, at all relevant times, a California corporation. It is a wholly owned subsidiary of TMC and responsible for the

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manufacture, distribution and sales of Toyota automobiles and trucks in the U.S. It is located at 19001 South Western Avenue, Torrance, CA.

6. Defendant Toyota Motor North America, Inc. ("TMNA") is the holding company for, and oversees, Toyota's manufacturing, financing, sales research and development, and marketing operations in the U.S., Canada and Mexico and is based in New York at 9 West 57th Street, Suite 4900, New York, New York.

7. Defendant Toyota Motor Engineering & Manufacturing North America ("TMEMNA") is the parent company for Toyota's manufacturing operations in the U.S. and Canada. It operates as a subsidiary of TMC and provides centralized support in the areas of purchasing, production, production control, engineering, quality control, and administration. It is headquartered at 25 Atlantic Avenue, Erlanger, Kentucky.

8. Defendant Lexus ("Lexus") is the luxury vehicle division of TMC. Lexus operates its own design, engineering, and manufacturing centers, solely responsible for the division's vehicles. Lexus' headquarters are located in Toyota City, Aichi Prefecture, Japan. Lexus' design facilities are located in California, among other places. The Lexus ES is assembled at the Miyata plant Miyawaka City, Fukuoka Prefecture, Japan, which is owned by Toyota Motor Kyusha, Inc., a wholly owned subsidiary of TMC. The Lexus IS is assembled at the Tahara plant in Tahara City, Aichi Prefecture, which is owned by TMC. Lexus ES and IS automobiles are sold throughout the United States.

9. Defendant Toyota Motor Manufacturing, Indiana, Inc. ("TMMI") manufactured the 2007 to 2008 model year ("MY") Toyota Tundra, 2008 to 2010 MY Toyota Sequoia, and the 2010 MY Toyota Highlander. TMMI is a wholly-owned subsidiary of TMC. It is located at 4000 South Tulip Tree Drive, Princeton, IN 47670-4000.

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10. Defendant Toyota Motor Manufacturing, Texas, Inc. ("TMMTX") manufactured the 2007 to 2010 MY Toyota Tundra. TMMTX is a wholly-owned subsidiary of TMC. It is located at 1 Lone Star Pass San Antonio, Texas, 78264-3413.

11. Defendant Toyota Motor Manufacturing, Kentucky, Inc. ("TMMK") manufactured the 2005 to 2010 MY Toyota Avalon and the 2007 to 2010 MY Toyota Camry. TMMK is a wholly-owned subsidiary of TMC. It is located at 1001 Cherry Blossom Way, Georgetown, KY 40324.

12. Defendant New United Motor Manufacturing, Inc. ("NUMMI") manufactured the 2009 to 2010 MY Toyota Corolla and the 2009 to 2010 MY Pontiac Vibe. NUMMI is located at 45500 Fremont Boulevard Fremont, CA 94538-6368.

13. Defendant Subaru of Indiana Automotive, Inc. ("SIA") manufactured the 2007 to 2010 MY Toyota Camry. It is located at 5500 State Road 38 East, Lafayette, Indiana 47905.

14. At all relevant times, TMC has owned and controlled TMS, TMNA, TMEMNA, Lexus, TMMI, TMMTX, TMMK, NUMMI and SIA and thereby conducted business in the U.S. These defendants and their subsidiaries and agents, are collectively referred to as "Toyota".

15. Defendant CTS Corporation ("CTS") is an Indiana corporation located at 905 West Boulevard, Elkhart, Indiana. CTS designs and manufactures electronic components and at all relevant times made the accelerator assemblies for Toyota vehicles that are subject of the claims herein (except for Lexus vehicles) beginning with model year 2005.

16. TMC, TMS, TMNA, TMEMNA, Lexus, TMMI, TMMTX, TMMK, NUMMI, SIA, and CTS may sometimes be collectively referred to as "Defendants".

17. The true names and capacities of the defendants sued herein as Doe Defendants 1 through 10, inclusive, are currently unknown to plaintiff, who therefore sues such defendants by

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fictitious names. Each of the defendants designated herein as a Doe is legally responsible for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend this Complaint to reflect the true names and capacities of the Doe Defendants when such identities become known.

BACKGROUND

18. "Toyota received field technical information regarding reports of accelerator pedals demonstrating symptoms such as rough operation or being slow to return to the idle position" at least as early as March 2007, according to a January 21, 2010 letter from Chris Santucci, TMNA Manager, Technical & Regulatory Affairs, to the National Highway Traffic Safety Administration ("NHTSA"). Santucci formerly worked for the NHTSA, which sets safety standards for motor vehicles and associated equipment, investigates possible safety defects, assures that products meet safety standards and are not defective (through recalls if necessary), and tracks safety-related recalls. Toyota sought to "minimize" the problem, according to The New York Times. Toyota quietly substituted one material used in the affected accelerator pedal assemblies for another as a fix and, in June 2008, reported that the slow return to the idle position of accelerator pedals in some of its vehicles was merely "a drivability issue unrelated to safety".

19. Toyota continued to receive complaints. In December 2008, Toyota received more "field technical information", this time from the European market, which indicated that accelerator pedals sticking on vehicles there. In March 2009, Toyota began another investigation that, in August 2009, also resulted in a quiet fix for some of its vehicles. However, despite the fact that accelerator pedal assemblies on some Toyota vehicles produced in the United States are of a similar design and composed of the same materials that were subject to the December 2008 reports from Europe, the August 2009 changes were limited to vehicles produced in Europe.

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20. The March 2007 and December 2008 reports indicate that Toyota knew at least a year prior to the January 21 Recall, as defined below, that some Toyota vehicles had defective accelerator pedal assemblies. In fact, Santucci later identified those very reports and subsequent investigations as the first "principal events" in the chronology leading to the January 21 Recall.

21. Toyota may have known about the problem even earlier. The Los Angeles Times reported, in a November 8, 2009 article, that "[m]ore than 1,000 Toyota and Lexus owners have reported since 2001 that their vehicles suddenly accelerated on their own" and that these crashes "resulted in at least 19 deaths and scores of injuries over the last decade"—far more than any other automaker has experienced. The Los Angeles Times, and other news reporting agencies, report further that independent safety experts have identified nearly 2,000 sudden-acceleration cases for Toyota vehicles built since 2001 and that experts say the actual numbers may be far higher.

22. According to the Los Angeles Times, Toyota owner complaints helped trigger at least eight investigations into "sudden acceleration" in Toyota and Lexus vehicles by the NHTSA since 2001, but that those investigations "systematically excluded or dismissed the majority of complaints", including cases in which drivers said they were unable to stop runaway cars using their brakes; incidents of unintended acceleration lasting more than a few seconds; and reports in which owners did not identify the possible causes of the problem. According to the Los Angeles Times, when Toyota was asked to submit its own complaint data to the NHTSA, it eliminated reports claiming that sudden acceleration occurred for more than a few seconds or when drivers said they were unable to control a runaway engine by applying the brakes, which contributed to an appearance that the problem was much smaller than the total number of complaints suggested.

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TOYOTA ATTRIBUTES REPORTS OF SUDDEN AND UNINTEDED ACCELEREATION TO "FLOOR PEDAL ENTRAPMENT" AND ATTEMPTS TO MIMIMIZE SERIOUSNESS OF THREAT TO SAFETY

23. In September 2007, Toyota recalled 55,000 accessory all-weather floor mats sold for use in some 2007 and 2008 model year Lexus ES 350 and Toyota Camry vehicles because, as reported by the NHTSA, if the mat were to "interfere with the accelerator pedal", it would "increase the possibility of a crash." However, Toyota was in the midst of investigating the March 2007 reports concerning sticking accelerator pedal assemblies at that time and following the September 2007 recall both Toyota and the NHTSA continued to receive complaints of unintended acceleration in the models affected recall, as well as in others vehicles not affected by the recall.

24. On August 28, 2009, "[f]our people were killed outside San Diego when the Lexus ES 350 sedan they were traveling in accelerated to 120 miles per hour and crashed, despite efforts by the driver to apply the brakes," according to The New York Times. The New York Times reported further that, "[t]he 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.

25. Toyota stated in a September 14, 2009 press release that, "[w]e believe our vehicles to be among the safest on the road today." Toyota stated further that preliminary investigations, "[d]river's floor mat interference with the accelerator pedal is possible in *any vehicle make* with *any combination floor mats* when the floor mat is not properly secured or if it is not the factory designed floor mat for the vehicle" (emphasis added).

26. Toyota issued a consumer safety advisory on September 29, 2009, instructing owners of specific Toyota and Lexus model vehicles to remove their driver's floor mat:

> Recent events have prompted Toyota to take a closer look at the potential for an accelerator pedal to get stuck in the full open position due to an unsecured or incompatible driver's floor mat. A stuck open accelerator pedal may result in very high vehicle speeds and make it difficult to stop the vehicle, which could cause a crash, serious injury or death.
>
> * * *
>
> Until Toyota develops a remedy, it is asking owners of specific Toyota and Lexus models to take out any removable driver's floor mat and NOT replace it with any other floor mat. The following models are affected:
>
> - 2007 – 2010 Camry
> - 2005 – 2010 Avalon
> - 2004 – 2009 Prius
> - 2005 – 2010 Tacoma
> - 2007 – 2010 Tundra
> - 2007 – 2010 ES350
> - 2006 – 2010 IS250 and IS350
>
> Should the vehicle continue to accelerate rapidly after releasing the accelerator pedal, this could be an indication of floor mat interference.

27. In connection with the safety campaign that followed, Santucci, then-Assistant Manager, Technical & Regulatory Affairs of TMNA, wrote to the NHTSA that, "[a]lthough Toyota is willing to identify this campaign as a safety recall in the owner communication about the campaign, Toyota has not determined that the vehicles identified [in the safety advisory] contain a 'safety-related defect'".

28. On November 2, 2009, Toyota attempted to further minimize the seriousness of this defect in certain of its vehicles by stating that "no defect exists in vehicles in which the driver's floor mat is compatible with the vehicle and properly secured" and that the company's finding was consistent with "a recent decision by the NHTSA". Toyota stated that, "[t]his is the sixth time in the past six years that NHTSA has undertaken such an exhaustive review of the allegations of unintended acceleration on Toyota and Lexus vehicles and the sixth time the agency has found no *vehicle based* cause for the unwanted acceleration allegations" (emphasis added).

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29. These statements were untrue. On November 4, 2009, the NHTSA issued a press release "correcting inaccurate and misleading information put out by Toyota". NHTSA spokeswoman Karen Aldana said that the problem with the design of Toyota and Lexus accelerators was, in fact, "very dangerous" and that removing the floor mats was "simply an interim measure" that would "*not correct the underlying defect in the vehicles*" (emphasis added). Aldana stated further that the "matter [was] not closed" and would remain open until Toyota "effectively addressed the defect by providing a suitable *vehicle based* solution" (emphasis added). Toyota responded to the public rebuke in a November 6, 2009 press release by acknowledging that removal of the driver's floor mat is merely "an interim measure and that further vehicle-based action is required".

30. On November 25, 2009, Toyota issued an announcement of "details of the vehicle-based remedy to address the root cause of the potential risk for floor mat entrapment of accelerator pedals in certain Toyota and Lexus models" ("November 25 Announcement"). These vehicles are subject to what Toyota termed its "floor pedal entrapment recall." The initial list of vehicles affected by the November 25 Announcement was expanded by Toyota on January 26, 2010. The following list of vehicles affected by the November 25 Announcement, totaling approximately 5.3 million vehicles, reflects the January amendment:

a. 2009 to 2010 model year ("MY") Pontiac Vibe;
b. 2005 to 2010 MY Toyota Avalon;
c. 2007 to 2010 MY Toyota Camry;
d. 2009 to 2010 MY Toyota Corolla;
e. 2008 to 2010 MY Toyota Highlander;
f. 2009 to 2010 MY Toyota Matrix;
g. 2004 to 2009 MY Toyota Prius;
h. 2005 to 2010 MY Toyota Tacoma;
i. 2007 to 2010 MY Toyota Tundra;
j. 2009 to 2010 MY Toyota Venza;
k. 2007 to 2010 MY Lexus ES 350;
l. 2006 to 2010 MY Lexus IS 250; and

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m. 2006 to 2010 MY Lexus IS 350.

TOYOTA FINALLY ACKNOWLEDGES "VEHICLE-BASED" PROBLEM WITH ACCELERATOR PEDAL ASSEMBLIES IN SOME TOYOTA VEHICLES

31. The remedy Toyota described in the November 25 Announcement, purportedly to "address the root cause" behind accounts of sudden and unintended acceleration, was to "reconfigure" the shape of the accelerator pedal or floor surface underneath the accelerator pedal:

> The specific measures of the vehicle-based remedy are as follows:
>
> 1. The shape of the accelerator pedal will be reconfigured to address the risk of floor mat entrapment, even when an older-design all-weather floor mat or other inappropriate floor mat is improperly attached, or is placed on top of another floor mat. For the ES350, Camry, and Avalon models involved, the shape of the floor surface underneath will also be reconfigured to increase the space between the accelerator pedal and the floor.
>
> 2. Vehicles with any genuine Toyota or Lexus accessory all-weather floor mat will be provided with newly-designed replacement driver- and front passenger-side all-weather floor mats.

However, Toyota did not recall the affected vehicles at that time. Instead, it said,

> In the meantime, owners of the involved vehicles are asked to take out any removable driver's floor mat and not replace it with any other floor mat until they are notified of the vehicle-based remedy, as notified in the consumer safety advisory and the interim notice.
>
> * * *
>
> The safety of our owners and the public is our utmost concern and Toyota has and will continue to thoroughly investigate and take appropriate measures to address any defect trends that are identified.

Thus, Toyota misled current owners and lessees to believe that the vehicles' issues were adequately addressed by Toyota.

32. The New York Times reported, in its February 1, 2010 article that, on December 26, 2009, four people died near Dallas when a Toyota Avalon sped off a road and into a pond.

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The police found that the floor mats were removed and in the Avalon's trunk. The New York Times further reported that, on December 28, 2009, a New Jersey man managed, by shifting in and out of neutral, to drive a 2007 Avalon to a dealership after it began speeding out of control. After parking, the motor continued racing and the brakes and tires started smoking.

33. In January 21, 2010, Toyota finally began a recall for a "vehicle-based" defect; namely, defective accelerator pedal assemblies ("January 21 Recall"). Approximately 2.3 million vehicles are affected by the January 21 Recall, which involved the following models:

a. 2005 to 2010 MY Toyota Avalon;
b. certain 2009 to 2010 MY Toyota Corolla;
c. certain 2007 to 2010 MY Toyota Camry;
d. certain 2010 MY Toyota Highlander;
e. 2009 to 2010 MY Toyota Matrix;
f. certain 2009 to 2010 MY Toyota RAV4;
g. 2008 to 2010 MY Toyota Sequoia; and
h. 2007 to 2010 MY Toyota Tundra.

34. According to the New York Times, the vehicles affected by the January 21 Recall represented over 60% of Toyota's total monthly U.S. sales from 2004 to 2009, based on a 12-month moving average. The New York Times reported further that Toyota's total U.S. sales ranged from well over 100,000 to nearly 200,000 vehicles per month during that time.

35. In a letter to the NHTSA dated January 21, 2010, Santucci described the defect in the accelerator pedal assemblies resulting in sudden and unintended acceleration reported in some of its vehicles:

> In accordance with the requirements of the National Traffic and Motor Vehicle Safety Act of 1966 and 49 CFR Part 573, on behalf of Toyota Motor Corporation ["TMC"], we hereby submit the attached Defect Information Report Concerning a voluntary safety recall of certain Toyota Tundra, Sequoia, Avalon, Camry, Corolla, Matrix, RAV4, Highlander, and Pontiac Vibe vehicles. *Toyota has determined that a defect exists in the accelerator pedal assembly which may result in the accelerator pedal becoming harder to depress, slower to return, or, in the worst case, mechanically stuck in a partially depressed position.*

(emphasis added).

36. In its Defect Information Report referenced in the January 21, 2010 letter, Toyota describes what it purports is the underlying cause of defect:

> Description of Problem:
>
> Due to the manner in which the friction lever interacts with the sliding surface of the accelerator pedal inside the pedal sensor assembly, the sliding surface of the lever may become smooth during vehicle operation. In this condition, if condensation occurs on the surface, as may occur from heater operation (without A/C) when the pedal assembly is cold, the friction when the accelerator pedal is operated may increase, which may result in the accelerator pedal becoming harder to depress, slower to return, or, in the worst case, mechanically stuck in a partially depressed position. In addition, some of the affected vehicles' pedals were manufactured with friction levers made of a different material (PA46), which may be susceptible to humidity when parked for a long period in hot temperatures. In this condition, the friction when the accelerator pedal is operated may increase, which may result in the accelerator pedal movement becoming rough or slow to return. In light of the similarity with one of the symptoms described above that are associated with the PPS material, Toyota has decided to include these vehicles in the defect determination.

37. On January 28, 2010, issued a statement that Toyota had "identified the cause of the problem" and had been working closely with CTS, the manufacturer of the accelerator pedal assemblies found on the vehicles affected by the January 21 Recall, on a revised pedal design. According to a January 28, 2010 statement by Chris Nielsen, TMEMNA's Vice President of Purchasing, "CTS is a long-term and valued supplier to us."

38. According to Toyota, the January 21 Recall is separate and unrelated to the November 25 Announcement that involved approximately 5.3 million vehicles. However, Toyota also announced that approximately 1.3 vehicles are part of both the November 25 Announcement and the January 21 Recall. Reportedly, it is Toyota's position that this significant overlap is merely coincidence. A total of approximately 6.3 million vehicles are part of both the November 25 Announcement and January 21 Recall in the United States ("Recalled

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Vehicles"). On January 29, 2010, Toyota expanded the January 21 Recall to China and to eight Toyota models in Europe. Reportedly, over 9 million vehicles are affected worldwide.

THE TRUE CAUSE OF SUDDEN AND UNINTEDED ACCELERATION IN SOME TOYOTA VEHICLES REMAINS UNCLEAR

39. The public may still not know the true cause of sudden and unintended acceleration. According to the New York Times, on April 19, 2008, witnesses saw a 2005 Toyota Camry accelerate out of control, jumped a curb and fly through the air before crashing into a tree. The driver, Guadalupe Alberto, was killed instantly. The 2005 Camry is not among the millions of Recalled Vehicles and also did not have floor mats at the time of the accident. Reportedly, the crash is now being looked at as a possible example of problems with the electronic system that controls the throttle and engine speed in Toyotas.

40. Despite yet another accident, Toyota has been telling customers, since as early as January 22, 2010, that it is "confident that your vehicle is safe to drive, and no action is required at this time", for drivers not experiencing an accelerator pedal that is "hard to depress, slow to return or is unsmooth during operation". On February 1, 2010, Toyota described the reason it believes the accelerator pedals in recalled vehicles stick in a partially open position and announced that, "[a] precision-cut steel reinforcement bar will be installed into the assembly that will reduce the surface tension between the friction shoe and the adjoining surface". According to Toyota, "[w]ith this reinforcement in place, the excess friction that can cause the pedal to stick is eliminated."

41. Toyota's "solution" does not address the potential problem with electronic throttles, which mounting evidence suggests is the true cause of reports of sudden and unintended acceleration.

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42. Both Toyota and the NHTSA acknowledge that a standard braking system cannot always counter a wide-open throttle, as is the case in sudden acceleration. Toyota stated in the November 25 Announcement that it would install a failsafe in some affected vehicles, saying, "as a separate measure independent of the vehicle-based remedy, Toyota will install a brake override system onto the involved Camry, Avalon, and Lexus ES 350, IS 350 and IS 250 models as an extra measure of confidence. This system cuts engine power in case of simultaneous application of both the accelerator and brake pedals." The November 25 Announcement stated further that, "[t]he brake override system will be made standard equipment throughout the Toyota and Lexus product lines starting with January 2010 production of ES 350 and Camry and is scheduled to be incorporated into new production of most models by the end of 2010."

43. According to The New York Times, Santucci was deposed in December 2009 concerning a 2004 NHTSA investigation of certain Toyota vehicles. During that testimony, Santucci testified that the electronic throttle control system in Alberto's 2005 Camry was similar to the computer equipment in other Toyotas now under recall for sticky pedals and unsecured floor mats.

PAST NHTSA FINDINGS ARE NOT RELIABLE

44. Toyota stated on November 2, 2009, that it had been investigated six times in the past and that the agency found no vehicle-based cause for reports of sudden and unintended acceleration. However, Santucci reportedly testified Toyota and the NHTSA had discussions about limiting the type of acceleration incidents to be investigated. Santucci's testimony is that, "I recall them saying to us, Toyota, myself,that they were not interested in reports alleging uncontrolled acceleration that occurred for a long duration." The New York Times reported that the NHTSA, in fact, decided to look only at cases of unintended acceleration in which drivers

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had not applied their brakes to rule out potential braking concerns from the scope of the investigation. Santucci testified that, "I think it worked out well for both the agency and Toyota, meaning Toyota provided what they were looking for". The NHTSA ultimately found, "[a] defect trend has not been identified at this time, and further use of agency resources does not appear to be warranted."

45. The NHTSA investigations, and Toyota's handling of the problem, will be the subject of Congressional hearings. The House Energy and Commerce Committee has scheduled a February 25, 2010 hearing to focus on why several years elapsed after the NHTSA began to get complaints about runaway Toyotas before TMC recalled several of its models to fix a defect that could cause their accelerator pedals to stick. "Like many consumers, I am concerned by the seriousness and scope of Toyota's recent recall announcements," said Representative Henry Waxman, the California Democrat who chairs the Energy and Commerce Committee. In a January 28, 2010 letter to Yoshimi Inaba, President and COO of TMNA, Waxman asked Inaba to produce information and documents dating back to 2001, including information "relating to sudden unintended acceleration, acceleration pedals, or *electronic throttle control*" (emphasis added).

46. The NHTSA is considering civil penalties against Toyota for the automaker's handling of both recalls.

CLASS ACTION ALLEGATIONS

47. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3), on behalf of himself and the following Class and Sub-Class:

Nationwide Class:

All owners and lessees in the United States of the Recalled Vehicles (the "Nationwide Class").

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New York Sub-Class

All owners and lessees in New York of Recalled Vehicles that were sold or leased in the State of New York (the "Sub-Class").

48. Excluded from the Nationwide Class and the Sub-Class are Defendants, as well as Defendants',subsidiaries, employees, officers, directors, or other person, firm trust or corporation or other entity related to or affiliated with Toyota and any person who has experienced physical injury as a result of the defects at issue in this litigation. Plaintiff reserve the right to amend the definition of the Nationwide Class and the Sub-Class, if discovery and/or further investigation reveal that the Nationwide Class and/or Sub-Class should be expanded or otherwise modified.

49. Numerosity/Impracticability of Joinder: The members of the Nationwide Class and Sub-Class are so numerous that joinder of all members would be impracticable. The members of the Nationwide Class and the Sub-Class are readily identifiable from information and records in Defendants' possession, custody or control.

50. The number of class members is approximately 6.3 million. There are millions of Nationwide Class members who purchased or leased Toyota vehicles and at least thousands, if not hundreds of thousands, of members of the Sub-Class.

51. Commonality and Predominance: Common questions of law and fact predominate over any questions affecting only individual members of the Nationwide Class and the Sub-Class. These common legal and factual questions, which do not vary from one Nationwide Class or Sub-Class member to another, and which may be determined without reference to the individual circumstances of any Nationwide Class or Sub-Class member, include, but are not limited, to the following:

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a. Whether Defendants omitted and/or concealed material facts from Plaintiff and the members of the Classes regarding Recalled Vehicles;

b. Whether, by the misconduct set forth in this Complaint, Defendants have engaged in deceptive or unlawful business practices with respect to the sale or lease of the Recalled Vehicles;

c. Whether Defendants had a duty to disclose the defects in Recalled Vehicles to Plaintiff and the Classes;

d. Whether, by their conduct, Defendants violated Magnuson-Moss Act, 15 U.S.C. §§ 2301, *et seq.*;

e. Whether, by their conduct, Defendants violated NY GBL §§349 and 350;

f. Whether, by their conduct described herein, Defendants breached their implied warranties to Plaintiff and the Classes;

g. Whether, by its conduct described herein, Defendants breached its express warranties to Plaintiff and the Classes;

h. Whether, by their conduct described herein, Defendants breached their contracts with Plaintiff and the Sub-Class;

i. Whether, by their conduct described herein, Defendants breached their duty of good faith and fair dealing;

j. Whether the Recalled Vehicles are defective;

k. Whether, as a result of Defendants' misconduct, Plaintiff and the Classes are entitled to damages; and

l. Whether, as a result of Defendants' misconduct, Plaintiff and the Classes are entitled to equitable relief and/or other relief, and, if so, the nature of such relief.

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52. Typicality: Plaintiff's claims are typical of the claims of the Nationwide Class and the Sub-Class, because Plaintiff and all Class members were injured by the same wrongful practices in which Defendants engaged. Plaintiff's claims arise from the same practice and course of conduct that gives rise to the claims of the Nationwide Class and Sub-Class members, and are based on the same or similar legal theories.

53. Adequacy: Plaintiff will fully and adequately protect the interests of the members of the Nationwide Class and the Sub-Class, and has retained class counsel who are experienced and qualified in prosecuting class actions, including consumer class actions and other forms of complex litigation. Neither Plaintiff nor her counsel has interests that are contrary to or conflicting with those of the Nationwide Class or the Sub-Class. Defendants have no defenses unique to Plaintiff.

54. Superiority: A class action is superior to all other available methods for the fair and efficient adjudication of this controversy for, *inter alia*, the following reasons:

a. It is economically impractical for members of the Classes to prosecute individual actions;

b. The Classes are readily definable;

c. Prosecution as a class action will eliminate the possibility of repetitious litigation; and

d. A class action will enable claims to be handled in an orderly and expeditious manner. A class action will save time and expense and will ensure uniformity of decisions.

55. Plaintiff does not anticipate any difficulty in the management of this litigation.

56. Defendants have, or have access to, address information for the Class members,

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which may be used for the purpose of providing notice of the pendency of this action.

COUNT I

Asserted On Behalf Of The Nationwide Class Against Toyota and CTS
(Violations Of Magnuson-Moss Act (15 U.S.C. §§ 2301-2312) - Implied Warranty)

57. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

58. The Recalled Vehicles are "consumer products" as that term is defined by 15 U.S.C. § 2301(1).

59. Plaintiff and Nationwide Class members are "consumers" as that term is defined by 15 U.S.C. § 2301(3).

60. Toyota and CTS are "suppliers" as that term is defined by 15 U.S.C. § 2301(4).

61. Toyota and CTS are "warrantors" as that term is defined by 15 U.S.C. § 2301(5).

62. Toyota and CTS provided Plaintiff and Class members with "implied warranties" as that term is defined by 15 U.S.C. § 2301(7). When the Recalled Vehicles were sold or leased to Plaintiff and the Nationwide Class, implied warranties under state law attached, specifically the implied warranty of merchantability.

63. Toyota sold the Recalled Vehicles with defective accelerator pedal assemblies and floor mats (hereinafter collectively referred to as "accelerator pedal assemblies"), and CTS made the defective accelerator pedals as described hereinabove, which rendered the Recalled Vehicles unfit for their ordinary purpose. Toyota has acknowledged that such a defect exists and that the Recalled Vehicles are unfit for their ordinary purpose.

64. Any attempt by Toyota or CTS to disclaim the implied warranty of merchantability with respect to the Recalled Vehicles is void due to Toyota and CTS's

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knowledge or failure to know that the accelerator pedal assemblies were defective when sold or leased to Plaintiff and the Nationwide Class.

65. Toyota and CTS cannot disclaim the implied warranty of merchantability that attaches to the Recalled Vehicles, because Toyota provided Plaintiff and the Nationwide Class with written warranties as that term is defined by 15 U.S.C. § 2301(6).

66. Plaintiff has given Toyota a reasonable opportunity to cure its failures with respect to its warranties, and Toyota failed to do so.

67. Plaintiff and the Nationwide Class were damaged by Toyota and CTS' breach of their warranties.

68. As a result of Toyota and CTS' breach of implied warranties, Plaintiff and Nationwide Class members are entitled to revoke their acceptance of the Recalled Vehicles, obtain damages and equitable relief, and obtain attorneys' fees and costs pursuant to 15 U.S.C. § 2310.

COUNT II

Asserted On Behalf Of The Nationwide Class Against Toyota (Breach Of Express Warranty)

69. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

70. Toyota warranted that the Recalled Vehicles were free of defects in workmanship and materials. Providing defective accelerator pedal assemblies with the Recalled Vehicles, as explained herein, is a breach of this warranty.

71. As a direct and proximate cause of Toyota's breach of express warranties, Plaintiff and the Nationwide Class members have been damaged.

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72. Plaintiff has given Toyota a reasonable opportunity to cure its failure with respect to its warranty, and Toyota has failed to do so.

73. As a result of Toyota's breach of express warranty, Plaintiff and the Nationwide Class members have suffered damages.

COUNT III

Asserted On Behalf Of The Nationwide Class Against Toyota and CTS (Breach Of Implied Warranty Of Merchantability)

74. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

75. Toyota and CTS are "merchants" within the meaning of the Uniform Commercial Code § 2-104.

76. The Recalled Vehicles and defective accelerator pedal assemblies are "goods" within the meaning of Uniform Commercial Code § 2-105.

77. Toyota and CTS's implied warranty of merchantability accompanied the sale of the Recalled Vehicles and/or the defective accelerator pedal assemblies to Plaintiff and members of the Nationwide Class.

78. Toyota and CTS, by implication, warranted that the Recalled Vehicles and/or the accelerator pedal assemblies were fit for ordinary use.

79. The frequent failure of the accelerator pedal assemblies in the Recalled Vehicles made the Recalled Vehicles and accelerator pedal assemblies defective and, thus, unfit for the ordinary purposes for which the goods are used. The Recalled Vehicles are not fit for ordinary use because the accelerator pedal assemblies have a dangerous propensity to stick in the full-open position resulting in sudden and unintended acceleration.

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80. As set forth herein, any effort by Toyota and CTS to disclaim or otherwise limit its responsibility for the Recalled Vehicles was unconscionable under all of the circumstances. Toyota and CTS knew that the Recalled Vehicles were unfit for normal use.. Toyota and CTS' attempt to disclaim any warranty on the Recalled Vehicles is therefore unjust and cannot stand.

81. Through the conduct described herein, Toyota and CTS has breached their implied warranty of merchantability and are liable to Plaintiff and the Nationwide Class.

82. Plaintiff and the other members of the Nationwide Class have sustained damages as a result of Toyota and CTS' breaches.

83. Plaintiff has provided timely notice to Toyota regarding the problems she was experiencing with her 2010 Toyota Camry and, notwithstanding such notice, Toyota has failed and refused to offer Plaintiff a remedy.

COUNT IV

Asserted on Behalf of the Nationwide Class Against Toyota and CTS (Breach of Contract)

84. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

85. Plaintiff and Nationwide Class members entered into agreements to purchase or lease the Recalled Vehicles, and were in contractual privity with Toyota and CTS as a result of the express warranty described herein, as well as the specifications included with the purchase or lease of the Recalled Vehicles. Such privity likewise existed because the dealers from which Plaintiff and the Nationwide Class purchased or leased the Recalled Vehicles acted as Toyota's agents through franchise agreements, distribution agreements, and any other agreement governing the relationship between Toyota and any such dealer.

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86. Regardless of whether Plaintiff and the Classes were in contractual privity with Toyota or CTS, Toyota and CTS still may be held to have breached their contracts with Plaintiff and the Nationwide Class. As alleged herein, Toyota and CTS committed acts and omissions which were actuated by actual malice and accompanied by a wanton and willful disregard of persons, including Plaintiff and Nationwide Class members, who foreseeably might be harmed by those acts and omissions.

87. Toyota and CTS failed to disclose the true nature of the accelerator pedal assemblies, and the fact that the accelerator pedal assemblies would render the Recalled Vehicles unfit for use. Toyota and CTS knew or recklessly disregarded the fact that Plaintiff and the Nationwide Class were not knowledgeable with regard to the frequent failures, cost, and true nature of the accelerator pedal assemblies as alleged herein, and did not disclose that information to Plaintiff and the Nationwide Class.

88. Plaintiff and the Nationwide Class members performed all of their obligations under the contracts. Toyota breached its obligations under the contracts as alleged herein.

89. As a direct and proximate result of Toyota and CTS's breach of contract, Plaintiff and Nationwide Class members have been damaged.

COUNT V

Asserted On Behalf Of The Nationwide Class Against Toyota and CTS (Breach Of Implied Covenant Of Good Faith And Fair Dealing)

90. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

91. Plaintiff and Nationwide Class members entered into agreements to purchase or lease the Recalled Vehicles, or otherwise were in contractual privity with Toyota as a result of the express warranty described herein, as well as the specifications included with the purchase or

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lease of the Recalled Vehicles. Contractual privity likewise existed because the dealers from which Plaintiff and the Nationwide Class purchased or leased the Recalled Vehicles acted as Toyota's agent through franchise agreements, distribution agreements, and any other agreement governing the relationship between Toyota and any such dealer. Although CTS was not a party to these contracts, CTS had a duty to act in good faith due to the contractual relationship with Plaintiff and the Nationwide Class as alleged herein.

92. The contracts and warranties were subject to the implied covenant that Toyota would conduct business with Plaintiff and Nationwide Class members in good faith and would deal fairly with Plaintiff and Nationwide Class members. CTS' contracts and warranties were subject to the implied covenant that Toyota would conduct business with Plaintiff and Nationwide Class members in good faith and would deal fairly with Plaintiff and Nationwide Class members.

93. Regardless whether Plaintiff and the Nationwide Class were in contractual privity with Toyota and CTS, Toyota and CTS still had a duty of good faith and fair dealing. As alleged herein, Toyota and CTS committed acts and omissions which were actuated by malice and/or accompanied by a wanton and willful disregard of persons, including Plaintiff and the members of the Nationwide Class, who foreseeably might be harmed by those acts and omissions.

94. Toyota and CTS breached those implied covenants via the sale or lease to Plaintiff and members of the Nationwide Class of the Recalled Vehicles that were not fit for ordinary use and that were equipped with defective accelerator pedal assemblies that were inherently defective when Toyota and CTS knew, or should have known, that the accelerator pedal assemblies were defective. Toyota and CTS failed to disclose the true nature of the accelerator pedal assemblies, and the fact that the accelerator pedal assemblies would render the

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Recalled Vehicles unfit for use. Toyota and CTS knew or recklessly disregarded the fact that Plaintiff and the Nationwide Class were not knowledgeable with regard to the frequent failures, cost, and true nature of the accelerator pedal assemblies as alleged herein, and did not disclose that information to Plaintiff and the Nationwide Class. Defendants also breached those covenants by refusing to provide Plaintiff and the Nationwide Class with an adequate remedy.

95. Defendants behaved inequitably and acted in total disregard of the harm caused to Plaintiff and the Nationwide Class, and unjustly enriched themselves at the expense of Plaintiff and the Nationwide Class.

96. As a direct and proximate result of Toyota and CTS's breach of its implied covenants, Plaintiff and Nationwide Class members have been damaged.

COUNT VI

Asserted On Behalf Of The Sub-Class Against Toyota and CTS (Violation Of N.Y. G.B.L. §349)

97. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

98. Plaintiff and other members of the Sub-Class are "consumers" in accordance with GBL §349.

99. At all relevant times material hereto, Toyota and CTS conducted trade and commerce in New York and elsewhere within the meaning of GBL §349.

100. Toyota and CTS' acts materially misled Plaintiff and the Sub-Class in that Toyota and CTS misrepresented or failed to disclose the following material facts:

a. The Recalled Vehicles are not fit for normal use;

b. The accelerator pedal assemblies have a dangerous propensity to stick in the full-open position resulting in sudden and unintended acceleration;

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c. The Recalled Vehicles are not equipped with a failsafe to protect against sudden and unintended acceleration; and

d. The consequences of sudden and unintended acceleration are serious and potentially deadly.

101. Toyota and CTS consciously omitted to disclose material facts from Plaintiff and other members of the Sub-Class with respect to the accelerator pedal assemblies on the Recalled Vehicles.

102. Toyota intended that Plaintiff and the Sub-Class rely on Toyota and CTS' acts of concealment and omission, so that Plaintiff and other Sub-Class members would purchase and/or lease the Recalled Vehicles equipped with the defective accelerator pedal assemblies.

103. Had Toyota and CTS disclosed all material information regarding the defective accelerator pedal assemblies in the Recalled Vehicles to Plaintiff and the Sub-Class, they would not have purchased and/or leased the Recalled Vehicles, or would have paid less for the Recalled Vehicles.

104. The foregoing acts, omissions and practices proximately caused Plaintiff and other members of the Classes to suffer actual injury and damage including, *inter alia,* the loss of use of the Recalled Vehicles and diminution of value of those vehicles.

COUNT VII

Asserted On Behalf of the Sub-Class Against Toyota
(Violations of N.Y. G.B.L. §350)

105. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

106. Toyota, in marketing the Recalled Vehicles, failed to disclose the following facts to Plaintiff and the Sub-Class:

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a. The Recalled Vehicles are not fit for normal use;

b. The accelerator pedal assemblies have a dangerous propensity to stick in the full-open position resulting in sudden and unintended acceleration;

c. The Recalled Vehicles are not equipped with a failsafe to protect against sudden and unintended acceleration; and

d. The consequences of sudden and unintended acceleration are serious and potentially deadly.

107. Plaintiff and the Sub-Class were misled and/or deceived by the omission of these material facts. Toyota, due to its superior knowledge of the facts herein, was required to disclose these facts to Plaintiff and the Sub-Class.

108. The foregoing acts, omissions and practices proximately caused Plaintiff and other members of the Sub-Class to suffer actual injury and damage.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff on behalf of herself and on behalf of the Classes prays:

A. For an order certifying this action as a class action, appointing Plaintiff as representative of the Classes and appointing her attorneys as counsel for the Classes;

B. For Defendants to pay lease and car loan payments until Toyota repairs or replaces the defective accelerator pedal assemblies in the Recalled Vehicles;

C. For all compensatory and other appropriate damages on all applicable claims in an amount to be proven at trial, including the diminution in value of the Recalled Vehicles as a result of the acts complained of herein;

D. For an order permanently enjoining Defendants from engaging in the unlawful practices alleged herein;

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E. For an award of attorneys' fees, costs and expenses; and

F. For such other and further relief that the Court deems appropriate and just under the circumstances.

JURY TRIAL DEMAND

Plaintiff demands a trial by jury.

Dated: February 8, 2010

ABBEY SPANIER RODD
& ABRAMS, LLP

By: _____
Jill Abrams (JA 1578)
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TOY-RQ-05E-00010370

Amended: October 3, 2008

INDIVIDUAL PRACTICES OF JUDGE P. KEVIN CASTEL
United States Courthouse
500 Pearl Street
New York, New York 10007
web site: www.nysd.uscourts.gov

Unless otherwise ordered, matters before Judge Castel shall be conducted in accordance with the following practices:

1. Communications with Chambers

A. Letters. Except as otherwise provided below, communications with chambers shall be by letter, with copies simultaneously delivered to all counsel. Letters may be sent to chambers via fax, (212) 805-7949, provided they do not exceed five pages in length. If a fax is transmitted to chambers, it should not also be mailed or delivered to chambers. Letters should not be filed on ECF.

B. Telephone Calls. For docketing, scheduling and calendar matters, call the Courtroom Deputy, Florence Nacanther, at (212) 805-0131 between 8:30 A.M. and 5:00 P.M. Telephone calls to chambers are permitted only in emergency situations requiring immediate attention, (212) 805-0262.

C. Requests for Adjournments or Extensions of Time. All requests for adjournments or extensions of time must state (1) the original date, (2) the number of previous requests for adjournment or extension, (3) whether these previous requests were granted or denied, and (4) whether the adversary consents, and, if not, the reasons given by the adversary for refusing to consent. If the requested adjournment or extension affects any other scheduled dates, the request (in a civil case) must attach a proposed Revised Case Management Plan and Scheduling Order (reflecting dates which are business days). If the request is for an adjournment of a court appearance, absent an emergency, it shall be made at least 48 hours prior to the scheduled appearance. Requests for adjournments should be transmitted to chambers and not filed on ECF.

D. ECF. Counsel for all parties, are required to register as ECF users in accordance with the Procedures for Electronic Case Filing and file a Notice of Appearance in each case.

2. Motions

A.

1. Pre-Motion Conferences in Civil Cases. For discovery motions, follow Local Civil Rule 37.2 Southern District. For motions other than discovery motions in a civil case, a pre-motion conference with the court is required, except for motions described in Sub-paragraph A(2). To arrange a pre-motion conference, the moving party shall submit a letter not to exceed five pages in length setting forth in detail the basis for the anticipated motion and other parties may respond in a letter not to exceed five pages within three business days.

2. No Pre-Motion Conference Required. Sub-paragraph A(1) above does not apply to any of the motions described in Rule 6(b), Federal Rules of Civil Procedure, Rules

4(a)(4)(A), Federal Rules of Appellate Procedure, or section 1447 of title 28 nor does it apply to motions brought on by order to show cause, motions by incarcerated pro se litigants, motions for a default judgment, motions for appointment of lead counsel under the PSLRA, motions for admission pro hac vice and motions for reconsideration or reargument. A pre-motion conference is not required before making such motions.

B. Courtesy Copies.

1. Pleadings: Courtesy copies of pleadings, marked as such, shall be submitted to chambers as soon as practical after filing, in accordance with the SDNY policies regarding mail deliveries.

2. Motion Papers: Courtesy copies of all motion papers (in both ECF and non-ECF cases), marked as such, shall be submitted to chambers at the time the papers are served, in accordance with the SDNY policies regarding mail deliveries.

C. Memoranda of Law. Unless prior permission has been granted, memoranda of law in support of and in opposition to motions are limited to 25 pages, and reply memoranda are limited to 10 pages. Memoranda of 10 pages or more shall contain a table of contents.

D. Filing of Motion Papers. Motion papers shall be filed promptly after service.

E. Oral Argument on Motions. Parties may request oral argument by letter at the time their moving, opposing or reply papers are filed. The court will determine whether argument will be heard and, if so, will advise counsel of the argument date.

F. Summary Judgment. The Local Rule 56.1(a)(2) Statement by the party opposing summary judgment shall set forth verbatim the text of each paragraph of the Local Rule 56.1(a)(1) Statement immediately preceding its response thereto.

3. Pretrial Procedures

A. Joint Pretrial Orders in Civil Cases. Unless otherwise ordered by the Court, within 30 days following completion of discovery in a civil case, the parties shall submit to the Court for its approval a Joint Pretrial Order, that includes the information required by Federal Rule of Civil Procedure 26(a)(3), and the following:

i. The names, addresses (including firm names), and telephone and fax numbers of trial counsel.

ii. A brief summary by each party of the claims and defenses that the party has asserted which remain to be tried, without recital of evidentiary matter, but including citations to all statutes relied on. Any claim or defense not so identified is deemed withdrawn.

iii. A statement by each party as to whether the case is to be tried with or without a jury, and the number of trial days needed.

iv. A page and line designation by each party of deposition testimony to be offered in its case in chief, with any cross-designations and objections by any other party.

v. A list by each party of exhibits to be offered in its case in chief, with one star indicating exhibits to which no party objects on grounds of authenticity, and two stars indicating exhibits to which no party objects on any ground.

vi. A statement confirming that trial counsel have met and conferred face-to-face with a view towards reaching stipulations of fact and setting forth the content of any stipulation.

vii. A statement of the damages claimed and any relief sought, including the manner and method used to calculate the claimed damages and a breakdown of its elements.

B. Filings Prior to Trial in Civil Cases. Unless otherwise ordered by the Court, the parties shall file with the Joint Pretrial Order:

i. In jury cases, proposed voir dire questions, verdict form and requests to charge;

ii. In non-jury cases, proposed findings of fact and conclusions of law;

iii. The parties are required to meet and confer regarding items i. or ii. and make a joint submission in areas where agreement is reached and separate submissions in areas where no agreement is reached. Unless otherwise agreed upon by the parties, the party with the burden of proof should prepare the initial draft in sufficient time for the other side to respond; only the final result of this meet and conferral process should be submitted to the Court. When feasible, items i. and ii. should be submitted, in addition to hard copy, on a 3.5" diskette or CD-Rom in Microsoft Word version Office 2000 or WordPerfect version 9 or higher format;

iv. Motions in limine addressing any evidentiary or other issues that should be resolved prior to empanelling a jury.

J. MICHAEL McMAHON
CLERK OF COURT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
500 PEARL STREET, NEW YORK, NY 10007
300 QUARROPAS STREET, WHITE PLAINS, NY 10601

WWW.NYSD.USCOURTS.GOV

Electronic Case Filing Rules & Instructions

August 1, 2008 Edition

IMPORTANT INFORMATION FOR NEW CASES

A party filing a new civil case assigned to the Electronic Case Filing (ECF) system must do the following after obtaining a civil case number:

(1) E-mail a pdf copy of the case initiating documents to the Clerk's Office within 24 hours of delivering the paper documents to the Court; and

(2) Serve each party to the action with the initiating documents and a copy of:

(a) SDNY Electronic Case Filing Rules & Instructions (attached); and

(b) The assigned Judge's Individual Practices.

For complete instructions and e-mail addresses see Section 14 - Opening a Civil Action.

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Introduction

The United States District Court for the Southern District of New York implemented an Electronic Case Filing (ECF) system in December 2003. Electronic versions of documents filed by attorneys over the Internet have largely replaced paper documents in the Court's files. Almost all new civil and criminal cases filed in this Court after December 2, 2003 are Electronic Case Filing (ECF) cases. Cases filed before December 2, 2003, Pro se cases (unless the pro se litigant is a member of the bar), Social Security cases and habeas corpus cases however are not ECF cases and must be filed on paper. The information in this document applies only to cases assigned to the ECF system.

Electronic Case Filing has several advantages for both the attorney and the Court:

- Twenty-four hour concurrent access to case files from any location over the Internet
- Remote document filing from any Internet connection worldwide
- Secure access to the ECF system via unique user password
- Immediate e-mail notification of case activity to parties and the Court
- Storage of documents in a reliable and secure electronic format

In addition to the Federal Rules of Civil and Criminal Procedure, the following govern Electronic Case Filing in this District (available at www.nysd.uscourts.gov):

- **SDNY Electronic Case Filing Rules & Instructions (this document):**

  Part I. Electronic Case Filing Rules (ECF Rules), approved by the Board of Judges of this Court, provide the broad outline of the rules of Electronic Case Filing.

  Part II. Electronic Case Filing Instructions (ECF Instructions), written by the Clerk of Court under the authority of the ECF Rules, provide step by step instructions for Electronic Case Filing.

- **The Judge's Individual Practices**

  Each Judge's Individual Practices outline their own specific filing requirements.

The Court is prepared to assist you in filing electronically in several ways:

- The SDNY Electronic Case Filing Rules & Instructions will answer many of your ECF questions.
- Training in Electronic Case Filing (ECF) is available both in person at the courthouse and on-line at www.nysd.uscourts.gov (*See section 24 - ECF Help Desk and Training*).
- ECF Help Desk operators are available by telephone to answer your electronic filing questions (*See section 24 - ECF Help Desk and Training*).

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What's New

Updated August 1, 2008:

This edition of the ECF Rules & Instructions contains new material.

Effective August 1, 2008, in cases assigned to the Electronic Case Filing (ECF) system, all notices and stipulations of voluntary dismissal pursuant to Federal Rule of Civil Procedure 41(a)(1)(A) must be filed electronically on the ECF system.

Paper versions of notices and stipulations pursuant to Rule 41(a)(1)(A) in ECF cases will no longer be accepted for filing effective August 1, 2008.

Please use the following ECF filing events:

NOTICE OF VOLUNTARY DISMISSAL to file a notice pursuant to Rule 41(a)(1)(A)(i); and

STIPULATION OF VOLUNTARY DISMISSAL to file a stipulation pursuant to Rule 41(a)(1)(A)(ii).

In accordance with Rule 41(a)(1)(A)(ii), stipulations of voluntary dismissal require the signature of all parties who have appeared in the action. Only partial stipulations of voluntary dismissal, seeking to dismiss some but not all parties, must continue to be submitted by e-mail to the Judgment Clerk to be conformed for the Court's approval.

In cases not assigned to the ECF system, notices and stipulations filed pursuant to Rule 41(a)(1)(A) must continue to be filed in paper form with the Judgment Clerk.

Accordingly, revisions have been made to the following items:

Section 18 - Non ECF Documents

18.1 In an ECF case are there documents that I should not file electronically?

18.4 Are Proposed Orders, Proposed Judgments, Stipulations, Voluntary Notices of Dismissal or Consents filed electronically?

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Part I. Electronic Case Filing Rules

The Court will accept for filing documents submitted, signed or verified by electronic means that comply with the following rules.

Section 1. Scope of Electronic Filing

1.1 The Court will designate which cases will be assigned to the Electronic Case Filing (ECF) system. Except as expressly provided and in exceptional circumstances preventing a Filing User from filing electronically, all petitions, motions, memoranda of law, or other pleadings and documents required to be filed with the Court in a case assigned to the ECF system must be filed electronically. A paper may be filed electronically (a) from a remote location, (b) by bringing it to the Clerk's office during regular business hours, in a form or electronic format prescribed by the Clerk, for input into the system, or (c) by bringing the paper and the Filing User's SDNY ECF password and log-in to the Clerk's Office during regular business hours to be scanned into the system by the Filing User.

1.2 Unless limited by their terms to civil cases, the provisions of these procedures relating to electronic filing apply in criminal cases that are initiated by the filing of an indictment or information. Electronic filing procedures shall not apply to applications for arrest, search or electronic surveillance warrants; for other orders in aid of or ancillary to a criminal investigation; or to proceedings relating to the grand jury.

1.3 Electronic filing procedures shall not apply to Social Security cases, Pro Se cases (unless the pro se litigant is a member of the bar), Habeas Corpus cases or cases initiated before December 2, 2003.

(*See section 13 - ECF Basics*).

1.4 The filing and service of the initial papers in a civil case, including the complaint, the issuance of the summons and the proof of service of the summons and complaint, as well as service of non-party subpoenas, will be accomplished in the traditional manner on paper in accordance with the Federal Rules of Civil Procedure and applicable Local Rules governing service, rather than electronically. In a criminal case, the indictment or information, including any superseders, shall also be filed and given to the defendant in the traditional manner on paper in accordance with the Federal Rules of Criminal Procedure and applicable Local Rules rather than electronically; in addition, service of subpoenas shall be made in the traditional manner on paper in accordance with the Federal Rules of Criminal Procedure and applicable Local Rules. In a case assigned to the ECF system after it has been opened, parties must promptly provide the Clerk with electronic copies of all documents previously provided in paper form. All subsequent documents must be filed electronically except as provided in these Rules & Instructions or as ordered by the Court.

(*See section 14 - Opening a Civil Action*).

1.5 The Clerk shall write and revise as necessary Instructions to guide Filing Users and maximize the efficiency of the Electronic Case Filing system.

(*See Part II - Electronic Case Filing Instructions*)

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Section 2. Eligibility, Registration, Passwords

2.1 Attorneys admitted to the bar of this Court, including those admitted pro hac vice and attorneys authorized to represent the United States, may register and may be required to register as Filing Users of the Court's ECF system. Unless excused by the Court, attorneys not already Filing Users appearing in cases assigned to the ECF system must register as Filing Users forthwith upon the case being so designated. Registration is in a form prescribed by the Clerk and requires the Filing User's name, address, telephone number, Internet e-mail address, and a declaration that the attorney is admitted to the bar of this Court or authorized to represent the United States.

2.2 If the Court permits or requires, a party to a pending civil action who is not represented by an attorney may register as a Filing User in the ECF system solely for purposes of the action. Registration is in a form prescribed by the Clerk and requires identification of the action as well as the name, address, telephone number and Internet e-mail address of the party. The Court may require the party to attend in-person training for Electronic Case Filing as a condition of registering as a Filing User. If, during the course of the proceeding, the party retains an attorney who appears on the party's behalf, the attorney must advise the Clerk to terminate the party's registration as a Filing User upon the attorney's appearance.

2.3 Once registration is completed, the Filing User will receive notification of the user log-in and password. Filing Users agree to protect the security of their passwords and immediately notify the Clerk if they learn that their password has been compromised. Users may be subject to sanctions for failure to comply with this provision.

2.4 In a civil action, the Clerk will enter, as Filing Users to whom Notices of Electronic Filing will be transmitted, (a) each attorney identified on the Civil Cover Sheet, as well as (b) each additional attorney who subsequently appears in the action and files a Notice of Appearance (which must be filed electronically). In a criminal case, the Clerk will enter, as Filing Users to whom Notices of Electronic Filing will be transmitted and who will be granted access to electronically file and retrieve documents in the case, the attorney(s) for the United States identified on the Criminal Designation Form or subsequently identified as representing the United States in the case and each attorney filing a Notice of Appearance on behalf of a defendant. Notices of Appearance on behalf of a criminal defendant will be filed in the traditional manner on paper.

2.5 An attorney of record may, by written or electronic request to the Clerk, have transmission of Notices of Electronic Filing to another attorney in his or her firm terminated.

(*See section 22 - ECF Passwords*).

Section 3. Consequences of Electronic Filing

3.1 Except as otherwise provided in Rule 4 herein, electronic filing of a document in the ECF system consistent with these procedures, together with the transmission of a Notice of Electronic Filing from the Court, constitutes filing of the document for all purposes of the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, and the Local Rules of this Court and constitutes entry of the document on the docket kept by the Clerk under Fed. R. Civ. P. 58 and 79 and Fed. R. Crim. P. 49 and 55.

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3.2 When a document has been filed electronically, the official record is the electronic recording of the document as stored by the Court (subject to the exception set out in Rule 4 below), and the filing party is bound by the document as filed. Except in the case of documents first filed in paper form and subsequently submitted electronically under Rule 1, a document filed electronically is deemed filed on the date and time stated on the Notice of Electronic Filing from the Court.

3.3 Electronic filing must be completed before midnight local time where the Court is located in order to be considered timely filed that day.

3.4 Individual Judges' Practices should continue to be followed with respect to delivery of courtesy copies.

(*See section 19 - Service of Electronically Filed Documents*).

Section 4. Entry of Court Orders

4.1 All orders, decrees, judgments and proceedings of the Court will be filed in accordance with these procedures and entered on the docket kept by the Clerk under Fed. R. Civ. P. 58 and 79 and Fed. R. Crim. P. 49 and 55. Each document signed by a judge shall be scanned so as to contain an image of the judge's signature and shall be filed electronically by the Court, and the manually signed original shall be filed by the Clerk. In the event of a discrepancy between the electronically filed copy and the manually signed original, the manually signed original shall control.

4.2 A Filing User submitting a document electronically that requires a judge's signature must promptly deliver the document in such other form as the Court requires, if any.

Section 5. Attachments and Exhibits

5.1 Filing Users must submit in electronic form all documents referenced as exhibits or attachments, unless the Court permits paper filing.

5.2 A Filing User must submit as exhibits or attachments only those excerpts of the referenced documents that are relevant to the matter under consideration by the Court. Excerpted material must be clearly and prominently identified as such. Filing Users who file excerpts of documents as exhibits or attachments under this procedure do so without prejudice to their right to file timely additional excerpts or the complete document. Responding parties may file timely additional excerpts that they believe are relevant or the complete document. A party may move for permission to serve and file in hard copy documents that cannot reasonably be scanned.

5.3 In cases where the record of an administrative or other prior proceeding must be filed with the Court, such record may be served and filed in hard copy without prior motion and order of the Court.

(*See section 15 - Motions*).

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Section 6. Sealed Documents

6.1 Documents ordered to be placed under seal may not be filed electronically.

6.2 A motion to file documents under seal should be filed electronically unless prohibited by law, in redacted form if necessary; however, a motion to file under seal that includes a statement of why the filing should not be made electronically may be made in paper copy. The order of the Court authorizing the filing of documents under seal may be filed electronically unless prohibited by law.

6.3 A paper copy of the sealing order must be attached to the outside of the envelope containing the documents under seal and be delivered to the Clerk's Office.

(*See section 18 - Non-Electronic Documents*).

Section 7. Retention Requirements

Documents that are electronically filed and require original signatures other than that of the Filing User must be maintained in paper form by the Filing User until one year after all time periods for appeals expire, except that affidavits, declarations and proofs of service must be maintained in paper form by the Filing User until five years after all time periods for appeals expire. On request of the Court, the Filing User must provide original documents for review.

(*See section 13 - ECF Basics*).

Section 8. Signatures

8.1 The user log-in and password required to submit documents to the ECF system serve as the Filing User's signature on all electronic documents filed with the Court. They also serve as a signature for purposes of the Federal Rules of Civil Procedure, including Rule 11, the Federal Rules of Criminal Procedure, the Local Rules of this Court, and any other purpose for which a signature is required in connection with proceedings before the Court. Each document filed electronically must indicate that it has been electronically filed.

8.2 Electronically filed documents must include a signature block and must set forth the name, address, telephone number and e-mail address all in compliance with the Federal Rules of Civil Procedure and Local Civil Rule 11.1. In addition, the name of the Filing User under whose log-in and password the document is submitted must be preceded by an "s/" typed in the space where the signature would otherwise appear.

8.3 No Filing User or other person may knowingly permit or cause to permit a Filing User's password to be used by anyone other than an authorized agent of the Filing User.

8.4 A document requiring the signature of a defendant in a criminal case may be electronically filed only in a scanned format that contains an image of the defendant's signature.

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8.5 Documents requiring signatures of more than one party must be electronically filed either by: (a) submitting a scanned document containing all necessary signatures; (b) representing the consent of the other parties on the document; (c) identifying on the document the parties whose signatures are required and by the submission of a notice of endorsement by the other parties no later than three business days after filing; or (d) in any other manner approved by the Court.

(*See section 13 - ECF Basics*).

Section 9. Service of Documents by Electronic Means

Transmission of the Clerk's Notice of Electronic Filing of a document shall constitute service of such document upon any Filing User in that case. It remains the duty of the attorney for a party to review regularly the docket sheet of the case. Attorneys and pro se parties who are not Filing Users shall be served with a paper copy of any electronically filed pleading or other document. Service of such paper copy must be made according to the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure and the Local Rules.

(*See section 19 - Service of Electronically Filed Documents*).

Section 10. Notice of Court Orders and Judgments

Immediately upon the entry of an order or judgment in a proceeding assigned to the ECF system, the Clerk will transmit to all Filing Users in the case, in electronic form, a Notice of Electronic Filing. Electronic transmission of the Notice of Electronic Filing constitutes the notice required by Fed.R.Crim.P. 49(c) and Fed.R.Civ.P. 77(d). It remains the duty of the attorney for a party to review regularly the docket sheet of the case. The Clerk must give notice in paper form to a person who is not a Filing User in accordance with the Federal Rules of Civil Procedure or the Federal Rules of Criminal Procedure.

(*See section 19 - Service of Electronically Filed Documents*).

Section 11. Technical Failures

A Filing User whose filing is made untimely as the result of a technical failure may seek appropriate relief from the Court.

(*See section 23 - ECF Computer System Information*).

Section 12. Public Access

A person may review at the Clerk's Office filings that have not been sealed by the Court. A person also may access the ECF system at the Court's Internet site www.nysd.uscourts.gov by obtaining a PACER log-in and

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password. A person who has PACER access may retrieve docket sheets in civil and criminal cases, documents in a civil case assigned to the ECF System, and documents in a criminal case filed after November 1, 2004. Only counsel for the government and for a defendant may retrieve documents in a criminal case filed prior to November 1, 2004. Only a Filing User under Rule 2 herein may file documents.

(*See section 13 - ECF Basics*).

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Part II. Electronic Case Filing Instructions

Section 13. ECF Basics

13.1 May letters be filed electronically?

No. Letters are submitted in the traditional manner on paper. An attorney should not file a letter electronically on the ECF system. The Judge may direct the Clerk to place a letter on the docket if it is deemed appropriate.

13.2 In brief, how do I file a document electronically?

(a) Use your secure SDNY ECF password (*see section 22 - ECF Passwords*) to log-in to the ECF system from any Internet connection.

(b) Select the appropriate category, CIVIL or CRIMINAL.

(c) Find the appropriate ECF Filing Event, or title, for your document. (*See below*).

(d) Indicate the party filing the document (hold down the control key to designate more than one party).

(e) Upload a PDF copy (*see section 23 - ECF Computer System Information*) of your document. Include any exhibits as attachments to the main document. File supporting documents separately.

(f) Print the final screen, the Notice of Electronic Filing (NEF), for your records.

(g) Service is complete provided all parties receive electronic notice of the filing (via the NEF email sent automatically by the Court - see the NEF for a list of who was/was not served electronically). If a party will not receive electronic notice via the NEF email, you must serve him/her in the traditional manner, on paper, then electronically file an affidavit of service (*see section 19 - Service of Electronically Filed Documents*).

(h) Submit a paper courtesy copy to the Judge if required (*see the Judge's Individual Practices at www.nysd.uscourts.gov*).

13.3 What is the secure website for electronic filing on the SDNY ECF system?

To file electronically go to **https://ecf.nysd.uscourts.gov**, or link to the filing website via the Court's public website (see below). You will need your SDNY ECF log-in and password to file electronically.

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13.4 What is the public website for information about the Court?

For publicly available information go to **www.nysd.uscourts.gov** (no password required). From the homepage click on ECF for information on Electronic Case Filing.

13.5 What are the mailing addresses for the Court?

United States District Court, 500 Pearl Street, New York, NY 10007; or United States District Court, 300 Quarropas Street, White Plains, NY 10601.

13.6 Is an electronically filed document filed in accordance with the Federal Rules of Civil Procedure?

Yes. Local Civil Rule 5.2 provides:

> A paper filed by electronic means in accordance with procedures promulgated by the Court is, for purposes of Federal Rule of Civil Procedure 5(e), filed in compliance with the local civil rules of the Southern and Eastern Districts of New York.

(*See section 3 - Consequences of Electronic Case Filing*).

13.7 Which cases are ECF cases?

Civil and criminal cases filed after December 2, 2003, are subject to electronic filing. Cases filed before that date, Social Security cases, habeas corpus cases and pro se cases will not be assigned to the ECF system and must be filed on paper.

(*See section 1 - Scope of Electronic Filing*).

13.8 Which Judges entertain ECF cases?

All of the Court's District Judges and Magistrate Judges are able to entertain ECF cases.

13.9 How can I tell if my case is an ECF case?

The docket sheet will include the letters "ECF" in the upper right corner and an entry titled "CASE DESIGNATED ECF". If you are not sure if you are required to file electronically, call the ECF Help Desk at (212)805-0800.

13.10 If a case is deemed an ECF case, am I required to file documents electronically?

Yes. In an ECF case the attorney is responsible for electronically filing documents over the Internet using a secure SDNY log-in and password. With certain exceptions outlined below the Clerk's Office will not accept paper filings in an ECF case.

(*See section 1 - Scope of Electronic Case Filing* and *section 18 -Non-Electronic Documents*).

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13.11 May I file documents electronically in a non-ECF (paper) case?

No. Do not file documents electronically in non ECF (paper) case. Only those cases filed after December 2, 2003 are subject to electronic filing. Pro Se cases, Social Security cases, habeas corpus cases and cases filed before December 2, 2003, will not be assigned to the ECF system and must be filed on paper.

(*See section 1 - Scope of Electronic Case Filing*).

13.12 Will the Court file documents electronically in a non-ECF (paper) case?

Yes, the Court may file Orders and Opinions in electronic format (pdf) in a non-ECF (paper) case. This will not convert a non-ECF case to an ECF case, and parties should continue to file documents on paper.

13.13 Can I file electronically at any time?

Yes. You can file electronically 24 hours a day, 7 days a week, 365 days a year from any Internet connection worldwide. Filing must be completed before midnight local time where the Court is located in order to be considered timely filed that day.

(*See section 3 - Consequences of Electronic Case Filing*).

13.14 When is an electronically filed document deemed filed?

An electronically filed document is deemed filed on the date and time stated on the Notice of Electronic Filing (also referred to herein as the "filing receipt") from the Court.

(*See section 3 - Consequences of Electronic Case Filing*).

13.15 What is a docket sheet, and how can I view one?

The docket sheet is the official record of all filings in a case. You can view the docket sheet, including images of electronically filed documents, via the PACER public access system (for details go to http://pacer.psc.uscourts.gov or call 800-676-6856). Or you can use one of the public access computers available in the Clerk's Office.

(*See section 12 - Public Access*).

13.16 Should I routinely view the docket sheet in my case?

Yes. In ECF cases, service is accomplished by an e-mail sent by the Court. However e-mail is not foolproof, and you may miss an e-mail message. Therefore it remains the duty of the attorney for a party to review regularly the docket sheet of the case in order not to miss a filing.

(*See section 9 - Service of Documents by Electronic Means*).

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13.17 How do I view an electronically filed document in an ECF case?

Click on Query, enter the case number, go to Docket Report, find the document and click on the blue number (hyperlink) next to that entry. A pdf copy of the complete document will then appear. If there is no blue hyperlink, then there is no electronic version of that document. In non-ECF (paper) cases you will not be able to view documents, only document summaries.

13.18 How will I know if it's appropriate to electronically file my document?

First, determine if your case is an ECF case - not all cases are ECF cases. When filing in an ECF case if you can find an ECF Filing Event that directly matches your document then it should be electronically filed. If you cannot find a matching ECF Filing Event it probably should not be electronically filed. The ECF Event Dictionary (a PDF document available on our public website at www.nysd.uscourts.gov) is very useful for finding your event and the category in which it is listed. See the list of non-ECF documents below or call the ECF Help Desk at (212)805-0800.

(*See section 24 - ECF Help Desk and Training*).

13.19 Must the caption indicate the case is an electronic (ECF) case?

Yes. The case number must be followed by the judge's initials in parenthesis, and "ECF CASE" below the case number. For example:

06 cv 1234 (ABC)
ECF Case

(*See section 8 - Signatures*).

13.20 How do I sign an electronically filed document?

The ECF log-in and password of the filing attorney serve as his/her electronic signature. The filing attorney may place an S/ in place of his/her signature. The attorney's name and contact information, including e-mail address, must appear below the signature line. Signatures for all other persons (clients, witnesses etc.) must be scanned in order to capture the actual ink signature.

(*See section 8 - Signatures*).

13.21 When filing must I choose a name for my document on the ECF Docket Sheet?

Yes. When filing electronically you will be asked to name your document by selecting the appropriate ECF Filing Event. The ECF Filing Event is essentially the title of the document on the docket sheet, such as Motion for Summary Judgment or Affidavit in Support of Motion.

13.22 How do I find the correct ECF Filing Event for my document?

ECF Filing Events are listed by category on the ECF system. Within each category is an alphabetical listing of available ECF Filing Events. You may use the search function to find your Filing Event. The ECF Event

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Dictionary (a pdf document available on our public website at www.nysd.uscourts.gov) is also very useful for finding your event and the category in which it's listed. Print the dictionary for future reference. If you cannot find the appropriate event for your document do not file it using the wrong event. Call the ECF Help Desk at (212)805-0800 for assistance if necessary.

(*See section 24 - ECF Help Desk and Training*).

13.23 Must I retain paper originals of documents I electronically file?

Yes. Filing Users must retain original versions of electronically filed documents for a period of time after filing. On request of the Court, the Filing User must provide original documents for review.

(*See section 7 - Retention Requirements*).

13.24 Should I continue to submit courtesy copies?

Yes, continue your current practice. In the past if you would have submitted a paper courtesy copy of a document, you should now submit a paper courtesy copy of the document in an ECF case. For example, most Judges require courtesy copies of motion papers. Read the Judge's Individual Practices for specific practices.

(*See section 3 - Consequences of Electronic Case Filing*).

13.25 Are Administrative Records filed electronically?

Yes, if possible. However, if the administrative record is too large to be scanned it may be served and filed in hard copy without prior motion and order of the Court.

(*See section 5 - Attachments and Exhibits*).

13.26 In Consolidated and MDL cases can I file simultaneously in member cases?

Yes. When filing in Consolidated and Multi-District Litigation (MDL) cases you can save time by electronically filing a document simultaneously in the member case(s) using the computer function titled "Spread Text and Effects" (not available in related cases). Please observe the following MDL filing rules:

- In consolidated and MDL cases you must file all documents first under the Lead or MDL case number.

- You may then precisely designate the member case(s) in which you wish to simultaneously file.

- Do not file in all cases unless it is appropriate. Your document may not relate to all member cases.

- The case caption must include all the case numbers in which your document will be filed.

- Instructions for Spread Text and Effects and information on in-person training are available on-line at www.nysd.uscourts.gov

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13.27 What if I make a mistake in electronic filing?

Call the ECF Help Desk immediately at (212)805-0800.

(*See section 24 - ECF Help Desk and Training*).

Section 14. Opening a Civil Action

14.1 Electronically filed (ECF) cases are opened and service of the initiating documents (complaint, notice of removal, etc.) is accomplished in the traditional manner, on paper.

14.2 In order to alert your adversary(s) to the requirements of Electronic Case Filing and the Judge's Individual Practices you are required to deliver paper copies of the following documents to all parties (available at the courthouse, and www.nysd.uscourts.gov):

- **Electronic Case Filing Rules & Instructions** (this document)
- **The Individual Practices** of the assigned Judge

14.3 Then within 24 hours of the assignment of a case number, you are required to e-mail to the Clerk's Office (e-mail is not ECF filing) the initiating documents in PDF format only (such as Adobe Acrobat PDF, see section 21). Include a F.R.C.P. Rule 7.1 Statement (if applicable) and all exhibits. The case number followed by the Judge's initials and "ECF CASE" must appear in the case caption. Failure to do so within 24 hours will delay adding your PDF documents to the computerized ECF docket.

Each document must be in a separate PDF file no larger than 2.5 megabytes (separate large computer files into smaller parts if necessary, and label accordingly). The subject line of the e-mail and the name of the PDF file should list the case number followed by a brief document description (ex. "Re: 01cv1234 KMW-complaint").

Send a PDF copy of the initiating documents by e-mail (do not file on the ECF system) to:

- For new civil cases assigned to a Manhattan Judge e-mail to:
  caseopenings@nysd.uscourts.gov
  or **case_openings@nysd.uscourts.gov**
- For new civil cases assigned to a White Plains Judge e-mail to:
  wpclerk@nysd.uscourts.gov

14.4 File the Affidavit of Service (or the Acknowledgment of Service, Certificate of Service, Request for Waiver of Service, Summons Returned Executed/Unexecuted, Waiver of Service Executed/Unexecuted) for the initiating document (complaint, notice of removal, etc.) in the following manner:

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(a) Electronically file the Affidavit of Service for the initiating document on the ECF system (do not e-mail), and

(b) Deliver the original paper Affidavit of Service, with summons attached, to the Clerk's Office. Include a copy of the ECF Notice of Electronic Filing for this document (the filing receipt),

(See section 19 - Service of Electronically Filed Documents).

14.5 Subsequent documents, including the Defendant's Answer, must be filed electronically on the ECF system at **https://ecf.nysd.uscourts.gov**. With certain exceptions outlined below, the Clerk's Office will not accept a paper document for filing in an ECF case.

(*See section 1 - Scope of Electronic Filing* and *section 18 - Non-electronic Documents*).

Section 15. Motions

15.1 What ECF Filing Event should be used to file a motion?

A motion must be filed using an ECF Filing Event beginning with the word "Motion". The ECF system contains over 160 separate motion Filing Events for your use, all beginning with the word "Motion" (eg. "Motion for Summary Judgment", etc.). See the ECF Events Dictionary at www.nysd.uscourts.gov for a complete list of motions and supporting documents. Do not use the "Notice" filing event to file a motion.

15.2 Should I file supporting papers as attachments to the motion?

No. File supporting or response documents separately under the appropriate ECF Filing Event found in the category "Replies, Opposition and Supporting Documents". For example, a motion, an affidavit in support and a memorandum of law in support must be filed separately.

15.3 What ECF Filing Event should be used to file supporting papers?

Use the appropriate ECF Filing Events for supporting papers found in the category "Replies, Opposition and Supporting Documents" (eg. Affidavit in Support of Motion, Memorandum of Law in Support of Motion, etc.). Never use the ECF Filing Event for Motion to file supporting papers. For example, filing a motion, an affidavit in support and a memorandum of law in support, and labeling each one "Motion" would make it appear incorrectly that three motions were filed instead of one.

15.4 How do I file exhibits?

Exhibits shall be filed only as attachments to a document, such as a motion or an affidavit. Do not use the ECF Filing Event for "Motion" to file exhibits separately. Exhibits are the only items that should be attached to electronically filed documents. You are limited to electronically filing only relevant excerpts of exhibits.

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Excerpts must be clearly identified as such. If the exhibit is too large to be scanned and electronically filed call the ECF Help Desk at (212)805-0800.

(See section 5 - Attachments and Exhibits; see also section 24 - ECF Help Desk and Training).

Section 16. Default Judgments

16.1 How do I file a Default Judgment?

In one of the three ways outlined below. Consult the Individual Practices of the Judge to determine the appropriate method (at www.nysd.uscourts.gov). If the Judge's Individual Practices contain no specific rules regarding Default Judgments you should follow section 16.4 below.

If you wish to electronically file a Request to Enter Default Judgment before submitting a Default Judgment, you must file an unsigned Clerk's Certificate as an attachment to the Request. Then submit a paper copy of the proposed Clerk's Certificate to the Orders, Appeals & Judgments Clerk. The clerk will sign and return the Clerk's Certificate, and you may then move for a Default Judgment using the appropriate method outlined below.

When necessary, submit paper documents to the Orders, Appeals & Judgements Clerk in Manhattan (212-805-0143) or White Plains (914-390-4000) depending upon where the Judge sits. If sending documents by mail, enclose a return envelope with postage. For mailing addresses *see section 13 - ECF Basics*.

16.2 Default Judgment brought by Motion:

(a) Submit to the Orders, Appeals & Judgment Clerk two paper Clerk's Certificates. The clerk will sign and return both Certificates to the filing party.

(b) Electronically file the Motion for Default Judgment on the ECF system. The following items should be filed as attachments to the Motion: the signed Clerk's Certificate; and a copy of the Summons and Complaint with proof of service. The following supporting documents should be filed as separate ECF Filing Events: Affidavit in Support; and Statement of Damages (unless requesting an inquest).

(c) Electronically file an Affidavit of Service for the Motion for Default Judgment.

(d) Submit a courtesy copy of the Motion to the Judge, including the original signed Clerk's Certificate and a copy of the Affidavit of Service.

16.3 Default Judgment brought by Order to Show Cause (OSC):

(a) Submit to the Orders, Appeals & Judgments Clerk a paper original of the OSC. Include as exhibits to the Affidavit in Support a Clerk's Certificate and a proposed Default Judgment.

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Include courtesy copies of all documents.

(b) If signed by the Court, the Clerk's Office will electronically file only the Order. After the Order appears on the docket sheet, the attorney must electronically file all supporting papers.

(c) Electronically file an Affidavit of Service for the Order to Show Cause.

16.4 Default Judgment brought on by Default Judgment and Order:

(a) Submit to the Orders, Appeals & Judgments Clerk: a paper original of the proposed Default Judgment and Order; the Affidavit in Support; a Statement of Damages (unless requesting an inquest); a copy of the Summons and Complaint with proof of service; and a Clerk's Certificate. The papers will be forwarded to the Judge for signature.

(b) If signed by the Court, the Clerk's Office will electronically file only the Order. After the Order appears on the docket sheet, the attorney must electronically file all supporting papers.

Section 17. Appeals

17.1 Are appeals filed electronically?

No. Appeals in ECF and non-ECF cases must be filed in the traditional manner, on paper.

17.2 How do I file an appeal in an ECF case?

File the appeal in the traditional manner, on paper either at the courthouse or by mail. Include the filing fee if necessary. Then within 24 hours of filing the paper copy of your Appeal, you are required to e-mail to the Clerk's Office an electronic copy of the Appeal in PDF format. Include any exhibits. Each document must be in a separate PDF file no larger than 2.5 megabytes. The District Court case number followed by the Judge's initials and "ECF CASE" must appear in the document's case caption. When sending e-mail, the subject line of the e-mail should always list the case number followed by a document description (ex. "Re: 01cv1234-appeal"). Questions may be directed to the Orders, Appeals & Judgments Clerk in Manhattan at (212)805-0636, or in White Plains at (914)390-4000. Send the e-mail (do not file on the ECF system) to:

- For appeals from an ECF case assigned to a Manhattan Judge e-mail to:

  appeals@nysd.uscourts.gov

- For appeals from an ECF case assigned to a White Plains Judge e-mail to:

  wpclerk@nysd.uscourts.gov

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Section 18. Non-Electronic Documents

18.1 In an ECF case are there documents that I should not file electronically?

Yes, including:

- Letters, see instruction 18.2 below.
- Case initiating documents (complaint, notice of removal, etc.), see section 14;
- All types of complaints (3rd party, Interpleader etc.), see instruction 18.3 below;
- Proposed orders; proposed judgments, stipulations; consents, see instruction 18.4 below;
- Orders to show cause (with or without a temporary restraining order), see instruction 18.6 below;
- Motions for Admission pro hac vice, see instruction 18.7 below;
- Miscellaneous cases, see instruction 18.8 below;
- Sealed documents, see instruction 18.9 below;
- Surety bonds, see instruction 18.10 below;
- Bill of Costs, see instruction 18.11 below;
- Notices of Appeal, see section 17;

18.2 May letters be filed electronically?

No. Letters are submitted in the traditional manner on paper. An attorney should not file a letter electronically on the ECF system. The Judge may direct the Clerk to place a letter on the docket if it is deemed appropriate.

18.3 Are Amended Complaints, Third Party Complaints, Interpleader Complaints, etc. filed electronically?

No. All complaints, no matter what type, are filed the same way:

(a) Deliver the paper original to the appropriate Clerk's Office (Manhattan or White Plains), and

(b) E-mail a PDF copy of the document within 24 hours, including exhibits and Rule 7.1 Disclosure Statement (if required) to the Clerk's Office. Send the e-mail to:

- For cases assigned to a Manhattan Judge e-mail to:

caseopenings@nysd.uscourts.gov

or **case_openings@nysd.uscourts.gov**

- For cases assigned to a White Plains Judge e-mail to:

wpclerk@nysd.uscourts.gov

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18.4 Are Proposed Orders, Proposed Judgments, Stipulations or Consents filed electronically?

No. Any document that requires the signature of a Judge should not be electronically filed. Proposed orders, judgments, stipulations and consents should not be submitted through the ECF system. Instead they should be sent by e-mail to the Clerk. Proposed orders should be submitted in word processing format (WordPerfect or Word) rather than as a pdf document. Stipulations should be submitted in pdf format. Stipulations must contain ink signatures. Faxed signatures are acceptable, the last person to sign may e-mail it to the clerk. [Please note, effective August 1, 2008, Stipulations of Voluntary Dismissal pursuant to F.R.C.P. Rule 41(a)(1)(A)(ii) do not require the signature of a Judge, and should be electronically filed in ECF cases.] Questions may be directed to the Orders, Appeals & Judgments Clerk in Manhattan at (212)805-0143 or in White Plains at (914)390-4000. E-mail the proposed order, judgment or stipulation to:

- For cases assigned to a Manhattan Judge e-mail to:

  judgments@nysd.uscourts.gov

- For cases assigned to a White Plains Judge e-mail to:

  wpclerk@nysd.uscourts.gov

18.5 Must a Stipulation or Consent include a traditional ink signature?

Yes. You cannot substitute s/ for a traditional ink signature for these documents. Faxed signatures are acceptable.

(*See section 8 - Signatures*).

18.6 Are Orders to Show Cause filed electronically?

No. An Order to Show Cause (with or without a Temporary Restraining Order) must be submitted in the traditional manner, on paper, to the Orders, Appeals & Judgments clerk. If signed by the Court, the Clerk's Office will electronically file only the Order. After the Order appears on the docket sheet, the attorney must electronically file all supporting papers

18.7 Are Motions for Admission pro hac vice filed electronically?

No. A Motion for Admission pro hac vice is filed in the traditional manner, on paper. See the Attorney Admissions page at www.nysd.uscourts.gov for details and sample forms.

18.8 Are Miscellaneous cases filed electronically?

No. Miscellaneous cases are filed in the traditional manner, in paper form. Miscellaneous cases are those that use an "M" docket number (eg. "M 8-85") instead of a traditional case number, and require payment of a Miscellaneous filing fee for each document.

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18.9 Are sealed documents filed electronically?

No. Sealed documents are filed in the traditional manner, in paper form. The sealed envelope must contain the paper document and a CD-ROM containing a pdf copy of the document. A copy of the Judge's sealing order must be attached to the outside of the envelope.

(*See section 6 - Sealed Documents*).

18.10 Are surety bonds filed electronically?

No. Surety bonds are filed in the traditional manner, on paper. Include a copy of the Court's Order regarding the bond.

18.11 Is a Bill of Costs filed electronically?

No. A Bill of Costs should be filed in the traditional manner, in paper form. See Local Civil Rule 54.1 for details. See also the required Bill of Costs form at www.nysd.uscourts.gov.

Section 19. Service of Electronically Filed Documents

19.1 How is service accomplished for electronically filed documents?

After you register for an ECF password (*see section 22 - ECF Passwords*) you will receive a Notice of Electronic Filing (NEF) by e-mail whenever there is activity in your case, including court orders and filings by your adversary. That e-mail from the Court constitutes service. A hyperlink to a PDF image of any electronically filed document will be included (not all activity includes a PDF document). Print a copy of the document and the NEF for your records. The Clerk's Office will no longer mail paper copies of electronically filed documents.

(See section 9 - Service of Documents by Electronic Means).

19.2 Am I required to serve a paper copy of an electronically filed document?

Maybe. If all parties will receive electronic notification of the filing, then service is complete upon transmission by the Court of the Notice of Electronic Filing email (NEF) and you are not required to serve a paper copy.

If any party will not receive a NEF, you are required to accomplish service on that party in the traditional manner, on paper. Then you must electronically file an Affidavit of Service (see below).

The Notice of Electronic Filing receipt will inform you who will receive notice of the filing "electronically" (by e-mail from the Court) and who will receive notice "by other means" (traditional service on paper).

(*See section 9 - Service of Documents by Electronic Means*).

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19.3 Am I required to electronically file an Affidavit of Service in an ECF case?

Only two circumstances require the electronic filing of an Affidavit of Service in an ECF case:

(a) The Affidavit of Service for the initiating document (complaint, notice of removal, etc.) must be filed as follows:

(1) Electronically file the Affidavit of Service for the initiating document on the ECF system (do not send by e-mail), and

(2) Deliver the original paper Affidavit of Service with summons attached to the Clerk's Office. Attach a copy of the ECF filing receipt for this document. And

(b) An Affidavit of Service must be electronically filed anytime a party is served with a paper document. This usually occurs when a party will not receive electronic notice of the filing (via e-mail) from the Court. See the Notice of Electronic Filing (NEF) for a list of who was or was not served electronically.

(*See section 9 - Service of Documents by Electronic Means*).

19.4 Is a filing timely if it is completed before midnight?

Yes. Filing must be completed before midnight local time where the Court is located in order to be considered timely filed that day.

(*See section 3 - Consequences of Electronic Case Filing*).

19.5 Do I receive a receipt (Notice of Electronic Filing) when I file electronically?

Yes. When you successfully complete an electronic filing the final screen will display a NOTICE OF ELECTRONIC FILING (NEF), or filing receipt. Print a copy for your records. The NEF receipt will tell you what was filed, by whom, when it was filed and if a document number was assigned on the docket sheet (not all case activity merits a document number). If you do not see the NEF screen your filing may not have been successful and you are advised to check the docket sheet.

19.6 Should I routinely view the docket sheet in my case?

Yes. Although service is accomplished in ECF cases by an e-mail sent by the Court, e-mail is not foolproof and you risk missing an e-mail message. Therefore it remains the duty of the attorney for a party to review regularly the docket sheet of the case in order not to miss a filing.

(*See section 9 - Service of Documents by Electronic Means*).

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Section 20. Attorney Appearances

20.1 How does an attorney's name appear on the docket sheet?

The attorney who signs the initiating document will be added to the docket sheet when the Clerk's Office opens the case on the ECF system. The attorney responding to that filing must add his or her own name to the docket sheet the first time he or she appears in the case. When electronically filing the first document, the responding attorney must: (a) click to create an "Association" with the client (i.e. represent the client); (b) click the "Notice" box to receive electronic notice of case activity; and (c) click the "Lead" attorney box if applicable. If the responding attorney is not offered the opportunity to create an "association" with the client on his/her first electronic filing, he/she must electronically file a Notice of Appearance in order to appear on the docket.

20.2 If the attorney's name is on the docket sheet why doesn't he/she receive e-mail notification of filings?

It could be because his or her name was added to the docket sheet before the attorney obtained an ECF password. In that case the attorney's name and firm address will appear at the top of the docket sheet, but the e-mail address will be missing. If this is the case the solution is to obtain an ECF password. Or it could be because the attorney filed a Notice of Appearance but failed to check the "Notice" box when creating an association with the client to indicate that he or she would like to receive e-mail notification of activity in the case. In this case, call the ECF Help Desk at (212)805-0800.

(*See section 24 - ECF Help Desk and Training*).

20.3 How do I electronically file a Notice of Appearance in an ECF case?

If an attorney joins a case already in progress he or she must electronically file a Notice of Appearance. When electronically filing the Notice of Appearance, the attorney must: (a) click to create an "Association" with the client (i.e. represent the client); (b) click the "Notice" box to receive electronic notice of case activity; and (c) click the "Lead" attorney box if applicable. Please note the ECF system will not allow an attorney to electronically file a Notice of Appearance on behalf of another attorney. The Notice of Appearance and the ECF password must belong to the same attorney.

(*See section 2 - Eligibility, Registration, Passwords*).

20.4 How do I file a Motion for Admission pro hac vice in an ECF case?

In the traditional manner, on paper. After the Order of Admission pro hac vice is signed, the attorney must apply for an ECF password. See the Attorney Admissions page at www.nysd.uscourts.gov for details and sample forms.

20.5 Am I required to notify the Court when my contact information changes?

Yes. Local Civil Rule 1.3 requires an attorney to notify the court when his/her contact information changes.

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For information go to www.nysd.uscourts.gov or call the Attorney Admissions Clerk at (212) 805-0645. Follow the steps below to change your contact information:

(a) If you have a pending case provide notice to the Court and your adversary(s) by electronically filing a NOTICE OF CHANGE OF ADDRESS in each open case where you remain the attorney of record, or

(b) If you do not have a pending case mail written notice of the change to: Attorney Admissions Clerk, United States District Court, 500 Pearl Street, NY, NY 10007.

20.6 What if only my e-mail address has changed?

You can make a simple change of your e-mail address yourself on the ECF system. To update your primary e-mail address click on Maintain Your Account and E-mail Information. However, if your other contact information has changed you must follow the directions above to update your full contact information.

20.7 Can I specify additional e-mail addresses to receive notification of activity in my cases?

Yes. You can add an alternate e-mail address for yourself, or add a colleague's e-mail address. On the ECF system click on Utilities, Maintain Your Account, and E-mail Information.

20.8 Can I receive electronic notification of activity in cases where I do not represent a party?

Yes. You can add cases to your e-mail notification list on the SDNY ECF system even if you don't represent a party to the case. Click on Utilities, Maintain Your Account, and E-mail Information.

Section 21. Privacy and Public Access to ECF Cases

21.1 Has electronic filing expanded public access to documents?

Yes, documents filed electronically on the ECF system are more widely available than ever before. Electronic documents can now be viewed over the Internet via a PACER account. In order to protect people's privacy and reduce the threat of identity theft, parties should be cautious when filing sensitive information.

21.2 Who is responsible for redacting sensitive information from filed documents?

It is the sole responsibility of counsel and the parties to be sure that all documents comply with the rules of this Court requiring redaction of personal identifiers. Neither the judge nor the Clerk of Court will review documents for compliance with this rule.

21.3 Am I required to redact certain sensitive information in a document?

Yes. Amendments to Federal Rule of Civil Procedure 5.2 and Criminal Procedure 49.1 require that personal

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identification information be redacted from documents filed with the court. You should not include sensitive information in any document filed with the Court unless such inclusion is necessary and relevant to the case. This applies to both ECF cases and non-ECF (paper) cases. In compliance with the E-Government Act of 2002, a party wishing to file a document containing the personal data identifiers listed below must file a redacted version in the public file:

- Social Security Numbers: include only the last four digits of the number.
- Names of Minor Children: include only the initials of the child.
- Dates of Birth: include only the year.
- Financial Account #'s: include only the last four digits of these numbers.
- Home Addresses: include only the City and State.

21.4 Is there other sensitive information that I should consider redacting?

Yes. Caution should be exercised when filing documents that contain the following:

- Personal identifying numbers (PIN #'s), such as a driver's license number
- Medical records, treatment and diagnosis
- Employment history
- Individual financial information
- Proprietary or trade secret information
- Information regarding an individual's cooperation with the government

21.5 Am I required to file sensitive information under seal?

No. In addition to the redacted public filing a party may file, but is not required to file, the personal data identifiers listed above by filing under seal.

You may file under seal either: (a) a reference list, or (b) an original, unredacted version of the document.

If you find it necessary to file sensitive information, the Court prefers a reference list to the filing of a complete document. The reference list shall contain the complete personal data identifier(s) and the redacted identifier(s) used in its (their) place in the filing. The reference list may be amended as of right.

21.6 Are sealed documents filed electronically?

No. Sealed documents are filed in the traditional manner, in paper form. The sealed envelope must contain the paper document and a CD-ROM containing a pdf copy of the document. A copy of the Judge's sealing order must be attached to the outside of the envelope.

(*See section 6 - Sealed Documents*).

21.7 Who should maintain custody of original unredacted documents?

Parties are responsible for maintaining possession of original, unredacted documents, and information redacted

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from publicly filed documents. The Court may later require counsel to furnish the unredacted information.

21.8 What if I mistakenly file sensitive or confidential information?

(a) Immediately contact the ECF Help Desk at (212)805-0800. The filing will be temporarily sealed and made invisible to the public.

(b) After notifying the ECF Help Desk, the filing party must ask the Judge, in writing, for the entry to be formally sealed by the Court.

(c) Electronically file a redacted version of the mistaken filing.

Section 22. ECF Passwords

22.1 To file electronically in this Court, do I need an ECF password from the United States District Court for the Southern District of New York?

Yes. To file electronically in this District Court you must have an ECF log-in and password issued by this Court. This password is unique, and is not the same as a password from another District or Bankruptcy Court, or a PACER password. Protect the security of your password by reporting a lost or stolen password immediately to the ECF Help Desk at (212)805-0800.

(*See section 2 - Eligibility, Registration , Passwords*).

22.2 Is my SDNY ECF password the same as my PACER password?

No. Your SDNY ECF password is unique and is not the same as your password for the PACER public access system. For information on PACER go to http://pacer.psc.uscourts.gov or call 800-676-6856.

22.3 Must I be an attorney admitted to this Court to obtain an ECF password?

Yes. ECF passwords are available only to attorneys in good standing with this Court.

22.4 How do I obtain an ECF password if I am already admitted to practice in this Court?

An attorney admitted to practice in this court may register for an ECF password on-line at www.nysd.uscourts.gov. From the homepage click on CM/ECF, then Attorney Registration. You will need your SDNY bar code (your first and last initials followed by four numbers of your own choosing), and the exact date you were admitted to practice in this Court (the date is printed on your Certificate of Good Standing). Contact the Attorney Admissions Office at (212) 805-0645 if you have forgotten any of this information. Click to submit your application on-line, and wait for your ECF password to arrive by e-mail.

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22.5 How do I obtain an ECF password if I am not yet admitted to practice in this Court?

The application to be fully admitted to the bar of this court includes a request for an ECF password. Go to www.nysd.uscourts.gov and from the homepage click on Attorney Admission. The application to the bar of this Court requires you to: **(a)** submit your application on-line, and **(b)** deliver a paper copy of that application and the appropriate fee to the Clerk's Office. Your ECF password will be sent by e-mail after you are sworn-in. If you wish to practice in one case only, you should move for admission Pro Hac Vice (see instructions below).

22.6 How do I obtain an ECF password if I am admitted to practice pro hac vice?

An attorney may be admitted to practice in one case by moving for admission pro hac vice. For complete pro hac vice motion instructions go to www.nysd.uscourts.gov, then click on Attorney Admission. Immediately after a motion to be admitted pro hac vice is granted, the attorney is required to register on-line for an ECF password at www.nysd.uscourts.gov. Enter the date the order was signed and enter XXXXXX for the bar code. Click to submit your application on-line, and wait for your ECF password to arrive by e-mail.

22.7 Do I need a new ECF password if I change law firms?

No. Your ECF password will remain the same even if you change your contact information. Local Civil Rule 1.3 requires an attorney to notify the court when his/her contact information changes. For information go to www.nysd.uscourts.gov or call the Attorney Admissions Clerk at (212) 805-0645. Follow the steps below to change your contact information:

(a) If you have a pending case provide notice to the Court and your adversary(s) by electronically filing a NOTICE OF CHANGE OF ADDRESS in each open case where you remain the attorney of record, or

(b) If you do not have a pending case mail written notice of the change to: Attorney Admissions Clerk, United States District Court, 500 Pearl Street, NY, NY 10007.

22.8 How will I know if my ECF password application was submitted successfully on-line?

When you are ready click the "Submit" button on the bottom of the form. The screen will turn red and you will be asked to review your answers for accuracy. After review click "Proceed". If the screen turns green your application was successfully submitted.

22.9 How long does it take to obtain an ECF password?

Your ECF password will be sent to you by e-mail, within 48 hours of your on-line request. Print a copy for your records.

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Section 23. ECF Computer System Information

23.1 What Internet browser should I use to file electronically on the ECF system?

Each new version of ECF is tested with specific Internet browsers before release. Check the ECF log-in page for a list of approved Internet browsers.

23.2 What is a PDF file and how do I create one?

All documents filed on the ECF system must be PDF computer files (portable document format). A PDF file is created by scanning a printed document using PDF writer software such as Adobe Acrobat (go to Adobe.com for details). PDF files cannot be altered, providing security to the filer and the Court.

23.3 Can I file electronically at the courthouse?

Yes, you may scan and electronically file documents using the document scanners and computers available at the ECF Help Desk in the Clerk's Office. Bring your paper documents and your SDNY ECF log-in and password.

23.4 Is there a limit to the size of a document that can be filed on ECF?

Yes. No single PDF computer file may be larger than 2.5 megabytes (2.5 mb). No single filing event including attachments (eg. Affidavit in Support with exhibits attached) may be larger than 15 megabytes. If the filing is too large, the ECF system will not allow it to be filed, and you will not see a Notice of Electronic Filing (filing receipt) screen. To determine the size of an Adobe Acrobat PDF file click on File, Document Properties, Summary.

23.5 What if my document exceeds the file size limit?

Scan your documents at low resolution. Within the Adobe Acrobat program, on the "Scan Manager" screen, adjust the settings for black and white and 200 dpi (dots per inch). This creates a good quality picture and allows you to fit more pages into a single PDF file. If that doesn't work, separate an oversized file into 2 or more parts. Simply label each file 1a, 1b, 1c, etc. Only relevant excerpts of exhibits should be electronically filed (see below). Finally, if you still experience problems call the ECF Help Desk at (212)805-0800.

(*See section 24 - ECF Help Desk and Training*).

23.6 Do I need the Court's permission to file on paper in an ECF case?

Yes. If your document is too large to file electronically after following the directions above, you may seek permission from the Judge to file on paper. Call the ECF Help Desk first for guidance at (212)805-0800.

(*See section 5 - Attachments and Exhibits*).

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23.7 Must I file only relevant excerpts of exhibits?

Yes. You are limited to electronically filing only relevant excerpts of exhibits. Excerpts must be clearly identified as such.

(*See section 5 - Attachments and Exhibits*).

23.8 What if a technical failure prevents me from filing electronically?

If a technical failure prevents you from filing electronically, follow the steps below:

(a) Do not attempt to file paper documents in ECF cases except for emergency filings (eg. Temporary Restraining Order).

(b) If the problem concerns the Filing User's equipment or Internet Service Provider (ISP), and the Court's ECF system remains in service, the Filing User may use the document scanners at the ECF Help Desk in the Clerk's Office to file electronically. Bring your paper documents and your SDNY ECF password.

(c) If the Court's ECF system is out of order you should electronically file your document as soon as the system is restored.

(d) If you missed a filing deadline when the ECF system was out of order, attach a statement to your filing explaining how the interruption in service prevented you from filing in a timely fashion.

(*See section 11 - Technical Failures*)

Section 24. ECF Help Desk & Training

24.1 How can I learn how to file electronically?

The Court offers several options for ECF training. Details are available on the CM/ECF page at www.nysd.uscourts.gov

(a) In-person training classes are offered weekly for attorneys and support staff (approx. 2 hours).

(b) Step by step filing instructions can be found on-line in the course materials for our in-person training. From the CM/ECF page click on Training. Then click on Instructor Led Training, and click on the course title.

(c) "ECF 101" is a short interactive web-based introduction to electronic filing available on-line.

TOY-RQ-05E-00010403

24.2 How do I sign up for free e-mail alerts concerning ECF news?

Sign up for free e-mail alerts from the Court at www.nysd.uscourts.gov. From the homepage click on CM/ECF, then POC. You will receive periodic e-mails alerting you to planned ECF service interruptions for maintenance, and unplanned interruptions due to technical difficulties. You will also receive periodic ECF Newsletter e-mails containing news and helpful filing hints. You do not need to be an attorney to sign up for free e-mail alerts.

24.3 How do I contact the ECF Help Desk?

The ECF telephone Help Desk is available from 8:30 AM to 7:00 PM Monday through Friday at (212) 805-0800. Or you can e-mail your ECF questions to **helpdesk@nysd.uscourts.gov**

The preceding Rules for Electronic Case Filing were approved by the Board of Judges of the Southern District of New York on May 28, 2008.

The preceding Electronic Case Filing Instructions were written by the Clerk of Court under the authority of the ECF Rules and were last revised on August 1, 2008.

TOY-RQ-05E-00010404

FROM: Beatrice Casarez (214)932-3601
CT - Dallas SOP Team
350 North St Paul Street
Suite 2900
Dallas, TX 75201

FedEx Revenue Barcode

TO: **Patrick Nepute (859)746-4132**
Toyota Motor Engineering & Manufact
25 ATLANTIC AVE.

ERLANGER, KY 41018

CAD#: 8278314
SHIP DATE: 17FEB10
WEIGHT: 1 LB

Ref: SOP/0409900/516171319/Beatrice Casarez

DELIVERY ADDRESS (FedEx-EDR)

** 2DAY **

FRI
A1
Deliver by:
19FEB10

TRK # 7921 7592 2170

FORM
0201

CVG

41018 -KY-US

SA FFTA

CLS101009121

CT Corporation

Service of Process Transmittal

02/17/2010
CT Log Number 516171319

TO: Patrick Nepute, General Counsel
Toyota Motor Engineering & Manufacturing North America, Inc.
25 ATLANTIC AVE.
ERLANGER, KY 41018-

RECEIVED
FEB 23 2010
LEGAL DEPARTMENT

RE: **Process Served in Texas**

FOR: Toyota Motor Manufacturing, Texas, Inc. (Domestic State: TX)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION:	Barbara Iglesias, Individually and On Behalf of All Others Similarly Situated, Pltfs. vs. Toyota Motor Corporation, et al. including Toyota Motor Manufacturing, Texas, Inc., Dfts.
DOCUMENT(S) SERVED:	Summons, Return Form, Complaint, Attachment(s)
COURT/AGENCY:	United States District Court, Southern District, NY Case # 10CIV1014
NATURE OF ACTION:	Product Liability Litigation - Manufacturing Defect - Floor Pedal Entrapment on various Toyota vehicles
ON WHOM PROCESS WAS SERVED:	C T Corporation System, Dallas, TX
DATE AND HOUR OF SERVICE:	By Process Server on 02/17/2010 at 15:10
APPEARANCE OR ANSWER DUE:	Within 20 days after service of this summons, exclusive of the day of service
ATTORNEY(S) / SENDER(S):	Jill Abrams Abbey Spanier Rodd & Abrams, LLP 212 East 39th Street New York, NY 10016 2128893700
ACTION ITEMS:	SOP Papers with Transmittal, via Fed Ex 2 Day , 792175922170 Email Notification, Patrick Nepute pat.nepute@tema.toyota.com Email Notification, Tanya Herbert tanya.herbert@tema.toyota.com
SIGNED:	C T Corporation System
PER:	Beatrice Casarez
ADDRESS:	350 North St Paul Street Suite 2900 Dallas, TX 75201
TELEPHONE:	214-932-3601

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.

AO440 (Rev 8/01) Summons in a Civil Action

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Barbara Iglesias, Individually and On Behalf Of All Others Similarly Situated,

Plaintiff,

vs.

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

Defendants.

SUMMONS IN A CIVILACTION

CASE NO.:

JUDGE CASTEL

10 CIV 1014

TO: Toyota Motor Manufacturing, Texas, Inc.
c/o CT Corporation System
350 N. St. Paul Street
Dallas, TX 75201

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY, (name and address)

JILL S. ABRAMS, ESQ.
ABBEY SPANIER RODD & ABRAMS, LLP
212 East 39th Street,
New York, New York 10016
(212) 889-3700

an answer to the complaint which is herewith served upon you, within twenty (20) days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

J. MICHAEL McMAHON

CLERK

DEPUTY CLERK

DATE FEB 08 2010

AO440 (Rev 8/01) Summons in a Civil Action

RETURN OF SERVICE

Service of the Summons and Complaint was made by me[1]	DATE
NAME OF SERVER	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: _____

☐ Other (specify): _____

STATEMENT OF SERVICE FEES

TRAVEL	SERVICES	TOTAL
		$0.00

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.

JUDGE CASTEL

10 CIV 1014

ABBEY SPANIER RODD & ABRAMS, LLP
Jill Abrams (JA 1578)
jabrams@abbeyspanier.com
Orin Kurtz (OK 7334)
okurtz@abbeyspanier.com
Jeremy Nash
jnash@abbeyspanier.com (JN 2857)
212 East 39th Street
New York, New York 10016
(212) 889-3700

Attorneys for Plaintiff

RECEIVED
FEB 06 2010
U.S.D.C. S.D. N.Y.
CASHIERS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Barbara Iglesias, Individually and On Behalf Of All Others Similarly Situated, Plaintiff, vs. TOYOTA MOTOR CORPORATION, TOYOTA MOTOR SALES, U.S.A., INC., TOYOTA MOTOR NORTH AMERICA, INC., TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC., 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. Defendants.	Civil Action No. **CLASS ACTION COMPLAINT AND JURY TRIAL DEMAND**

Plaintiff Barbara Iglesias ("Plaintiff"), by and through her undersigned attorneys, alleges as follows:

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d) because this action involves citizens of different states. The amount in controversy exceeds $5,000,000, exclusive of interest and costs.

2. Venue is proper in this District pursuant to 28 U.S.C. §1391, because Defendants do business in this District, and a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this District.

THE PARTIES

3. Plaintiff is a resident of the Bronx, New York. On December 1, 2009, Plaintiff bought a 2010 model year Toyota Camry in the Bronx, New York.

4. Defendant Toyota Motor Corporation ("TMC") is and was, at all relevant times, a Japanese limited liability, joint-stock company which operates through numerous subsidiaries and affiliated companies. Its principal executive office is located at 1 Toyota-cho, Toyota City, Aichi Prefecture 471-8571, Japan. Its automotive operations include the design, manufacture, assembly and sale of passenger cars, minivans and commercial vehicles. TMC's financial services business consists primarily of providing financing to dealers and their customers for the purchase or lease of Toyota vehicles. Its financial services also provide retail leasing through the purchase of lease contracts originated by Toyota dealers. North America is one of Toyota's primary automobile markets. In the U.S., Toyota vehicles are marketed through distributors and through these distributors, Toyota maintains networks of dealers.

5. Defendant Toyota Motor Sales, U.S.A., Inc. ("TMS") is and was, at all relevant times, a California corporation. It is a wholly owned subsidiary of TMC and responsible for the

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manufacture, distribution and sales of Toyota automobiles and trucks in the U.S. It is located at 19001 South Western Avenue, Torrance, CA.

6. Defendant Toyota Motor North America, Inc. ("TMNA") is the holding company for, and oversees, Toyota's manufacturing, financing, sales research and development, and marketing operations in the U.S., Canada and Mexico and is based in New York at 9 West 57th Street, Suite 4900, New York, New York.

7. Defendant Toyota Motor Engineering & Manufacturing North America ("TMEMNA") is the parent company for Toyota's manufacturing operations in the U.S. and Canada. It operates as a subsidiary of TMC and provides centralized support in the areas of purchasing, production, production control, engineering, quality control, and administration. It is headquartered at 25 Atlantic Avenue, Erlanger, Kentucky.

8. Defendant Lexus ("Lexus") is the luxury vehicle division of TMC. Lexus operates its own design, engineering, and manufacturing centers, solely responsible for the division's vehicles. Lexus' headquarters are located in Toyota City, Aichi Prefecture, Japan. Lexus' design facilities are located in California, among other places. The Lexus ES is assembled at the Miyata plant Miyawaka City, Fukuoka Prefecture, Japan, which is owned by Toyota Motor Kyusha, Inc., a wholly owned subsidiary of TMC. The Lexus IS is assembled at the Tahara plant in Tahara City, Aichi Prefecture, which is owned by TMC. Lexus ES and IS automobiles are sold throughout the United States.

9. Defendant Toyota Motor Manufacturing, Indiana, Inc. ("TMMI") manufactured the 2007 to 2008 model year ("MY") Toyota Tundra, 2008 to 2010 MY Toyota Sequoia, and the 2010 MY Toyota Highlander. TMMI is a wholly-owned subsidiary of TMC. It is located at 4000 South Tulip Tree Drive, Princeton, IN 47670-4000.

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10. Defendant Toyota Motor Manufacturing, Texas, Inc. ("TMMTX") manufactured the 2007 to 2010 MY Toyota Tundra. TMMTX is a wholly-owned subsidiary of TMC. It is located at 1 Lone Star Pass San Antonio, Texas, 78264-3413.

11. Defendant Toyota Motor Manufacturing, Kentucky, Inc. ("TMMK") manufactured the 2005 to 2010 MY Toyota Avalon and the 2007 to 2010 MY Toyota Camry. TMMK is a wholly-owned subsidiary of TMC. It is located at 1001 Cherry Blossom Way, Georgetown, KY 40324.

12. Defendant New United Motor Manufacturing, Inc. ("NUMMI") manufactured the 2009 to 2010 MY Toyota Corolla and the 2009 to 2010 MY Pontiac Vibe. NUMMI is located at 45500 Fremont Boulevard Fremont, CA 94538-6368.

13. Defendant Subaru of Indiana Automotive, Inc. ("SIA") manufactured the 2007 to 2010 MY Toyota Camry. It is located at 5500 State Road 38 East, Lafayette, Indiana 47905.

14. At all relevant times, TMC has owned and controlled TMS, TMNA, TMEMNA, Lexus, TMMI, TMMTX, TMMK, NUMMI and SIA and thereby conducted business in the U.S. These defendants and their subsidiaries and agents, are collectively referred to as "Toyota".

15. Defendant CTS Corporation ("CTS") is an Indiana corporation located at 905 West Boulevard, Elkhart, Indiana. CTS designs and manufactures electronic components and at all relevant times made the accelerator assemblies for Toyota vehicles that are subject of the claims herein (except for Lexus vehicles) beginning with model year 2005.

16. TMC, TMS, TMNA, TMEMNA, Lexus, TMMI, TMMTX, TMMK, NUMMI, SIA, and CTS may sometimes be collectively referred to as "Defendants".

17. The true names and capacities of the defendants sued herein as Doe Defendants 1 through 10, inclusive, are currently unknown to plaintiff, who therefore sues such defendants by

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fictitious names. Each of the defendants designated herein as a Doe is legally responsible for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend this Complaint to reflect the true names and capacities of the Doe Defendants when such identities become known.

BACKGROUND

18. "Toyota received field technical information regarding reports of accelerator pedals demonstrating symptoms such as rough operation or being slow to return to the idle position" at least as early as March 2007, according to a January 21, 2010 letter from Chris Santucci, TMNA Manager, Technical & Regulatory Affairs, to the National Highway Traffic Safety Administration ("NHTSA"). Santucci formerly worked for the NHTSA, which sets safety standards for motor vehicles and associated equipment, investigates possible safety defects, assures that products meet safety standards and are not defective (through recalls if necessary), and tracks safety-related recalls. Toyota sought to "minimize" the problem, according to The New York Times. Toyota quietly substituted one material used in the affected accelerator pedal assemblies for another as a fix and, in June 2008, reported that the slow return to the idle position of accelerator pedals in some of its vehicles was merely "a drivability issue unrelated to safety".

19. Toyota continued to receive complaints. In December 2008, Toyota received more "field technical information", this time from the European market, which indicated that accelerator pedals sticking on vehicles there. In March 2009, Toyota began another investigation that, in August 2009, also resulted in a quiet fix for some of its vehicles. However, despite the fact that accelerator pedal assemblies on some Toyota vehicles produced in the United States are of a similar design and composed of the same materials that were subject to the December 2008 reports from Europe, the August 2009 changes were limited to vehicles produced in Europe.

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20. The March 2007 and December 2008 reports indicate that Toyota knew at least a year prior to the January 21 Recall, as defined below, that some Toyota vehicles had defective accelerator pedal assemblies. In fact, Santucci later identified those very reports and subsequent investigations as the first "principal events" in the chronology leading to the January 21 Recall.

21. Toyota may have known about the problem even earlier. The Los Angeles Times reported, in a November 8, 2009 article, that "[m]ore than 1,000 Toyota and Lexus owners have reported since 2001 that their vehicles suddenly accelerated on their own" and that these crashes "resulted in at least 19 deaths and scores of injuries over the last decade"—far more than any other automaker has experienced. The Los Angeles Times, and other news reporting agencies, report further that independent safety experts have identified nearly 2,000 sudden-acceleration cases for Toyota vehicles built since 2001 and that experts say the actual numbers may be far higher.

22. According to the Los Angeles Times, Toyota owner complaints helped trigger at least eight investigations into "sudden acceleration" in Toyota and Lexus vehicles by the NHTSA since 2001, but that those investigations "systematically excluded or dismissed the majority of complaints", including cases in which drivers said they were unable to stop runaway cars using their brakes; incidents of unintended acceleration lasting more than a few seconds; and reports in which owners did not identify the possible causes of the problem. According to the Los Angeles Times, when Toyota was asked to submit its own complaint data to the NHTSA, it eliminated reports claiming that sudden acceleration occurred for more than a few seconds or when drivers said they were unable to control a runaway engine by applying the brakes, which contributed to an appearance that the problem was much smaller than the total number of complaints suggested.

TOY-RQ-05E-00010414

TOYOTA ATTRIBUTES REPORTS OF SUDDEN AND UNINTEDED ACCELEREATION TO "FLOOR PEDAL ENTRAPMENT" AND ATTEMPTS TO MIMIMIZE SERIOUSNESS OF THREAT TO SAFETY

23. In September 2007, Toyota recalled 55,000 accessory all-weather floor mats sold for use in some 2007 and 2008 model year Lexus ES 350 and Toyota Camry vehicles because, as reported by the NHTSA, if the mat were to "interfere with the accelerator pedal", it would "increase the possibility of a crash." However, Toyota was in the midst of investigating the March 2007 reports concerning sticking accelerator pedal assemblies at that time and following the September 2007 recall both Toyota and the NHTSA continued to receive complaints of unintended acceleration in the models affected recall, as well as in others vehicles not affected by the recall.

24. On August 28, 2009, "[f]our people were killed outside San Diego when the Lexus ES 350 sedan they were traveling in accelerated to 120 miles per hour and crashed, despite efforts by the driver to apply the brakes," according to The New York Times. The New York Times reported further that, "[t]he 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.

25. Toyota stated in a September 14, 2009 press release that, "[w]e believe our vehicles to be among the safest on the road today." Toyota stated further that preliminary investigations, "[d]river's floor mat interference with the accelerator pedal is possible in *any vehicle make* with *any combination floor mats* when the floor mat is not properly secured or if it is not the factory designed floor mat for the vehicle" (emphasis added).

26. Toyota issued a consumer safety advisory on September 29, 2009, instructing owners of specific Toyota and Lexus model vehicles to remove their driver's floor mat:

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> Recent events have prompted Toyota to take a closer look at the potential for an accelerator pedal to get stuck in the full open position due to an unsecured or incompatible driver's floor mat. A stuck open accelerator pedal may result in very high vehicle speeds and make it difficult to stop the vehicle, which could cause a crash, serious injury or death.
>
> * * *
>
> Until Toyota develops a remedy, it is asking owners of specific Toyota and Lexus models to take out any removable driver's floor mat and NOT replace it with any other floor mat. The following models are affected:
>
> - 2007 – 2010 Camry
> - 2005 – 2010 Avalon
> - 2004 – 2009 Prius
> - 2005 – 2010 Tacoma
> - 2007 – 2010 Tundra
> - 2007 – 2010 ES350
> - 2006 – 2010 IS250 and IS350
>
> Should the vehicle continue to accelerate rapidly after releasing the accelerator pedal, this could be an indication of floor mat interference.

27. In connection with the safety campaign that followed, Santucci, then-Assistant Manager, Technical & Regulatory Affairs of TMNA, wrote to the NHTSA that, "[a]lthough Toyota is willing to identify this campaign as a safety recall in the owner communication about the campaign, Toyota has not determined that the vehicles identified [in the safety advisory] contain a 'safety-related defect'".

28. On November 2, 2009, Toyota attempted to further minimize the seriousness of this defect in certain of its vehicles by stating that "no defect exists in vehicles in which the driver's floor mat is compatible with the vehicle and properly secured" and that the company's finding was consistent with "a recent decision by the NHTSA". Toyota stated that, "[t]his is the sixth time in the past six years that NHTSA has undertaken such an exhaustive review of the allegations of unintended acceleration on Toyota and Lexus vehicles and the sixth time the agency has found no *vehicle based* cause for the unwanted acceleration allegations" (emphasis added).

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29. These statements were untrue. On November 4, 2009, the NHTSA issued a press release "correcting inaccurate and misleading information put out by Toyota". NHTSA spokeswoman Karen Aldana said that the problem with the design of Toyota and Lexus accelerators was, in fact, "very dangerous" and that removing the floor mats was "simply an interim measure" that would "*not correct the underlying defect in the vehicles*" (emphasis added). Aldana stated further that the "matter [was] not closed" and would remain open until Toyota "effectively addressed the defect by providing a suitable *vehicle based* solution" (emphasis added). Toyota responded to the public rebuke in a November 6, 2009 press release by acknowledging that removal of the driver's floor mat is merely "an interim measure and that further vehicle-based action is required".

30. On November 25, 2009, Toyota issued an announcement of "details of the vehicle-based remedy to address the root cause of the potential risk for floor mat entrapment of accelerator pedals in certain Toyota and Lexus models" ("November 25 Announcement"). These vehicles are subject to what Toyota termed its "floor pedal entrapment recall." The initial list of vehicles affected by the November 25 Announcement was expanded by Toyota on January 26, 2010. The following list of vehicles affected by the November 25 Announcement, totaling approximately 5.3 million vehicles, reflects the January amendment:

a. 2009 to 2010 model year ("MY") Pontiac Vibe;
b. 2005 to 2010 MY Toyota Avalon;
c. 2007 to 2010 MY Toyota Camry;
d. 2009 to 2010 MY Toyota Corolla;
e. 2008 to 2010 MY Toyota Highlander;
f. 2009 to 2010 MY Toyota Matrix;
g. 2004 to 2009 MY Toyota Prius;
h. 2005 to 2010 MY Toyota Tacoma;
i. 2007 to 2010 MY Toyota Tundra;
j. 2009 to 2010 MY Toyota Venza;
k. 2007 to 2010 MY Lexus ES 350;
l. 2006 to 2010 MY Lexus IS 250; and

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m. 2006 to 2010 MY Lexus IS 350.

TOYOTA FINALLY ACKNOWLEDGES "VEHICLE-BASED" PROBLEM WITH ACCELERATOR PEDAL ASSEMBLIES IN SOME TOYOTA VEHICLES

31. The remedy Toyota described in the November 25 Announcement, purportedly to "address the root cause" behind accounts of sudden and unintended acceleration, was to "reconfigure" the shape of the accelerator pedal or floor surface underneath the accelerator pedal:

> The specific measures of the vehicle-based remedy are as follows:
>
> 1. The shape of the accelerator pedal will be reconfigured to address the risk of floor mat entrapment, even when an older-design all-weather floor mat or other inappropriate floor mat is improperly attached, or is placed on top of another floor mat. For the ES350, Camry, and Avalon models involved, the shape of the floor surface underneath will also be reconfigured to increase the space between the accelerator pedal and the floor.
>
> 2. Vehicles with any genuine Toyota or Lexus accessory all-weather floor mat will be provided with newly-designed replacement driver- and front passenger-side all-weather floor mats.

However, Toyota did not recall the affected vehicles at that time. Instead, it said,

> In the meantime, owners of the involved vehicles are asked to take out any removable driver's floor mat and not replace it with any other floor mat until they are notified of the vehicle-based remedy, as notified in the consumer safety advisory and the interim notice.
>
> * * *
>
> The safety of our owners and the public is our utmost concern and Toyota has and will continue to thoroughly investigate and take appropriate measures to address any defect trends that are identified.

Thus, Toyota misled current owners and lessees to believe that the vehicles' issues were adequately addressed by Toyota.

32. The New York Times reported, in its February 1, 2010 article that, on December 26, 2009, four people died near Dallas when a Toyota Avalon sped off a road and into a pond.

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The police found that the floor mats were removed and in the Avalon's trunk. The New York Times further reported that, on December 28, 2009, a New Jersey man managed, by shifting in and out of neutral, to drive a 2007 Avalon to a dealership after it began speeding out of control. After parking, the motor continued racing and the brakes and tires started smoking.

33. In January 21, 2010, Toyota finally began a recall for a "vehicle-based" defect; namely, defective accelerator pedal assemblies ("January 21 Recall"). Approximately 2.3 million vehicles are affected by the January 21 Recall, which involved the following models:

a. 2005 to 2010 MY Toyota Avalon;
b. certain 2009 to 2010 MY Toyota Corolla;
c. certain 2007 to 2010 MY Toyota Camry;
d. certain 2010 MY Toyota Highlander;
e. 2009 to 2010 MY Toyota Matrix;
f. certain 2009 to 2010 MY Toyota RAV4;
g. 2008 to 2010 MY Toyota Sequoia; and
h. 2007 to 2010 MY Toyota Tundra.

34. According to the New York Times, the vehicles affected by the January 21 Recall represented over 60% of Toyota's total monthly U.S. sales from 2004 to 2009, based on a 12-month moving average. The New York Times reported further that Toyota's total U.S. sales ranged from well over 100,000 to nearly 200,000 vehicles per month during that time.

35. In a letter to the NHTSA dated January 21, 2010, Santucci described the defect in the accelerator pedal assemblies resulting in sudden and unintended acceleration reported in some of its vehicles:

> In accordance with the requirements of the National Traffic and Motor Vehicle Safety Act of 1966 and 49 CFR Part 573, on behalf of Toyota Motor Corporation ["TMC"], we hereby submit the attached Defect Information Report Concerning a voluntary safety recall of certain Toyota Tundra, Sequoia, Avalon, Camry, Corolla, Matrix, RAV4, Highlander, and Pontiac Vibe vehicles. *Toyota has determined that a defect exists in the accelerator pedal assembly which may result in the accelerator pedal becoming harder to depress, slower to return, or, in the worst case, mechanically stuck in a partially depressed position.*

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(emphasis added).

36. In its Defect Information Report referenced in the January 21, 2010 letter, Toyota describes what it purports is the underlying cause of defect:

> Description of Problem:
>
> Due to the manner in which the friction lever interacts with the sliding surface of the accelerator pedal inside the pedal sensor assembly, the sliding surface of the lever may become smooth during vehicle operation. In this condition, if condensation occurs on the surface, as may occur from heater operation (without A/C) when the pedal assembly is cold, the friction when the accelerator pedal is operated may increase, which may result in the accelerator pedal becoming harder to depress, slower to return, or, in the worst case, mechanically stuck in a partially depressed position. In addition, some of the affected vehicles' pedals were manufactured with friction levers made of a different material (PA46), which may be susceptible to humidity when parked for a long period in hot temperatures. In this condition, the friction when the accelerator pedal is operated may increase, which may result in the accelerator pedal movement becoming rough or slow to return. In light of the similarity with one of the symptoms described above that are associated with the PPS material, Toyota has decided to include these vehicles in the defect determination.

37. On January 28, 2010, issued a statement that Toyota had "identified the cause of the problem" and had been working closely with CTS, the manufacturer of the accelerator pedal assemblies found on the vehicles affected by the January 21 Recall, on a revised pedal design. According to a January 28, 2010 statement by Chris Nielsen, TMEMNA's Vice President of Purchasing, "CTS is a long-term and valued supplier to us."

38. According to Toyota, the January 21 Recall is separate and unrelated to the November 25 Announcement that involved approximately 5.3 million vehicles. However, Toyota also announced that approximately 1.3 vehicles are part of both the November 25 Announcement and the January 21 Recall. Reportedly, it is Toyota's position that this significant overlap is merely coincidence. A total of approximately 6.3 million vehicles are part of both the November 25 Announcement and January 21 Recall in the United States ("Recalled

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Vehicles"). On January 29, 2010, Toyota expanded the January 21 Recall to China and to eight Toyota models in Europe. Reportedly, over 9 million vehicles are affected worldwide.

THE TRUE CAUSE OF SUDDEN AND UNINTEDED ACCELERATION IN SOME TOYOTA VEHICLES REMAINS UNCLEAR

39. The public may still not know the true cause of sudden and unintended acceleration. According to the New York Times, on April 19, 2008, witnesses saw a 2005 Toyota Camry accelerate out of control, jumped a curb and fly through the air before crashing into a tree. The driver, Guadalupe Alberto, was killed instantly. The 2005 Camry is not among the millions of Recalled Vehicles and also did not have floor mats at the time of the accident. Reportedly, the crash is now being looked at as a possible example of problems with the electronic system that controls the throttle and engine speed in Toyotas.

40. Despite yet another accident, Toyota has been telling customers, since as early as January 22, 2010, that it is "confident that your vehicle is safe to drive, and no action is required at this time", for drivers not experiencing an accelerator pedal that is "hard to depress, slow to return or is unsmooth during operation". On February 1, 2010, Toyota described the reason it believes the accelerator pedals in recalled vehicles stick in a partially open position and announced that, "[a] precision-cut steel reinforcement bar will be installed into the assembly that will reduce the surface tension between the friction shoe and the adjoining surface". According to Toyota, "[w]ith this reinforcement in place, the excess friction that can cause the pedal to stick is eliminated."

41. Toyota's "solution" does not address the potential problem with electronic throttles, which mounting evidence suggests is the true cause of reports of sudden and unintended acceleration.

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42. Both Toyota and the NHTSA acknowledge that a standard braking system cannot always counter a wide-open throttle, as is the case in sudden acceleration. Toyota stated in the November 25 Announcement that it would install a failsafe in some affected vehicles, saying, "as a separate measure independent of the vehicle-based remedy, Toyota will install a brake override system onto the involved Camry, Avalon, and Lexus ES 350, IS 350 and IS 250 models as an extra measure of confidence. This system cuts engine power in case of simultaneous application of both the accelerator and brake pedals." The November 25 Announcement stated further that, "[t]he brake override system will be made standard equipment throughout the Toyota and Lexus product lines starting with January 2010 production of ES 350 and Camry and is scheduled to be incorporated into new production of most models by the end of 2010."

43. According to The New York Times, Santucci was deposed in December 2009 concerning a 2004 NHTSA investigation of certain Toyota vehicles. During that testimony, Santucci testified that the electronic throttle control system in Alberto's 2005 Camry was similar to the computer equipment in other Toyotas now under recall for sticky pedals and unsecured floor mats.

PAST NHTSA FINDINGS ARE NOT RELIABLE

44. Toyota stated on November 2, 2009, that it had been investigated six times in the past and that the agency found no vehicle-based cause for reports of sudden and unintended acceleration. However, Santucci reportedly testified Toyota and the NHTSA had discussions about limiting the type of acceleration incidents to be investigated. Santucci's testimony is that, "I recall them saying to us, Toyota, myself,that they were not interested in reports alleging uncontrolled acceleration that occurred for a long duration." The New York Times reported that the NHTSA, in fact, decided to look only at cases of unintended acceleration in which drivers

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had not applied their brakes to rule out potential braking concerns from the scope of the investigation. Santucci testified that, "I think it worked out well for both the agency and Toyota, meaning Toyota provided what they were looking for". The NHTSA ultimately found, "[a] defect trend has not been identified at this time, and further use of agency resources does not appear to be warranted."

45. The NHTSA investigations, and Toyota's handling of the problem, will be the subject of Congressional hearings. The House Energy and Commerce Committee has scheduled a February 25, 2010 hearing to focus on why several years elapsed after the NHTSA began to get complaints about runaway Toyotas before TMC recalled several of its models to fix a defect that could cause their accelerator pedals to stick. "Like many consumers, I am concerned by the seriousness and scope of Toyota's recent recall announcements," said Representative Henry Waxman, the California Democrat who chairs the Energy and Commerce Committee. In a January 28, 2010 letter to Yoshimi Inaba, President and COO of TMNA, Waxman asked Inaba to produce information and documents dating back to 2001, including information "relating to sudden unintended acceleration, acceleration pedals, or *electronic throttle control*" (emphasis added).

46. The NHTSA is considering civil penalties against Toyota for the automaker's handling of both recalls.

CLASS ACTION ALLEGATIONS

47. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3), on behalf of himself and the following Class and Sub-Class:

Nationwide Class:

All owners and lessees in the United States of the Recalled Vehicles (the "Nationwide Class").

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New York Sub-Class

All owners and lessees in New York of Recalled Vehicles that were sold or leased in the State of New York (the "Sub-Class").

48. Excluded from the Nationwide Class and the Sub-Class are Defendants, as well as Defendants',subsidiaries, employees, officers, directors, or other person, firm trust or corporation or other entity related to or affiliated with Toyota and any person who has experienced physical injury as a result of the defects at issue in this litigation. Plaintiff reserve the right to amend the definition of the Nationwide Class and the Sub-Class, if discovery and/or further investigation reveal that the Nationwide Class and/or Sub-Class should be expanded or otherwise modified.

49. Numerosity/Impracticability of Joinder: The members of the Nationwide Class and Sub-Class are so numerous that joinder of all members would be impracticable. The members of the Nationwide Class and the Sub-Class are readily identifiable from information and records in Defendants' possession, custody or control.

50. The number of class members is approximately 6.3 million. There are millions of Nationwide Class members who purchased or leased Toyota vehicles and at least thousands, if not hundreds of thousands, of members of the Sub-Class.

51. Commonality and Predominance: Common questions of law and fact predominate over any questions affecting only individual members of the Nationwide Class and the Sub-Class. These common legal and factual questions, which do not vary from one Nationwide Class or Sub-Class member to another, and which may be determined without reference to the individual circumstances of any Nationwide Class or Sub-Class member, include, but are not limited, to the following:

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a. Whether Defendants omitted and/or concealed material facts from Plaintiff and the members of the Classes regarding Recalled Vehicles;

b. Whether, by the misconduct set forth in this Complaint, Defendants have engaged in deceptive or unlawful business practices with respect to the sale or lease of the Recalled Vehicles;

c. Whether Defendants had a duty to disclose the defects in Recalled Vehicles to Plaintiff and the Classes;

d. Whether, by their conduct, Defendants violated Magnuson-Moss Act, 15 U.S.C. §§ 2301, *et seq.*;

e. Whether, by their conduct, Defendants violated NY GBL §§349 and 350;

f. Whether, by their conduct described herein, Defendants breached their implied warranties to Plaintiff and the Classes;

g. Whether, by its conduct described herein, Defendants breached its express warranties to Plaintiff and the Classes;

h. Whether, by their conduct described herein, Defendants breached their contracts with Plaintiff and the Sub-Class;

i. Whether, by their conduct described herein, Defendants breached their duty of good faith and fair dealing;

j. Whether the Recalled Vehicles are defective;

k. Whether, as a result of Defendants' misconduct, Plaintiff and the Classes are entitled to damages; and

l. Whether, as a result of Defendants' misconduct, Plaintiff and the Classes are entitled to equitable relief and/or other relief, and, if so, the nature of such relief.

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52. Typicality: Plaintiff's claims are typical of the claims of the Nationwide Class and the Sub-Class, because Plaintiff and all Class members were injured by the same wrongful practices in which Defendants engaged. Plaintiff's claims arise from the same practice and course of conduct that gives rise to the claims of the Nationwide Class and Sub-Class members, and are based on the same or similar legal theories.

53. Adequacy: Plaintiff will fully and adequately protect the interests of the members of the Nationwide Class and the Sub-Class, and has retained class counsel who are experienced and qualified in prosecuting class actions, including consumer class actions and other forms of complex litigation. Neither Plaintiff nor her counsel has interests that are contrary to or conflicting with those of the Nationwide Class or the Sub-Class. Defendants have no defenses unique to Plaintiff.

54. Superiority: A class action is superior to all other available methods for the fair and efficient adjudication of this controversy for, *inter alia*, the following reasons:

a. It is economically impractical for members of the Classes to prosecute individual actions;

b. The Classes are readily definable;

c. Prosecution as a class action will eliminate the possibility of repetitious litigation; and

d. A class action will enable claims to be handled in an orderly and expeditious manner. A class action will save time and expense and will ensure uniformity of decisions.

55. Plaintiff does not anticipate any difficulty in the management of this litigation.

56. Defendants have, or have access to, address information for the Class members,

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which may be used for the purpose of providing notice of the pendency of this action.

COUNT I

Asserted On Behalf Of The Nationwide Class Against Toyota and CTS
(Violations Of Magnuson-Moss Act (15 U.S.C. §§ 2301-2312) - Implied Warranty)

57. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

58. The Recalled Vehicles are "consumer products" as that term is defined by 15 U.S.C. § 2301(1).

59. Plaintiff and Nationwide Class members are "consumers" as that term is defined by 15 U.S.C. § 2301(3).

60. Toyota and CTS are "suppliers" as that term is defined by 15 U.S.C. § 2301(4).

61. Toyota and CTS are "warrantors" as that term is defined by 15 U.S.C. § 2301(5).

62. Toyota and CTS provided Plaintiff and Class members with "implied warranties" as that term is defined by 15 U.S.C. § 2301(7). When the Recalled Vehicles were sold or leased to Plaintiff and the Nationwide Class, implied warranties under state law attached, specifically the implied warranty of merchantability.

63. Toyota sold the Recalled Vehicles with defective accelerator pedal assemblies and floor mats (hereinafter collectively referred to as "accelerator pedal assemblies"), and CTS made the defective accelerator pedals as described hereinabove, which rendered the Recalled Vehicles unfit for their ordinary purpose. Toyota has acknowledged that such a defect exists and that the Recalled Vehicles are unfit for their ordinary purpose.

64. Any attempt by Toyota or CTS to disclaim the implied warranty of merchantability with respect to the Recalled Vehicles is void due to Toyota and CTS's

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knowledge or failure to know that the accelerator pedal assemblies were defective when sold or leased to Plaintiff and the Nationwide Class.

65. Toyota and CTS cannot disclaim the implied warranty of merchantability that attaches to the Recalled Vehicles, because Toyota provided Plaintiff and the Nationwide Class with written warranties as that term is defined by 15 U.S.C. § 2301(6).

66. Plaintiff has given Toyota a reasonable opportunity to cure its failures with respect to its warranties, and Toyota failed to do so.

67. Plaintiff and the Nationwide Class were damaged by Toyota and CTS' breach of their warranties.

68. As a result of Toyota and CTS' breach of implied warranties, Plaintiff and Nationwide Class members are entitled to revoke their acceptance of the Recalled Vehicles, obtain damages and equitable relief, and obtain attorneys' fees and costs pursuant to 15 U.S.C. § 2310.

COUNT II

Asserted On Behalf Of The Nationwide Class Against Toyota (Breach Of Express Warranty)

69. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

70. Toyota warranted that the Recalled Vehicles were free of defects in workmanship and materials. Providing defective accelerator pedal assemblies with the Recalled Vehicles, as explained herein, is a breach of this warranty.

71. As a direct and proximate cause of Toyota's breach of express warranties, Plaintiff and the Nationwide Class members have been damaged.

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72. Plaintiff has given Toyota a reasonable opportunity to cure its failure with respect to its warranty, and Toyota has failed to do so.

73. As a result of Toyota's breach of express warranty, Plaintiff and the Nationwide Class members have suffered damages.

COUNT III

Asserted On Behalf Of The Nationwide Class Against Toyota and CTS (Breach Of Implied Warranty Of Merchantability)

74. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

75. Toyota and CTS are "merchants" within the meaning of the Uniform Commercial Code § 2-104.

76. The Recalled Vehicles and defective accelerator pedal assemblies are "goods" within the meaning of Uniform Commercial Code § 2-105.

77. Toyota and CTS's implied warranty of merchantability accompanied the sale of the Recalled Vehicles and/or the defective accelerator pedal assemblies to Plaintiff and members of the Nationwide Class.

78. Toyota and CTS, by implication, warranted that the Recalled Vehicles and/or the accelerator pedal assemblies were fit for ordinary use.

79. The frequent failure of the accelerator pedal assemblies in the Recalled Vehicles made the Recalled Vehicles and accelerator pedal assemblies defective and, thus, unfit for the ordinary purposes for which the goods are used. The Recalled Vehicles are not fit for ordinary use because the accelerator pedal assemblies have a dangerous propensity to stick in the full-open position resulting in sudden and unintended acceleration.

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80. As set forth herein, any effort by Toyota and CTS to disclaim or otherwise limit its responsibility for the Recalled Vehicles was unconscionable under all of the circumstances. Toyota and CTS knew that the Recalled Vehicles were unfit for normal use.. Toyota and CTS' attempt to disclaim any warranty on the Recalled Vehicles is therefore unjust and cannot stand.

81. Through the conduct described herein, Toyota and CTS has breached their implied warranty of merchantability and are liable to Plaintiff and the Nationwide Class.

82. Plaintiff and the other members of the Nationwide Class have sustained damages as a result of Toyota and CTS' breaches.

83. Plaintiff has provided timely notice to Toyota regarding the problems she was experiencing with her 2010 Toyota Camry and, notwithstanding such notice, Toyota has failed and refused to offer Plaintiff a remedy.

COUNT IV

Asserted on Behalf of the Nationwide Class Against Toyota and CTS (Breach of Contract)

84. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

85. Plaintiff and Nationwide Class members entered into agreements to purchase or lease the Recalled Vehicles, and were in contractual privity with Toyota and CTS as a result of the express warranty described herein, as well as the specifications included with the purchase or lease of the Recalled Vehicles. Such privity likewise existed because the dealers from which Plaintiff and the Nationwide Class purchased or leased the Recalled Vehicles acted as Toyota's agents through franchise agreements, distribution agreements, and any other agreement governing the relationship between Toyota and any such dealer.

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86. Regardless of whether Plaintiff and the Classes were in contractual privity with Toyota or CTS, Toyota and CTS still may be held to have breached their contracts with Plaintiff and the Nationwide Class. As alleged herein, Toyota and CTS committed acts and omissions which were actuated by actual malice and accompanied by a wanton and willful disregard of persons, including Plaintiff and Nationwide Class members, who foreseeably might be harmed by those acts and omissions.

87. Toyota and CTS failed to disclose the true nature of the accelerator pedal assemblies, and the fact that the accelerator pedal assemblies would render the Recalled Vehicles unfit for use. Toyota and CTS knew or recklessly disregarded the fact that Plaintiff and the Nationwide Class were not knowledgeable with regard to the frequent failures, cost, and true nature of the accelerator pedal assemblies as alleged herein, and did not disclose that information to Plaintiff and the Nationwide Class.

88. Plaintiff and the Nationwide Class members performed all of their obligations under the contracts. Toyota breached its obligations under the contracts as alleged herein.

89. As a direct and proximate result of Toyota and CTS's breach of contract, Plaintiff and Nationwide Class members have been damaged.

COUNT V

Asserted On Behalf Of The Nationwide Class Against Toyota and CTS (Breach Of Implied Covenant Of Good Faith And Fair Dealing)

90. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

91. Plaintiff and Nationwide Class members entered into agreements to purchase or lease the Recalled Vehicles, or otherwise were in contractual privity with Toyota as a result of the express warranty described herein, as well as the specifications included with the purchase or

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lease of the Recalled Vehicles. Contractual privity likewise existed because the dealers from which Plaintiff and the Nationwide Class purchased or leased the Recalled Vehicles acted as Toyota's agent through franchise agreements, distribution agreements, and any other agreement governing the relationship between Toyota and any such dealer. Although CTS was not a party to these contracts, CTS had a duty to act in good faith due to the contractual relationship with Plaintiff and the Nationwide Class as alleged herein.

92. The contracts and warranties were subject to the implied covenant that Toyota would conduct business with Plaintiff and Nationwide Class members in good faith and would deal fairly with Plaintiff and Nationwide Class members. CTS' contracts and warranties were subject to the implied covenant that Toyota would conduct business with Plaintiff and Nationwide Class members in good faith and would deal fairly with Plaintiff and Nationwide Class members.

93. Regardless whether Plaintiff and the Nationwide Class were in contractual privity with Toyota and CTS, Toyota and CTS still had a duty of good faith and fair dealing. As alleged herein, Toyota and CTS committed acts and omissions which were actuated by malice and/or accompanied by a wanton and willful disregard of persons, including Plaintiff and the members of the Nationwide Class, who foreseeably might be harmed by those acts and omissions.

94. Toyota and CTS breached those implied covenants via the sale or lease to Plaintiff and members of the Nationwide Class of the Recalled Vehicles that were not fit for ordinary use and that were equipped with defective accelerator pedal assemblies that were inherently defective when Toyota and CTS knew, or should have known, that the accelerator pedal assemblies were defective. Toyota and CTS failed to disclose the true nature of the accelerator pedal assemblies, and the fact that the accelerator pedal assemblies would render the

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Recalled Vehicles unfit for use. Toyota and CTS knew or recklessly disregarded the fact that Plaintiff and the Nationwide Class were not knowledgeable with regard to the frequent failures, cost, and true nature of the accelerator pedal assemblies as alleged herein, and did not disclose that information to Plaintiff and the Nationwide Class. Defendants also breached those covenants by refusing to provide Plaintiff and the Nationwide Class with an adequate remedy.

95. Defendants behaved inequitably and acted in total disregard of the harm caused to Plaintiff and the Nationwide Class, and unjustly enriched themselves at the expense of Plaintiff and the Nationwide Class.

96. As a direct and proximate result of Toyota and CTS's breach of its implied covenants, Plaintiff and Nationwide Class members have been damaged.

COUNT VI

Asserted On Behalf Of The Sub-Class Against Toyota and CTS (Violation Of N.Y. G.B.L. §349)

97. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

98. Plaintiff and other members of the Sub-Class are "consumers" in accordance with GBL §349.

99. At all relevant times material hereto, Toyota and CTS conducted trade and commerce in New York and elsewhere within the meaning of GBL §349.

100. Toyota and CTS' acts materially misled Plaintiff and the Sub-Class in that Toyota and CTS misrepresented or failed to disclose the following material facts:

a. The Recalled Vehicles are not fit for normal use;

b. The accelerator pedal assemblies have a dangerous propensity to stick in the full-open position resulting in sudden and unintended acceleration;

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c. The Recalled Vehicles are not equipped with a failsafe to protect against sudden and unintended acceleration; and

d. The consequences of sudden and unintended acceleration are serious and potentially deadly.

101. Toyota and CTS consciously omitted to disclose material facts from Plaintiff and other members of the Sub-Class with respect to the accelerator pedal assemblies on the Recalled Vehicles.

102. Toyota intended that Plaintiff and the Sub-Class rely on Toyota and CTS' acts of concealment and omission, so that Plaintiff and other Sub-Class members would purchase and/or lease the Recalled Vehicles equipped with the defective accelerator pedal assemblies.

103. Had Toyota and CTS disclosed all material information regarding the defective accelerator pedal assemblies in the Recalled Vehicles to Plaintiff and the Sub-Class, they would not have purchased and/or leased the Recalled Vehicles, or would have paid less for the Recalled Vehicles.

104. The foregoing acts, omissions and practices proximately caused Plaintiff and other members of the Classes to suffer actual injury and damage including, *inter alia,* the loss of use of the Recalled Vehicles and diminution of value of those vehicles.

COUNT VII

Asserted On Behalf of the Sub-Class Against Toyota
(Violations of N.Y. G.B.L. §350)

105. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

106. Toyota, in marketing the Recalled Vehicles, failed to disclose the following facts to Plaintiff and the Sub-Class:

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a. The Recalled Vehicles are not fit for normal use;

b. The accelerator pedal assemblies have a dangerous propensity to stick in the full-open position resulting in sudden and unintended acceleration;

c. The Recalled Vehicles are not equipped with a failsafe to protect against sudden and unintended acceleration; and

d. The consequences of sudden and unintended acceleration are serious and potentially deadly.

107. Plaintiff and the Sub-Class were misled and/or deceived by the omission of these material facts. Toyota, due to its superior knowledge of the facts herein, was required to disclose these facts to Plaintiff and the Sub-Class.

108. The foregoing acts, omissions and practices proximately caused Plaintiff and other members of the Sub-Class to suffer actual injury and damage.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff on behalf of herself and on behalf of the Classes prays:

A. For an order certifying this action as a class action, appointing Plaintiff as representative of the Classes and appointing her attorneys as counsel for the Classes;

B. For Defendants to pay lease and car loan payments until Toyota repairs or replaces the defective accelerator pedal assemblies in the Recalled Vehicles;

C. For all compensatory and other appropriate damages on all applicable claims in an amount to be proven at trial, including the diminution in value of the Recalled Vehicles as a result of the acts complained of herein;

D. For an order permanently enjoining Defendants from engaging in the unlawful practices alleged herein;

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E. For an award of attorneys' fees, costs and expenses; and

F. For such other and further relief that the Court deems appropriate and just under the circumstances.

JURY TRIAL DEMAND

Plaintiff demands a trial by jury.

Dated: February 8, 2010

ABBEY SPANIER RODD
& ABRAMS, LLP

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Amended: October 3, 2008

INDIVIDUAL PRACTICES OF JUDGE P. KEVIN CASTEL

United States Courthouse
500 Pearl Street
New York, New York 10007
web site: www.nysd.uscourts.gov

Unless otherwise ordered, matters before Judge Castel shall be conducted in accordance with the following practices:

1. Communications with Chambers

A. Letters. Except as otherwise provided below, communications with chambers shall be by letter, with copies simultaneously delivered to all counsel. Letters may be sent to chambers via fax, (212) 805-7949, provided they do not exceed five pages in length. If a fax is transmitted to chambers, it should not also be mailed or delivered to chambers. Letters should not be filed on ECF.

B. Telephone Calls. For docketing, scheduling and calendar matters, call the Courtroom Deputy, Florence Nacanther, at (212) 805-0131 between 8:30 A.M. and 5:00 P.M. Telephone calls to chambers are permitted only in emergency situations requiring immediate attention, (212) 805-0262.

C. Requests for Adjournments or Extensions of Time. All requests for adjournments or extensions of time must state (1) the original date, (2) the number of previous requests for adjournment or extension, (3) whether these previous requests were granted or denied, and (4) whether the adversary consents, and, if not, the reasons given by the adversary for refusing to consent. If the requested adjournment or extension affects any other scheduled dates, the request (in a civil case) must attach a proposed Revised Case Management Plan and Scheduling Order (reflecting dates which are business days). If the request is for an adjournment of a court appearance, absent an emergency, it shall be made at least 48 hours prior to the scheduled appearance. Requests for adjournments should be transmitted to chambers and not filed on ECF.

D. ECF. Counsel for all parties, are required to register as ECF users in accordance with the Procedures for Electronic Case Filing and file a Notice of Appearance in each case.

2. Motions

A.

1. Pre-Motion Conferences in Civil Cases. For discovery motions, follow Local Civil Rule 37.2 Southern District. For motions other than discovery motions in a civil case, a pre-motion conference with the court is required, except for motions described in Sub-paragraph A(2). To arrange a pre-motion conference, the moving party shall submit a letter not to exceed five pages in length setting forth in detail the basis for the anticipated motion and other parties may respond in a letter not to exceed five pages within three business days.

2. No Pre-Motion Conference Required. Sub-paragraph A(1) above does not apply to any of the motions described in Rule 6(b), Federal Rules of Civil Procedure, Rules

J. MICHAEL McMAHON
CLERK OF COURT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
500 PEARL STREET, NEW YORK, NY 10007
300 QUARROPAS STREET, WHITE PLAINS, NY 10601

WWW.NYSD.USCOURTS.GOV

Electronic Case Filing Rules & Instructions

August 1, 2008 Edition

IMPORTANT INFORMATION FOR NEW CASES

A party filing a new civil case assigned to the Electronic Case Filing (ECF) system must do the following after obtaining a civil case number:

(1) E-mail a pdf copy of the case initiating documents to the Clerk's Office within 24 hours of delivering the paper documents to the Court; and

(2) Serve each party to the action with the initiating documents and a copy of:

(a) SDNY Electronic Case Filing Rules & Instructions (attached); and

(b) The assigned Judge's Individual Practices.

For complete instructions and e-mail addresses see Section 14 - Opening a Civil Action.

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Introduction

The United States District Court for the Southern District of New York implemented an Electronic Case Filing (ECF) system in December 2003. Electronic versions of documents filed by attorneys over the Internet have largely replaced paper documents in the Court's files. Almost all new civil and criminal cases filed in this Court after December 2, 2003 are Electronic Case Filing (ECF) cases. Cases filed before December 2, 2003, Pro se cases (unless the pro se litigant is a member of the bar), Social Security cases and habeas corpus cases however are not ECF cases and must be filed on paper. The information in this document applies only to cases assigned to the ECF system.

Electronic Case Filing has several advantages for both the attorney and the Court:

- Twenty-four hour concurrent access to case files from any location over the Internet
- Remote document filing from any Internet connection worldwide
- Secure access to the ECF system via unique user password
- Immediate e-mail notification of case activity to parties and the Court
- Storage of documents in a reliable and secure electronic format

In addition to the Federal Rules of Civil and Criminal Procedure, the following govern Electronic Case Filing in this District (available at www.nysd.uscourts.gov):

- **SDNY Electronic Case Filing Rules & Instructions (this document):**

  Part I. Electronic Case Filing Rules (ECF Rules), approved by the Board of Judges of this Court, provide the broad outline of the rules of Electronic Case Filing.

  Part II. Electronic Case Filing Instructions (ECF Instructions), written by the Clerk of Court under the authority of the ECF Rules, provide step by step instructions for Electronic Case Filing.

- **The Judge's Individual Practices**

  Each Judge's Individual Practices outline their own specific filing requirements.

The Court is prepared to assist you in filing electronically in several ways:

- The SDNY Electronic Case Filing Rules & Instructions will answer many of your ECF questions.
- Training in Electronic Case Filing (ECF) is available both in person at the courthouse and on-line at www.nysd.uscourts.gov (*See section 24 - ECF Help Desk and Training*).
- ECF Help Desk operators are available by telephone to answer your electronic filing questions (*See section 24 - ECF Help Desk and Training*).

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What's New

Updated August 1, 2008:

This edition of the ECF Rules & Instructions contains new material.

Effective August 1, 2008, in cases assigned to the Electronic Case Filing (ECF) system, all notices and stipulations of voluntary dismissal pursuant to Federal Rule of Civil Procedure 41(a)(1)(A) must be filed electronically on the ECF system.

Paper versions of notices and stipulations pursuant to Rule 41(a)(1)(A) in ECF cases will no longer be accepted for filing effective August 1, 2008.

Please use the following ECF filing events:

NOTICE OF VOLUNTARY DISMISSAL to file a notice pursuant to Rule 41(a)(1)(A)(i); and

STIPULATION OF VOLUNTARY DISMISSAL to file a stipulation pursuant to Rule 41(a)(1)(A)(ii).

In accordance with Rule 41(a)(1)(A)(ii), stipulations of voluntary dismissal require the signature of all parties who have appeared in the action. Only partial stipulations of voluntary dismissal, seeking to dismiss some but not all parties, must continue to be submitted by e-mail to the Judgment Clerk to be conformed for the Court's approval.

In cases not assigned to the ECF system, notices and stipulations filed pursuant to Rule 41(a)(1)(A) must continue to be filed in paper form with the Judgment Clerk.

Accordingly, revisions have been made to the following items:

Section 18 - Non ECF Documents

18.1 In an ECF case are there documents that I should not file electronically?

18.4 Are Proposed Orders, Proposed Judgments, Stipulations, Voluntary Notices of Dismissal or Consents filed electronically?

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Part I. Electronic Case Filing Rules

The Court will accept for filing documents submitted, signed or verified by electronic means that comply with the following rules.

Section 1. Scope of Electronic Filing

1.1 The Court will designate which cases will be assigned to the Electronic Case Filing (ECF) system. Except as expressly provided and in exceptional circumstances preventing a Filing User from filing electronically, all petitions, motions, memoranda of law, or other pleadings and documents required to be filed with the Court in a case assigned to the ECF system must be filed electronically. A paper may be filed electronically (a) from a remote location, (b) by bringing it to the Clerk's office during regular business hours, in a form or electronic format prescribed by the Clerk, for input into the system, or (c) by bringing the paper and the Filing User's SDNY ECF password and log-in to the Clerk's Office during regular business hours to be scanned into the system by the Filing User.

1.2 Unless limited by their terms to civil cases, the provisions of these procedures relating to electronic filing apply in criminal cases that are initiated by the filing of an indictment or information. Electronic filing procedures shall not apply to applications for arrest, search or electronic surveillance warrants; for other orders in aid of or ancillary to a criminal investigation; or to proceedings relating to the grand jury.

1.3 Electronic filing procedures shall not apply to Social Security cases, Pro Se cases (unless the pro se litigant is a member of the bar), Habeas Corpus cases or cases initiated before December 2, 2003.

(*See section 13 - ECF Basics*).

1.4 The filing and service of the initial papers in a civil case, including the complaint, the issuance of the summons and the proof of service of the summons and complaint, as well as service of non-party subpoenas, will be accomplished in the traditional manner on paper in accordance with the Federal Rules of Civil Procedure and applicable Local Rules governing service, rather than electronically. In a criminal case, the indictment or information, including any superseders, shall also be filed and given to the defendant in the traditional manner on paper in accordance with the Federal Rules of Criminal Procedure and applicable Local Rules rather than electronically; in addition, service of subpoenas shall be made in the traditional manner on paper in accordance with the Federal Rules of Criminal Procedure and applicable Local Rules. In a case assigned to the ECF system after it has been opened, parties must promptly provide the Clerk with electronic copies of all documents previously provided in paper form. All subsequent documents must be filed electronically except as provided in these Rules & Instructions or as ordered by the Court.

(*See section 14 - Opening a Civil Action*).

1.5 The Clerk shall write and revise as necessary Instructions to guide Filing Users and maximize the efficiency of the Electronic Case Filing system.

(*See Part II - Electronic Case Filing Instructions*)

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Section 2. Eligibility, Registration, Passwords

2.1 Attorneys admitted to the bar of this Court, including those admitted pro hac vice and attorneys authorized to represent the United States, may register and may be required to register as Filing Users of the Court's ECF system. Unless excused by the Court, attorneys not already Filing Users appearing in cases assigned to the ECF system must register as Filing Users forthwith upon the case being so designated. Registration is in a form prescribed by the Clerk and requires the Filing User's name, address, telephone number, Internet e-mail address, and a declaration that the attorney is admitted to the bar of this Court or authorized to represent the United States.

2.2 If the Court permits or requires, a party to a pending civil action who is not represented by an attorney may register as a Filing User in the ECF system solely for purposes of the action. Registration is in a form prescribed by the Clerk and requires identification of the action as well as the name, address, telephone number and Internet e-mail address of the party. The Court may require the party to attend in-person training for Electronic Case Filing as a condition of registering as a Filing User. If, during the course of the proceeding, the party retains an attorney who appears on the party's behalf, the attorney must advise the Clerk to terminate the party's registration as a Filing User upon the attorney's appearance.

2.3 Once registration is completed, the Filing User will receive notification of the user log-in and password. Filing Users agree to protect the security of their passwords and immediately notify the Clerk if they learn that their password has been compromised. Users may be subject to sanctions for failure to comply with this provision.

2.4 In a civil action, the Clerk will enter, as Filing Users to whom Notices of Electronic Filing will be transmitted, (a) each attorney identified on the Civil Cover Sheet, as well as (b) each additional attorney who subsequently appears in the action and files a Notice of Appearance (which must be filed electronically). In a criminal case, the Clerk will enter, as Filing Users to whom Notices of Electronic Filing will be transmitted and who will be granted access to electronically file and retrieve documents in the case, the attorney(s) for the United States identified on the Criminal Designation Form or subsequently identified as representing the United States in the case and each attorney filing a Notice of Appearance on behalf of a defendant. Notices of Appearance on behalf of a criminal defendant will be filed in the traditional manner on paper.

2.5 An attorney of record may, by written or electronic request to the Clerk, have transmission of Notices of Electronic Filing to another attorney in his or her firm terminated.

(*See section 22 - ECF Passwords*).

Section 3. Consequences of Electronic Filing

3.1 Except as otherwise provided in Rule 4 herein, electronic filing of a document in the ECF system consistent with these procedures, together with the transmission of a Notice of Electronic Filing from the Court, constitutes filing of the document for all purposes of the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, and the Local Rules of this Court and constitutes entry of the document on the docket kept by the Clerk under Fed. R. Civ. P. 58 and 79 and Fed. R. Crim. P. 49 and 55.

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3.2 When a document has been filed electronically, the official record is the electronic recording of the document as stored by the Court (subject to the exception set out in Rule 4 below), and the filing party is bound by the document as filed. Except in the case of documents first filed in paper form and subsequently submitted electronically under Rule 1, a document filed electronically is deemed filed on the date and time stated on the Notice of Electronic Filing from the Court.

3.3 Electronic filing must be completed before midnight local time where the Court is located in order to be considered timely filed that day.

3.4 Individual Judges' Practices should continue to be followed with respect to delivery of courtesy copies.

(*See section 19 - Service of Electronically Filed Documents*).

Section 4. Entry of Court Orders

4.1 All orders, decrees, judgments and proceedings of the Court will be filed in accordance with these procedures and entered on the docket kept by the Clerk under Fed. R. Civ. P. 58 and 79 and Fed. R. Crim. P. 49 and 55. Each document signed by a judge shall be scanned so as to contain an image of the judge's signature and shall be filed electronically by the Court, and the manually signed original shall be filed by the Clerk. In the event of a discrepancy between the electronically filed copy and the manually signed original, the manually signed original shall control.

4.2 A Filing User submitting a document electronically that requires a judge's signature must promptly deliver the document in such other form as the Court requires, if any.

Section 5. Attachments and Exhibits

5.1 Filing Users must submit in electronic form all documents referenced as exhibits or attachments, unless the Court permits paper filing.

5.2 A Filing User must submit as exhibits or attachments only those excerpts of the referenced documents that are relevant to the matter under consideration by the Court. Excerpted material must be clearly and prominently identified as such. Filing Users who file excerpts of documents as exhibits or attachments under this procedure do so without prejudice to their right to file timely additional excerpts or the complete document. Responding parties may file timely additional excerpts that they believe are relevant or the complete document. A party may move for permission to serve and file in hard copy documents that cannot reasonably be scanned.

5.3 In cases where the record of an administrative or other prior proceeding must be filed with the Court, such record may be served and filed in hard copy without prior motion and order of the Court.

(*See section 15 - Motions*).

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Section 6. Sealed Documents

6.1 Documents ordered to be placed under seal may not be filed electronically.

6.2 A motion to file documents under seal should be filed electronically unless prohibited by law, in redacted form if necessary; however, a motion to file under seal that includes a statement of why the filing should not be made electronically may be made in paper copy. The order of the Court authorizing the filing of documents under seal may be filed electronically unless prohibited by law.

6.3 A paper copy of the sealing order must be attached to the outside of the envelope containing the documents under seal and be delivered to the Clerk's Office.

(*See section 18 - Non-Electronic Documents*).

Section 7. Retention Requirements

Documents that are electronically filed and require original signatures other than that of the Filing User must be maintained in paper form by the Filing User until one year after all time periods for appeals expire, except that affidavits, declarations and proofs of service must be maintained in paper form by the Filing User until five years after all time periods for appeals expire. On request of the Court, the Filing User must provide original documents for review.

(*See section 13 - ECF Basics*).

Section 8. Signatures

8.1 The user log-in and password required to submit documents to the ECF system serve as the Filing User's signature on all electronic documents filed with the Court. They also serve as a signature for purposes of the Federal Rules of Civil Procedure, including Rule 11, the Federal Rules of Criminal Procedure, the Local Rules of this Court, and any other purpose for which a signature is required in connection with proceedings before the Court. Each document filed electronically must indicate that it has been electronically filed.

8.2 Electronically filed documents must include a signature block and must set forth the name, address, telephone number and e-mail address all in compliance with the Federal Rules of Civil Procedure and Local Civil Rule 11.1. In addition, the name of the Filing User under whose log-in and password the document is submitted must be preceded by an "s/" typed in the space where the signature would otherwise appear.

8.3 No Filing User or other person may knowingly permit or cause to permit a Filing User's password to be used by anyone other than an authorized agent of the Filing User.

8.4 A document requiring the signature of a defendant in a criminal case may be electronically filed only in a scanned format that contains an image of the defendant's signature.

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8.5 Documents requiring signatures of more than one party must be electronically filed either by: (a) submitting a scanned document containing all necessary signatures; (b) representing the consent of the other parties on the document; (c) identifying on the document the parties whose signatures are required and by the submission of a notice of endorsement by the other parties no later than three business days after filing; or (d) in any other manner approved by the Court.

(*See section 13 - ECF Basics*).

Section 9. Service of Documents by Electronic Means

Transmission of the Clerk's Notice of Electronic Filing of a document shall constitute service of such document upon any Filing User in that case. It remains the duty of the attorney for a party to review regularly the docket sheet of the case. Attorneys and pro se parties who are not Filing Users shall be served with a paper copy of any electronically filed pleading or other document. Service of such paper copy must be made according to the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure and the Local Rules.

(*See section 19 - Service of Electronically Filed Documents*).

Section 10. Notice of Court Orders and Judgments

Immediately upon the entry of an order or judgment in a proceeding assigned to the ECF system, the Clerk will transmit to all Filing Users in the case, in electronic form, a Notice of Electronic Filing. Electronic transmission of the Notice of Electronic Filing constitutes the notice required by Fed.R.Crim.P. 49(c) and Fed.R.Civ.P. 77(d). It remains the duty of the attorney for a party to review regularly the docket sheet of the case. The Clerk must give notice in paper form to a person who is not a Filing User in accordance with the Federal Rules of Civil Procedure or the Federal Rules of Criminal Procedure.

(*See section 19 - Service of Electronically Filed Documents*).

Section 11. Technical Failures

A Filing User whose filing is made untimely as the result of a technical failure may seek appropriate relief from the Court.

(*See section 23 - ECF Computer System Information*).

Section 12. Public Access

A person may review at the Clerk's Office filings that have not been sealed by the Court. A person also may access the ECF system at the Court's Internet site www.nysd.uscourts.gov by obtaining a PACER log-in and

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password. A person who has PACER access may retrieve docket sheets in civil and criminal cases, documents in a civil case assigned to the ECF System, and documents in a criminal case filed after November 1, 2004. Only counsel for the government and for a defendant may retrieve documents in a criminal case filed prior to November 1, 2004. Only a Filing User under Rule 2 herein may file documents.

(*See section 13 - ECF Basics*).

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Part II. Electronic Case Filing Instructions

Section 13. ECF Basics

13.1 May letters be filed electronically?

No. Letters are submitted in the traditional manner on paper. An attorney should not file a letter electronically on the ECF system. The Judge may direct the Clerk to place a letter on the docket if it is deemed appropriate.

13.2 In brief, how do I file a document electronically?

(a) Use your secure SDNY ECF password (*see section 22 - ECF Passwords*) to log-in to the ECF system from any Internet connection.

(b) Select the appropriate category, CIVIL or CRIMINAL.

(c) Find the appropriate ECF Filing Event, or title, for your document. (*See below*).

(d) Indicate the party filing the document (hold down the control key to designate more than one party).

(e) Upload a PDF copy (*see section 23 - ECF Computer System Information*) of your document. Include any exhibits as attachments to the main document. File supporting documents separately.

(f) Print the final screen, the Notice of Electronic Filing (NEF), for your records.

(g) Service is complete provided all parties receive electronic notice of the filing (via the NEF email sent automatically by the Court - see the NEF for a list of who was/was not served electronically). If a party will not receive electronic notice via the NEF email, you must serve him/her in the traditional manner, on paper, then electronically file an affidavit of service (*see section 19 - Service of Electronically Filed Documents*).

(h) Submit a paper courtesy copy to the Judge if required (*see the Judge's Individual Practices at www.nysd.uscourts.gov*).

13.3 What is the secure website for electronic filing on the SDNY ECF system?

To file electronically go to **https://ecf.nysd.uscourts.gov**, or link to the filing website via the Court's public website (see below). You will need your SDNY ECF log-in and password to file electronically.

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13.4 What is the public website for information about the Court?

For publicly available information go to **www.nysd.uscourts.gov** (no password required). From the homepage click on ECF for information on Electronic Case Filing.

13.5 What are the mailing addresses for the Court?

United States District Court, 500 Pearl Street, New York, NY 10007; or United States District Court, 300 Quarropas Street, White Plains, NY 10601.

13.6 Is an electronically filed document filed in accordance with the Federal Rules of Civil Procedure?

Yes. Local Civil Rule 5.2 provides:

> A paper filed by electronic means in accordance with procedures promulgated by the Court is, for purposes of Federal Rule of Civil Procedure 5(e), filed in compliance with the local civil rules of the Southern and Eastern Districts of New York.

(*See section 3 - Consequences of Electronic Case Filing*).

13.7 Which cases are ECF cases?

Civil and criminal cases filed after December 2, 2003, are subject to electronic filing. Cases filed before that date, Social Security cases, habeas corpus cases and pro se cases will not be assigned to the ECF system and must be filed on paper.

(*See section 1 - Scope of Electronic Filing*).

13.8 Which Judges entertain ECF cases?

All of the Court's District Judges and Magistrate Judges are able to entertain ECF cases.

13.9 How can I tell if my case is an ECF case?

The docket sheet will include the letters "ECF" in the upper right corner and an entry titled "CASE DESIGNATED ECF". If you are not sure if you are required to file electronically, call the ECF Help Desk at (212)805-0800.

13.10 If a case is deemed an ECF case, am I required to file documents electronically?

Yes. In an ECF case the attorney is responsible for electronically filing documents over the Internet using a secure SDNY log-in and password. With certain exceptions outlined below the Clerk's Office will not accept paper filings in an ECF case.

(*See section 1 - Scope of Electronic Case Filing* and *section 18 -Non-Electronic Documents*).

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13.11 May I file documents electronically in a non-ECF (paper) case?

No. Do not file documents electronically in non ECF (paper) case. Only those cases filed after December 2, 2003 are subject to electronic filing. Pro Se cases, Social Security cases, habeas corpus cases and cases filed before December 2, 2003, will not be assigned to the ECF system and must be filed on paper.

(*See section 1 - Scope of Electronic Case Filing*).

13.12 Will the Court file documents electronically in a non-ECF (paper) case?

Yes, the Court may file Orders and Opinions in electronic format (pdf) in a non-ECF (paper) case. This will not convert a non-ECF case to an ECF case, and parties should continue to file documents on paper.

13.13 Can I file electronically at any time?

Yes. You can file electronically 24 hours a day, 7 days a week, 365 days a year from any Internet connection worldwide. Filing must be completed before midnight local time where the Court is located in order to be considered timely filed that day.

(*See section 3 - Consequences of Electronic Case Filing*).

13.14 When is an electronically filed document deemed filed?

An electronically filed document is deemed filed on the date and time stated on the Notice of Electronic Filing (also referred to herein as the "filing receipt") from the Court.

(*See section 3 - Consequences of Electronic Case Filing*).

13.15 What is a docket sheet, and how can I view one?

The docket sheet is the official record of all filings in a case. You can view the docket sheet, including images of electronically filed documents, via the PACER public access system (for details go to http://pacer.psc.uscourts.gov or call 800-676-6856). Or you can use one of the public access computers available in the Clerk's Office.

(*See section 12 - Public Access*).

13.16 Should I routinely view the docket sheet in my case?

Yes. In ECF cases, service is accomplished by an e-mail sent by the Court. However e-mail is not foolproof, and you may miss an e-mail message. Therefore it remains the duty of the attorney for a party to review regularly the docket sheet of the case in order not to miss a filing.

(*See section 9 - Service of Documents by Electronic Means*).

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13.17 How do I view an electronically filed document in an ECF case?

Click on Query, enter the case number, go to Docket Report, find the document and click on the blue number (hyperlink) next to that entry. A pdf copy of the complete document will then appear. If there is no blue hyperlink, then there is no electronic version of that document. In non-ECF (paper) cases you will not be able to view documents, only document summaries.

13.18 How will I know if it's appropriate to electronically file my document?

First, determine if your case is an ECF case - not all cases are ECF cases. When filing in an ECF case if you can find an ECF Filing Event that directly matches your document then it should be electronically filed. If you cannot find a matching ECF Filing Event it probably should not be electronically filed. The ECF Event Dictionary (a PDF document available on our public website at www.nysd.uscourts.gov) is very useful for finding your event and the category in which it is listed. See the list of non-ECF documents below or call the ECF Help Desk at (212)805-0800.

(*See section 24 - ECF Help Desk and Training*).

13.19 Must the caption indicate the case is an electronic (ECF) case?

Yes. The case number must be followed by the judge's initials in parenthesis, and "ECF CASE" below the case number. For example:

06 cv 1234 (ABC)
ECF Case

(*See section 8 - Signatures*).

13.20 How do I sign an electronically filed document?

The ECF log-in and password of the filing attorney serve as his/her electronic signature. The filing attorney may place an S/ in place of his/her signature. The attorney's name and contact information, including e-mail address, must appear below the signature line. Signatures for all other persons (clients, witnesses etc.) must be scanned in order to capture the actual ink signature.

(*See section 8 - Signatures*).

13.21 When filing must I choose a name for my document on the ECF Docket Sheet?

Yes. When filing electronically you will be asked to name your document by selecting the appropriate ECF Filing Event. The ECF Filing Event is essentially the title of the document on the docket sheet, such as Motion for Summary Judgment or Affidavit in Support of Motion.

13.22 How do I find the correct ECF Filing Event for my document?

ECF Filing Events are listed by category on the ECF system. Within each category is an alphabetical listing of available ECF Filing Events. You may use the search function to find your Filing Event. The ECF Event

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Dictionary (a pdf document available on our public website at www.nysd.uscourts.gov) is also very useful for finding your event and the category in which it's listed. Print the dictionary for future reference. If you cannot find the appropriate event for your document do not file it using the wrong event. Call the ECF Help Desk at (212)805-0800 for assistance if necessary.

(*See section 24 - ECF Help Desk and Training*).

13.23 Must I retain paper originals of documents I electronically file?

Yes. Filing Users must retain original versions of electronically filed documents for a period of time after filing. On request of the Court, the Filing User must provide original documents for review.

(*See section 7 - Retention Requirements*).

13.24 Should I continue to submit courtesy copies?

Yes, continue your current practice. In the past if you would have submitted a paper courtesy copy of a document, you should now submit a paper courtesy copy of the document in an ECF case. For example, most Judges require courtesy copies of motion papers. Read the Judge's Individual Practices for specific practices.

(*See section 3 - Consequences of Electronic Case Filing*).

13.25 Are Administrative Records filed electronically?

Yes, if possible. However, if the administrative record is too large to be scanned it may be served and filed in hard copy without prior motion and order of the Court.

(*See section 5 - Attachments and Exhibits*).

13.26 In Consolidated and MDL cases can I file simultaneously in member cases?

Yes. When filing in Consolidated and Multi-District Litigation (MDL) cases you can save time by electronically filing a document simultaneously in the member case(s) using the computer function titled "Spread Text and Effects" (not available in related cases). Please observe the following MDL filing rules:

- In consolidated and MDL cases you must file all documents first under the Lead or MDL case number.

- You may then precisely designate the member case(s) in which you wish to simultaneously file.

- Do not file in all cases unless it is appropriate. Your document may not relate to all member cases.

- The case caption must include all the case numbers in which your document will be filed.

- Instructions for Spread Text and Effects and information on in-person training are available on-line at www.nysd.uscourts.gov

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13.27 What if I make a mistake in electronic filing?

Call the ECF Help Desk immediately at (212)805-0800.

(*See section 24 - ECF Help Desk and Training*).

Section 14. Opening a Civil Action

14.1 Electronically filed (ECF) cases are opened and service of the initiating documents (complaint, notice of removal, etc.) is accomplished in the traditional manner, on paper.

14.2 In order to alert your adversary(s) to the requirements of Electronic Case Filing and the Judge's Individual Practices you are required to deliver paper copies of the following documents to all parties (available at the courthouse, and www.nysd.uscourts.gov):

- **Electronic Case Filing Rules & Instructions** (this document)
- **The Individual Practices** of the assigned Judge

14.3 Then within 24 hours of the assignment of a case number, you are required to e-mail to the Clerk's Office (e-mail is not ECF filing) the initiating documents in PDF format only (such as Adobe Acrobat PDF, see section 21). Include a F.R.C.P. Rule 7.1 Statement (if applicable) and all exhibits. The case number followed by the Judge's initials and "ECF CASE" must appear in the case caption. Failure to do so within 24 hours will delay adding your PDF documents to the computerized ECF docket.

Each document must be in a separate PDF file no larger than 2.5 megabytes (separate large computer files into smaller parts if necessary, and label accordingly). The subject line of the e-mail and the name of the PDF file should list the case number followed by a brief document description (ex. "Re: 01cv1234 KMW-complaint").

Send a PDF copy of the initiating documents by e-mail (do not file on the ECF system) to:

- For new civil cases assigned to a Manhattan Judge e-mail to:
  caseopenings@nysd.uscourts.gov
  or **case_openings@nysd.uscourts.gov**
- For new civil cases assigned to a White Plains Judge e-mail to:
  wpclerk@nysd.uscourts.gov

14.4 File the Affidavit of Service (or the Acknowledgment of Service, Certificate of Service, Request for Waiver of Service, Summons Returned Executed/Unexecuted, Waiver of Service Executed/Unexecuted) for the initiating document (complaint, notice of removal, etc.) in the following manner:

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(a) Electronically file the Affidavit of Service for the initiating document on the ECF system (do not e-mail), and

(b) Deliver the original paper Affidavit of Service, with summons attached, to the Clerk's Office. Include a copy of the ECF Notice of Electronic Filing for this document (the filing receipt),

(See section 19 - Service of Electronically Filed Documents).

14.5 Subsequent documents, including the Defendant's Answer, must be filed electronically on the ECF system at **https://ecf.nysd.uscourts.gov**. With certain exceptions outlined below, the Clerk's Office will not accept a paper document for filing in an ECF case.

(See section 1 - Scope of Electronic Filing and *section 18 - Non-electronic Documents).*

Section 15. Motions

15.1 What ECF Filing Event should be used to file a motion?

A motion must be filed using an ECF Filing Event beginning with the word "Motion". The ECF system contains over 160 separate motion Filing Events for your use, all beginning with the word "Motion" (eg. "Motion for Summary Judgment", etc.). See the ECF Events Dictionary at www.nysd.uscourts.gov for a complete list of motions and supporting documents. Do not use the "Notice" filing event to file a motion.

15.2 Should I file supporting papers as attachments to the motion?

No. File supporting or response documents separately under the appropriate ECF Filing Event found in the category "Replies, Opposition and Supporting Documents". For example, a motion, an affidavit in support and a memorandum of law in support must be filed separately.

15.3 What ECF Filing Event should be used to file supporting papers?

Use the appropriate ECF Filing Events for supporting papers found in the category "Replies, Opposition and Supporting Documents" (eg. Affidavit in Support of Motion, Memorandum of Law in Support of Motion, etc.). Never use the ECF Filing Event for Motion to file supporting papers. For example, filing a motion, an affidavit in support and a memorandum of law in support, and labeling each one "Motion" would make it appear incorrectly that three motions were filed instead of one.

15.4 How do I file exhibits?

Exhibits shall be filed only as attachments to a document, such as a motion or an affidavit. Do not use the ECF Filing Event for "Motion" to file exhibits separately. Exhibits are the only items that should be attached to electronically filed documents. You are limited to electronically filing only relevant excerpts of exhibits.

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Excerpts must be clearly identified as such. If the exhibit is too large to be scanned and electronically filed call the ECF Help Desk at (212)805-0800.

(See section 5 - Attachments and Exhibits; see also section 24 - ECF Help Desk and Training).

Section 16. Default Judgments

16.1 How do I file a Default Judgment?

In one of the three ways outlined below. Consult the Individual Practices of the Judge to determine the appropriate method (at www.nysd.uscourts.gov). If the Judge's Individual Practices contain no specific rules regarding Default Judgments you should follow section 16.4 below.

If you wish to electronically file a Request to Enter Default Judgment before submitting a Default Judgment, you must file an unsigned Clerk's Certificate as an attachment to the Request. Then submit a paper copy of the proposed Clerk's Certificate to the Orders, Appeals & Judgments Clerk. The clerk will sign and return the Clerk's Certificate, and you may then move for a Default Judgment using the appropriate method outlined below.

When necessary, submit paper documents to the Orders, Appeals & Judgements Clerk in Manhattan (212-805-0143) or White Plains (914-390-4000) depending upon where the Judge sits. If sending documents by mail, enclose a return envelope with postage. For mailing addresses *see section 13 - ECF Basics*.

16.2 Default Judgment brought by Motion:

(a) Submit to the Orders, Appeals & Judgment Clerk two paper Clerk's Certificates. The clerk will sign and return both Certificates to the filing party.

(b) Electronically file the Motion for Default Judgment on the ECF system. The following items should be filed as attachments to the Motion: the signed Clerk's Certificate; and a copy of the Summons and Complaint with proof of service. The following supporting documents should be filed as separate ECF Filing Events: Affidavit in Support; and Statement of Damages (unless requesting an inquest).

(c) Electronically file an Affidavit of Service for the Motion for Default Judgment.

(d) Submit a courtesy copy of the Motion to the Judge, including the original signed Clerk's Certificate and a copy of the Affidavit of Service.

16.3 Default Judgment brought by Order to Show Cause (OSC):

(a) Submit to the Orders, Appeals & Judgments Clerk a paper original of the OSC. Include as exhibits to the Affidavit in Support a Clerk's Certificate and a proposed Default Judgment.

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Include courtesy copies of all documents.

(b) If signed by the Court, the Clerk's Office will electronically file only the Order. After the Order appears on the docket sheet, the attorney must electronically file all supporting papers.

(c) Electronically file an Affidavit of Service for the Order to Show Cause.

16.4 Default Judgment brought on by Default Judgment and Order:

(a) Submit to the Orders, Appeals & Judgments Clerk: a paper original of the proposed Default Judgment and Order; the Affidavit in Support; a Statement of Damages (unless requesting an inquest); a copy of the Summons and Complaint with proof of service; and a Clerk's Certificate. The papers will be forwarded to the Judge for signature.

(b) If signed by the Court, the Clerk's Office will electronically file only the Order. After the Order appears on the docket sheet, the attorney must electronically file all supporting papers.

Section 17. Appeals

17.1 Are appeals filed electronically?

No. Appeals in ECF and non-ECF cases must be filed in the traditional manner, on paper.

17.2 How do I file an appeal in an ECF case?

File the appeal in the traditional manner, on paper either at the courthouse or by mail. Include the filing fee if necessary. Then within 24 hours of filing the paper copy of your Appeal, you are required to e-mail to the Clerk's Office an electronic copy of the Appeal in PDF format. Include any exhibits. Each document must be in a separate PDF file no larger than 2.5 megabytes. The District Court case number followed by the Judge's initials and "ECF CASE" must appear in the document's case caption. When sending e-mail, the subject line of the e-mail should always list the case number followed by a document description (ex. "Re: 01cv1234-appeal"). Questions may be directed to the Orders, Appeals & Judgments Clerk in Manhattan at (212)805-0636, or in White Plains at (914)390-4000. Send the e-mail (do not file on the ECF system) to:

- For appeals from an ECF case assigned to a Manhattan Judge e-mail to:

  appeals@nysd.uscourts.gov

- For appeals from an ECF case assigned to a White Plains Judge e-mail to:

  wpclerk@nysd.uscourts.gov

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Section 18. Non-Electronic Documents

18.1 In an ECF case are there documents that I should not file electronically?

Yes, including:

- Letters, see instruction 18.2 below.
- Case initiating documents (complaint, notice of removal, etc.), see section 14;
- All types of complaints (3rd party, Interpleader etc.), see instruction 18.3 below;
- Proposed orders; proposed judgments, stipulations; consents, see instruction 18.4 below;
- Orders to show cause (with or without a temporary restraining order), see instruction 18.6 below;
- Motions for Admission pro hac vice, see instruction 18.7 below;
- Miscellaneous cases, see instruction 18.8 below;
- Sealed documents, see instruction 18.9 below;
- Surety bonds, see instruction 18.10 below;
- Bill of Costs, see instruction 18.11 below;
- Notices of Appeal, see section 17;

18.2 May letters be filed electronically?

No. Letters are submitted in the traditional manner on paper. An attorney should not file a letter electronically on the ECF system. The Judge may direct the Clerk to place a letter on the docket if it is deemed appropriate.

18.3 Are Amended Complaints, Third Party Complaints, Interpleader Complaints, etc. filed electronically?

No. All complaints, no matter what type, are filed the same way:

(a) Deliver the paper original to the appropriate Clerk's Office (Manhattan or White Plains), and

(b) E-mail a PDF copy of the document within 24 hours, including exhibits and Rule 7.1 Disclosure Statement (if required) to the Clerk's Office. Send the e-mail to:

- For cases assigned to a Manhattan Judge e-mail to:

caseopenings@nysd.uscourts.gov

or **case_openings@nysd.uscourts.gov**

- For cases assigned to a White Plains Judge e-mail to:

wpclerk@nysd.uscourts.gov

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18.4 Are Proposed Orders, Proposed Judgments, Stipulations or Consents filed electronically?

No. Any document that requires the signature of a Judge should not be electronically filed. Proposed orders, judgments, stipulations and consents should not be submitted through the ECF system. Instead they should be sent by e-mail to the Clerk. Proposed orders should be submitted in word processing format (WordPerfect or Word) rather than as a pdf document. Stipulations should be submitted in pdf format. Stipulations must contain ink signatures. Faxed signatures are acceptable, the last person to sign may e-mail it to the clerk. [Please note, effective August 1, 2008, Stipulations of Voluntary Dismissal pursuant to F.R.C.P. Rule 41(a)(1)(A)(ii) do not require the signature of a Judge, and should be electronically filed in ECF cases.] Questions may be directed to the Orders, Appeals & Judgments Clerk in Manhattan at (212)805-0143 or in White Plains at (914)390-4000. E-mail the proposed order, judgment or stipulation to:

- For cases assigned to a Manhattan Judge e-mail to:

  judgments@nysd.uscourts.gov

- For cases assigned to a White Plains Judge e-mail to:

  wpclerk@nysd.uscourts.gov

18.5 Must a Stipulation or Consent include a traditional ink signature?

Yes. You cannot substitute s/ for a traditional ink signature for these documents. Faxed signatures are acceptable.

(*See section 8 - Signatures*).

18.6 Are Orders to Show Cause filed electronically?

No. An Order to Show Cause (with or without a Temporary Restraining Order) must be submitted in the traditional manner, on paper, to the Orders, Appeals & Judgments clerk. If signed by the Court, the Clerk's Office will electronically file only the Order. After the Order appears on the docket sheet, the attorney must electronically file all supporting papers

18.7 Are Motions for Admission pro hac vice filed electronically?

No. A Motion for Admission pro hac vice is filed in the traditional manner, on paper. See the Attorney Admissions page at www.nysd.uscourts.gov for details and sample forms.

18.8 Are Miscellaneous cases filed electronically?

No. Miscellaneous cases are filed in the traditional manner, in paper form. Miscellaneous cases are those that use an "M" docket number (eg. "M 8-85") instead of a traditional case number, and require payment of a Miscellaneous filing fee for each document.

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18.9 Are sealed documents filed electronically?

No. Sealed documents are filed in the traditional manner, in paper form. The sealed envelope must contain the paper document and a CD-ROM containing a pdf copy of the document. A copy of the Judge's sealing order must be attached to the outside of the envelope.

(*See section 6 - Sealed Documents*).

18.10 Are surety bonds filed electronically?

No. Surety bonds are filed in the traditional manner, on paper. Include a copy of the Court's Order regarding the bond.

18.11 Is a Bill of Costs filed electronically?

No. A Bill of Costs should be filed in the traditional manner, in paper form. See Local Civil Rule 54.1 for details. See also the required Bill of Costs form at www.nysd.uscourts.gov.

Section 19. Service of Electronically Filed Documents

19.1 How is service accomplished for electronically filed documents?

After you register for an ECF password (*see section 22 - ECF Passwords*) you will receive a Notice of Electronic Filing (NEF) by e-mail whenever there is activity in your case, including court orders and filings by your adversary. That e-mail from the Court constitutes service. A hyperlink to a PDF image of any electronically filed document will be included (not all activity includes a PDF document). Print a copy of the document and the NEF for your records. The Clerk's Office will no longer mail paper copies of electronically filed documents.

(See section 9 - Service of Documents by Electronic Means).

19.2 Am I required to serve a paper copy of an electronically filed document?

Maybe. If all parties will receive electronic notification of the filing, then service is complete upon transmission by the Court of the Notice of Electronic Filing email (NEF) and you are not required to serve a paper copy.

If any party will not receive a NEF, you are required to accomplish service on that party in the traditional manner, on paper. Then you must electronically file an Affidavit of Service (see below).

The Notice of Electronic Filing receipt will inform you who will receive notice of the filing "electronically" (by e-mail from the Court) and who will receive notice "by other means" (traditional service on paper).

(*See section 9 - Service of Documents by Electronic Means*).

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19.3 Am I required to electronically file an Affidavit of Service in an ECF case?

Only two circumstances require the electronic filing of an Affidavit of Service in an ECF case:

(a) The Affidavit of Service for the initiating document (complaint, notice of removal, etc.) must be filed as follows:

(1) Electronically file the Affidavit of Service for the initiating document on the ECF system (do not send by e-mail), and

(2) Deliver the original paper Affidavit of Service with summons attached to the Clerk's Office. Attach a copy of the ECF filing receipt for this document. And

(b) An Affidavit of Service must be electronically filed anytime a party is served with a paper document. This usually occurs when a party will not receive electronic notice of the filing (via e-mail) from the Court. See the Notice of Electronic Filing (NEF) for a list of who was or was not served electronically.

(*See section 9 - Service of Documents by Electronic Means*).

19.4 Is a filing timely if it is completed before midnight?

Yes. Filing must be completed before midnight local time where the Court is located in order to be considered timely filed that day.

(*See section 3 - Consequences of Electronic Case Filing*).

19.5 Do I receive a receipt (Notice of Electronic Filing) when I file electronically?

Yes. When you successfully complete an electronic filing the final screen will display a NOTICE OF ELECTRONIC FILING (NEF), or filing receipt. Print a copy for your records. The NEF receipt will tell you what was filed, by whom, when it was filed and if a document number was assigned on the docket sheet (not all case activity merits a document number). If you do not see the NEF screen your filing may not have been successful and you are advised to check the docket sheet.

19.6 Should I routinely view the docket sheet in my case?

Yes. Although service is accomplished in ECF cases by an e-mail sent by the Court, e-mail is not foolproof and you risk missing an e-mail message. Therefore it remains the duty of the attorney for a party to review regularly the docket sheet of the case in order not to miss a filing.

(*See section 9 - Service of Documents by Electronic Means*).

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Section 20. Attorney Appearances

20.1 How does an attorney's name appear on the docket sheet?

The attorney who signs the initiating document will be added to the docket sheet when the Clerk's Office opens the case on the ECF system. The attorney responding to that filing must add his or her own name to the docket sheet the first time he or she appears in the case. When electronically filing the first document, the responding attorney must: (a) click to create an "Association" with the client (i.e. represent the client); (b) click the "Notice" box to receive electronic notice of case activity; and (c) click the "Lead" attorney box if applicable. If the responding attorney is not offered the opportunity to create an "association" with the client on his/her first electronic filing, he/she must electronically file a Notice of Appearance in order to appear on the docket.

20.2 If the attorney's name is on the docket sheet why doesn't he/she receive e-mail notification of filings?

It could be because his or her name was added to the docket sheet before the attorney obtained an ECF password. In that case the attorney's name and firm address will appear at the top of the docket sheet, but the e-mail address will be missing. If this is the case the solution is to obtain an ECF password. Or it could be because the attorney filed a Notice of Appearance but failed to check the "Notice" box when creating an association with the client to indicate that he or she would like to receive e-mail notification of activity in the case. In this case, call the ECF Help Desk at (212)805-0800.

(*See section 24 - ECF Help Desk and Training*).

20.3 How do I electronically file a Notice of Appearance in an ECF case?

If an attorney joins a case already in progress he or she must electronically file a Notice of Appearance. When electronically filing the Notice of Appearance, the attorney must: (a) click to create an "Association" with the client (i.e. represent the client); (b) click the "Notice" box to receive electronic notice of case activity; and (c) click the "Lead" attorney box if applicable. Please note the ECF system will not allow an attorney to electronically file a Notice of Appearance on behalf of another attorney. The Notice of Appearance and the ECF password must belong to the same attorney.

(*See section 2 - Eligibility, Registration, Passwords*).

20.4 How do I file a Motion for Admission pro hac vice in an ECF case?

In the traditional manner, on paper. After the Order of Admission pro hac vice is signed, the attorney must apply for an ECF password. See the Attorney Admissions page at www.nysd.uscourts.gov for details and sample forms.

20.5 Am I required to notify the Court when my contact information changes?

Yes. Local Civil Rule 1.3 requires an attorney to notify the court when his/her contact information changes.

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For information go to www.nysd.uscourts.gov or call the Attorney Admissions Clerk at (212) 805-0645. Follow the steps below to change your contact information:

(a) If you have a pending case provide notice to the Court and your adversary(s) by electronically filing a NOTICE OF CHANGE OF ADDRESS in each open case where you remain the attorney of record, or

(b) If you do not have a pending case mail written notice of the change to: Attorney Admissions Clerk, United States District Court, 500 Pearl Street, NY, NY 10007.

20.6 What if only my e-mail address has changed?

You can make a simple change of your e-mail address yourself on the ECF system. To update your primary e-mail address click on Maintain Your Account and E-mail Information. However, if your other contact information has changed you must follow the directions above to update your full contact information.

20.7 Can I specify additional e-mail addresses to receive notification of activity in my cases?

Yes. You can add an alternate e-mail address for yourself, or add a colleague's e-mail address. On the ECF system click on Utilities, Maintain Your Account, and E-mail Information.

20.8 Can I receive electronic notification of activity in cases where I do not represent a party?

Yes. You can add cases to your e-mail notification list on the SDNY ECF system even if you don't represent a party to the case. Click on Utilities, Maintain Your Account, and E-mail Information.

Section 21. Privacy and Public Access to ECF Cases

21.1 Has electronic filing expanded public access to documents?

Yes, documents filed electronically on the ECF system are more widely available than ever before. Electronic documents can now be viewed over the Internet via a PACER account. In order to protect people's privacy and reduce the threat of identity theft, parties should be cautious when filing sensitive information.

21.2 Who is responsible for redacting sensitive information from filed documents?

It is the sole responsibility of counsel and the parties to be sure that all documents comply with the rules of this Court requiring redaction of personal identifiers. Neither the judge nor the Clerk of Court will review documents for compliance with this rule.

21.3 Am I required to redact certain sensitive information in a document?

Yes. Amendments to Federal Rule of Civil Procedure 5.2 and Criminal Procedure 49.1 require that personal

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identification information be redacted from documents filed with the court. You should not include sensitive information in any document filed with the Court unless such inclusion is necessary and relevant to the case. This applies to both ECF cases and non-ECF (paper) cases. In compliance with the E-Government Act of 2002, a party wishing to file a document containing the personal data identifiers listed below must file a redacted version in the public file:

- Social Security Numbers: include only the last four digits of the number.
- Names of Minor Children: include only the initials of the child.
- Dates of Birth: include only the year.
- Financial Account #'s: include only the last four digits of these numbers.
- Home Addresses: include only the City and State.

21.4 Is there other sensitive information that I should consider redacting?

Yes. Caution should be exercised when filing documents that contain the following:

- Personal identifying numbers (PIN #'s), such as a driver's license number
- Medical records, treatment and diagnosis
- Employment history
- Individual financial information
- Proprietary or trade secret information
- Information regarding an individual's cooperation with the government

21.5 Am I required to file sensitive information under seal?

No. In addition to the redacted public filing a party may file, but is not required to file, the personal data identifiers listed above by filing under seal.

You may file under seal either: (a) a reference list, or (b) an original, unredacted version of the document.

If you find it necessary to file sensitive information, the Court prefers a reference list to the filing of a complete document. The reference list shall contain the complete personal data identifier(s) and the redacted identifier(s) used in its (their) place in the filing. The reference list may be amended as of right.

21.6 Are sealed documents filed electronically?

No. Sealed documents are filed in the traditional manner, in paper form. The sealed envelope must contain the paper document and a CD-ROM containing a pdf copy of the document. A copy of the Judge's sealing order must be attached to the outside of the envelope.

(*See section 6 - Sealed Documents*).

21.7 Who should maintain custody of original unredacted documents?

Parties are responsible for maintaining possession of original, unredacted documents, and information redacted

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from publicly filed documents. The Court may later require counsel to furnish the unredacted information.

21.8 What if I mistakenly file sensitive or confidential information?

(a) Immediately contact the ECF Help Desk at (212)805-0800. The filing will be temporarily sealed and made invisible to the public.

(b) After notifying the ECF Help Desk, the filing party must ask the Judge, in writing, for the entry to be formally sealed by the Court.

(c) Electronically file a redacted version of the mistaken filing.

Section 22. ECF Passwords

22.1 To file electronically in this Court, do I need an ECF password from the United States District Court for the Southern District of New York?

Yes. To file electronically in this District Court you must have an ECF log-in and password issued by this Court. This password is unique, and is not the same as a password from another District or Bankruptcy Court, or a PACER password. Protect the security of your password by reporting a lost or stolen password immediately to the ECF Help Desk at (212)805-0800.

(*See section 2 - Eligibility, Registration , Passwords*).

22.2 Is my SDNY ECF password the same as my PACER password?

No. Your SDNY ECF password is unique and is not the same as your password for the PACER public access system. For information on PACER go to http://pacer.psc.uscourts.gov or call 800-676-6856.

22.3 Must I be an attorney admitted to this Court to obtain an ECF password?

Yes. ECF passwords are available only to attorneys in good standing with this Court.

22.4 How do I obtain an ECF password if I am already admitted to practice in this Court?

An attorney admitted to practice in this court may register for an ECF password on-line at www.nysd.uscourts.gov. From the homepage click on CM/ECF, then Attorney Registration. You will need your SDNY bar code (your first and last initials followed by four numbers of your own choosing), and the exact date you were admitted to practice in this Court (the date is printed on your Certificate of Good Standing). Contact the Attorney Admissions Office at (212) 805-0645 if you have forgotten any of this information. Click to submit your application on-line, and wait for your ECF password to arrive by e-mail.

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22.5 How do I obtain an ECF password if I am not yet admitted to practice in this Court?

The application to be fully admitted to the bar of this court includes a request for an ECF password. Go to www.nysd.uscourts.gov and from the homepage click on Attorney Admission. The application to the bar of this Court requires you to: **(a)** submit your application on-line, and **(b)** deliver a paper copy of that application and the appropriate fee to the Clerk's Office. Your ECF password will be sent by e-mail after you are sworn-in. If you wish to practice in one case only, you should move for admission Pro Hac Vice (see instructions below).

22.6 How do I obtain an ECF password if I am admitted to practice pro hac vice?

An attorney may be admitted to practice in one case by moving for admission pro hac vice. For complete pro hac vice motion instructions go to www.nysd.uscourts.gov, then click on Attorney Admission. Immediately after a motion to be admitted pro hac vice is granted, the attorney is required to register on-line for an ECF password at www.nysd.uscourts.gov. Enter the date the order was signed and enter XXXXXX for the bar code. Click to submit your application on-line, and wait for your ECF password to arrive by e-mail.

22.7 Do I need a new ECF password if I change law firms?

No. Your ECF password will remain the same even if you change your contact information. Local Civil Rule 1.3 requires an attorney to notify the court when his/her contact information changes. For information go to www.nysd.uscourts.gov or call the Attorney Admissions Clerk at (212) 805-0645. Follow the steps below to change your contact information:

(a) If you have a pending case provide notice to the Court and your adversary(s) by electronically filing a NOTICE OF CHANGE OF ADDRESS in each open case where you remain the attorney of record, or

(b) If you do not have a pending case mail written notice of the change to: Attorney Admissions Clerk, United States District Court, 500 Pearl Street, NY, NY 10007.

22.8 How will I know if my ECF password application was submitted successfully on-line?

When you are ready click the "Submit" button on the bottom of the form. The screen will turn red and you will be asked to review your answers for accuracy. After review click "Proceed". If the screen turns green your application was successfully submitted.

22.9 How long does it take to obtain an ECF password?

Your ECF password will be sent to you by e-mail, within 48 hours of your on-line request. Print a copy for your records.

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Section 23. ECF Computer System Information

23.1 What Internet browser should I use to file electronically on the ECF system?

Each new version of ECF is tested with specific Internet browsers before release. Check the ECF log-in page for a list of approved Internet browsers.

23.2 What is a PDF file and how do I create one?

All documents filed on the ECF system must be PDF computer files (portable document format). A PDF file is created by scanning a printed document using PDF writer software such as Adobe Acrobat (go to Adobe.com for details). PDF files cannot be altered, providing security to the filer and the Court.

23.3 Can I file electronically at the courthouse?

Yes, you may scan and electronically file documents using the document scanners and computers available at the ECF Help Desk in the Clerk's Office. Bring your paper documents and your SDNY ECF log-in and password.

23.4 Is there a limit to the size of a document that can be filed on ECF?

Yes. No single PDF computer file may be larger than 2.5 megabytes (2.5 mb). No single filing event including attachments (eg. Affidavit in Support with exhibits attached) may be larger than 15 megabytes. If the filing is too large, the ECF system will not allow it to be filed, and you will not see a Notice of Electronic Filing (filing receipt) screen. To determine the size of an Adobe Acrobat PDF file click on File, Document Properties, Summary.

23.5 What if my document exceeds the file size limit?

Scan your documents at low resolution. Within the Adobe Acrobat program, on the "Scan Manager" screen, adjust the settings for black and white and 200 dpi (dots per inch). This creates a good quality picture and allows you to fit more pages into a single PDF file. If that doesn't work, separate an oversized file into 2 or more parts. Simply label each file 1a, 1b, 1c, etc. Only relevant excerpts of exhibits should be electronically filed (see below). Finally, if you still experience problems call the ECF Help Desk at (212)805-0800.

(*See section 24 - ECF Help Desk and Training*).

23.6 Do I need the Court's permission to file on paper in an ECF case?

Yes. If your document is too large to file electronically after following the directions above, you may seek permission from the Judge to file on paper. Call the ECF Help Desk first for guidance at (212)805-0800.

(*See section 5 - Attachments and Exhibits*).

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23.7 Must I file only relevant excerpts of exhibits?

Yes. You are limited to electronically filing only relevant excerpts of exhibits. Excerpts must be clearly identified as such.

(*See section 5 - Attachments and Exhibits*).

23.8 What if a technical failure prevents me from filing electronically?

If a technical failure prevents you from filing electronically, follow the steps below:

(a) Do not attempt to file paper documents in ECF cases except for emergency filings (eg. Temporary Restraining Order).

(b) If the problem concerns the Filing User's equipment or Internet Service Provider (ISP), and the Court's ECF system remains in service, the Filing User may use the document scanners at the ECF Help Desk in the Clerk's Office to file electronically. Bring your paper documents and your SDNY ECF password.

(c) If the Court's ECF system is out of order you should electronically file your document as soon as the system is restored.

(d) If you missed a filing deadline when the ECF system was out of order, attach a statement to your filing explaining how the interruption in service prevented you from filing in a timely fashion.

(*See section 11 - Technical Failures*)

Section 24. ECF Help Desk & Training

24.1 How can I learn how to file electronically?

The Court offers several options for ECF training. Details are available on the CM/ECF page at www.nysd.uscourts.gov

(a) In-person training classes are offered weekly for attorneys and support staff (approx. 2 hours).

(b) Step by step filing instructions can be found on-line in the course materials for our in-person training. From the CM/ECF page click on Training. Then click on Instructor Led Training, and click on the course title.

(c) "ECF 101" is a short interactive web-based introduction to electronic filing available on-line.

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24.2 How do I sign up for free e-mail alerts concerning ECF news?

Sign up for free e-mail alerts from the Court at www.nysd.uscourts.gov. From the homepage click on CM/ECF, then POC. You will receive periodic e-mails alerting you to planned ECF service interruptions for maintenance, and unplanned interruptions due to technical difficulties. You will also receive periodic ECF Newsletter e-mails containing news and helpful filing hints. You do not need to be an attorney to sign up for free e-mail alerts.

24.3 How do I contact the ECF Help Desk?

The ECF telephone Help Desk is available from 8:30 AM to 7:00 PM Monday through Friday at (212) 805-0800. Or you can e-mail your ECF questions to **helpdesk@nysd.uscourts.gov**

The preceding Rules for Electronic Case Filing were approved by the Board of Judges of the Southern District of New York on May 28, 2008.

The preceding Electronic Case Filing Instructions were written by the Clerk of Court under the authority of the ECF Rules and were last revised on August 1, 2008.

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FedEx Packing Slip

Package # : 5703048892

Created By : Phyllis Farmer

Created On : 02/12/2010 08:09 AM

FedEx Tracking # : 799442739538

Recipient :

Patrick Nepute

Title : General Counsel
Customer : Toyota Motor Engineering & Manufacturing North America, Inc.
Address : 25 ATLANTIC AVE., ERLANGER, KY - 41018
Email : pat.nepute@tema.toyota.com
Phone : 859-746-4132 Fax : -

FedEx Account : 134930624

Shipment Type : FedEx 2Day

PackageType : Envelope

Items Shipped : 3

Log #	Case #	Entity Name	Assigned To
516149320	10 CIV 1014	Toyota Motor Engineering & Manufacturing North America, Inc.	Phyllis Farmer
516149330	10 CIV 1014	Toyota Motor Manufacturing, Kentucky, Inc.	Phyllis Farmer
516151035	09-91973	Toyota Motor Manufacturing, Kentucky, Inc.	Phyllis Farmer

FROM: Phyllis Farmer (502)721-0133
Kentucky CT Reps
4169 Westport Road

Louisville, KY 40207

FedEx Revenue Barcode

TO: **Patrick Nepute (859)746-4132**
Toyota Motor Engineering & Manufact
25 ATLANTIC AVE.

ERLANGER, KY 41018

CAD#: 8279300
SHIP DATE: 12FEB10
WEIGHT: 1 LB

Ref: SOP/0610800/516149320/Phyllis Farmer

DELIVERY ADDRESS (FedEx-EDR)

** 2DAY **

TUE
A1
Deliver by:
16FEB10

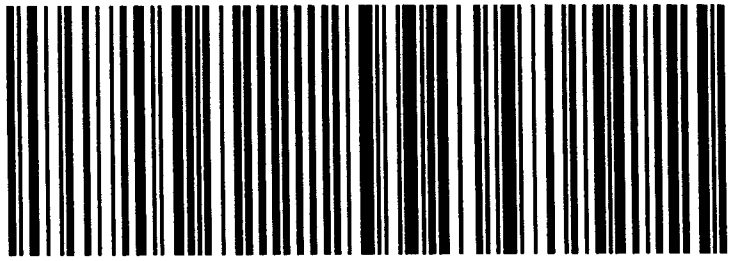
TRK # 7994 4273 9538

FORM
0201

CVG

41018 -KY-US

SA FFTA



CLS101009121

CT Corporation

Service of Process Transmittal

02/12/2010
CT Log Number 516149330

TO: Patrick Nepute, General Counsel
Toyota Motor Engineering & Manufacturing North America, Inc.
25 ATLANTIC AVE.
ERLANGER, KY 41018-

RECEIVED
FEB 18 2010
LEGAL DEPARTMENT

RE: **Process Served in Kentucky**

FOR: Toyota Motor Manufacturing, Kentucky, Inc. (Domestic State: KY)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION:	Barbara Iglesias, et. al., Pltfs. vs. toyota Motor Corporation, et al. including Toyota Motor Manufacturing, Kentucky, Inc., Dfts.
DOCUMENT(S) SERVED:	Summons, Class Action Complaint, Attachments
COURT/AGENCY:	USDC, KY Case # 10 CIV 1014
NATURE OF ACTION:	Product Liability Litigation - Manufacturing Defect - Claim is about Faulty Acceleration
ON WHOM PROCESS WAS SERVED:	C T Corporation System, Louisville, KY
DATE AND HOUR OF SERVICE:	By Process Server on 02/12/2010 at 09:00
APPEARANCE OR ANSWER DUE:	Within 20 days
ATTORNEY(S) / SENDER(S):	Jill Abrams Abbey Spainer Rodd & Abrams, LLP 212 East 39th Street New York, NY 10016 212-889-3700
ACTION ITEMS:	SOP Papers with Transmittal, via Fed Ex 2 Day , 799442739538 Email Notification, Patrick Nepute pat.nepute@tema.toyota.com Email Notification, Tanya Herbert tanya.herbert@tema.toyota.com
SIGNED: **ADDRESS:** **TELEPHONE:**	C T Corporation System 4169 Westport Road Louisville, KY 40207 502-721-0133

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.

AO440 (Rev 8/01) Summons in a Civil Action

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Barbara Iglesias, Individually and On Behalf Of All Others Similarly Situated,

Plaintiff,

vs.

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

Defendants.

SUMMONS IN A CIVILACTION

CASE NO.:

JUDGE CASTEL

10 CIV 1014

TO: Toyota Motor Manufacturing, Kentucky, Inc.
c/o CT Corporation System
4169 Westport Road
Louisville, KY 40207

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY, (name and address)

JILL S. ABRAMS, ESQ.
ABBEY SPANIER RODD & ABRAMS, LLP
212 East 39th Street,
New York, New York 10016
(212) 889-3700

an answer to the complaint which is herewith served upon you, within twenty (20) days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

J. MICHAEL McMAHON

CLERK

DEPUTY CLERK

DATE FEB 08 2010

AO440 (Rev 8/01) Summons in a Civil Action

RETURN OF SERVICE

Service of the Summons and Complaint was made by me[1]	DATE
NAME OF SERVER	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: _____

☐ Other (specify): _____

STATEMENT OF SERVICE FEES

TRAVEL	SERVICES	TOTAL
		$0.00

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.

JUDGE CASTEL

10 CIV 1014

ABBEY SPANIER RODD & ABRAMS, LLP
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Attorneys for Plaintiff

RECEIVED
FEB 06 2010
U.S.D.C. S.D. N.Y.
CASHIERS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Barbara Iglesias, Individually and On Behalf Of All Others Similarly Situated,

Plaintiff,

vs.

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

Defendants.

Civil Action No.

CLASS ACTION COMPLAINT
AND JURY TRIAL DEMAND

Plaintiff Barbara Iglesias ("Plaintiff"), by and through her undersigned attorneys, alleges as follows:

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d) because this action involves citizens of different states. The amount in controversy exceeds $5,000,000, exclusive of interest and costs.

2. Venue is proper in this District pursuant to 28 U.S.C. §1391, because Defendants do business in this District, and a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this District.

THE PARTIES

3. Plaintiff is a resident of the Bronx, New York. On December 1, 2009, Plaintiff bought a 2010 model year Toyota Camry in the Bronx, New York.

4. Defendant Toyota Motor Corporation ("TMC") is and was, at all relevant times, a Japanese limited liability, joint-stock company which operates through numerous subsidiaries and affiliated companies. Its principal executive office is located at 1 Toyota-cho, Toyota City, Aichi Prefecture 471-8571, Japan. Its automotive operations include the design, manufacture, assembly and sale of passenger cars, minivans and commercial vehicles. TMC's financial services business consists primarily of providing financing to dealers and their customers for the purchase or lease of Toyota vehicles. Its financial services also provide retail leasing through the purchase of lease contracts originated by Toyota dealers. North America is one of Toyota's primary automobile markets. In the U.S., Toyota vehicles are marketed through distributors and through these distributors, Toyota maintains networks of dealers.

5. Defendant Toyota Motor Sales, U.S.A., Inc. ("TMS") is and was, at all relevant times, a California corporation. It is a wholly owned subsidiary of TMC and responsible for the

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manufacture, distribution and sales of Toyota automobiles and trucks in the U.S. It is located at 19001 South Western Avenue, Torrance, CA.

6. Defendant Toyota Motor North America, Inc. ("TMNA") is the holding company for, and oversees, Toyota's manufacturing, financing, sales research and development, and marketing operations in the U.S., Canada and Mexico and is based in New York at 9 West 57th Street, Suite 4900, New York, New York.

7. Defendant Toyota Motor Engineering & Manufacturing North America ("TMEMNA") is the parent company for Toyota's manufacturing operations in the U.S. and Canada. It operates as a subsidiary of TMC and provides centralized support in the areas of purchasing, production, production control, engineering, quality control, and administration. It is headquartered at 25 Atlantic Avenue, Erlanger, Kentucky.

8. Defendant Lexus ("Lexus") is the luxury vehicle division of TMC. Lexus operates its own design, engineering, and manufacturing centers, solely responsible for the division's vehicles. Lexus' headquarters are located in Toyota City, Aichi Prefecture, Japan. Lexus' design facilities are located in California, among other places. The Lexus ES is assembled at the Miyata plant Miyawaka City, Fukuoka Prefecture, Japan, which is owned by Toyota Motor Kyusha, Inc., a wholly owned subsidiary of TMC. The Lexus IS is assembled at the Tahara plant in Tahara City, Aichi Prefecture, which is owned by TMC. Lexus ES and IS automobiles are sold throughout the United States.

9. Defendant Toyota Motor Manufacturing, Indiana, Inc. ("TMMI") manufactured the 2007 to 2008 model year ("MY") Toyota Tundra, 2008 to 2010 MY Toyota Sequoia, and the 2010 MY Toyota Highlander. TMMI is a wholly-owned subsidiary of TMC. It is located at 4000 South Tulip Tree Drive, Princeton, IN 47670-4000.

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10. Defendant Toyota Motor Manufacturing, Texas, Inc. ("TMMTX") manufactured the 2007 to 2010 MY Toyota Tundra. TMMTX is a wholly-owned subsidiary of TMC. It is located at 1 Lone Star Pass San Antonio, Texas, 78264-3413.

11. Defendant Toyota Motor Manufacturing, Kentucky, Inc. ("TMMK") manufactured the 2005 to 2010 MY Toyota Avalon and the 2007 to 2010 MY Toyota Camry. TMMK is a wholly-owned subsidiary of TMC. It is located at 1001 Cherry Blossom Way, Georgetown, KY 40324.

12. Defendant New United Motor Manufacturing, Inc. ("NUMMI") manufactured the 2009 to 2010 MY Toyota Corolla and the 2009 to 2010 MY Pontiac Vibe. NUMMI is located at 45500 Fremont Boulevard Fremont, CA 94538-6368.

13. Defendant Subaru of Indiana Automotive, Inc. ("SIA") manufactured the 2007 to 2010 MY Toyota Camry. It is located at 5500 State Road 38 East, Lafayette, Indiana 47905.

14. At all relevant times, TMC has owned and controlled TMS, TMNA, TMEMNA, Lexus, TMMI, TMMTX, TMMK, NUMMI and SIA and thereby conducted business in the U.S. These defendants and their subsidiaries and agents, are collectively referred to as "Toyota".

15. Defendant CTS Corporation ("CTS") is an Indiana corporation located at 905 West Boulevard, Elkhart, Indiana. CTS designs and manufactures electronic components and at all relevant times made the accelerator assemblies for Toyota vehicles that are subject of the claims herein (except for Lexus vehicles) beginning with model year 2005.

16. TMC, TMS, TMNA, TMEMNA, Lexus, TMMI, TMMTX, TMMK, NUMMI, SIA, and CTS may sometimes be collectively referred to as "Defendants".

17. The true names and capacities of the defendants sued herein as Doe Defendants 1 through 10, inclusive, are currently unknown to plaintiff, who therefore sues such defendants by

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fictitious names. Each of the defendants designated herein as a Doe is legally responsible for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend this Complaint to reflect the true names and capacities of the Doe Defendants when such identities become known.

BACKGROUND

18. "Toyota received field technical information regarding reports of accelerator pedals demonstrating symptoms such as rough operation or being slow to return to the idle position" at least as early as March 2007, according to a January 21, 2010 letter from Chris Santucci, TMNA Manager, Technical & Regulatory Affairs, to the National Highway Traffic Safety Administration ("NHTSA"). Santucci formerly worked for the NHTSA, which sets safety standards for motor vehicles and associated equipment, investigates possible safety defects, assures that products meet safety standards and are not defective (through recalls if necessary), and tracks safety-related recalls. Toyota sought to "minimize" the problem, according to The New York Times. Toyota quietly substituted one material used in the affected accelerator pedal assemblies for another as a fix and, in June 2008, reported that the slow return to the idle position of accelerator pedals in some of its vehicles was merely "a drivability issue unrelated to safety".

19. Toyota continued to receive complaints. In December 2008, Toyota received more "field technical information", this time from the European market, which indicated that accelerator pedals sticking on vehicles there. In March 2009, Toyota began another investigation that, in August 2009, also resulted in a quiet fix for some of its vehicles. However, despite the fact that accelerator pedal assemblies on some Toyota vehicles produced in the United States are of a similar design and composed of the same materials that were subject to the December 2008 reports from Europe, the August 2009 changes were limited to vehicles produced in Europe.

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20. The March 2007 and December 2008 reports indicate that Toyota knew at least a year prior to the January 21 Recall, as defined below, that some Toyota vehicles had defective accelerator pedal assemblies. In fact, Santucci later identified those very reports and subsequent investigations as the first "principal events" in the chronology leading to the January 21 Recall.

21. Toyota may have known about the problem even earlier. The Los Angeles Times reported, in a November 8, 2009 article, that "[m]ore than 1,000 Toyota and Lexus owners have reported since 2001 that their vehicles suddenly accelerated on their own" and that these crashes "resulted in at least 19 deaths and scores of injuries over the last decade"—far more than any other automaker has experienced. The Los Angeles Times, and other news reporting agencies, report further that independent safety experts have identified nearly 2,000 sudden-acceleration cases for Toyota vehicles built since 2001 and that experts say the actual numbers may be far higher.

22. According to the Los Angeles Times, Toyota owner complaints helped trigger at least eight investigations into "sudden acceleration" in Toyota and Lexus vehicles by the NHTSA since 2001, but that those investigations "systematically excluded or dismissed the majority of complaints", including cases in which drivers said they were unable to stop runaway cars using their brakes; incidents of unintended acceleration lasting more than a few seconds; and reports in which owners did not identify the possible causes of the problem. According to the Los Angeles Times, when Toyota was asked to submit its own complaint data to the NHTSA, it eliminated reports claiming that sudden acceleration occurred for more than a few seconds or when drivers said they were unable to control a runaway engine by applying the brakes, which contributed to an appearance that the problem was much smaller than the total number of complaints suggested.

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TOYOTA ATTRIBUTES REPORTS OF SUDDEN AND UNINTEDED ACCELEREATION TO "FLOOR PEDAL ENTRAPMENT" AND ATTEMPTS TO MIMIMIZE SERIOUSNESS OF THREAT TO SAFETY

23. In September 2007, Toyota recalled 55,000 accessory all-weather floor mats sold for use in some 2007 and 2008 model year Lexus ES 350 and Toyota Camry vehicles because, as reported by the NHTSA, if the mat were to "interfere with the accelerator pedal", it would "increase the possibility of a crash." However, Toyota was in the midst of investigating the March 2007 reports concerning sticking accelerator pedal assemblies at that time and following the September 2007 recall both Toyota and the NHTSA continued to receive complaints of unintended acceleration in the models affected recall, as well as in others vehicles not affected by the recall.

24. On August 28, 2009, "[f]our people were killed outside San Diego when the Lexus ES 350 sedan they were traveling in accelerated to 120 miles per hour and crashed, despite efforts by the driver to apply the brakes," according to The New York Times. The New York Times reported further that, "[t]he 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.

25. Toyota stated in a September 14, 2009 press release that, "[w]e believe our vehicles to be among the safest on the road today." Toyota stated further that preliminary investigations, "[d]river's floor mat interference with the accelerator pedal is possible in *any vehicle make* with *any combination floor mats* when the floor mat is not properly secured or if it is not the factory designed floor mat for the vehicle" (emphasis added).

26. Toyota issued a consumer safety advisory on September 29, 2009, instructing owners of specific Toyota and Lexus model vehicles to remove their driver's floor mat:

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Recent events have prompted Toyota to take a closer look at the potential for an accelerator pedal to get stuck in the full open position due to an unsecured or incompatible driver's floor mat. A stuck open accelerator pedal may result in very high vehicle speeds and make it difficult to stop the vehicle, which could cause a crash, serious injury or death.

* * *

Until Toyota develops a remedy, it is asking owners of specific Toyota and Lexus models to take out any removable driver's floor mat and NOT replace it with any other floor mat. The following models are affected:

- 2007 – 2010 Camry
- 2005 – 2010 Avalon
- 2004 – 2009 Prius
- 2005 – 2010 Tacoma
- 2007 – 2010 Tundra
- 2007 – 2010 ES350
- 2006 – 2010 IS250 and IS350

Should the vehicle continue to accelerate rapidly after releasing the accelerator pedal, this could be an indication of floor mat interference.

27. In connection with the safety campaign that followed, Santucci, then-Assistant Manager, Technical & Regulatory Affairs of TMNA, wrote to the NHTSA that, "[a]lthough Toyota is willing to identify this campaign as a safety recall in the owner communication about the campaign, Toyota has not determined that the vehicles identified [in the safety advisory] contain a 'safety-related defect'".

28. On November 2, 2009, Toyota attempted to further minimize the seriousness of this defect in certain of its vehicles by stating that "no defect exists in vehicles in which the driver's floor mat is compatible with the vehicle and properly secured" and that the company's finding was consistent with "a recent decision by the NHTSA". Toyota stated that, "[t]his is the sixth time in the past six years that NHTSA has undertaken such an exhaustive review of the allegations of unintended acceleration on Toyota and Lexus vehicles and the sixth time the agency has found no *vehicle based* cause for the unwanted acceleration allegations" (emphasis added).

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29. These statements were untrue. On November 4, 2009, the NHTSA issued a press release "correcting inaccurate and misleading information put out by Toyota". NHTSA spokeswoman Karen Aldana said that the problem with the design of Toyota and Lexus accelerators was, in fact, "very dangerous" and that removing the floor mats was "simply an interim measure" that would "*not correct the underlying defect in the vehicles*" (emphasis added). Aldana stated further that the "matter [was] not closed" and would remain open until Toyota "effectively addressed the defect by providing a suitable *vehicle based* solution" (emphasis added). Toyota responded to the public rebuke in a November 6, 2009 press release by acknowledging that removal of the driver's floor mat is merely "an interim measure and that further vehicle-based action is required".

30. On November 25, 2009, Toyota issued an announcement of "details of the vehicle-based remedy to address the root cause of the potential risk for floor mat entrapment of accelerator pedals in certain Toyota and Lexus models" ("November 25 Announcement"). These vehicles are subject to what Toyota termed its "floor pedal entrapment recall." The initial list of vehicles affected by the November 25 Announcement was expanded by Toyota on January 26, 2010. The following list of vehicles affected by the November 25 Announcement, totaling approximately 5.3 million vehicles, reflects the January amendment:

a. 2009 to 2010 model year ("MY") Pontiac Vibe;
b. 2005 to 2010 MY Toyota Avalon;
c. 2007 to 2010 MY Toyota Camry;
d. 2009 to 2010 MY Toyota Corolla;
e. 2008 to 2010 MY Toyota Highlander;
f. 2009 to 2010 MY Toyota Matrix;
g. 2004 to 2009 MY Toyota Prius;
h. 2005 to 2010 MY Toyota Tacoma;
i. 2007 to 2010 MY Toyota Tundra;
j. 2009 to 2010 MY Toyota Venza;
k. 2007 to 2010 MY Lexus ES 350;
l. 2006 to 2010 MY Lexus IS 250; and

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m. 2006 to 2010 MY Lexus IS 350.

TOYOTA FINALLY ACKNOWLEDGES "VEHICLE-BASED" PROBLEM WITH ACCELERATOR PEDAL ASSEMBLIES IN SOME TOYOTA VEHICLES

31. The remedy Toyota described in the November 25 Announcement, purportedly to "address the root cause" behind accounts of sudden and unintended acceleration, was to "reconfigure" the shape of the accelerator pedal or floor surface underneath the accelerator pedal:

> The specific measures of the vehicle-based remedy are as follows:
>
> 1. The shape of the accelerator pedal will be reconfigured to address the risk of floor mat entrapment, even when an older-design all-weather floor mat or other inappropriate floor mat is improperly attached, or is placed on top of another floor mat. For the ES350, Camry, and Avalon models involved, the shape of the floor surface underneath will also be reconfigured to increase the space between the accelerator pedal and the floor.
>
> 2. Vehicles with any genuine Toyota or Lexus accessory all-weather floor mat will be provided with newly-designed replacement driver- and front passenger-side all-weather floor mats.

However, Toyota did not recall the affected vehicles at that time. Instead, it said,

> In the meantime, owners of the involved vehicles are asked to take out any removable driver's floor mat and not replace it with any other floor mat until they are notified of the vehicle-based remedy, as notified in the consumer safety advisory and the interim notice.
>
> * * *
>
> The safety of our owners and the public is our utmost concern and Toyota has and will continue to thoroughly investigate and take appropriate measures to address any defect trends that are identified.

Thus, Toyota misled current owners and lessees to believe that the vehicles' issues were adequately addressed by Toyota.

32. The New York Times reported, in its February 1, 2010 article that, on December 26, 2009, four people died near Dallas when a Toyota Avalon sped off a road and into a pond.

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The police found that the floor mats were removed and in the Avalon's trunk. The New York Times further reported that, on December 28, 2009, a New Jersey man managed, by shifting in and out of neutral, to drive a 2007 Avalon to a dealership after it began speeding out of control. After parking, the motor continued racing and the brakes and tires started smoking.

33. In January 21, 2010, Toyota finally began a recall for a "vehicle-based" defect; namely, defective accelerator pedal assemblies ("January 21 Recall"). Approximately 2.3 million vehicles are affected by the January 21 Recall, which involved the following models:

a. 2005 to 2010 MY Toyota Avalon;
b. certain 2009 to 2010 MY Toyota Corolla;
c. certain 2007 to 2010 MY Toyota Camry;
d. certain 2010 MY Toyota Highlander;
e. 2009 to 2010 MY Toyota Matrix;
f. certain 2009 to 2010 MY Toyota RAV4;
g. 2008 to 2010 MY Toyota Sequoia; and
h. 2007 to 2010 MY Toyota Tundra.

34. According to the New York Times, the vehicles affected by the January 21 Recall represented over 60% of Toyota's total monthly U.S. sales from 2004 to 2009, based on a 12-month moving average. The New York Times reported further that Toyota's total U.S. sales ranged from well over 100,000 to nearly 200,000 vehicles per month during that time.

35. In a letter to the NHTSA dated January 21, 2010, Santucci described the defect in the accelerator pedal assemblies resulting in sudden and unintended acceleration reported in some of its vehicles:

> In accordance with the requirements of the National Traffic and Motor Vehicle Safety Act of 1966 and 49 CFR Part 573, on behalf of Toyota Motor Corporation ["TMC"], we hereby submit the attached Defect Information Report Concerning a voluntary safety recall of certain Toyota Tundra, Sequoia, Avalon, Camry, Corolla, Matrix, RAV4, Highlander, and Pontiac Vibe vehicles. *Toyota has determined that a defect exists in the accelerator pedal assembly which may result in the accelerator pedal becoming harder to depress, slower to return, or, in the worst case, mechanically stuck in a partially depressed position.*

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(emphasis added).

36. In its Defect Information Report referenced in the January 21, 2010 letter, Toyota describes what it purports is the underlying cause of defect:

> Description of Problem:
>
> Due to the manner in which the friction lever interacts with the sliding surface of the accelerator pedal inside the pedal sensor assembly, the sliding surface of the lever may become smooth during vehicle operation. In this condition, if condensation occurs on the surface, as may occur from heater operation (without A/C) when the pedal assembly is cold, the friction when the accelerator pedal is operated may increase, which may result in the accelerator pedal becoming harder to depress, slower to return, or, in the worst case, mechanically stuck in a partially depressed position. In addition, some of the affected vehicles' pedals were manufactured with friction levers made of a different material (PA46), which may be susceptible to humidity when parked for a long period in hot temperatures. In this condition, the friction when the accelerator pedal is operated may increase, which may result in the accelerator pedal movement becoming rough or slow to return. In light of the similarity with one of the symptoms described above that are associated with the PPS material, Toyota has decided to include these vehicles in the defect determination.

37. On January 28, 2010, issued a statement that Toyota had "identified the cause of the problem" and had been working closely with CTS, the manufacturer of the accelerator pedal assemblies found on the vehicles affected by the January 21 Recall, on a revised pedal design. According to a January 28, 2010 statement by Chris Nielsen, TMEMNA's Vice President of Purchasing, "CTS is a long-term and valued supplier to us."

38. According to Toyota, the January 21 Recall is separate and unrelated to the November 25 Announcement that involved approximately 5.3 million vehicles. However, Toyota also announced that approximately 1.3 vehicles are part of both the November 25 Announcement and the January 21 Recall. Reportedly, it is Toyota's position that this significant overlap is merely coincidence. A total of approximately 6.3 million vehicles are part of both the November 25 Announcement and January 21 Recall in the United States ("Recalled

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Vehicles"). On January 29, 2010, Toyota expanded the January 21 Recall to China and to eight Toyota models in Europe. Reportedly, over 9 million vehicles are affected worldwide.

THE TRUE CAUSE OF SUDDEN AND UNINTEDED ACCELERATION IN SOME TOYOTA VEHICLES REMAINS UNCLEAR

39. The public may still not know the true cause of sudden and unintended acceleration. According to the New York Times, on April 19, 2008, witnesses saw a 2005 Toyota Camry accelerate out of control, jumped a curb and fly through the air before crashing into a tree. The driver, Guadalupe Alberto, was killed instantly. The 2005 Camry is not among the millions of Recalled Vehicles and also did not have floor mats at the time of the accident. Reportedly, the crash is now being looked at as a possible example of problems with the electronic system that controls the throttle and engine speed in Toyotas.

40. Despite yet another accident, Toyota has been telling customers, since as early as January 22, 2010, that it is "confident that your vehicle is safe to drive, and no action is required at this time", for drivers not experiencing an accelerator pedal that is "hard to depress, slow to return or is unsmooth during operation". On February 1, 2010, Toyota described the reason it believes the accelerator pedals in recalled vehicles stick in a partially open position and announced that, "[a] precision-cut steel reinforcement bar will be installed into the assembly that will reduce the surface tension between the friction shoe and the adjoining surface". According to Toyota, "[w]ith this reinforcement in place, the excess friction that can cause the pedal to stick is eliminated."

41. Toyota's "solution" does not address the potential problem with electronic throttles, which mounting evidence suggests is the true cause of reports of sudden and unintended acceleration.

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42. Both Toyota and the NHTSA acknowledge that a standard braking system cannot always counter a wide-open throttle, as is the case in sudden acceleration. Toyota stated in the November 25 Announcement that it would install a failsafe in some affected vehicles, saying, "as a separate measure independent of the vehicle-based remedy, Toyota will install a brake override system onto the involved Camry, Avalon, and Lexus ES 350, IS 350 and IS 250 models as an extra measure of confidence. This system cuts engine power in case of simultaneous application of both the accelerator and brake pedals." The November 25 Announcement stated further that, "[t]he brake override system will be made standard equipment throughout the Toyota and Lexus product lines starting with January 2010 production of ES 350 and Camry and is scheduled to be incorporated into new production of most models by the end of 2010."

43. According to The New York Times, Santucci was deposed in December 2009 concerning a 2004 NHTSA investigation of certain Toyota vehicles. During that testimony, Santucci testified that the electronic throttle control system in Alberto's 2005 Camry was similar to the computer equipment in other Toyotas now under recall for sticky pedals and unsecured floor mats.

PAST NHTSA FINDINGS ARE NOT RELIABLE

44. Toyota stated on November 2, 2009, that it had been investigated six times in the past and that the agency found no vehicle-based cause for reports of sudden and unintended acceleration. However, Santucci reportedly testified Toyota and the NHTSA had discussions about limiting the type of acceleration incidents to be investigated. Santucci's testimony is that, "I recall them saying to us, Toyota, myself,that they were not interested in reports alleging uncontrolled acceleration that occurred for a long duration." The New York Times reported that the NHTSA, in fact, decided to look only at cases of unintended acceleration in which drivers

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had not applied their brakes to rule out potential braking concerns from the scope of the investigation. Santucci testified that, "I think it worked out well for both the agency and Toyota, meaning Toyota provided what they were looking for". The NHTSA ultimately found, "[a] defect trend has not been identified at this time, and further use of agency resources does not appear to be warranted."

45. The NHTSA investigations, and Toyota's handling of the problem, will be the subject of Congressional hearings. The House Energy and Commerce Committee has scheduled a February 25, 2010 hearing to focus on why several years elapsed after the NHTSA began to get complaints about runaway Toyotas before TMC recalled several of its models to fix a defect that could cause their accelerator pedals to stick. "Like many consumers, I am concerned by the seriousness and scope of Toyota's recent recall announcements," said Representative Henry Waxman, the California Democrat who chairs the Energy and Commerce Committee. In a January 28, 2010 letter to Yoshimi Inaba, President and COO of TMNA, Waxman asked Inaba to produce information and documents dating back to 2001, including information "relating to sudden unintended acceleration, acceleration pedals, or *electronic throttle control*" (emphasis added).

46. The NHTSA is considering civil penalties against Toyota for the automaker's handling of both recalls.

CLASS ACTION ALLEGATIONS

47. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3), on behalf of himself and the following Class and Sub-Class:

Nationwide Class:

All owners and lessees in the United States of the Recalled Vehicles (the "Nationwide Class").

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New York Sub-Class

All owners and lessees in New York of Recalled Vehicles that were sold or leased in the State of New York (the "Sub-Class").

48. Excluded from the Nationwide Class and the Sub-Class are Defendants, as well as Defendants',subsidiaries, employees, officers, directors, or other person, firm trust or corporation or other entity related to or affiliated with Toyota and any person who has experienced physical injury as a result of the defects at issue in this litigation. Plaintiff reserve the right to amend the definition of the Nationwide Class and the Sub-Class, if discovery and/or further investigation reveal that the Nationwide Class and/or Sub-Class should be expanded or otherwise modified.

49. Numerosity/Impracticability of Joinder: The members of the Nationwide Class and Sub-Class are so numerous that joinder of all members would be impracticable. The members of the Nationwide Class and the Sub-Class are readily identifiable from information and records in Defendants' possession, custody or control.

50. The number of class members is approximately 6.3 million. There are millions of Nationwide Class members who purchased or leased Toyota vehicles and at least thousands, if not hundreds of thousands, of members of the Sub-Class.

51. Commonality and Predominance: Common questions of law and fact predominate over any questions affecting only individual members of the Nationwide Class and the Sub-Class. These common legal and factual questions, which do not vary from one Nationwide Class or Sub-Class member to another, and which may be determined without reference to the individual circumstances of any Nationwide Class or Sub-Class member, include, but are not limited, to the following:

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a. Whether Defendants omitted and/or concealed material facts from Plaintiff and the members of the Classes regarding Recalled Vehicles;

b. Whether, by the misconduct set forth in this Complaint, Defendants have engaged in deceptive or unlawful business practices with respect to the sale or lease of the Recalled Vehicles;

c. Whether Defendants had a duty to disclose the defects in Recalled Vehicles to Plaintiff and the Classes;

d. Whether, by their conduct, Defendants violated Magnuson-Moss Act, 15 U.S.C. §§ 2301, *et seq.*;

e. Whether, by their conduct, Defendants violated NY GBL §§349 and 350;

f. Whether, by their conduct described herein, Defendants breached their implied warranties to Plaintiff and the Classes;

g. Whether, by its conduct described herein, Defendants breached its express warranties to Plaintiff and the Classes;

h. Whether, by their conduct described herein, Defendants breached their contracts with Plaintiff and the Sub-Class;

i. Whether, by their conduct described herein, Defendants breached their duty of good faith and fair dealing;

j. Whether the Recalled Vehicles are defective;

k. Whether, as a result of Defendants' misconduct, Plaintiff and the Classes are entitled to damages; and

l. Whether, as a result of Defendants' misconduct, Plaintiff and the Classes are entitled to equitable relief and/or other relief, and, if so, the nature of such relief.

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52. Typicality: Plaintiff's claims are typical of the claims of the Nationwide Class and the Sub-Class, because Plaintiff and all Class members were injured by the same wrongful practices in which Defendants engaged. Plaintiff's claims arise from the same practice and course of conduct that gives rise to the claims of the Nationwide Class and Sub-Class members, and are based on the same or similar legal theories.

53. Adequacy: Plaintiff will fully and adequately protect the interests of the members of the Nationwide Class and the Sub-Class, and has retained class counsel who are experienced and qualified in prosecuting class actions, including consumer class actions and other forms of complex litigation. Neither Plaintiff nor her counsel has interests that are contrary to or conflicting with those of the Nationwide Class or the Sub-Class. Defendants have no defenses unique to Plaintiff.

54. Superiority: A class action is superior to all other available methods for the fair and efficient adjudication of this controversy for, *inter alia*, the following reasons:

a. It is economically impractical for members of the Classes to prosecute individual actions;

b. The Classes are readily definable;

c. Prosecution as a class action will eliminate the possibility of repetitious litigation; and

d. A class action will enable claims to be handled in an orderly and expeditious manner. A class action will save time and expense and will ensure uniformity of decisions.

55. Plaintiff does not anticipate any difficulty in the management of this litigation.

56. Defendants have, or have access to, address information for the Class members,

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which may be used for the purpose of providing notice of the pendency of this action.

COUNT I

Asserted On Behalf Of The Nationwide Class Against Toyota and CTS
(Violations Of Magnuson-Moss Act (15 U.S.C. §§ 2301-2312) - Implied Warranty)

57. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

58. The Recalled Vehicles are "consumer products" as that term is defined by 15 U.S.C. § 2301(1).

59. Plaintiff and Nationwide Class members are "consumers" as that term is defined by 15 U.S.C. § 2301(3).

60. Toyota and CTS are "suppliers" as that term is defined by 15 U.S.C. § 2301(4).

61. Toyota and CTS are "warrantors" as that term is defined by 15 U.S.C. § 2301(5).

62. Toyota and CTS provided Plaintiff and Class members with "implied warranties" as that term is defined by 15 U.S.C. § 2301(7). When the Recalled Vehicles were sold or leased to Plaintiff and the Nationwide Class, implied warranties under state law attached, specifically the implied warranty of merchantability.

63. Toyota sold the Recalled Vehicles with defective accelerator pedal assemblies and floor mats (hereinafter collectively referred to as "accelerator pedal assemblies"), and CTS made the defective accelerator pedals as described hereinabove, which rendered the Recalled Vehicles unfit for their ordinary purpose. Toyota has acknowledged that such a defect exists and that the Recalled Vehicles are unfit for their ordinary purpose.

64. Any attempt by Toyota or CTS to disclaim the implied warranty of merchantability with respect to the Recalled Vehicles is void due to Toyota and CTS's

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knowledge or failure to know that the accelerator pedal assemblies were defective when sold or leased to Plaintiff and the Nationwide Class.

65. Toyota and CTS cannot disclaim the implied warranty of merchantability that attaches to the Recalled Vehicles, because Toyota provided Plaintiff and the Nationwide Class with written warranties as that term is defined by 15 U.S.C. § 2301(6).

66. Plaintiff has given Toyota a reasonable opportunity to cure its failures with respect to its warranties, and Toyota failed to do so.

67. Plaintiff and the Nationwide Class were damaged by Toyota and CTS' breach of their warranties.

68. As a result of Toyota and CTS' breach of implied warranties, Plaintiff and Nationwide Class members are entitled to revoke their acceptance of the Recalled Vehicles, obtain damages and equitable relief, and obtain attorneys' fees and costs pursuant to 15 U.S.C. § 2310.

COUNT II

Asserted On Behalf Of The Nationwide Class Against Toyota (Breach Of Express Warranty)

69. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

70. Toyota warranted that the Recalled Vehicles were free of defects in workmanship and materials. Providing defective accelerator pedal assemblies with the Recalled Vehicles, as explained herein, is a breach of this warranty.

71. As a direct and proximate cause of Toyota's breach of express warranties, Plaintiff and the Nationwide Class members have been damaged.

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72. Plaintiff has given Toyota a reasonable opportunity to cure its failure with respect to its warranty, and Toyota has failed to do so.

73. As a result of Toyota's breach of express warranty, Plaintiff and the Nationwide Class members have suffered damages.

COUNT III

Asserted On Behalf Of The Nationwide Class Against Toyota and CTS (Breach Of Implied Warranty Of Merchantability)

74. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

75. Toyota and CTS are "merchants" within the meaning of the Uniform Commercial Code § 2-104.

76. The Recalled Vehicles and defective accelerator pedal assemblies are "goods" within the meaning of Uniform Commercial Code § 2-105.

77. Toyota and CTS's implied warranty of merchantability accompanied the sale of the Recalled Vehicles and/or the defective accelerator pedal assemblies to Plaintiff and members of the Nationwide Class.

78. Toyota and CTS, by implication, warranted that the Recalled Vehicles and/or the accelerator pedal assemblies were fit for ordinary use.

79. The frequent failure of the accelerator pedal assemblies in the Recalled Vehicles made the Recalled Vehicles and accelerator pedal assemblies defective and, thus, unfit for the ordinary purposes for which the goods are used. The Recalled Vehicles are not fit for ordinary use because the accelerator pedal assemblies have a dangerous propensity to stick in the full-open position resulting in sudden and unintended acceleration.

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80. As set forth herein, any effort by Toyota and CTS to disclaim or otherwise limit its responsibility for the Recalled Vehicles was unconscionable under all of the circumstances. Toyota and CTS knew that the Recalled Vehicles were unfit for normal use.. Toyota and CTS' attempt to disclaim any warranty on the Recalled Vehicles is therefore unjust and cannot stand.

81. Through the conduct described herein, Toyota and CTS has breached their implied warranty of merchantability and are liable to Plaintiff and the Nationwide Class.

82. Plaintiff and the other members of the Nationwide Class have sustained damages as a result of Toyota and CTS' breaches.

83. Plaintiff has provided timely notice to Toyota regarding the problems she was experiencing with her 2010 Toyota Camry and, notwithstanding such notice, Toyota has failed and refused to offer Plaintiff a remedy.

COUNT IV

Asserted on Behalf of the Nationwide Class Against Toyota and CTS (Breach of Contract)

84. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

85. Plaintiff and Nationwide Class members entered into agreements to purchase or lease the Recalled Vehicles, and were in contractual privity with Toyota and CTS as a result of the express warranty described herein, as well as the specifications included with the purchase or lease of the Recalled Vehicles. Such privity likewise existed because the dealers from which Plaintiff and the Nationwide Class purchased or leased the Recalled Vehicles acted as Toyota's agents through franchise agreements, distribution agreements, and any other agreement governing the relationship between Toyota and any such dealer.

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86. Regardless of whether Plaintiff and the Classes were in contractual privity with Toyota or CTS, Toyota and CTS still may be held to have breached their contracts with Plaintiff and the Nationwide Class. As alleged herein, Toyota and CTS committed acts and omissions which were actuated by actual malice and accompanied by a wanton and willful disregard of persons, including Plaintiff and Nationwide Class members, who foreseeably might be harmed by those acts and omissions.

87. Toyota and CTS failed to disclose the true nature of the accelerator pedal assemblies, and the fact that the accelerator pedal assemblies would render the Recalled Vehicles unfit for use. Toyota and CTS knew or recklessly disregarded the fact that Plaintiff and the Nationwide Class were not knowledgeable with regard to the frequent failures, cost, and true nature of the accelerator pedal assemblies as alleged herein, and did not disclose that information to Plaintiff and the Nationwide Class.

88. Plaintiff and the Nationwide Class members performed all of their obligations under the contracts. Toyota breached its obligations under the contracts as alleged herein.

89. As a direct and proximate result of Toyota and CTS's breach of contract, Plaintiff and Nationwide Class members have been damaged.

COUNT V

Asserted On Behalf Of The Nationwide Class Against Toyota and CTS (Breach Of Implied Covenant Of Good Faith And Fair Dealing)

90. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

91. Plaintiff and Nationwide Class members entered into agreements to purchase or lease the Recalled Vehicles, or otherwise were in contractual privity with Toyota as a result of the express warranty described herein, as well as the specifications included with the purchase or

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lease of the Recalled Vehicles. Contractual privity likewise existed because the dealers from which Plaintiff and the Nationwide Class purchased or leased the Recalled Vehicles acted as Toyota's agent through franchise agreements, distribution agreements, and any other agreement governing the relationship between Toyota and any such dealer. Although CTS was not a party to these contracts, CTS had a duty to act in good faith due to the contractual relationship with Plaintiff and the Nationwide Class as alleged herein.

92. The contracts and warranties were subject to the implied covenant that Toyota would conduct business with Plaintiff and Nationwide Class members in good faith and would deal fairly with Plaintiff and Nationwide Class members. CTS' contracts and warranties were subject to the implied covenant that Toyota would conduct business with Plaintiff and Nationwide Class members in good faith and would deal fairly with Plaintiff and Nationwide Class members.

93. Regardless whether Plaintiff and the Nationwide Class were in contractual privity with Toyota and CTS, Toyota and CTS still had a duty of good faith and fair dealing. As alleged herein, Toyota and CTS committed acts and omissions which were actuated by malice and/or accompanied by a wanton and willful disregard of persons, including Plaintiff and the members of the Nationwide Class, who foreseeably might be harmed by those acts and omissions.

94. Toyota and CTS breached those implied covenants via the sale or lease to Plaintiff and members of the Nationwide Class of the Recalled Vehicles that were not fit for ordinary use and that were equipped with defective accelerator pedal assemblies that were inherently defective when Toyota and CTS knew, or should have known, that the accelerator pedal assemblies were defective. Toyota and CTS failed to disclose the true nature of the accelerator pedal assemblies, and the fact that the accelerator pedal assemblies would render the

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Recalled Vehicles unfit for use. Toyota and CTS knew or recklessly disregarded the fact that Plaintiff and the Nationwide Class were not knowledgeable with regard to the frequent failures, cost, and true nature of the accelerator pedal assemblies as alleged herein, and did not disclose that information to Plaintiff and the Nationwide Class. Defendants also breached those covenants by refusing to provide Plaintiff and the Nationwide Class with an adequate remedy.

95. Defendants behaved inequitably and acted in total disregard of the harm caused to Plaintiff and the Nationwide Class, and unjustly enriched themselves at the expense of Plaintiff and the Nationwide Class.

96. As a direct and proximate result of Toyota and CTS's breach of its implied covenants, Plaintiff and Nationwide Class members have been damaged.

COUNT VI

Asserted On Behalf Of The Sub-Class Against Toyota and CTS (Violation Of N.Y. G.B.L. §349)

97. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

98. Plaintiff and other members of the Sub-Class are "consumers" in accordance with GBL §349.

99. At all relevant times material hereto, Toyota and CTS conducted trade and commerce in New York and elsewhere within the meaning of GBL §349.

100. Toyota and CTS' acts materially misled Plaintiff and the Sub-Class in that Toyota and CTS misrepresented or failed to disclose the following material facts:

a. The Recalled Vehicles are not fit for normal use;

b. The accelerator pedal assemblies have a dangerous propensity to stick in the full-open position resulting in sudden and unintended acceleration;

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c. The Recalled Vehicles are not equipped with a failsafe to protect against sudden and unintended acceleration; and

d. The consequences of sudden and unintended acceleration are serious and potentially deadly.

101. Toyota and CTS consciously omitted to disclose material facts from Plaintiff and other members of the Sub-Class with respect to the accelerator pedal assemblies on the Recalled Vehicles.

102. Toyota intended that Plaintiff and the Sub-Class rely on Toyota and CTS' acts of concealment and omission, so that Plaintiff and other Sub-Class members would purchase and/or lease the Recalled Vehicles equipped with the defective accelerator pedal assemblies.

103. Had Toyota and CTS disclosed all material information regarding the defective accelerator pedal assemblies in the Recalled Vehicles to Plaintiff and the Sub-Class, they would not have purchased and/or leased the Recalled Vehicles, or would have paid less for the Recalled Vehicles.

104. The foregoing acts, omissions and practices proximately caused Plaintiff and other members of the Classes to suffer actual injury and damage including, *inter alia,* the loss of use of the Recalled Vehicles and diminution of value of those vehicles.

COUNT VII

Asserted On Behalf of the Sub-Class Against Toyota
(Violations of N.Y. G.B.L. §350)

105. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

106. Toyota, in marketing the Recalled Vehicles, failed to disclose the following facts to Plaintiff and the Sub-Class:

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a. The Recalled Vehicles are not fit for normal use;

b. The accelerator pedal assemblies have a dangerous propensity to stick in the full-open position resulting in sudden and unintended acceleration;

c. The Recalled Vehicles are not equipped with a failsafe to protect against sudden and unintended acceleration; and

d. The consequences of sudden and unintended acceleration are serious and potentially deadly.

107. Plaintiff and the Sub-Class were misled and/or deceived by the omission of these material facts. Toyota, due to its superior knowledge of the facts herein, was required to disclose these facts to Plaintiff and the Sub-Class.

108. The foregoing acts, omissions and practices proximately caused Plaintiff and other members of the Sub-Class to suffer actual injury and damage.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff on behalf of herself and on behalf of the Classes prays:

A. For an order certifying this action as a class action, appointing Plaintiff as representative of the Classes and appointing her attorneys as counsel for the Classes;

B. For Defendants to pay lease and car loan payments until Toyota repairs or replaces the defective accelerator pedal assemblies in the Recalled Vehicles;

C. For all compensatory and other appropriate damages on all applicable claims in an amount to be proven at trial, including the diminution in value of the Recalled Vehicles as a result of the acts complained of herein;

D. For an order permanently enjoining Defendants from engaging in the unlawful practices alleged herein;

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E. For an award of attorneys' fees, costs and expenses; and

F. For such other and further relief that the Court deems appropriate and just under the circumstances.

JURY TRIAL DEMAND

Plaintiff demands a trial by jury.

Dated: February 8, 2010

ABBEY SPANIER RODD
& ABRAMS, LLP

By: _____
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Amended: October 3, 2008

INDIVIDUAL PRACTICES OF JUDGE P. KEVIN CASTEL

United States Courthouse
500 Pearl Street
New York, New York 10007
web site: www.nysd.uscourts.gov

Unless otherwise ordered, matters before Judge Castel shall be conducted in accordance with the following practices:

1. Communications with Chambers

A. Letters. Except as otherwise provided below, communications with chambers shall be by letter, with copies simultaneously delivered to all counsel. Letters may be sent to chambers via fax, (212) 805-7949, provided they do not exceed five pages in length. If a fax is transmitted to chambers, it should not also be mailed or delivered to chambers. Letters should not be filed on ECF.

B. Telephone Calls. For docketing, scheduling and calendar matters, call the Courtroom Deputy, Florence Nacanther, at (212) 805-0131 between 8:30 A.M. and 5:00 P.M. Telephone calls to chambers are permitted only in emergency situations requiring immediate attention, (212) 805-0262.

C. Requests for Adjournments or Extensions of Time. All requests for adjournments or extensions of time must state (1) the original date, (2) the number of previous requests for adjournment or extension, (3) whether these previous requests were granted or denied, and (4) whether the adversary consents, and, if not, the reasons given by the adversary for refusing to consent. If the requested adjournment or extension affects any other scheduled dates, the request (in a civil case) must attach a proposed Revised Case Management Plan and Scheduling Order (reflecting dates which are business days). If the request is for an adjournment of a court appearance, absent an emergency, it shall be made at least 48 hours prior to the scheduled appearance. Requests for adjournments should be transmitted to chambers and not filed on ECF.

D. ECF. Counsel for all parties, are required to register as ECF users in accordance with the Procedures for Electronic Case Filing and file a Notice of Appearance in each case.

2. Motions

A.

1. Pre-Motion Conferences in Civil Cases. For discovery motions, follow Local Civil Rule 37.2 Southern District. For motions other than discovery motions in a civil case, a pre-motion conference with the court is required, except for motions described in Sub-paragraph A(2). To arrange a pre-motion conference, the moving party shall submit a letter not to exceed five pages in length setting forth in detail the basis for the anticipated motion and other parties may respond in a letter not to exceed five pages within three business days.

2. No Pre-Motion Conference Required. Sub-paragraph A(1) above does not apply to any of the motions described in Rule 6(b), Federal Rules of Civil Procedure, Rules

4(a)(4)(A), Federal Rules of Appellate Procedure, or section 1447 of title 28 nor does it apply to motions brought on by order to show cause, motions by incarcerated pro se litigants, motions for a default judgment, motions for appointment of lead counsel under the PSLRA, motions for admission pro hac vice and motions for reconsideration or reargument. A pre-motion conference is not required before making such motions.

B. **Courtesy Copies.**

1. Pleadings: Courtesy copies of pleadings, marked as such, shall be submitted to chambers as soon as practical after filing, in accordance with the SDNY policies regarding mail deliveries.

2. Motion Papers: Courtesy copies of all motion papers (in both ECF and non-ECF cases), marked as such, shall be submitted to chambers at the time the papers are served, in accordance with the SDNY policies regarding mail deliveries.

C. **Memoranda of Law.** Unless prior permission has been granted, memoranda of law in support of and in opposition to motions are limited to 25 pages, and reply memoranda are limited to 10 pages. Memoranda of 10 pages or more shall contain a table of contents.

D. **Filing of Motion Papers.** Motion papers shall be filed promptly after service.

E. **Oral Argument on Motions.** Parties may request oral argument by letter at the time their moving, opposing or reply papers are filed. The court will determine whether argument will be heard and, if so, will advise counsel of the argument date.

F. **Summary Judgment.** The Local Rule 56.1(a)(2) Statement by the party opposing summary judgment shall set forth verbatim the text of each paragraph of the Local Rule 56.1(a)(1) Statement immediately preceding its response thereto.

3. Pretrial Procedures

A. **Joint Pretrial Orders in Civil Cases.** Unless otherwise ordered by the Court, within 30 days following completion of discovery in a civil case, the parties shall submit to the Court for its approval a Joint Pretrial Order, that includes the information required by Federal Rule of Civil Procedure 26(a)(3), and the following:

i. The names, addresses (including firm names), and telephone and fax numbers of trial counsel.

ii. A brief summary by each party of the claims and defenses that the party has asserted which remain to be tried, without recital of evidentiary matter, but including citations to all statutes relied on. Any claim or defense not so identified is deemed withdrawn.

iii. A statement by each party as to whether the case is to be tried with or without a jury, and the number of trial days needed.

iv. A page and line designation by each party of deposition testimony to be offered in its case in chief, with any cross-designations and objections by any other party.

v. A list by each party of exhibits to be offered in its case in chief, with one star indicating exhibits to which no party objects on grounds of authenticity, and two stars indicating exhibits to which no party objects on any ground.

vi. A statement confirming that trial counsel have met and conferred face-to-face with a view towards reaching stipulations of fact and setting forth the content of any stipulation.

vii. A statement of the damages claimed and any relief sought, including the manner and method used to calculate the claimed damages and a breakdown of its elements.

B. Filings Prior to Trial in Civil Cases. Unless otherwise ordered by the Court, the parties shall file with the Joint Pretrial Order:

i. In jury cases, proposed voir dire questions, verdict form and requests to charge;

ii. In non-jury cases, proposed findings of fact and conclusions of law;

iii. The parties are required to meet and confer regarding items i. or ii. and make a joint submission in areas where agreement is reached and separate submissions in areas where no agreement is reached. Unless otherwise agreed upon by the parties, the party with the burden of proof should prepare the initial draft in sufficient time for the other side to respond; only the final result of this meet and conferral process should be submitted to the Court. When feasible, items i. and ii. should be submitted, in addition to hard copy, on a 3.5" diskette or CD-Rom in Microsoft Word version Office 2000 or WordPerfect version 9 or higher format;

iv. Motions in limine addressing any evidentiary or other issues that should be resolved prior to empanelling a jury.

J. MICHAEL McMAHON
CLERK OF COURT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
500 PEARL STREET, NEW YORK, NY 10007
300 QUARROPAS STREET, WHITE PLAINS, NY 10601

WWW.NYSD.USCOURTS.GOV

Electronic Case Filing Rules & Instructions

August 1, 2008 Edition

IMPORTANT INFORMATION FOR NEW CASES

A party filing a new civil case assigned to the Electronic Case Filing (ECF) system must do the following after obtaining a civil case number:

(1) E-mail a pdf copy of the case initiating documents to the Clerk's Office within 24 hours of delivering the paper documents to the Court; and

(2) Serve each party to the action with the initiating documents and a copy of:

(a) SDNY Electronic Case Filing Rules & Instructions (attached); and

(b) The assigned Judge's Individual Practices.

For complete instructions and e-mail addresses see Section 14 - Opening a Civil Action.

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Introduction

The United States District Court for the Southern District of New York implemented an Electronic Case Filing (ECF) system in December 2003. Electronic versions of documents filed by attorneys over the Internet have largely replaced paper documents in the Court's files. Almost all new civil and criminal cases filed in this Court after December 2, 2003 are Electronic Case Filing (ECF) cases. Cases filed before December 2, 2003, Pro se cases (unless the pro se litigant is a member of the bar), Social Security cases and habeas corpus cases however are not ECF cases and must be filed on paper. The information in this document applies only to cases assigned to the ECF system.

Electronic Case Filing has several advantages for both the attorney and the Court:

- Twenty-four hour concurrent access to case files from any location over the Internet
- Remote document filing from any Internet connection worldwide
- Secure access to the ECF system via unique user password
- Immediate e-mail notification of case activity to parties and the Court
- Storage of documents in a reliable and secure electronic format

In addition to the Federal Rules of Civil and Criminal Procedure, the following govern Electronic Case Filing in this District (available at www.nysd.uscourts.gov):

- **SDNY Electronic Case Filing Rules & Instructions (this document):**

  Part I. Electronic Case Filing Rules (ECF Rules), approved by the Board of Judges of this Court, provide the broad outline of the rules of Electronic Case Filing.

  Part II. Electronic Case Filing Instructions (ECF Instructions), written by the Clerk of Court under the authority of the ECF Rules, provide step by step instructions for Electronic Case Filing.

- **The Judge's Individual Practices**

  Each Judge's Individual Practices outline their own specific filing requirements.

The Court is prepared to assist you in filing electronically in several ways:

- The SDNY Electronic Case Filing Rules & Instructions will answer many of your ECF questions.
- Training in Electronic Case Filing (ECF) is available both in person at the courthouse and on-line at www.nysd.uscourts.gov (*See section 24 - ECF Help Desk and Training*).
- ECF Help Desk operators are available by telephone to answer your electronic filing questions (*See section 24 - ECF Help Desk and Training*).

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What's New

Updated August 1, 2008:

This edition of the ECF Rules & Instructions contains new material.

Effective August 1, 2008, in cases assigned to the Electronic Case Filing (ECF) system, all notices and stipulations of voluntary dismissal pursuant to Federal Rule of Civil Procedure 41(a)(1)(A) must be filed electronically on the ECF system.

Paper versions of notices and stipulations pursuant to Rule 41(a)(1)(A) in ECF cases will no longer be accepted for filing effective August 1, 2008.

Please use the following ECF filing events:

NOTICE OF VOLUNTARY DISMISSAL to file a notice pursuant to Rule 41(a)(1)(A)(i); and

STIPULATION OF VOLUNTARY DISMISSAL to file a stipulation pursuant to Rule 41(a)(1)(A)(ii).

In accordance with Rule 41(a)(1)(A)(ii), stipulations of voluntary dismissal require the signature of all parties who have appeared in the action. Only partial stipulations of voluntary dismissal, seeking to dismiss some but not all parties, must continue to be submitted by e-mail to the Judgment Clerk to be conformed for the Court's approval.

In cases not assigned to the ECF system, notices and stipulations filed pursuant to Rule 41(a)(1)(A) must continue to be filed in paper form with the Judgment Clerk.

Accordingly, revisions have been made to the following items:

Section 18 - Non ECF Documents

18.1 In an ECF case are there documents that I should not file electronically?

18.4 Are Proposed Orders, Proposed Judgments, Stipulations, Voluntary Notices of Dismissal or Consents filed electronically?

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Part I. Electronic Case Filing Rules

The Court will accept for filing documents submitted, signed or verified by electronic means that comply with the following rules.

Section 1. Scope of Electronic Filing

1.1 The Court will designate which cases will be assigned to the Electronic Case Filing (ECF) system. Except as expressly provided and in exceptional circumstances preventing a Filing User from filing electronically, all petitions, motions, memoranda of law, or other pleadings and documents required to be filed with the Court in a case assigned to the ECF system must be filed electronically. A paper may be filed electronically (a) from a remote location, (b) by bringing it to the Clerk's office during regular business hours, in a form or electronic format prescribed by the Clerk, for input into the system, or (c) by bringing the paper and the Filing User's SDNY ECF password and log-in to the Clerk's Office during regular business hours to be scanned into the system by the Filing User.

1.2 Unless limited by their terms to civil cases, the provisions of these procedures relating to electronic filing apply in criminal cases that are initiated by the filing of an indictment or information. Electronic filing procedures shall not apply to applications for arrest, search or electronic surveillance warrants; for other orders in aid of or ancillary to a criminal investigation; or to proceedings relating to the grand jury.

1.3 Electronic filing procedures shall not apply to Social Security cases, Pro Se cases (unless the pro se litigant is a member of the bar), Habeas Corpus cases or cases initiated before December 2, 2003.

(*See section 13 - ECF Basics*).

1.4 The filing and service of the initial papers in a civil case, including the complaint, the issuance of the summons and the proof of service of the summons and complaint, as well as service of non-party subpoenas, will be accomplished in the traditional manner on paper in accordance with the Federal Rules of Civil Procedure and applicable Local Rules governing service, rather than electronically. In a criminal case, the indictment or information, including any superseders, shall also be filed and given to the defendant in the traditional manner on paper in accordance with the Federal Rules of Criminal Procedure and applicable Local Rules rather than electronically; in addition, service of subpoenas shall be made in the traditional manner on paper in accordance with the Federal Rules of Criminal Procedure and applicable Local Rules. In a case assigned to the ECF system after it has been opened, parties must promptly provide the Clerk with electronic copies of all documents previously provided in paper form. All subsequent documents must be filed electronically except as provided in these Rules & Instructions or as ordered by the Court.

(*See section 14 - Opening a Civil Action*).

1.5 The Clerk shall write and revise as necessary Instructions to guide Filing Users and maximize the efficiency of the Electronic Case Filing system.

(*See Part II - Electronic Case Filing Instructions*)

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Section 2. Eligibility, Registration, Passwords

2.1 Attorneys admitted to the bar of this Court, including those admitted pro hac vice and attorneys authorized to represent the United States, may register and may be required to register as Filing Users of the Court's ECF system. Unless excused by the Court, attorneys not already Filing Users appearing in cases assigned to the ECF system must register as Filing Users forthwith upon the case being so designated. Registration is in a form prescribed by the Clerk and requires the Filing User's name, address, telephone number, Internet e-mail address, and a declaration that the attorney is admitted to the bar of this Court or authorized to represent the United States.

2.2 If the Court permits or requires, a party to a pending civil action who is not represented by an attorney may register as a Filing User in the ECF system solely for purposes of the action. Registration is in a form prescribed by the Clerk and requires identification of the action as well as the name, address, telephone number and Internet e-mail address of the party. The Court may require the party to attend in-person training for Electronic Case Filing as a condition of registering as a Filing User. If, during the course of the proceeding, the party retains an attorney who appears on the party's behalf, the attorney must advise the Clerk to terminate the party's registration as a Filing User upon the attorney's appearance.

2.3 Once registration is completed, the Filing User will receive notification of the user log-in and password. Filing Users agree to protect the security of their passwords and immediately notify the Clerk if they learn that their password has been compromised. Users may be subject to sanctions for failure to comply with this provision.

2.4 In a civil action, the Clerk will enter, as Filing Users to whom Notices of Electronic Filing will be transmitted, (a) each attorney identified on the Civil Cover Sheet, as well as (b) each additional attorney who subsequently appears in the action and files a Notice of Appearance (which must be filed electronically). In a criminal case, the Clerk will enter, as Filing Users to whom Notices of Electronic Filing will be transmitted and who will be granted access to electronically file and retrieve documents in the case, the attorney(s) for the United States identified on the Criminal Designation Form or subsequently identified as representing the United States in the case and each attorney filing a Notice of Appearance on behalf of a defendant. Notices of Appearance on behalf of a criminal defendant will be filed in the traditional manner on paper.

2.5 An attorney of record may, by written or electronic request to the Clerk, have transmission of Notices of Electronic Filing to another attorney in his or her firm terminated.

(*See section 22 - ECF Passwords*).

Section 3. Consequences of Electronic Filing

3.1 Except as otherwise provided in Rule 4 herein, electronic filing of a document in the ECF system consistent with these procedures, together with the transmission of a Notice of Electronic Filing from the Court, constitutes filing of the document for all purposes of the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, and the Local Rules of this Court and constitutes entry of the document on the docket kept by the Clerk under Fed. R. Civ. P. 58 and 79 and Fed. R. Crim. P. 49 and 55.

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3.2 When a document has been filed electronically, the official record is the electronic recording of the document as stored by the Court (subject to the exception set out in Rule 4 below), and the filing party is bound by the document as filed. Except in the case of documents first filed in paper form and subsequently submitted electronically under Rule 1, a document filed electronically is deemed filed on the date and time stated on the Notice of Electronic Filing from the Court.

3.3 Electronic filing must be completed before midnight local time where the Court is located in order to be considered timely filed that day.

3.4 Individual Judges' Practices should continue to be followed with respect to delivery of courtesy copies.

(*See section 19 - Service of Electronically Filed Documents*).

Section 4. Entry of Court Orders

4.1 All orders, decrees, judgments and proceedings of the Court will be filed in accordance with these procedures and entered on the docket kept by the Clerk under Fed. R. Civ. P. 58 and 79 and Fed. R. Crim. P. 49 and 55. Each document signed by a judge shall be scanned so as to contain an image of the judge's signature and shall be filed electronically by the Court, and the manually signed original shall be filed by the Clerk. In the event of a discrepancy between the electronically filed copy and the manually signed original, the manually signed original shall control.

4.2 A Filing User submitting a document electronically that requires a judge's signature must promptly deliver the document in such other form as the Court requires, if any.

Section 5. Attachments and Exhibits

5.1 Filing Users must submit in electronic form all documents referenced as exhibits or attachments, unless the Court permits paper filing.

5.2 A Filing User must submit as exhibits or attachments only those excerpts of the referenced documents that are relevant to the matter under consideration by the Court. Excerpted material must be clearly and prominently identified as such. Filing Users who file excerpts of documents as exhibits or attachments under this procedure do so without prejudice to their right to file timely additional excerpts or the complete document. Responding parties may file timely additional excerpts that they believe are relevant or the complete document. A party may move for permission to serve and file in hard copy documents that cannot reasonably be scanned.

5.3 In cases where the record of an administrative or other prior proceeding must be filed with the Court, such record may be served and filed in hard copy without prior motion and order of the Court.

(*See section 15 - Motions*).

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Section 6. Sealed Documents

6.1 Documents ordered to be placed under seal may not be filed electronically.

6.2 A motion to file documents under seal should be filed electronically unless prohibited by law, in redacted form if necessary; however, a motion to file under seal that includes a statement of why the filing should not be made electronically may be made in paper copy. The order of the Court authorizing the filing of documents under seal may be filed electronically unless prohibited by law.

6.3 A paper copy of the sealing order must be attached to the outside of the envelope containing the documents under seal and be delivered to the Clerk's Office.

(*See section 18 - Non-Electronic Documents*).

Section 7. Retention Requirements

Documents that are electronically filed and require original signatures other than that of the Filing User must be maintained in paper form by the Filing User until one year after all time periods for appeals expire, except that affidavits, declarations and proofs of service must be maintained in paper form by the Filing User until five years after all time periods for appeals expire. On request of the Court, the Filing User must provide original documents for review.

(*See section 13 - ECF Basics*).

Section 8. Signatures

8.1 The user log-in and password required to submit documents to the ECF system serve as the Filing User's signature on all electronic documents filed with the Court. They also serve as a signature for purposes of the Federal Rules of Civil Procedure, including Rule 11, the Federal Rules of Criminal Procedure, the Local Rules of this Court, and any other purpose for which a signature is required in connection with proceedings before the Court. Each document filed electronically must indicate that it has been electronically filed.

8.2 Electronically filed documents must include a signature block and must set forth the name, address, telephone number and e-mail address all in compliance with the Federal Rules of Civil Procedure and Local Civil Rule 11.1. In addition, the name of the Filing User under whose log-in and password the document is submitted must be preceded by an "s/" typed in the space where the signature would otherwise appear.

8.3 No Filing User or other person may knowingly permit or cause to permit a Filing User's password to be used by anyone other than an authorized agent of the Filing User.

8.4 A document requiring the signature of a defendant in a criminal case may be electronically filed only in a scanned format that contains an image of the defendant's signature.

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8.5 Documents requiring signatures of more than one party must be electronically filed either by: (a) submitting a scanned document containing all necessary signatures; (b) representing the consent of the other parties on the document; (c) identifying on the document the parties whose signatures are required and by the submission of a notice of endorsement by the other parties no later than three business days after filing; or (d) in any other manner approved by the Court.

(*See section 13 - ECF Basics*).

Section 9. Service of Documents by Electronic Means

Transmission of the Clerk's Notice of Electronic Filing of a document shall constitute service of such document upon any Filing User in that case. It remains the duty of the attorney for a party to review regularly the docket sheet of the case. Attorneys and pro se parties who are not Filing Users shall be served with a paper copy of any electronically filed pleading or other document. Service of such paper copy must be made according to the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure and the Local Rules.

(*See section 19 - Service of Electronically Filed Documents*).

Section 10. Notice of Court Orders and Judgments

Immediately upon the entry of an order or judgment in a proceeding assigned to the ECF system, the Clerk will transmit to all Filing Users in the case, in electronic form, a Notice of Electronic Filing. Electronic transmission of the Notice of Electronic Filing constitutes the notice required by Fed.R.Crim.P. 49(c) and Fed.R.Civ.P. 77(d). It remains the duty of the attorney for a party to review regularly the docket sheet of the case. The Clerk must give notice in paper form to a person who is not a Filing User in accordance with the Federal Rules of Civil Procedure or the Federal Rules of Criminal Procedure.

(*See section 19 - Service of Electronically Filed Documents*).

Section 11. Technical Failures

A Filing User whose filing is made untimely as the result of a technical failure may seek appropriate relief from the Court.

(*See section 23 - ECF Computer System Information*).

Section 12. Public Access

A person may review at the Clerk's Office filings that have not been sealed by the Court. A person also may access the ECF system at the Court's Internet site www.nysd.uscourts.gov by obtaining a PACER log-in and

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password. A person who has PACER access may retrieve docket sheets in civil and criminal cases, documents in a civil case assigned to the ECF System, and documents in a criminal case filed after November 1, 2004. Only counsel for the government and for a defendant may retrieve documents in a criminal case filed prior to November 1, 2004. Only a Filing User under Rule 2 herein may file documents.

(*See section 13 - ECF Basics*).

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Part II. Electronic Case Filing Instructions

Section 13. ECF Basics

13.1 May letters be filed electronically?

No. Letters are submitted in the traditional manner on paper. An attorney should not file a letter electronically on the ECF system. The Judge may direct the Clerk to place a letter on the docket if it is deemed appropriate.

13.2 In brief, how do I file a document electronically?

(a) Use your secure SDNY ECF password (*see section 22 - ECF Passwords*) to log-in to the ECF system from any Internet connection.

(b) Select the appropriate category, CIVIL or CRIMINAL.

(c) Find the appropriate ECF Filing Event, or title, for your document. (*See below*).

(d) Indicate the party filing the document (hold down the control key to designate more than one party).

(e) Upload a PDF copy (*see section 23 - ECF Computer System Information*) of your document. Include any exhibits as attachments to the main document. File supporting documents separately.

(f) Print the final screen, the Notice of Electronic Filing (NEF), for your records.

(g) Service is complete provided all parties receive electronic notice of the filing (via the NEF email sent automatically by the Court - see the NEF for a list of who was/was not served electronically). If a party will not receive electronic notice via the NEF email, you must serve him/her in the traditional manner, on paper, then electronically file an affidavit of service (*see section 19 - Service of Electronically Filed Documents*).

(h) Submit a paper courtesy copy to the Judge if required (*see the Judge's Individual Practices at www.nysd.uscourts.gov*).

13.3 What is the secure website for electronic filing on the SDNY ECF system?

To file electronically go to **https://ecf.nysd.uscourts.gov**, or link to the filing website via the Court's public website (see below). You will need your SDNY ECF log-in and password to file electronically.

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13.4 What is the public website for information about the Court?

For publicly available information go to **www.nysd.uscourts.gov** (no password required). From the homepage click on ECF for information on Electronic Case Filing.

13.5 What are the mailing addresses for the Court?

United States District Court, 500 Pearl Street, New York, NY 10007; or United States District Court, 300 Quarropas Street, White Plains, NY 10601.

13.6 Is an electronically filed document filed in accordance with the Federal Rules of Civil Procedure?

Yes. Local Civil Rule 5.2 provides:

> A paper filed by electronic means in accordance with procedures promulgated by the Court is, for purposes of Federal Rule of Civil Procedure 5(e), filed in compliance with the local civil rules of the Southern and Eastern Districts of New York.

(*See section 3 - Consequences of Electronic Case Filing*).

13.7 Which cases are ECF cases?

Civil and criminal cases filed after December 2, 2003, are subject to electronic filing. Cases filed before that date, Social Security cases, habeas corpus cases and pro se cases will not be assigned to the ECF system and must be filed on paper.

(*See section 1 - Scope of Electronic Filing*).

13.8 Which Judges entertain ECF cases?

All of the Court's District Judges and Magistrate Judges are able to entertain ECF cases.

13.9 How can I tell if my case is an ECF case?

The docket sheet will include the letters "ECF" in the upper right corner and an entry titled "CASE DESIGNATED ECF". If you are not sure if you are required to file electronically, call the ECF Help Desk at (212)805-0800.

13.10 If a case is deemed an ECF case, am I required to file documents electronically?

Yes. In an ECF case the attorney is responsible for electronically filing documents over the Internet using a secure SDNY log-in and password. With certain exceptions outlined below the Clerk's Office will not accept paper filings in an ECF case.

(*See section 1 - Scope of Electronic Case Filing* and *section 18 -Non-Electronic Documents*).

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13.11 May I file documents electronically in a non-ECF (paper) case?

No. Do not file documents electronically in non ECF (paper) case. Only those cases filed after December 2, 2003 are subject to electronic filing. Pro Se cases, Social Security cases, habeas corpus cases and cases filed before December 2, 2003, will not be assigned to the ECF system and must be filed on paper.

(*See section 1 - Scope of Electronic Case Filing*).

13.12 Will the Court file documents electronically in a non-ECF (paper) case?

Yes, the Court may file Orders and Opinions in electronic format (pdf) in a non-ECF (paper) case. This will not convert a non-ECF case to an ECF case, and parties should continue to file documents on paper.

13.13 Can I file electronically at any time?

Yes. You can file electronically 24 hours a day, 7 days a week, 365 days a year from any Internet connection worldwide. Filing must be completed before midnight local time where the Court is located in order to be considered timely filed that day.

(*See section 3 - Consequences of Electronic Case Filing*).

13.14 When is an electronically filed document deemed filed?

An electronically filed document is deemed filed on the date and time stated on the Notice of Electronic Filing (also referred to herein as the "filing receipt") from the Court.

(*See section 3 - Consequences of Electronic Case Filing*).

13.15 What is a docket sheet, and how can I view one?

The docket sheet is the official record of all filings in a case. You can view the docket sheet, including images of electronically filed documents, via the PACER public access system (for details go to http://pacer.psc.uscourts.gov or call 800-676-6856). Or you can use one of the public access computers available in the Clerk's Office.

(*See section 12 - Public Access*).

13.16 Should I routinely view the docket sheet in my case?

Yes. In ECF cases, service is accomplished by an e-mail sent by the Court. However e-mail is not foolproof, and you may miss an e-mail message. Therefore it remains the duty of the attorney for a party to review regularly the docket sheet of the case in order not to miss a filing.

(*See section 9 - Service of Documents by Electronic Means*).

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13.17 How do I view an electronically filed document in an ECF case?

Click on Query, enter the case number, go to Docket Report, find the document and click on the blue number (hyperlink) next to that entry. A pdf copy of the complete document will then appear. If there is no blue hyperlink, then there is no electronic version of that document. In non-ECF (paper) cases you will not be able to view documents, only document summaries.

13.18 How will I know if it's appropriate to electronically file my document?

First, determine if your case is an ECF case - not all cases are ECF cases. When filing in an ECF case if you can find an ECF Filing Event that directly matches your document then it should be electronically filed. If you cannot find a matching ECF Filing Event it probably should not be electronically filed. The ECF Event Dictionary (a PDF document available on our public website at www.nysd.uscourts.gov) is very useful for finding your event and the category in which it is listed. See the list of non-ECF documents below or call the ECF Help Desk at (212)805-0800.

(*See section 24 - ECF Help Desk and Training*).

13.19 Must the caption indicate the case is an electronic (ECF) case?

Yes. The case number must be followed by the judge's initials in parenthesis, and "ECF CASE" below the case number. For example:

06 cv 1234 (ABC)
ECF Case

(*See section 8 - Signatures*).

13.20 How do I sign an electronically filed document?

The ECF log-in and password of the filing attorney serve as his/her electronic signature. The filing attorney may place an S/ in place of his/her signature. The attorney's name and contact information, including e-mail address, must appear below the signature line. Signatures for all other persons (clients, witnesses etc.) must be scanned in order to capture the actual ink signature.

(*See section 8 - Signatures*).

13.21 When filing must I choose a name for my document on the ECF Docket Sheet?

Yes. When filing electronically you will be asked to name your document by selecting the appropriate ECF Filing Event. The ECF Filing Event is essentially the title of the document on the docket sheet, such as Motion for Summary Judgment or Affidavit in Support of Motion.

13.22 How do I find the correct ECF Filing Event for my document?

ECF Filing Events are listed by category on the ECF system. Within each category is an alphabetical listing of available ECF Filing Events. You may use the search function to find your Filing Event. The ECF Event

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Dictionary (a pdf document available on our public website at www.nysd.uscourts.gov) is also very useful for finding your event and the category in which it's listed. Print the dictionary for future reference. If you cannot find the appropriate event for your document do not file it using the wrong event. Call the ECF Help Desk at (212)805-0800 for assistance if necessary.

(*See section 24 - ECF Help Desk and Training*).

13.23 Must I retain paper originals of documents I electronically file?

Yes. Filing Users must retain original versions of electronically filed documents for a period of time after filing. On request of the Court, the Filing User must provide original documents for review.

(*See section 7 - Retention Requirements*).

13.24 Should I continue to submit courtesy copies?

Yes, continue your current practice. In the past if you would have submitted a paper courtesy copy of a document, you should now submit a paper courtesy copy of the document in an ECF case. For example, most Judges require courtesy copies of motion papers. Read the Judge's Individual Practices for specific practices.

(*See section 3 - Consequences of Electronic Case Filing*).

13.25 Are Administrative Records filed electronically?

Yes, if possible. However, if the administrative record is too large to be scanned it may be served and filed in hard copy without prior motion and order of the Court.

(*See section 5 - Attachments and Exhibits*).

13.26 In Consolidated and MDL cases can I file simultaneously in member cases?

Yes. When filing in Consolidated and Multi-District Litigation (MDL) cases you can save time by electronically filing a document simultaneously in the member case(s) using the computer function titled "Spread Text and Effects" (not available in related cases). Please observe the following MDL filing rules:

- In consolidated and MDL cases you must file all documents first under the Lead or MDL case number.

- You may then precisely designate the member case(s) in which you wish to simultaneously file.

- Do not file in all cases unless it is appropriate. Your document may not relate to all member cases.

- The case caption must include all the case numbers in which your document will be filed.

- Instructions for Spread Text and Effects and information on in-person training are available on-line at www.nysd.uscourts.gov

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13.27 What if I make a mistake in electronic filing?

Call the ECF Help Desk immediately at (212)805-0800.

(*See section 24 - ECF Help Desk and Training*).

Section 14. Opening a Civil Action

14.1 Electronically filed (ECF) cases are opened and service of the initiating documents (complaint, notice of removal, etc.) is accomplished in the traditional manner, on paper.

14.2 In order to alert your adversary(s) to the requirements of Electronic Case Filing and the Judge's Individual Practices you are required to deliver paper copies of the following documents to all parties (available at the courthouse, and www.nysd.uscourts.gov):

- **Electronic Case Filing Rules & Instructions** (this document)
- **The Individual Practices** of the assigned Judge

14.3 Then within 24 hours of the assignment of a case number, you are required to e-mail to the Clerk's Office (e-mail is not ECF filing) the initiating documents in PDF format only (such as Adobe Acrobat PDF, see section 21). Include a F.R.C.P. Rule 7.1 Statement (if applicable) and all exhibits. The case number followed by the Judge's initials and "ECF CASE" must appear in the case caption. Failure to do so within 24 hours will delay adding your PDF documents to the computerized ECF docket.

Each document must be in a separate PDF file no larger than 2.5 megabytes (separate large computer files into smaller parts if necessary, and label accordingly). The subject line of the e-mail and the name of the PDF file should list the case number followed by a brief document description (ex. "Re: 01cv1234 KMW-complaint").

Send a PDF copy of the initiating documents by e-mail (do not file on the ECF system) to:

- For new civil cases assigned to a Manhattan Judge e-mail to:
  caseopenings@nysd.uscourts.gov
  or **case_openings@nysd.uscourts.gov**
- For new civil cases assigned to a White Plains Judge e-mail to:
  wpclerk@nysd.uscourts.gov

14.4 File the Affidavit of Service (or the Acknowledgment of Service, Certificate of Service, Request for Waiver of Service, Summons Returned Executed/Unexecuted, Waiver of Service Executed/Unexecuted) for the initiating document (complaint, notice of removal, etc.) in the following manner:

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(a) Electronically file the Affidavit of Service for the initiating document on the ECF system (do not e-mail), and

(b) Deliver the original paper Affidavit of Service, with summons attached, to the Clerk's Office. Include a copy of the ECF Notice of Electronic Filing for this document (the filing receipt),

(See section 19 - Service of Electronically Filed Documents).

14.5 Subsequent documents, including the Defendant's Answer, must be filed electronically on the ECF system at **https://ecf.nysd.uscourts.gov**. With certain exceptions outlined below, the Clerk's Office will not accept a paper document for filing in an ECF case.

(See section 1 - Scope of Electronic Filing and *section 18 - Non-electronic Documents).*

Section 15. Motions

15.1 What ECF Filing Event should be used to file a motion?

A motion must be filed using an ECF Filing Event beginning with the word "Motion". The ECF system contains over 160 separate motion Filing Events for your use, all beginning with the word "Motion" (eg. "Motion for Summary Judgment", etc.). See the ECF Events Dictionary at www.nysd.uscourts.gov for a complete list of motions and supporting documents. Do not use the "Notice" filing event to file a motion.

15.2 Should I file supporting papers as attachments to the motion?

No. File supporting or response documents separately under the appropriate ECF Filing Event found in the category "Replies, Opposition and Supporting Documents". For example, a motion, an affidavit in support and a memorandum of law in support must be filed separately.

15.3 What ECF Filing Event should be used to file supporting papers?

Use the appropriate ECF Filing Events for supporting papers found in the category "Replies, Opposition and Supporting Documents" (eg. Affidavit in Support of Motion, Memorandum of Law in Support of Motion, etc.). Never use the ECF Filing Event for Motion to file supporting papers. For example, filing a motion, an affidavit in support and a memorandum of law in support, and labeling each one "Motion" would make it appear incorrectly that three motions were filed instead of one.

15.4 How do I file exhibits?

Exhibits shall be filed only as attachments to a document, such as a motion or an affidavit. Do not use the ECF Filing Event for "Motion" to file exhibits separately. Exhibits are the only items that should be attached to electronically filed documents. You are limited to electronically filing only relevant excerpts of exhibits.

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Excerpts must be clearly identified as such. If the exhibit is too large to be scanned and electronically filed call the ECF Help Desk at (212)805-0800.

(See section 5 - Attachments and Exhibits; see also section 24 - ECF Help Desk and Training).

Section 16. Default Judgments

16.1 How do I file a Default Judgment?

In one of the three ways outlined below. Consult the Individual Practices of the Judge to determine the appropriate method (at www.nysd.uscourts.gov). If the Judge's Individual Practices contain no specific rules regarding Default Judgments you should follow section 16.4 below.

If you wish to electronically file a Request to Enter Default Judgment before submitting a Default Judgment, you must file an unsigned Clerk's Certificate as an attachment to the Request. Then submit a paper copy of the proposed Clerk's Certificate to the Orders, Appeals & Judgments Clerk. The clerk will sign and return the Clerk's Certificate, and you may then move for a Default Judgment using the appropriate method outlined below.

When necessary, submit paper documents to the Orders, Appeals & Judgements Clerk in Manhattan (212-805-0143) or White Plains (914-390-4000) depending upon where the Judge sits. If sending documents by mail, enclose a return envelope with postage. For mailing addresses *see section 13 - ECF Basics*.

16.2 Default Judgment brought by Motion:

(a) Submit to the Orders, Appeals & Judgment Clerk two paper Clerk's Certificates. The clerk will sign and return both Certificates to the filing party.

(b) Electronically file the Motion for Default Judgment on the ECF system. The following items should be filed as attachments to the Motion: the signed Clerk's Certificate; and a copy of the Summons and Complaint with proof of service. The following supporting documents should be filed as separate ECF Filing Events: Affidavit in Support; and Statement of Damages (unless requesting an inquest).

(c) Electronically file an Affidavit of Service for the Motion for Default Judgment.

(d) Submit a courtesy copy of the Motion to the Judge, including the original signed Clerk's Certificate and a copy of the Affidavit of Service.

16.3 Default Judgment brought by Order to Show Cause (OSC):

(a) Submit to the Orders, Appeals & Judgments Clerk a paper original of the OSC. Include as exhibits to the Affidavit in Support a Clerk's Certificate and a proposed Default Judgment.

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Include courtesy copies of all documents.

(b) If signed by the Court, the Clerk's Office will electronically file only the Order. After the Order appears on the docket sheet, the attorney must electronically file all supporting papers.

(c) Electronically file an Affidavit of Service for the Order to Show Cause.

16.4 Default Judgment brought on by Default Judgment and Order:

(a) Submit to the Orders, Appeals & Judgments Clerk: a paper original of the proposed Default Judgment and Order; the Affidavit in Support; a Statement of Damages (unless requesting an inquest); a copy of the Summons and Complaint with proof of service; and a Clerk's Certificate. The papers will be forwarded to the Judge for signature.

(b) If signed by the Court, the Clerk's Office will electronically file only the Order. After the Order appears on the docket sheet, the attorney must electronically file all supporting papers.

Section 17. Appeals

17.1 Are appeals filed electronically?

No. Appeals in ECF and non-ECF cases must be filed in the traditional manner, on paper.

17.2 How do I file an appeal in an ECF case?

File the appeal in the traditional manner, on paper either at the courthouse or by mail. Include the filing fee if necessary. Then within 24 hours of filing the paper copy of your Appeal, you are required to e-mail to the Clerk's Office an electronic copy of the Appeal in PDF format. Include any exhibits. Each document must be in a separate PDF file no larger than 2.5 megabytes. The District Court case number followed by the Judge's initials and "ECF CASE" must appear in the document's case caption. When sending e-mail, the subject line of the e-mail should always list the case number followed by a document description (ex. "Re: 01cv1234-appeal"). Questions may be directed to the Orders, Appeals & Judgments Clerk in Manhattan at (212)805-0636, or in White Plains at (914)390-4000. Send the e-mail (do not file on the ECF system) to:

- For appeals from an ECF case assigned to a Manhattan Judge e-mail to:

  appeals@nysd.uscourts.gov

- For appeals from an ECF case assigned to a White Plains Judge e-mail to:

  wpclerk@nysd.uscourts.gov

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Section 18. Non-Electronic Documents

18.1 In an ECF case are there documents that I should not file electronically?

Yes, including:

- Letters, see instruction 18.2 below.
- Case initiating documents (complaint, notice of removal, etc.), see section 14;
- All types of complaints (3rd party, Interpleader etc.), see instruction 18.3 below;
- Proposed orders; proposed judgments, stipulations; consents, see instruction 18.4 below;
- Orders to show cause (with or without a temporary restraining order), see instruction 18.6 below;
- Motions for Admission pro hac vice, see instruction 18.7 below;
- Miscellaneous cases, see instruction 18.8 below;
- Sealed documents, see instruction 18.9 below;
- Surety bonds, see instruction 18.10 below;
- Bill of Costs, see instruction 18.11 below;
- Notices of Appeal, see section 17;

18.2 May letters be filed electronically?

No. Letters are submitted in the traditional manner on paper. An attorney should not file a letter electronically on the ECF system. The Judge may direct the Clerk to place a letter on the docket if it is deemed appropriate.

18.3 Are Amended Complaints, Third Party Complaints, Interpleader Complaints, etc. filed electronically?

No. All complaints, no matter what type, are filed the same way:

(a) Deliver the paper original to the appropriate Clerk's Office (Manhattan or White Plains), and

(b) E-mail a PDF copy of the document within 24 hours, including exhibits and Rule 7.1 Disclosure Statement (if required) to the Clerk's Office. Send the e-mail to:

- For cases assigned to a Manhattan Judge e-mail to:

caseopenings@nysd.uscourts.gov

or **case_openings@nysd.uscourts.gov**

- For cases assigned to a White Plains Judge e-mail to:

wpclerk@nysd.uscourts.gov

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18.4 Are Proposed Orders, Proposed Judgments, Stipulations or Consents filed electronically?

No. Any document that requires the signature of a Judge should not be electronically filed. Proposed orders, judgments, stipulations and consents should not be submitted through the ECF system. Instead they should be sent by e-mail to the Clerk. Proposed orders should be submitted in word processing format (WordPerfect or Word) rather than as a pdf document. Stipulations should be submitted in pdf format. Stipulations must contain ink signatures. Faxed signatures are acceptable, the last person to sign may e-mail it to the clerk. [Please note, effective August 1, 2008, Stipulations of Voluntary Dismissal pursuant to F.R.C.P. Rule 41(a)(1)(A)(ii) do not require the signature of a Judge, and should be electronically filed in ECF cases.] Questions may be directed to the Orders, Appeals & Judgments Clerk in Manhattan at (212)805-0143 or in White Plains at (914)390-4000. E-mail the proposed order, judgment or stipulation to:

- For cases assigned to a Manhattan Judge e-mail to:

  judgments@nysd.uscourts.gov

- For cases assigned to a White Plains Judge e-mail to:

  wpclerk@nysd.uscourts.gov

18.5 Must a Stipulation or Consent include a traditional ink signature?

Yes. You cannot substitute s/ for a traditional ink signature for these documents. Faxed signatures are acceptable.

(*See section 8 - Signatures*).

18.6 Are Orders to Show Cause filed electronically?

No. An Order to Show Cause (with or without a Temporary Restraining Order) must be submitted in the traditional manner, on paper, to the Orders, Appeals & Judgments clerk. If signed by the Court, the Clerk's Office will electronically file only the Order. After the Order appears on the docket sheet, the attorney must electronically file all supporting papers

18.7 Are Motions for Admission pro hac vice filed electronically?

No. A Motion for Admission pro hac vice is filed in the traditional manner, on paper. See the Attorney Admissions page at www.nysd.uscourts.gov for details and sample forms.

18.8 Are Miscellaneous cases filed electronically?

No. Miscellaneous cases are filed in the traditional manner, in paper form. Miscellaneous cases are those that use an "M" docket number (eg. "M 8-85") instead of a traditional case number, and require payment of a Miscellaneous filing fee for each document.

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18.9 Are sealed documents filed electronically?

No. Sealed documents are filed in the traditional manner, in paper form. The sealed envelope must contain the paper document and a CD-ROM containing a pdf copy of the document. A copy of the Judge's sealing order must be attached to the outside of the envelope.

(*See section 6 - Sealed Documents*).

18.10 Are surety bonds filed electronically?

No. Surety bonds are filed in the traditional manner, on paper. Include a copy of the Court's Order regarding the bond.

18.11 Is a Bill of Costs filed electronically?

No. A Bill of Costs should be filed in the traditional manner, in paper form. See Local Civil Rule 54.1 for details. See also the required Bill of Costs form at www.nysd.uscourts.gov.

Section 19. Service of Electronically Filed Documents

19.1 How is service accomplished for electronically filed documents?

After you register for an ECF password (*see section 22 - ECF Passwords*) you will receive a Notice of Electronic Filing (NEF) by e-mail whenever there is activity in your case, including court orders and filings by your adversary. That e-mail from the Court constitutes service. A hyperlink to a PDF image of any electronically filed document will be included (not all activity includes a PDF document). Print a copy of the document and the NEF for your records. The Clerk's Office will no longer mail paper copies of electronically filed documents.

(See section 9 - Service of Documents by Electronic Means).

19.2 Am I required to serve a paper copy of an electronically filed document?

Maybe. If all parties will receive electronic notification of the filing, then service is complete upon transmission by the Court of the Notice of Electronic Filing email (NEF) and you are not required to serve a paper copy.

If any party will not receive a NEF, you are required to accomplish service on that party in the traditional manner, on paper. Then you must electronically file an Affidavit of Service (see below).

The Notice of Electronic Filing receipt will inform you who will receive notice of the filing "electronically" (by e-mail from the Court) and who will receive notice "by other means" (traditional service on paper).

(*See section 9 - Service of Documents by Electronic Means*).

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19.3 Am I required to electronically file an Affidavit of Service in an ECF case?

Only two circumstances require the electronic filing of an Affidavit of Service in an ECF case:

(a) The Affidavit of Service for the initiating document (complaint, notice of removal, etc.) must be filed as follows:

(1) Electronically file the Affidavit of Service for the initiating document on the ECF system (do not send by e-mail), and

(2) Deliver the original paper Affidavit of Service with summons attached to the Clerk's Office. Attach a copy of the ECF filing receipt for this document. And

(b) An Affidavit of Service must be electronically filed anytime a party is served with a paper document. This usually occurs when a party will not receive electronic notice of the filing (via e-mail) from the Court. See the Notice of Electronic Filing (NEF) for a list of who was or was not served electronically.

(*See section 9 - Service of Documents by Electronic Means*).

19.4 Is a filing timely if it is completed before midnight?

Yes. Filing must be completed before midnight local time where the Court is located in order to be considered timely filed that day.

(*See section 3 - Consequences of Electronic Case Filing*).

19.5 Do I receive a receipt (Notice of Electronic Filing) when I file electronically?

Yes. When you successfully complete an electronic filing the final screen will display a NOTICE OF ELECTRONIC FILING (NEF), or filing receipt. Print a copy for your records. The NEF receipt will tell you what was filed, by whom, when it was filed and if a document number was assigned on the docket sheet (not all case activity merits a document number). If you do not see the NEF screen your filing may not have been successful and you are advised to check the docket sheet.

19.6 Should I routinely view the docket sheet in my case?

Yes. Although service is accomplished in ECF cases by an e-mail sent by the Court, e-mail is not foolproof and you risk missing an e-mail message. Therefore it remains the duty of the attorney for a party to review regularly the docket sheet of the case in order not to miss a filing.

(*See section 9 - Service of Documents by Electronic Means*).

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Section 20. Attorney Appearances

20.1 How does an attorney's name appear on the docket sheet?

The attorney who signs the initiating document will be added to the docket sheet when the Clerk's Office opens the case on the ECF system. The attorney responding to that filing must add his or her own name to the docket sheet the first time he or she appears in the case. When electronically filing the first document, the responding attorney must: (a) click to create an "Association" with the client (i.e. represent the client); (b) click the "Notice" box to receive electronic notice of case activity; and (c) click the "Lead" attorney box if applicable. If the responding attorney is not offered the opportunity to create an "association" with the client on his/her first electronic filing, he/she must electronically file a Notice of Appearance in order to appear on the docket.

20.2 If the attorney's name is on the docket sheet why doesn't he/she receive e-mail notification of filings?

It could be because his or her name was added to the docket sheet before the attorney obtained an ECF password. In that case the attorney's name and firm address will appear at the top of the docket sheet, but the e-mail address will be missing. If this is the case the solution is to obtain an ECF password. Or it could be because the attorney filed a Notice of Appearance but failed to check the "Notice" box when creating an association with the client to indicate that he or she would like to receive e-mail notification of activity in the case. In this case, call the ECF Help Desk at (212)805-0800.

(*See section 24 - ECF Help Desk and Training*).

20.3 How do I electronically file a Notice of Appearance in an ECF case?

If an attorney joins a case already in progress he or she must electronically file a Notice of Appearance. When electronically filing the Notice of Appearance, the attorney must: (a) click to create an "Association" with the client (i.e. represent the client); (b) click the "Notice" box to receive electronic notice of case activity; and (c) click the "Lead" attorney box if applicable. Please note the ECF system will not allow an attorney to electronically file a Notice of Appearance on behalf of another attorney. The Notice of Appearance and the ECF password must belong to the same attorney.

(*See section 2 - Eligibility, Registration, Passwords*).

20.4 How do I file a Motion for Admission pro hac vice in an ECF case?

In the traditional manner, on paper. After the Order of Admission pro hac vice is signed, the attorney must apply for an ECF password. See the Attorney Admissions page at www.nysd.uscourts.gov for details and sample forms.

20.5 Am I required to notify the Court when my contact information changes?

Yes. Local Civil Rule 1.3 requires an attorney to notify the court when his/her contact information changes.

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For information go to www.nysd.uscourts.gov or call the Attorney Admissions Clerk at (212) 805-0645. Follow the steps below to change your contact information:

(a) If you have a pending case provide notice to the Court and your adversary(s) by electronically filing a NOTICE OF CHANGE OF ADDRESS in each open case where you remain the attorney of record, or

(b) If you do not have a pending case mail written notice of the change to: Attorney Admissions Clerk, United States District Court, 500 Pearl Street, NY, NY 10007.

20.6 What if only my e-mail address has changed?

You can make a simple change of your e-mail address yourself on the ECF system. To update your primary e-mail address click on Maintain Your Account and E-mail Information. However, if your other contact information has changed you must follow the directions above to update your full contact information.

20.7 Can I specify additional e-mail addresses to receive notification of activity in my cases?

Yes. You can add an alternate e-mail address for yourself, or add a colleague's e-mail address. On the ECF system click on Utilities, Maintain Your Account, and E-mail Information.

20.8 Can I receive electronic notification of activity in cases where I do not represent a party?

Yes. You can add cases to your e-mail notification list on the SDNY ECF system even if you don't represent a party to the case. Click on Utilities, Maintain Your Account, and E-mail Information.

Section 21. Privacy and Public Access to ECF Cases

21.1 Has electronic filing expanded public access to documents?

Yes, documents filed electronically on the ECF system are more widely available than ever before. Electronic documents can now be viewed over the Internet via a PACER account. In order to protect people's privacy and reduce the threat of identity theft, parties should be cautious when filing sensitive information.

21.2 Who is responsible for redacting sensitive information from filed documents?

It is the sole responsibility of counsel and the parties to be sure that all documents comply with the rules of this Court requiring redaction of personal identifiers. Neither the judge nor the Clerk of Court will review documents for compliance with this rule.

21.3 Am I required to redact certain sensitive information in a document?

Yes. Amendments to Federal Rule of Civil Procedure 5.2 and Criminal Procedure 49.1 require that personal

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identification information be redacted from documents filed with the court. You should not include sensitive information in any document filed with the Court unless such inclusion is necessary and relevant to the case. This applies to both ECF cases and non-ECF (paper) cases. In compliance with the E-Government Act of 2002, a party wishing to file a document containing the personal data identifiers listed below must file a redacted version in the public file:

- Social Security Numbers: include only the last four digits of the number.
- Names of Minor Children: include only the initials of the child.
- Dates of Birth: include only the year.
- Financial Account #'s: include only the last four digits of these numbers.
- Home Addresses: include only the City and State.

21.4 Is there other sensitive information that I should consider redacting?

Yes. Caution should be exercised when filing documents that contain the following:

- Personal identifying numbers (PIN #'s), such as a driver's license number
- Medical records, treatment and diagnosis
- Employment history
- Individual financial information
- Proprietary or trade secret information
- Information regarding an individual's cooperation with the government

21.5 Am I required to file sensitive information under seal?

No. In addition to the redacted public filing a party may file, but is not required to file, the personal data identifiers listed above by filing under seal.

You may file under seal either: (a) a reference list, or (b) an original, unredacted version of the document.

If you find it necessary to file sensitive information, the Court prefers a reference list to the filing of a complete document. The reference list shall contain the complete personal data identifier(s) and the redacted identifier(s) used in its (their) place in the filing. The reference list may be amended as of right.

21.6 Are sealed documents filed electronically?

No. Sealed documents are filed in the traditional manner, in paper form. The sealed envelope must contain the paper document and a CD-ROM containing a pdf copy of the document. A copy of the Judge's sealing order must be attached to the outside of the envelope.

(*See section 6 - Sealed Documents*).

21.7 Who should maintain custody of original unredacted documents?

Parties are responsible for maintaining possession of original, unredacted documents, and information redacted

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from publicly filed documents. The Court may later require counsel to furnish the unredacted information.

21.8 What if I mistakenly file sensitive or confidential information?

(a) Immediately contact the ECF Help Desk at (212)805-0800. The filing will be temporarily sealed and made invisible to the public.

(b) After notifying the ECF Help Desk, the filing party must ask the Judge, in writing, for the entry to be formally sealed by the Court.

(c) Electronically file a redacted version of the mistaken filing.

Section 22. ECF Passwords

22.1 To file electronically in this Court, do I need an ECF password from the United States District Court for the Southern District of New York?

Yes. To file electronically in this District Court you must have an ECF log-in and password issued by this Court. This password is unique, and is not the same as a password from another District or Bankruptcy Court, or a PACER password. Protect the security of your password by reporting a lost or stolen password immediately to the ECF Help Desk at (212)805-0800.

(*See section 2 - Eligibility, Registration , Passwords*).

22.2 Is my SDNY ECF password the same as my PACER password?

No. Your SDNY ECF password is unique and is not the same as your password for the PACER public access system. For information on PACER go to http://pacer.psc.uscourts.gov or call 800-676-6856.

22.3 Must I be an attorney admitted to this Court to obtain an ECF password?

Yes. ECF passwords are available only to attorneys in good standing with this Court.

22.4 How do I obtain an ECF password if I am already admitted to practice in this Court?

An attorney admitted to practice in this court may register for an ECF password on-line at www.nysd.uscourts.gov. From the homepage click on CM/ECF, then Attorney Registration. You will need your SDNY bar code (your first and last initials followed by four numbers of your own choosing), and the exact date you were admitted to practice in this Court (the date is printed on your Certificate of Good Standing). Contact the Attorney Admissions Office at (212) 805-0645 if you have forgotten any of this information. Click to submit your application on-line, and wait for your ECF password to arrive by e-mail.

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22.5 How do I obtain an ECF password if I am not yet admitted to practice in this Court?

The application to be fully admitted to the bar of this court includes a request for an ECF password. Go to www.nysd.uscourts.gov and from the homepage click on Attorney Admission. The application to the bar of this Court requires you to: **(a)** submit your application on-line, and **(b)** deliver a paper copy of that application and the appropriate fee to the Clerk's Office. Your ECF password will be sent by e-mail after you are sworn-in. If you wish to practice in one case only, you should move for admission Pro Hac Vice (see instructions below).

22.6 How do I obtain an ECF password if I am admitted to practice pro hac vice?

An attorney may be admitted to practice in one case by moving for admission pro hac vice. For complete pro hac vice motion instructions go to www.nysd.uscourts.gov, then click on Attorney Admission. Immediately after a motion to be admitted pro hac vice is granted, the attorney is required to register on-line for an ECF password at www.nysd.uscourts.gov. Enter the date the order was signed and enter XXXXXX for the bar code. Click to submit your application on-line, and wait for your ECF password to arrive by e-mail.

22.7 Do I need a new ECF password if I change law firms?

No. Your ECF password will remain the same even if you change your contact information. Local Civil Rule 1.3 requires an attorney to notify the court when his/her contact information changes. For information go to www.nysd.uscourts.gov or call the Attorney Admissions Clerk at (212) 805-0645. Follow the steps below to change your contact information:

(a) If you have a pending case provide notice to the Court and your adversary(s) by electronically filing a NOTICE OF CHANGE OF ADDRESS in each open case where you remain the attorney of record, or

(b) If you do not have a pending case mail written notice of the change to: Attorney Admissions Clerk, United States District Court, 500 Pearl Street, NY, NY 10007.

22.8 How will I know if my ECF password application was submitted successfully on-line?

When you are ready click the "Submit" button on the bottom of the form. The screen will turn red and you will be asked to review your answers for accuracy. After review click "Proceed". If the screen turns green your application was successfully submitted.

22.9 How long does it take to obtain an ECF password?

Your ECF password will be sent to you by e-mail, within 48 hours of your on-line request. Print a copy for your records.

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Section 23. ECF Computer System Information

23.1 What Internet browser should I use to file electronically on the ECF system?

Each new version of ECF is tested with specific Internet browsers before release. Check the ECF log-in page for a list of approved Internet browsers.

23.2 What is a PDF file and how do I create one?

All documents filed on the ECF system must be PDF computer files (portable document format). A PDF file is created by scanning a printed document using PDF writer software such as Adobe Acrobat (go to Adobe.com for details). PDF files cannot be altered, providing security to the filer and the Court.

23.3 Can I file electronically at the courthouse?

Yes, you may scan and electronically file documents using the document scanners and computers available at the ECF Help Desk in the Clerk's Office. Bring your paper documents and your SDNY ECF log-in and password.

23.4 Is there a limit to the size of a document that can be filed on ECF?

Yes. No single PDF computer file may be larger than 2.5 megabytes (2.5 mb). No single filing event including attachments (eg. Affidavit in Support with exhibits attached) may be larger than 15 megabytes. If the filing is too large, the ECF system will not allow it to be filed, and you will not see a Notice of Electronic Filing (filing receipt) screen. To determine the size of an Adobe Acrobat PDF file click on File, Document Properties, Summary.

23.5 What if my document exceeds the file size limit?

Scan your documents at low resolution. Within the Adobe Acrobat program, on the "Scan Manager" screen, adjust the settings for black and white and 200 dpi (dots per inch). This creates a good quality picture and allows you to fit more pages into a single PDF file. If that doesn't work, separate an oversized file into 2 or more parts. Simply label each file 1a, 1b, 1c, etc. Only relevant excerpts of exhibits should be electronically filed (see below). Finally, if you still experience problems call the ECF Help Desk at (212)805-0800.

(*See section 24 - ECF Help Desk and Training*).

23.6 Do I need the Court's permission to file on paper in an ECF case?

Yes. If your document is too large to file electronically after following the directions above, you may seek permission from the Judge to file on paper. Call the ECF Help Desk first for guidance at (212)805-0800.

(*See section 5 - Attachments and Exhibits*).

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23.7 Must I file only relevant excerpts of exhibits?

Yes. You are limited to electronically filing only relevant excerpts of exhibits. Excerpts must be clearly identified as such.

(*See section 5 - Attachments and Exhibits*).

23.8 What if a technical failure prevents me from filing electronically?

If a technical failure prevents you from filing electronically, follow the steps below:

(a) Do not attempt to file paper documents in ECF cases except for emergency filings (eg. Temporary Restraining Order).

(b) If the problem concerns the Filing User's equipment or Internet Service Provider (ISP), and the Court's ECF system remains in service, the Filing User may use the document scanners at the ECF Help Desk in the Clerk's Office to file electronically. Bring your paper documents and your SDNY ECF password.

(c) If the Court's ECF system is out of order you should electronically file your document as soon as the system is restored.

(d) If you missed a filing deadline when the ECF system was out of order, attach a statement to your filing explaining how the interruption in service prevented you from filing in a timely fashion.

(*See section 11 - Technical Failures*)

Section 24. ECF Help Desk & Training

24.1 How can I learn how to file electronically?

The Court offers several options for ECF training. Details are available on the CM/ECF page at www.nysd.uscourts.gov

(a) In-person training classes are offered weekly for attorneys and support staff (approx. 2 hours).

(b) Step by step filing instructions can be found on-line in the course materials for our in-person training. From the CM/ECF page click on Training. Then click on Instructor Led Training, and click on the course title.

(c) "ECF 101" is a short interactive web-based introduction to electronic filing available on-line.

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24.2 How do I sign up for free e-mail alerts concerning ECF news?

Sign up for free e-mail alerts from the Court at www.nysd.uscourts.gov. From the homepage click on CM/ECF, then POC. You will receive periodic e-mails alerting you to planned ECF service interruptions for maintenance, and unplanned interruptions due to technical difficulties. You will also receive periodic ECF Newsletter e-mails containing news and helpful filing hints. You do not need to be an attorney to sign up for free e-mail alerts.

24.3 How do I contact the ECF Help Desk?

The ECF telephone Help Desk is available from 8:30 AM to 7:00 PM Monday through Friday at (212) 805-0800. Or you can e-mail your ECF questions to **helpdesk@nysd.uscourts.gov**

The preceding Rules for Electronic Case Filing were approved by the Board of Judges of the Southern District of New York on May 28, 2008.

The preceding Electronic Case Filing Instructions were written by the Clerk of Court under the authority of the ECF Rules and were last revised on August 1, 2008.

TOY-RQ-05E-00010535

CT Corporation

Service of Process Transmittal
02/18/2010
CT Log Number 516178429

TO: Pete Patterson
NEW UNITED MOTOR MANUFACTURING INC.
45500 FREMONT BLVD.
FREMONT, CA 94538-

RE: **Process Served in California**

FOR: NEW UNITED MOTOR MANUFACTURING, INC. (Domestic State: CA)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION:	Barbara Iglesias, Individually and On Behalf of All Others Similarly Situated, Pltf. vs. Toyota Motor Corporation, et al. including New United Motor Manufacturing, Inc., Dfts.
DOCUMENT(S) SERVED:	Summons, Return Form, Complaint and Jury Trial Demand, Attachment(s)
COURT/AGENCY:	United States District Court, Southern District, NY Case # 10CIV1014
NATURE OF ACTION:	Product Liability Litigation - Breach of Warranty - Class Action - Defective accelerator pedal assemblies and floor mats in the recalled vehicles
ON WHOM PROCESS WAS SERVED:	C T Corporation System, Los Angeles, CA
DATE AND HOUR OF SERVICE:	By Process Server on 02/18/2010 at 13:10
APPEARANCE OR ANSWER DUE:	Within 20 days after service, exclusive of the day of service
ATTORNEY(S) / SENDER(S):	Jill S. Abrams Abbey Spanier Rodd & Abrams, LLP 212 East 39th Street New York, NY 10016 212-889-3700
ACTION ITEMS:	SOP Papers with Transmittal, via Fed Ex 2 Day , 792176044603 Image SOP Email Notification, Pete Patterson ppatterson@nummi.com
SIGNED:	C T Corporation System
PER:	Nancy Flores
ADDRESS:	818 West Seventh Street Los Angeles, CA 90017
TELEPHONE:	213-337-4615

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.

1:10 2/18/10

AO440 (Rev 8/01) Summons in a Civil Action

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JUDGE CASTEL

Barbara Iglesias, Individually and On Behalf Of All Others Similarly Situated,

Plaintiff,

vs.

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

Defendants.

SUMMONS IN A CIVILACTION

CASE NO.:

10 CIV 1014

TO: New United Motor Manufacturing, Inc.
c/o CT Corporation System
818 West Seventh Street
Los Angeles, CA 90017

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY, (name and address)

JILL S. ABRAMS, ESQ.
ABBEY SPANIER RODD & ABRAMS, LLP
212 East 39th Street,
New York, New York 10016
(212) 889-3700

an answer to the complaint which is herewith served upon you, within twenty (20) days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

J. MICHAEL MCMAHON

CLERK

DEPUTY CLERK

DATE

FEB 08 2010

RETURN OF SERVICE

Service of the Summons and Complaint was made by me[1]	DATE
NAME OF SERVER	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: _____

☐ Other (specify): _____

STATEMENT OF SERVICE FEES

TRAVEL	SERVICES	TOTAL
		$0.00

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.

JUDGE CASTEL

10 CIV 1014

ABBEY SPANIER RODD & ABRAMS, LLP
Jill Abrams (JA 1578)
jabrams@abbeyspanier.com
Orin Kurtz (OK 7334)
okurtz@abbeyspanier.com
Jeremy Nash
jnash@abbeyspanier.com (JN 2857)
212 East 39th Street
New York, New York 10016
(212) 889-3700

Attorneys for Plaintiff

RECEIVED
Feb 08 2010
U.S.D.C. S.D. N.Y.
CASHIERS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Barbara Iglesias, Individually and On Behalf Of All Others Similarly Situated,

Plaintiff,

vs.

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

Defendants.

Civil Action No.

CLASS ACTION COMPLAINT AND JURY TRIAL DEMAND

Plaintiff Barbara Iglesias ("Plaintiff"), by and through her undersigned attorneys, alleges as follows:

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d) because this action involves citizens of different states. The amount in controversy exceeds $5,000,000, exclusive of interest and costs.

2. Venue is proper in this District pursuant to 28 U.S.C. §1391, because Defendants do business in this District, and a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this District.

THE PARTIES

3. Plaintiff is a resident of the Bronx, New York. On December 1, 2009, Plaintiff bought a 2010 model year Toyota Camry in the Bronx, New York.

4. Defendant Toyota Motor Corporation ("TMC") is and was, at all relevant times, a Japanese limited liability, joint-stock company which operates through numerous subsidiaries and affiliated companies. Its principal executive office is located at 1 Toyota-cho, Toyota City, Aichi Prefecture 471-8571, Japan. Its automotive operations include the design, manufacture, assembly and sale of passenger cars, minivans and commercial vehicles. TMC's financial services business consists primarily of providing financing to dealers and their customers for the purchase or lease of Toyota vehicles. Its financial services also provide retail leasing through the purchase of lease contracts originated by Toyota dealers. North America is one of Toyota's primary automobile markets. In the U.S., Toyota vehicles are marketed through distributors and through these distributors, Toyota maintains networks of dealers.

5. Defendant Toyota Motor Sales, U.S.A., Inc. ("TMS") is and was, at all relevant times, a California corporation. It is a wholly owned subsidiary of TMC and responsible for the

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manufacture, distribution and sales of Toyota automobiles and trucks in the U.S. It is located at 19001 South Western Avenue, Torrance, CA.

6. Defendant Toyota Motor North America, Inc. ("TMNA") is the holding company for, and oversees, Toyota's manufacturing, financing, sales research and development, and marketing operations in the U.S., Canada and Mexico and is based in New York at 9 West 57th Street, Suite 4900, New York, New York.

7. Defendant Toyota Motor Engineering & Manufacturing North America ("TMEMNA") is the parent company for Toyota's manufacturing operations in the U.S. and Canada. It operates as a subsidiary of TMC and provides centralized support in the areas of purchasing, production, production control, engineering, quality control, and administration. It is headquartered at 25 Atlantic Avenue, Erlanger, Kentucky.

8. Defendant Lexus ("Lexus") is the luxury vehicle division of TMC. Lexus operates its own design, engineering, and manufacturing centers, solely responsible for the division's vehicles. Lexus' headquarters are located in Toyota City, Aichi Prefecture, Japan. Lexus' design facilities are located in California, among other places. The Lexus ES is assembled at the Miyata plant Miyawaka City, Fukuoka Prefecture, Japan, which is owned by Toyota Motor Kyusha, Inc., a wholly owned subsidiary of TMC. The Lexus IS is assembled at the Tahara plant in Tahara City, Aichi Prefecture, which is owned by TMC. Lexus ES and IS automobiles are sold throughout the United States.

9. Defendant Toyota Motor Manufacturing, Indiana, Inc. ("TMMI") manufactured the 2007 to 2008 model year ("MY") Toyota Tundra, 2008 to 2010 MY Toyota Sequoia, and the 2010 MY Toyota Highlander. TMMI is a wholly-owned subsidiary of TMC. It is located at 4000 South Tulip Tree Drive, Princeton, IN 47670-4000.

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10. Defendant Toyota Motor Manufacturing, Texas, Inc. ("TMMTX") manufactured the 2007 to 2010 MY Toyota Tundra. TMMTX is a wholly-owned subsidiary of TMC. It is located at 1 Lone Star Pass San Antonio, Texas, 78264-3413.

11. Defendant Toyota Motor Manufacturing, Kentucky, Inc. ("TMMK") manufactured the 2005 to 2010 MY Toyota Avalon and the 2007 to 2010 MY Toyota Camry. TMMK is a wholly-owned subsidiary of TMC. It is located at 1001 Cherry Blossom Way, Georgetown, KY 40324.

12. Defendant New United Motor Manufacturing, Inc. ("NUMMI") manufactured the 2009 to 2010 MY Toyota Corolla and the 2009 to 2010 MY Pontiac Vibe. NUMMI is located at 45500 Fremont Boulevard Fremont, CA 94538-6368.

13. Defendant Subaru of Indiana Automotive, Inc. ("SIA") manufactured the 2007 to 2010 MY Toyota Camry. It is located at 5500 State Road 38 East, Lafayette, Indiana 47905.

14. At all relevant times, TMC has owned and controlled TMS, TMNA, TMEMNA, Lexus, TMMI, TMMTX, TMMK, NUMMI and SIA and thereby conducted business in the U.S. These defendants and their subsidiaries and agents, are collectively referred to as "Toyota".

15. Defendant CTS Corporation ("CTS") is an Indiana corporation located at 905 West Boulevard, Elkhart, Indiana. CTS designs and manufactures electronic components and at all relevant times made the accelerator assemblies for Toyota vehicles that are subject of the claims herein (except for Lexus vehicles) beginning with model year 2005.

16. TMC, TMS, TMNA, TMEMNA, Lexus, TMMI, TMMTX, TMMK, NUMMI, SIA, and CTS may sometimes be collectively referred to as "Defendants".

17. The true names and capacities of the defendants sued herein as Doe Defendants 1 through 10, inclusive, are currently unknown to plaintiff, who therefore sues such defendants by

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fictitious names. Each of the defendants designated herein as a Doe is legally responsible for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend this Complaint to reflect the true names and capacities of the Doe Defendants when such identities become known.

BACKGROUND

18. "Toyota received field technical information regarding reports of accelerator pedals demonstrating symptoms such as rough operation or being slow to return to the idle position" at least as early as March 2007, according to a January 21, 2010 letter from Chris Santucci, TMNA Manager, Technical & Regulatory Affairs, to the National Highway Traffic Safety Administration ("NHTSA"). Santucci formerly worked for the NHTSA, which sets safety standards for motor vehicles and associated equipment, investigates possible safety defects, assures that products meet safety standards and are not defective (through recalls if necessary), and tracks safety-related recalls. Toyota sought to "minimize" the problem, according to The New York Times. Toyota quietly substituted one material used in the affected accelerator pedal assemblies for another as a fix and, in June 2008, reported that the slow return to the idle position of accelerator pedals in some of its vehicles was merely "a drivability issue unrelated to safety".

19. Toyota continued to receive complaints. In December 2008, Toyota received more "field technical information", this time from the European market, which indicated that accelerator pedals sticking on vehicles there. In March 2009, Toyota began another investigation that, in August 2009, also resulted in a quiet fix for some of its vehicles. However, despite the fact that accelerator pedal assemblies on some Toyota vehicles produced in the United States are of a similar design and composed of the same materials that were subject to the December 2008 reports from Europe, the August 2009 changes were limited to vehicles produced in Europe.

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20. The March 2007 and December 2008 reports indicate that Toyota knew at least a year prior to the January 21 Recall, as defined below, that some Toyota vehicles had defective accelerator pedal assemblies. In fact, Santucci later identified those very reports and subsequent investigations as the first "principal events" in the chronology leading to the January 21 Recall.

21. Toyota may have known about the problem even earlier. The Los Angeles Times reported, in a November 8, 2009 article, that "[m]ore than 1,000 Toyota and Lexus owners have reported since 2001 that their vehicles suddenly accelerated on their own" and that these crashes "resulted in at least 19 deaths and scores of injuries over the last decade"—far more than any other automaker has experienced. The Los Angeles Times, and other news reporting agencies, report further that independent safety experts have identified nearly 2,000 sudden-acceleration cases for Toyota vehicles built since 2001 and that experts say the actual numbers may be far higher.

22. According to the Los Angeles Times, Toyota owner complaints helped trigger at least eight investigations into "sudden acceleration" in Toyota and Lexus vehicles by the NHTSA since 2001, but that those investigations "systematically excluded or dismissed the majority of complaints", including cases in which drivers said they were unable to stop runaway cars using their brakes; incidents of unintended acceleration lasting more than a few seconds; and reports in which owners did not identify the possible causes of the problem. According to the Los Angeles Times, when Toyota was asked to submit its own complaint data to the NHTSA, it eliminated reports claiming that sudden acceleration occurred for more than a few seconds or when drivers said they were unable to control a runaway engine by applying the brakes, which contributed to an appearance that the problem was much smaller than the total number of complaints suggested.

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TOYOTA ATTRIBUTES REPORTS OF SUDDEN AND UNINTEDED ACCELEREATION TO "FLOOR PEDAL ENTRAPMENT" AND ATTEMPTS TO MIMIMIZE SERIOUSNESS OF THREAT TO SAFETY

23. In September 2007, Toyota recalled 55,000 accessory all-weather floor mats sold for use in some 2007 and 2008 model year Lexus ES 350 and Toyota Camry vehicles because, as reported by the NHTSA, if the mat were to "interfere with the accelerator pedal", it would "increase the possibility of a crash." However, Toyota was in the midst of investigating the March 2007 reports concerning sticking accelerator pedal assemblies at that time and following the September 2007 recall both Toyota and the NHTSA continued to receive complaints of unintended acceleration in the models affected recall, as well as in others vehicles not affected by the recall.

24. On August 28, 2009, "[f]our people were killed outside San Diego when the Lexus ES 350 sedan they were traveling in accelerated to 120 miles per hour and crashed, despite efforts by the driver to apply the brakes," according to The New York Times. The New York Times reported further that, "[t]he 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.

25. Toyota stated in a September 14, 2009 press release that, "[w]e believe our vehicles to be among the safest on the road today." Toyota stated further that preliminary investigations, "[d]river's floor mat interference with the accelerator pedal is possible in *any vehicle make* with *any combination floor mats* when the floor mat is not properly secured or if it is not the factory designed floor mat for the vehicle" (emphasis added).

26. Toyota issued a consumer safety advisory on September 29, 2009, instructing owners of specific Toyota and Lexus model vehicles to remove their driver's floor mat:

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> Recent events have prompted Toyota to take a closer look at the potential for an accelerator pedal to get stuck in the full open position due to an unsecured or incompatible driver's floor mat. A stuck open accelerator pedal may result in very high vehicle speeds and make it difficult to stop the vehicle, which could cause a crash, serious injury or death.
>
> * * *
>
> Until Toyota develops a remedy, it is asking owners of specific Toyota and Lexus models to take out any removable driver's floor mat and NOT replace it with any other floor mat. The following models are affected:
>
> - 2007 – 2010 Camry
> - 2005 – 2010 Avalon
> - 2004 – 2009 Prius
> - 2005 – 2010 Tacoma
> - 2007 – 2010 Tundra
> - 2007 – 2010 ES350
> - 2006 – 2010 IS250 and IS350
>
> Should the vehicle continue to accelerate rapidly after releasing the accelerator pedal, this could be an indication of floor mat interference.

27. In connection with the safety campaign that followed, Santucci, then-Assistant Manager, Technical & Regulatory Affairs of TMNA, wrote to the NHTSA that, "[a]lthough Toyota is willing to identify this campaign as a safety recall in the owner communication about the campaign, Toyota has not determined that the vehicles identified [in the safety advisory] contain a 'safety-related defect'".

28. On November 2, 2009, Toyota attempted to further minimize the seriousness of this defect in certain of its vehicles by stating that "no defect exists in vehicles in which the driver's floor mat is compatible with the vehicle and properly secured" and that the company's finding was consistent with "a recent decision by the NHTSA". Toyota stated that, "[t]his is the sixth time in the past six years that NHTSA has undertaken such an exhaustive review of the allegations of unintended acceleration on Toyota and Lexus vehicles and the sixth time the agency has found no *vehicle based* cause for the unwanted acceleration allegations" (emphasis added).

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29. These statements were untrue. On November 4, 2009, the NHTSA issued a press release "correcting inaccurate and misleading information put out by Toyota". NHTSA spokeswoman Karen Aldana said that the problem with the design of Toyota and Lexus accelerators was, in fact, "very dangerous" and that removing the floor mats was "simply an interim measure" that would "*not correct the underlying defect in the vehicles*" (emphasis added). Aldana stated further that the "matter [was] not closed" and would remain open until Toyota "effectively addressed the defect by providing a suitable *vehicle based* solution" (emphasis added). Toyota responded to the public rebuke in a November 6, 2009 press release by acknowledging that removal of the driver's floor mat is merely "an interim measure and that further vehicle-based action is required".

30. On November 25, 2009, Toyota issued an announcement of "details of the vehicle-based remedy to address the root cause of the potential risk for floor mat entrapment of accelerator pedals in certain Toyota and Lexus models" ("November 25 Announcement"). These vehicles are subject to what Toyota termed its "floor pedal entrapment recall." The initial list of vehicles affected by the November 25 Announcement was expanded by Toyota on January 26, 2010. The following list of vehicles affected by the November 25 Announcement, totaling approximately 5.3 million vehicles, reflects the January amendment:

a. 2009 to 2010 model year ("MY") Pontiac Vibe;
b. 2005 to 2010 MY Toyota Avalon;
c. 2007 to 2010 MY Toyota Camry;
d. 2009 to 2010 MY Toyota Corolla;
e. 2008 to 2010 MY Toyota Highlander;
f. 2009 to 2010 MY Toyota Matrix;
g. 2004 to 2009 MY Toyota Prius;
h. 2005 to 2010 MY Toyota Tacoma;
i. 2007 to 2010 MY Toyota Tundra;
j. 2009 to 2010 MY Toyota Venza;
k. 2007 to 2010 MY Lexus ES 350;
l. 2006 to 2010 MY Lexus IS 250; and

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m. 2006 to 2010 MY Lexus IS 350.

TOYOTA FINALLY ACKNOWLEDGES "VEHICLE-BASED" PROBLEM WITH ACCELERATOR PEDAL ASSEMBLIES IN SOME TOYOTA VEHICLES

31. The remedy Toyota described in the November 25 Announcement, purportedly to "address the root cause" behind accounts of sudden and unintended acceleration, was to "reconfigure" the shape of the accelerator pedal or floor surface underneath the accelerator pedal:

> The specific measures of the vehicle-based remedy are as follows:
>
> 1. The shape of the accelerator pedal will be reconfigured to address the risk of floor mat entrapment, even when an older-design all-weather floor mat or other inappropriate floor mat is improperly attached, or is placed on top of another floor mat. For the ES350, Camry, and Avalon models involved, the shape of the floor surface underneath will also be reconfigured to increase the space between the accelerator pedal and the floor.
>
> 2. Vehicles with any genuine Toyota or Lexus accessory all-weather floor mat will be provided with newly-designed replacement driver- and front passenger-side all-weather floor mats.

However, Toyota did not recall the affected vehicles at that time. Instead, it said,

> In the meantime, owners of the involved vehicles are asked to take out any removable driver's floor mat and not replace it with any other floor mat until they are notified of the vehicle-based remedy, as notified in the consumer safety advisory and the interim notice.
>
> * * *
>
> The safety of our owners and the public is our utmost concern and Toyota has and will continue to thoroughly investigate and take appropriate measures to address any defect trends that are identified.

Thus, Toyota misled current owners and lessees to believe that the vehicles' issues were adequately addressed by Toyota.

32. The New York Times reported, in its February 1, 2010 article that, on December 26, 2009, four people died near Dallas when a Toyota Avalon sped off a road and into a pond.

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The police found that the floor mats were removed and in the Avalon's trunk. The New York Times further reported that, on December 28, 2009, a New Jersey man managed, by shifting in and out of neutral, to drive a 2007 Avalon to a dealership after it began speeding out of control. After parking, the motor continued racing and the brakes and tires started smoking.

33. In January 21, 2010, Toyota finally began a recall for a "vehicle-based" defect; namely, defective accelerator pedal assemblies ("January 21 Recall"). Approximately 2.3 million vehicles are affected by the January 21 Recall, which involved the following models:

a. 2005 to 2010 MY Toyota Avalon;
b. certain 2009 to 2010 MY Toyota Corolla;
c. certain 2007 to 2010 MY Toyota Camry;
d. certain 2010 MY Toyota Highlander;
e. 2009 to 2010 MY Toyota Matrix;
f. certain 2009 to 2010 MY Toyota RAV4;
g. 2008 to 2010 MY Toyota Sequoia; and
h. 2007 to 2010 MY Toyota Tundra.

34. According to the New York Times, the vehicles affected by the January 21 Recall represented over 60% of Toyota's total monthly U.S. sales from 2004 to 2009, based on a 12-month moving average. The New York Times reported further that Toyota's total U.S. sales ranged from well over 100,000 to nearly 200,000 vehicles per month during that time.

35. In a letter to the NHTSA dated January 21, 2010, Santucci described the defect in the accelerator pedal assemblies resulting in sudden and unintended acceleration reported in some of its vehicles:

> In accordance with the requirements of the National Traffic and Motor Vehicle Safety Act of 1966 and 49 CFR Part 573, on behalf of Toyota Motor Corporation ["TMC"], we hereby submit the attached Defect Information Report Concerning a voluntary safety recall of certain Toyota Tundra, Sequoia, Avalon, Camry, Corolla, Matrix, RAV4, Highlander, and Pontiac Vibe vehicles. *Toyota has determined that a defect exists in the accelerator pedal assembly which may result in the accelerator pedal becoming harder to depress, slower to return, or, in the worst case, mechanically stuck in a partially depressed position.*

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(emphasis added).

36. In its Defect Information Report referenced in the January 21, 2010 letter, Toyota describes what it purports is the underlying cause of defect:

> Description of Problem:
>
> Due to the manner in which the friction lever interacts with the sliding surface of the accelerator pedal inside the pedal sensor assembly, the sliding surface of the lever may become smooth during vehicle operation. In this condition, if condensation occurs on the surface, as may occur from heater operation (without A/C) when the pedal assembly is cold, the friction when the accelerator pedal is operated may increase, which may result in the accelerator pedal becoming harder to depress, slower to return, or, in the worst case, mechanically stuck in a partially depressed position. In addition, some of the affected vehicles' pedals were manufactured with friction levers made of a different material (PA46), which may be susceptible to humidity when parked for a long period in hot temperatures. In this condition, the friction when the accelerator pedal is operated may increase, which may result in the accelerator pedal movement becoming rough or slow to return. In light of the similarity with one of the symptoms described above that are associated with the PPS material, Toyota has decided to include these vehicles in the defect determination.

37. On January 28, 2010, issued a statement that Toyota had "identified the cause of the problem" and had been working closely with CTS, the manufacturer of the accelerator pedal assemblies found on the vehicles affected by the January 21 Recall, on a revised pedal design. According to a January 28, 2010 statement by Chris Nielsen, TMEMNA's Vice President of Purchasing, "CTS is a long-term and valued supplier to us."

38. According to Toyota, the January 21 Recall is separate and unrelated to the November 25 Announcement that involved approximately 5.3 million vehicles. However, Toyota also announced that approximately 1.3 vehicles are part of both the November 25 Announcement and the January 21 Recall. Reportedly, it is Toyota's position that this significant overlap is merely coincidence. A total of approximately 6.3 million vehicles are part of both the November 25 Announcement and January 21 Recall in the United States ("Recalled

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Vehicles"). On January 29, 2010, Toyota expanded the January 21 Recall to China and to eight Toyota models in Europe. Reportedly, over 9 million vehicles are affected worldwide.

THE TRUE CAUSE OF SUDDEN AND UNINTEDED ACCELERATION IN SOME TOYOTA VEHICLES REMAINS UNCLEAR

39. The public may still not know the true cause of sudden and unintended acceleration. According to the New York Times, on April 19, 2008, witnesses saw a 2005 Toyota Camry accelerate out of control, jumped a curb and fly through the air before crashing into a tree. The driver, Guadalupe Alberto, was killed instantly. The 2005 Camry is not among the millions of Recalled Vehicles and also did not have floor mats at the time of the accident. Reportedly, the crash is now being looked at as a possible example of problems with the electronic system that controls the throttle and engine speed in Toyotas.

40. Despite yet another accident, Toyota has been telling customers, since as early as January 22, 2010, that it is "confident that your vehicle is safe to drive, and no action is required at this time", for drivers not experiencing an accelerator pedal that is "hard to depress, slow to return or is unsmooth during operation". On February 1, 2010, Toyota described the reason it believes the accelerator pedals in recalled vehicles stick in a partially open position and announced that, "[a] precision-cut steel reinforcement bar will be installed into the assembly that will reduce the surface tension between the friction shoe and the adjoining surface". According to Toyota, "[w]ith this reinforcement in place, the excess friction that can cause the pedal to stick is eliminated."

41. Toyota's "solution" does not address the potential problem with electronic throttles, which mounting evidence suggests is the true cause of reports of sudden and unintended acceleration.

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42. Both Toyota and the NHTSA acknowledge that a standard braking system cannot always counter a wide-open throttle, as is the case in sudden acceleration. Toyota stated in the November 25 Announcement that it would install a failsafe in some affected vehicles, saying, "as a separate measure independent of the vehicle-based remedy, Toyota will install a brake override system onto the involved Camry, Avalon, and Lexus ES 350, IS 350 and IS 250 models as an extra measure of confidence. This system cuts engine power in case of simultaneous application of both the accelerator and brake pedals." The November 25 Announcement stated further that, "[t]he brake override system will be made standard equipment throughout the Toyota and Lexus product lines starting with January 2010 production of ES 350 and Camry and is scheduled to be incorporated into new production of most models by the end of 2010."

43. According to The New York Times, Santucci was deposed in December 2009 concerning a 2004 NHTSA investigation of certain Toyota vehicles. During that testimony, Santucci testified that the electronic throttle control system in Alberto's 2005 Camry was similar to the computer equipment in other Toyotas now under recall for sticky pedals and unsecured floor mats.

PAST NHTSA FINDINGS ARE NOT RELIABLE

44. Toyota stated on November 2, 2009, that it had been investigated six times in the past and that the agency found no vehicle-based cause for reports of sudden and unintended acceleration. However, Santucci reportedly testified Toyota and the NHTSA had discussions about limiting the type of acceleration incidents to be investigated. Santucci's testimony is that, "I recall them saying to us, Toyota, myself,that they were not interested in reports alleging uncontrolled acceleration that occurred for a long duration." The New York Times reported that the NHTSA, in fact, decided to look only at cases of unintended acceleration in which drivers

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had not applied their brakes to rule out potential braking concerns from the scope of the investigation. Santucci testified that, "I think it worked out well for both the agency and Toyota, meaning Toyota provided what they were looking for". The NHTSA ultimately found, "[a] defect trend has not been identified at this time, and further use of agency resources does not appear to be warranted."

45. The NHTSA investigations, and Toyota's handling of the problem, will be the subject of Congressional hearings. The House Energy and Commerce Committee has scheduled a February 25, 2010 hearing to focus on why several years elapsed after the NHTSA began to get complaints about runaway Toyotas before TMC recalled several of its models to fix a defect that could cause their accelerator pedals to stick. "Like many consumers, I am concerned by the seriousness and scope of Toyota's recent recall announcements," said Representative Henry Waxman, the California Democrat who chairs the Energy and Commerce Committee. In a January 28, 2010 letter to Yoshimi Inaba, President and COO of TMNA, Waxman asked Inaba to produce information and documents dating back to 2001, including information "relating to sudden unintended acceleration, acceleration pedals, or *electronic throttle control*" (emphasis added).

46. The NHTSA is considering civil penalties against Toyota for the automaker's handling of both recalls.

CLASS ACTION ALLEGATIONS

47. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3), on behalf of himself and the following Class and Sub-Class:

Nationwide Class:

All owners and lessees in the United States of the Recalled Vehicles (the "Nationwide Class").

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New York Sub-Class

All owners and lessees in New York of Recalled Vehicles that were sold or leased in the State of New York (the "Sub-Class").

48. Excluded from the Nationwide Class and the Sub-Class are Defendants, as well as Defendants',subsidiaries, employees, officers, directors, or other person, firm trust or corporation or other entity related to or affiliated with Toyota and any person who has experienced physical injury as a result of the defects at issue in this litigation. Plaintiff reserve the right to amend the definition of the Nationwide Class and the Sub-Class, if discovery and/or further investigation reveal that the Nationwide Class and/or Sub-Class should be expanded or otherwise modified.

49. Numerosity/Impracticability of Joinder: The members of the Nationwide Class and Sub-Class are so numerous that joinder of all members would be impracticable. The members of the Nationwide Class and the Sub-Class are readily identifiable from information and records in Defendants' possession, custody or control.

50. The number of class members is approximately 6.3 million. There are millions of Nationwide Class members who purchased or leased Toyota vehicles and at least thousands, if not hundreds of thousands, of members of the Sub-Class.

51. Commonality and Predominance: Common questions of law and fact predominate over any questions affecting only individual members of the Nationwide Class and the Sub-Class. These common legal and factual questions, which do not vary from one Nationwide Class or Sub-Class member to another, and which may be determined without reference to the individual circumstances of any Nationwide Class or Sub-Class member, include, but are not limited, to the following:

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a. Whether Defendants omitted and/or concealed material facts from Plaintiff and the members of the Classes regarding Recalled Vehicles;

b. Whether, by the misconduct set forth in this Complaint, Defendants have engaged in deceptive or unlawful business practices with respect to the sale or lease of the Recalled Vehicles;

c. Whether Defendants had a duty to disclose the defects in Recalled Vehicles to Plaintiff and the Classes;

d. Whether, by their conduct, Defendants violated Magnuson-Moss Act, 15 U.S.C. §§ 2301, *et seq.*;

e. Whether, by their conduct, Defendants violated NY GBL §§349 and 350;

f. Whether, by their conduct described herein, Defendants breached their implied warranties to Plaintiff and the Classes;

g. Whether, by its conduct described herein, Defendants breached its express warranties to Plaintiff and the Classes;

h. Whether, by their conduct described herein, Defendants breached their contracts with Plaintiff and the Sub-Class;

i. Whether, by their conduct described herein, Defendants breached their duty of good faith and fair dealing;

j. Whether the Recalled Vehicles are defective;

k. Whether, as a result of Defendants' misconduct, Plaintiff and the Classes are entitled to damages; and

l. Whether, as a result of Defendants' misconduct, Plaintiff and the Classes are entitled to equitable relief and/or other relief, and, if so, the nature of such relief.

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52. Typicality: Plaintiff's claims are typical of the claims of the Nationwide Class and the Sub-Class, because Plaintiff and all Class members were injured by the same wrongful practices in which Defendants engaged. Plaintiff's claims arise from the same practice and course of conduct that gives rise to the claims of the Nationwide Class and Sub-Class members, and are based on the same or similar legal theories.

53. Adequacy: Plaintiff will fully and adequately protect the interests of the members of the Nationwide Class and the Sub-Class, and has retained class counsel who are experienced and qualified in prosecuting class actions, including consumer class actions and other forms of complex litigation. Neither Plaintiff nor her counsel has interests that are contrary to or conflicting with those of the Nationwide Class or the Sub-Class. Defendants have no defenses unique to Plaintiff.

54. Superiority: A class action is superior to all other available methods for the fair and efficient adjudication of this controversy for, *inter alia*, the following reasons:

a. It is economically impractical for members of the Classes to prosecute individual actions;

b. The Classes are readily definable;

c. Prosecution as a class action will eliminate the possibility of repetitious litigation; and

d. A class action will enable claims to be handled in an orderly and expeditious manner. A class action will save time and expense and will ensure uniformity of decisions.

55. Plaintiff does not anticipate any difficulty in the management of this litigation.

56. Defendants have, or have access to, address information for the Class members,

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which may be used for the purpose of providing notice of the pendency of this action.

COUNT I

Asserted On Behalf Of The Nationwide Class Against Toyota and CTS (Violations Of Magnuson-Moss Act (15 U.S.C. §§ 2301-2312) - Implied Warranty)

57. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

58. The Recalled Vehicles are "consumer products" as that term is defined by 15 U.S.C. § 2301(1).

59. Plaintiff and Nationwide Class members are "consumers" as that term is defined by 15 U.S.C. § 2301(3).

60. Toyota and CTS are "suppliers" as that term is defined by 15 U.S.C. § 2301(4).

61. Toyota and CTS are "warrantors" as that term is defined by 15 U.S.C. § 2301(5).

62. Toyota and CTS provided Plaintiff and Class members with "implied warranties" as that term is defined by 15 U.S.C. § 2301(7). When the Recalled Vehicles were sold or leased to Plaintiff and the Nationwide Class, implied warranties under state law attached, specifically the implied warranty of merchantability.

63. Toyota sold the Recalled Vehicles with defective accelerator pedal assemblies and floor mats (hereinafter collectively referred to as "accelerator pedal assemblies"), and CTS made the defective accelerator pedals as described hereinabove, which rendered the Recalled Vehicles unfit for their ordinary purpose. Toyota has acknowledged that such a defect exists and that the Recalled Vehicles are unfit for their ordinary purpose.

64. Any attempt by Toyota or CTS to disclaim the implied warranty of merchantability with respect to the Recalled Vehicles is void due to Toyota and CTS's

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knowledge or failure to know that the accelerator pedal assemblies were defective when sold or leased to Plaintiff and the Nationwide Class.

65. Toyota and CTS cannot disclaim the implied warranty of merchantability that attaches to the Recalled Vehicles, because Toyota provided Plaintiff and the Nationwide Class with written warranties as that term is defined by 15 U.S.C. § 2301(6).

66. Plaintiff has given Toyota a reasonable opportunity to cure its failures with respect to its warranties, and Toyota failed to do so.

67. Plaintiff and the Nationwide Class were damaged by Toyota and CTS' breach of their warranties.

68. As a result of Toyota and CTS' breach of implied warranties, Plaintiff and Nationwide Class members are entitled to revoke their acceptance of the Recalled Vehicles, obtain damages and equitable relief, and obtain attorneys' fees and costs pursuant to 15 U.S.C. § 2310.

COUNT II

Asserted On Behalf Of The Nationwide Class Against Toyota (Breach Of Express Warranty)

69. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

70. Toyota warranted that the Recalled Vehicles were free of defects in workmanship and materials. Providing defective accelerator pedal assemblies with the Recalled Vehicles, as explained herein, is a breach of this warranty.

71. As a direct and proximate cause of Toyota's breach of express warranties, Plaintiff and the Nationwide Class members have been damaged.

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72. Plaintiff has given Toyota a reasonable opportunity to cure its failure with respect to its warranty, and Toyota has failed to do so.

73. As a result of Toyota's breach of express warranty, Plaintiff and the Nationwide Class members have suffered damages.

COUNT III

Asserted On Behalf Of The Nationwide Class Against Toyota and CTS (Breach Of Implied Warranty Of Merchantability)

74. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

75. Toyota and CTS are "merchants" within the meaning of the Uniform Commercial Code § 2-104.

76. The Recalled Vehicles and defective accelerator pedal assemblies are "goods" within the meaning of Uniform Commercial Code § 2-105.

77. Toyota and CTS's implied warranty of merchantability accompanied the sale of the Recalled Vehicles and/or the defective accelerator pedal assemblies to Plaintiff and members of the Nationwide Class.

78. Toyota and CTS, by implication, warranted that the Recalled Vehicles and/or the accelerator pedal assemblies were fit for ordinary use.

79. The frequent failure of the accelerator pedal assemblies in the Recalled Vehicles made the Recalled Vehicles and accelerator pedal assemblies defective and, thus, unfit for the ordinary purposes for which the goods are used. The Recalled Vehicles are not fit for ordinary use because the accelerator pedal assemblies have a dangerous propensity to stick in the full-open position resulting in sudden and unintended acceleration.

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80. As set forth herein, any effort by Toyota and CTS to disclaim or otherwise limit its responsibility for the Recalled Vehicles was unconscionable under all of the circumstances. Toyota and CTS knew that the Recalled Vehicles were unfit for normal use.. Toyota and CTS' attempt to disclaim any warranty on the Recalled Vehicles is therefore unjust and cannot stand.

81. Through the conduct described herein, Toyota and CTS has breached their implied warranty of merchantability and are liable to Plaintiff and the Nationwide Class.

82. Plaintiff and the other members of the Nationwide Class have sustained damages as a result of Toyota and CTS' breaches.

83. Plaintiff has provided timely notice to Toyota regarding the problems she was experiencing with her 2010 Toyota Camry and, notwithstanding such notice, Toyota has failed and refused to offer Plaintiff a remedy.

COUNT IV

Asserted on Behalf of the Nationwide Class Against Toyota and CTS (Breach of Contract)

84. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

85. Plaintiff and Nationwide Class members entered into agreements to purchase or lease the Recalled Vehicles, and were in contractual privity with Toyota and CTS as a result of the express warranty described herein, as well as the specifications included with the purchase or lease of the Recalled Vehicles. Such privity likewise existed because the dealers from which Plaintiff and the Nationwide Class purchased or leased the Recalled Vehicles acted as Toyota's agents through franchise agreements, distribution agreements, and any other agreement governing the relationship between Toyota and any such dealer.

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86. Regardless of whether Plaintiff and the Classes were in contractual privity with Toyota or CTS, Toyota and CTS still may be held to have breached their contracts with Plaintiff and the Nationwide Class. As alleged herein, Toyota and CTS committed acts and omissions which were actuated by actual malice and accompanied by a wanton and willful disregard of persons, including Plaintiff and Nationwide Class members, who foreseeably might be harmed by those acts and omissions.

87. Toyota and CTS failed to disclose the true nature of the accelerator pedal assemblies, and the fact that the accelerator pedal assemblies would render the Recalled Vehicles unfit for use. Toyota and CTS knew or recklessly disregarded the fact that Plaintiff and the Nationwide Class were not knowledgeable with regard to the frequent failures, cost, and true nature of the accelerator pedal assemblies as alleged herein, and did not disclose that information to Plaintiff and the Nationwide Class.

88. Plaintiff and the Nationwide Class members performed all of their obligations under the contracts. Toyota breached its obligations under the contracts as alleged herein.

89. As a direct and proximate result of Toyota and CTS's breach of contract, Plaintiff and Nationwide Class members have been damaged.

COUNT V

Asserted On Behalf Of The Nationwide Class Against Toyota and CTS (Breach Of Implied Covenant Of Good Faith And Fair Dealing)

90. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

91. Plaintiff and Nationwide Class members entered into agreements to purchase or lease the Recalled Vehicles, or otherwise were in contractual privity with Toyota as a result of the express warranty described herein, as well as the specifications included with the purchase or

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lease of the Recalled Vehicles. Contractual privity likewise existed because the dealers from which Plaintiff and the Nationwide Class purchased or leased the Recalled Vehicles acted as Toyota's agent through franchise agreements, distribution agreements, and any other agreement governing the relationship between Toyota and any such dealer. Although CTS was not a party to these contracts, CTS had a duty to act in good faith due to the contractual relationship with Plaintiff and the Nationwide Class as alleged herein.

92. The contracts and warranties were subject to the implied covenant that Toyota would conduct business with Plaintiff and Nationwide Class members in good faith and would deal fairly with Plaintiff and Nationwide Class members. CTS' contracts and warranties were subject to the implied covenant that Toyota would conduct business with Plaintiff and Nationwide Class members in good faith and would deal fairly with Plaintiff and Nationwide Class members.

93. Regardless whether Plaintiff and the Nationwide Class were in contractual privity with Toyota and CTS, Toyota and CTS still had a duty of good faith and fair dealing. As alleged herein, Toyota and CTS committed acts and omissions which were actuated by malice and/or accompanied by a wanton and willful disregard of persons, including Plaintiff and the members of the Nationwide Class, who foreseeably might be harmed by those acts and omissions.

94. Toyota and CTS breached those implied covenants via the sale or lease to Plaintiff and members of the Nationwide Class of the Recalled Vehicles that were not fit for ordinary use and that were equipped with defective accelerator pedal assemblies that were inherently defective when Toyota and CTS knew, or should have known, that the accelerator pedal assemblies were defective. Toyota and CTS failed to disclose the true nature of the accelerator pedal assemblies, and the fact that the accelerator pedal assemblies would render the

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Recalled Vehicles unfit for use. Toyota and CTS knew or recklessly disregarded the fact that Plaintiff and the Nationwide Class were not knowledgeable with regard to the frequent failures, cost, and true nature of the accelerator pedal assemblies as alleged herein, and did not disclose that information to Plaintiff and the Nationwide Class. Defendants also breached those covenants by refusing to provide Plaintiff and the Nationwide Class with an adequate remedy.

95. Defendants behaved inequitably and acted in total disregard of the harm caused to Plaintiff and the Nationwide Class, and unjustly enriched themselves at the expense of Plaintiff and the Nationwide Class.

96. As a direct and proximate result of Toyota and CTS's breach of its implied covenants, Plaintiff and Nationwide Class members have been damaged.

COUNT VI

Asserted On Behalf Of The Sub-Class Against Toyota and CTS (Violation Of N.Y. G.B.L. §349)

97. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

98. Plaintiff and other members of the Sub-Class are "consumers" in accordance with GBL §349.

99. At all relevant times material hereto, Toyota and CTS conducted trade and commerce in New York and elsewhere within the meaning of GBL §349.

100. Toyota and CTS' acts materially misled Plaintiff and the Sub-Class in that Toyota and CTS misrepresented or failed to disclose the following material facts:

a. The Recalled Vehicles are not fit for normal use;

b. The accelerator pedal assemblies have a dangerous propensity to stick in the full-open position resulting in sudden and unintended acceleration;

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c. The Recalled Vehicles are not equipped with a failsafe to protect against sudden and unintended acceleration; and

d. The consequences of sudden and unintended acceleration are serious and potentially deadly.

101. Toyota and CTS consciously omitted to disclose material facts from Plaintiff and other members of the Sub-Class with respect to the accelerator pedal assemblies on the Recalled Vehicles.

102. Toyota intended that Plaintiff and the Sub-Class rely on Toyota and CTS' acts of concealment and omission, so that Plaintiff and other Sub-Class members would purchase and/or lease the Recalled Vehicles equipped with the defective accelerator pedal assemblies.

103. Had Toyota and CTS disclosed all material information regarding the defective accelerator pedal assemblies in the Recalled Vehicles to Plaintiff and the Sub-Class, they would not have purchased and/or leased the Recalled Vehicles, or would have paid less for the Recalled Vehicles.

104. The foregoing acts, omissions and practices proximately caused Plaintiff and other members of the Classes to suffer actual injury and damage including, *inter alia,* the loss of use of the Recalled Vehicles and diminution of value of those vehicles.

COUNT VII

Asserted On Behalf of the Sub-Class Against Toyota (Violations of N.Y. G.B.L. §350)

105. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

106. Toyota, in marketing the Recalled Vehicles, failed to disclose the following facts to Plaintiff and the Sub-Class:

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a. The Recalled Vehicles are not fit for normal use;

b. The accelerator pedal assemblies have a dangerous propensity to stick in the full-open position resulting in sudden and unintended acceleration;

c. The Recalled Vehicles are not equipped with a failsafe to protect against sudden and unintended acceleration; and

d. The consequences of sudden and unintended acceleration are serious and potentially deadly.

107. Plaintiff and the Sub-Class were misled and/or deceived by the omission of these material facts. Toyota, due to its superior knowledge of the facts herein, was required to disclose these facts to Plaintiff and the Sub-Class.

108. The foregoing acts, omissions and practices proximately caused Plaintiff and other members of the Sub-Class to suffer actual injury and damage.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff on behalf of herself and on behalf of the Classes prays:

A. For an order certifying this action as a class action, appointing Plaintiff as representative of the Classes and appointing her attorneys as counsel for the Classes;

B. For Defendants to pay lease and car loan payments until Toyota repairs or replaces the defective accelerator pedal assemblies in the Recalled Vehicles;

C. For all compensatory and other appropriate damages on all applicable claims in an amount to be proven at trial, including the diminution in value of the Recalled Vehicles as a result of the acts complained of herein;

D. For an order permanently enjoining Defendants from engaging in the unlawful practices alleged herein;

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E. For an award of attorneys' fees, costs and expenses; and

F. For such other and further relief that the Court deems appropriate and just under the circumstances.

JURY TRIAL DEMAND

Plaintiff demands a trial by jury.

Dated: February 8, 2010

ABBEY SPANIER RODD
& ABRAMS, LLP

By: _____
Jill Abrams (JA 1578)
jabrams@abbeyspanier.com
Orin Kurtz (OK 7334)
okurtz@abbeyspanier.com
Jeremy Nash
jnash@abbeyspanier.com (JN 2857)
212 East 39th Street
New York, New York 10016
(212) 889-3700

TOY-RQ-05E-00010566

Amended: October 3, 2008

INDIVIDUAL PRACTICES OF JUDGE P. KEVIN CASTEL

United States Courthouse
500 Pearl Street
New York, New York 10007
web site: www.nysd.uscourts.gov

Unless otherwise ordered, matters before Judge Castel shall be conducted in accordance with the following practices:

1. Communications with Chambers

A. **Letters.** Except as otherwise provided below, communications with chambers shall be by letter, with copies simultaneously delivered to all counsel. Letters may be sent to chambers via fax, (212) 805-7949, provided they do not exceed five pages in length. If a fax is transmitted to chambers, it should not also be mailed or delivered to chambers. Letters should not be filed on ECF.

B. **Telephone Calls.** For docketing, scheduling and calendar matters, call the Courtroom Deputy, Florence Nacanther, at (212) 805-0131 between 8:30 A.M. and 5:00 P.M. Telephone calls to chambers are permitted only in emergency situations requiring immediate attention, (212) 805-0262.

C. **Requests for Adjournments or Extensions of Time.** All requests for adjournments or extensions of time must state (1) the original date, (2) the number of previous requests for adjournment or extension, (3) whether these previous requests were granted or denied, and (4) whether the adversary consents, and, if not, the reasons given by the adversary for refusing to consent. If the requested adjournment or extension affects any other scheduled dates, the request (in a civil case) must attach a proposed Revised Case Management Plan and Scheduling Order (reflecting dates which are business days). If the request is for an adjournment of a court appearance, absent an emergency, it shall be made at least 48 hours prior to the scheduled appearance. Requests for adjournments should be transmitted to chambers and not filed on ECF.

D. **ECF.** Counsel for all parties, are required to register as ECF users in accordance with the Procedures for Electronic Case Filing and file a Notice of Appearance in each case.

2. Motions

A.

1. **Pre-Motion Conferences in Civil Cases.** For discovery motions, follow Local Civil Rule 37.2 Southern District. For motions other than discovery motions in a civil case, a pre-motion conference with the court is required, except for motions described in Sub-paragraph A(2). To arrange a pre-motion conference, the moving party shall submit a letter not to exceed five pages in length setting forth in detail the basis for the anticipated motion and other parties may respond in a letter not to exceed five pages within three business days.

2. **No Pre-Motion Conference Required.** Sub-paragraph A(1) above does not apply to any of the motions described in Rule 6(b), Federal Rules of Civil Procedure, Rules

4(a)(4)(A), Federal Rules of Appellate Procedure, or section 1447 of title 28 nor does it apply to motions brought on by order to show cause, motions by incarcerated pro se litigants, motions for a default judgment, motions for appointment of lead counsel under the PSLRA, motions for admission pro hac vice and motions for reconsideration or reargument. A pre-motion conference is not required before making such motions.

B. **Courtesy Copies.**

1. **Pleadings:** Courtesy copies of pleadings, marked as such, shall be submitted to chambers as soon as practical after filing, in accordance with the SDNY policies regarding mail deliveries.

2. **Motion Papers:** Courtesy copies of all motion papers (in both ECF and non-ECF cases), marked as such, shall be submitted to chambers at the time the papers are served, in accordance with the SDNY policies regarding mail deliveries.

C. **Memoranda of Law.** Unless prior permission has been granted, memoranda of law in support of and in opposition to motions are limited to 25 pages, and reply memoranda are limited to 10 pages. Memoranda of 10 pages or more shall contain a table of contents.

D. **Filing of Motion Papers.** Motion papers shall be filed promptly after service.

E. **Oral Argument on Motions.** Parties may request oral argument by letter at the time their moving, opposing or reply papers are filed. The court will determine whether argument will be heard and, if so, will advise counsel of the argument date.

F. **Summary Judgment.** The Local Rule 56.1(a)(2) Statement by the party opposing summary judgment shall set forth verbatim the text of each paragraph of the Local Rule 56.1(a)(1) Statement immediately preceding its response thereto.

3. Pretrial Procedures

A. **Joint Pretrial Orders in Civil Cases.** Unless otherwise ordered by the Court, within 30 days following completion of discovery in a civil case, the parties shall submit to the Court for its approval a Joint Pretrial Order, that includes the information required by Federal Rule of Civil Procedure 26(a)(3), and the following:

i. The names, addresses (including firm names), and telephone and fax numbers of trial counsel.

ii. A brief summary by each party of the claims and defenses that the party has asserted which remain to be tried, without recital of evidentiary matter, but including citations to all statutes relied on. Any claim or defense not so identified is deemed withdrawn.

iii. A statement by each party as to whether the case is to be tried with or without a jury, and the number of trial days needed.

iv. A page and line designation by each party of deposition testimony to be offered in its case in chief, with any cross-designations and objections by any other party.

v. A list by each party of exhibits to be offered in its case in chief, with one star indicating exhibits to which no party objects on grounds of authenticity, and two stars indicating exhibits to which no party objects on any ground.

vi. A statement confirming that trial counsel have met and conferred face-to-face with a view towards reaching stipulations of fact and setting forth the content of any stipulation.

vii. A statement of the damages claimed and any relief sought, including the manner and method used to calculate the claimed damages and a breakdown of its elements.

B. **Filings Prior to Trial in Civil Cases.** Unless otherwise ordered by the Court, the parties shall file with the Joint Pretrial Order:

i. In jury cases, proposed voir dire questions, verdict form and requests to charge;

ii. In non-jury cases, proposed findings of fact and conclusions of law;

iii. The parties are required to meet and confer regarding items i. or ii. and make a joint submission in areas where agreement is reached and separate submissions in areas where no agreement is reached. Unless otherwise agreed upon by the parties, the party with the burden of proof should prepare the initial draft in sufficient time for the other side to respond; only the final result of this meet and conferral process should be submitted to the Court. When feasible, items i. and ii. should be submitted, in addition to hard copy, on a 3.5" diskette or CD-Rom in Microsoft Word version Office 2000 or WordPerfect version 9 or higher format;

iv. Motions in limine addressing any evidentiary or other issues that should be resolved prior to empanelling a jury.

Amended: October 3, 2008

INDIVIDUAL PRACTICES OF JUDGE P. KEVIN CASTEL
United States Courthouse
500 Pearl Street
New York, New York 10007
web site: www.nysd.uscourts.gov

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ii. In non-jury cases, proposed findings of fact and conclusions of law;

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iv. Motions in limine addressing any evidentiary or other issues that should be resolved prior to empanelling a jury.

J. MICHAEL McMAHON
CLERK OF COURT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
500 PEARL STREET, NEW YORK, NY 10007
300 QUARROPAS STREET, WHITE PLAINS, NY 10601

WWW.NYSD.USCOURTS.GOV

Electronic Case Filing Rules & Instructions

August 1, 2008 Edition

IMPORTANT INFORMATION FOR NEW CASES

A party filing a new civil case assigned to the Electronic Case Filing (ECF) system must do the following after obtaining a civil case number:

(1) E-mail a pdf copy of the case initiating documents to the Clerk's Office within 24 hours of delivering the paper documents to the Court; and

(2) Serve each party to the action with the initiating documents and a copy of:

(a) SDNY Electronic Case Filing Rules & Instructions (attached); and

(b) The assigned Judge's Individual Practices.

For complete instructions and e-mail addresses see Section 14 - Opening a Civil Action.

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Introduction

The United States District Court for the Southern District of New York implemented an Electronic Case Filing (ECF) system in December 2003. Electronic versions of documents filed by attorneys over the Internet have largely replaced paper documents in the Court's files. Almost all new civil and criminal cases filed in this Court after December 2, 2003 are Electronic Case Filing (ECF) cases. Cases filed before December 2, 2003, Pro se cases (unless the pro se litigant is a member of the bar), Social Security cases and habeas corpus cases however are not ECF cases and must be filed on paper. The information in this document applies only to cases assigned to the ECF system.

Electronic Case Filing has several advantages for both the attorney and the Court:

- Twenty-four hour concurrent access to case files from any location over the Internet
- Remote document filing from any Internet connection worldwide
- Secure access to the ECF system via unique user password
- Immediate e-mail notification of case activity to parties and the Court
- Storage of documents in a reliable and secure electronic format

In addition to the Federal Rules of Civil and Criminal Procedure, the following govern Electronic Case Filing in this District (available at www.nysd.uscourts.gov):

- **SDNY Electronic Case Filing Rules & Instructions (this document):**

  Part I. Electronic Case Filing Rules (ECF Rules), approved by the Board of Judges of this Court, provide the broad outline of the rules of Electronic Case Filing.

  Part II. Electronic Case Filing Instructions (ECF Instructions), written by the Clerk of Court under the authority of the ECF Rules, provide step by step instructions for Electronic Case Filing.

- **The Judge's Individual Practices**

  Each Judge's Individual Practices outline their own specific filing requirements.

The Court is prepared to assist you in filing electronically in several ways:

- The SDNY Electronic Case Filing Rules & Instructions will answer many of your ECF questions.
- Training in Electronic Case Filing (ECF) is available both in person at the courthouse and on-line at www.nysd.uscourts.gov (*See section 24 - ECF Help Desk and Training*).
- ECF Help Desk operators are available by telephone to answer your electronic filing questions (*See section 24 - ECF Help Desk and Training*).

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What's New

Updated August 1, 2008:

This edition of the ECF Rules & Instructions contains new material.

Effective August 1, 2008, in cases assigned to the Electronic Case Filing (ECF) system, all notices and stipulations of voluntary dismissal pursuant to Federal Rule of Civil Procedure 41(a)(1)(A) must be filed electronically on the ECF system.

Paper versions of notices and stipulations pursuant to Rule 41(a)(1)(A) in ECF cases will no longer be accepted for filing effective August 1, 2008.

Please use the following ECF filing events:

NOTICE OF VOLUNTARY DISMISSAL to file a notice pursuant to Rule 41(a)(1)(A)(i); and

STIPULATION OF VOLUNTARY DISMISSAL to file a stipulation pursuant to Rule 41(a)(1)(A)(ii).

In accordance with Rule 41(a)(1)(A)(ii), stipulations of voluntary dismissal require the signature of all parties who have appeared in the action. Only partial stipulations of voluntary dismissal, seeking to dismiss some but not all parties, must continue to be submitted by e-mail to the Judgment Clerk to be conformed for the Court's approval.

In cases not assigned to the ECF system, notices and stipulations filed pursuant to Rule 41(a)(1)(A) must continue to be filed in paper form with the Judgment Clerk.

Accordingly, revisions have been made to the following items:

Section 18 - Non ECF Documents

18.1 In an ECF case are there documents that I should not file electronically?

18.4 Are Proposed Orders, Proposed Judgments, Stipulations, Voluntary Notices of Dismissal or Consents filed electronically?

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Part I. Electronic Case Filing Rules

The Court will accept for filing documents submitted, signed or verified by electronic means that comply with the following rules.

Section 1. Scope of Electronic Filing

1.1 The Court will designate which cases will be assigned to the Electronic Case Filing (ECF) system. Except as expressly provided and in exceptional circumstances preventing a Filing User from filing electronically, all petitions, motions, memoranda of law, or other pleadings and documents required to be filed with the Court in a case assigned to the ECF system must be filed electronically. A paper may be filed electronically (a) from a remote location, (b) by bringing it to the Clerk's office during regular business hours, in a form or electronic format prescribed by the Clerk, for input into the system, or (c) by bringing the paper and the Filing User's SDNY ECF password and log-in to the Clerk's Office during regular business hours to be scanned into the system by the Filing User.

1.2 Unless limited by their terms to civil cases, the provisions of these procedures relating to electronic filing apply in criminal cases that are initiated by the filing of an indictment or information. Electronic filing procedures shall not apply to applications for arrest, search or electronic surveillance warrants; for other orders in aid of or ancillary to a criminal investigation; or to proceedings relating to the grand jury.

1.3 Electronic filing procedures shall not apply to Social Security cases, Pro Se cases (unless the pro se litigant is a member of the bar), Habeas Corpus cases or cases initiated before December 2, 2003.

(*See section 13 - ECF Basics*).

1.4 The filing and service of the initial papers in a civil case, including the complaint, the issuance of the summons and the proof of service of the summons and complaint, as well as service of non-party subpoenas, will be accomplished in the traditional manner on paper in accordance with the Federal Rules of Civil Procedure and applicable Local Rules governing service, rather than electronically. In a criminal case, the indictment or information, including any superseders, shall also be filed and given to the defendant in the traditional manner on paper in accordance with the Federal Rules of Criminal Procedure and applicable Local Rules rather than electronically; in addition, service of subpoenas shall be made in the traditional manner on paper in accordance with the Federal Rules of Criminal Procedure and applicable Local Rules. In a case assigned to the ECF system after it has been opened, parties must promptly provide the Clerk with electronic copies of all documents previously provided in paper form. All subsequent documents must be filed electronically except as provided in these Rules & Instructions or as ordered by the Court.

(*See section 14 - Opening a Civil Action*).

1.5 The Clerk shall write and revise as necessary Instructions to guide Filing Users and maximize the efficiency of the Electronic Case Filing system.

(*See Part II - Electronic Case Filing Instructions*)

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Section 2. Eligibility, Registration, Passwords

2.1 Attorneys admitted to the bar of this Court, including those admitted pro hac vice and attorneys authorized to represent the United States, may register and may be required to register as Filing Users of the Court's ECF system. Unless excused by the Court, attorneys not already Filing Users appearing in cases assigned to the ECF system must register as Filing Users forthwith upon the case being so designated. Registration is in a form prescribed by the Clerk and requires the Filing User's name, address, telephone number, Internet e-mail address, and a declaration that the attorney is admitted to the bar of this Court or authorized to represent the United States.

2.2 If the Court permits or requires, a party to a pending civil action who is not represented by an attorney may register as a Filing User in the ECF system solely for purposes of the action. Registration is in a form prescribed by the Clerk and requires identification of the action as well as the name, address, telephone number and Internet e-mail address of the party. The Court may require the party to attend in-person training for Electronic Case Filing as a condition of registering as a Filing User. If, during the course of the proceeding, the party retains an attorney who appears on the party's behalf, the attorney must advise the Clerk to terminate the party's registration as a Filing User upon the attorney's appearance.

2.3 Once registration is completed, the Filing User will receive notification of the user log-in and password. Filing Users agree to protect the security of their passwords and immediately notify the Clerk if they learn that their password has been compromised. Users may be subject to sanctions for failure to comply with this provision.

2.4 In a civil action, the Clerk will enter, as Filing Users to whom Notices of Electronic Filing will be transmitted, (a) each attorney identified on the Civil Cover Sheet, as well as (b) each additional attorney who subsequently appears in the action and files a Notice of Appearance (which must be filed electronically). In a criminal case, the Clerk will enter, as Filing Users to whom Notices of Electronic Filing will be transmitted and who will be granted access to electronically file and retrieve documents in the case, the attorney(s) for the United States identified on the Criminal Designation Form or subsequently identified as representing the United States in the case and each attorney filing a Notice of Appearance on behalf of a defendant. Notices of Appearance on behalf of a criminal defendant will be filed in the traditional manner on paper.

2.5 An attorney of record may, by written or electronic request to the Clerk, have transmission of Notices of Electronic Filing to another attorney in his or her firm terminated.

(*See section 22 - ECF Passwords*).

Section 3. Consequences of Electronic Filing

3.1 Except as otherwise provided in Rule 4 herein, electronic filing of a document in the ECF system consistent with these procedures, together with the transmission of a Notice of Electronic Filing from the Court, constitutes filing of the document for all purposes of the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, and the Local Rules of this Court and constitutes entry of the document on the docket kept by the Clerk under Fed. R. Civ. P. 58 and 79 and Fed. R. Crim. P. 49 and 55.

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3.2 When a document has been filed electronically, the official record is the electronic recording of the document as stored by the Court (subject to the exception set out in Rule 4 below), and the filing party is bound by the document as filed. Except in the case of documents first filed in paper form and subsequently submitted electronically under Rule 1, a document filed electronically is deemed filed on the date and time stated on the Notice of Electronic Filing from the Court.

3.3 Electronic filing must be completed before midnight local time where the Court is located in order to be considered timely filed that day.

3.4 Individual Judges' Practices should continue to be followed with respect to delivery of courtesy copies.

(*See section 19 - Service of Electronically Filed Documents*).

Section 4. Entry of Court Orders

4.1 All orders, decrees, judgments and proceedings of the Court will be filed in accordance with these procedures and entered on the docket kept by the Clerk under Fed. R. Civ. P. 58 and 79 and Fed. R. Crim. P. 49 and 55. Each document signed by a judge shall be scanned so as to contain an image of the judge's signature and shall be filed electronically by the Court, and the manually signed original shall be filed by the Clerk. In the event of a discrepancy between the electronically filed copy and the manually signed original, the manually signed original shall control.

4.2 A Filing User submitting a document electronically that requires a judge's signature must promptly deliver the document in such other form as the Court requires, if any.

Section 5. Attachments and Exhibits

5.1 Filing Users must submit in electronic form all documents referenced as exhibits or attachments, unless the Court permits paper filing.

5.2 A Filing User must submit as exhibits or attachments only those excerpts of the referenced documents that are relevant to the matter under consideration by the Court. Excerpted material must be clearly and prominently identified as such. Filing Users who file excerpts of documents as exhibits or attachments under this procedure do so without prejudice to their right to file timely additional excerpts or the complete document. Responding parties may file timely additional excerpts that they believe are relevant or the complete document. A party may move for permission to serve and file in hard copy documents that cannot reasonably be scanned.

5.3 In cases where the record of an administrative or other prior proceeding must be filed with the Court, such record may be served and filed in hard copy without prior motion and order of the Court.

(*See section 15 - Motions*).

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Section 6. Sealed Documents

6.1 Documents ordered to be placed under seal may not be filed electronically.

6.2 A motion to file documents under seal should be filed electronically unless prohibited by law, in redacted form if necessary; however, a motion to file under seal that includes a statement of why the filing should not be made electronically may be made in paper copy. The order of the Court authorizing the filing of documents under seal may be filed electronically unless prohibited by law.

6.3 A paper copy of the sealing order must be attached to the outside of the envelope containing the documents under seal and be delivered to the Clerk's Office.

(*See section 18 - Non-Electronic Documents*).

Section 7. Retention Requirements

Documents that are electronically filed and require original signatures other than that of the Filing User must be maintained in paper form by the Filing User until one year after all time periods for appeals expire, except that affidavits, declarations and proofs of service must be maintained in paper form by the Filing User until five years after all time periods for appeals expire. On request of the Court, the Filing User must provide original documents for review.

(*See section 13 - ECF Basics*).

Section 8. Signatures

8.1 The user log-in and password required to submit documents to the ECF system serve as the Filing User's signature on all electronic documents filed with the Court. They also serve as a signature for purposes of the Federal Rules of Civil Procedure, including Rule 11, the Federal Rules of Criminal Procedure, the Local Rules of this Court, and any other purpose for which a signature is required in connection with proceedings before the Court. Each document filed electronically must indicate that it has been electronically filed.

8.2 Electronically filed documents must include a signature block and must set forth the name, address, telephone number and e-mail address all in compliance with the Federal Rules of Civil Procedure and Local Civil Rule 11.1. In addition, the name of the Filing User under whose log-in and password the document is submitted must be preceded by an "s/" typed in the space where the signature would otherwise appear.

8.3 No Filing User or other person may knowingly permit or cause to permit a Filing User's password to be used by anyone other than an authorized agent of the Filing User.

8.4 A document requiring the signature of a defendant in a criminal case may be electronically filed only in a scanned format that contains an image of the defendant's signature.

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8.5 Documents requiring signatures of more than one party must be electronically filed either by: (a) submitting a scanned document containing all necessary signatures; (b) representing the consent of the other parties on the document; (c) identifying on the document the parties whose signatures are required and by the submission of a notice of endorsement by the other parties no later than three business days after filing; or (d) in any other manner approved by the Court.

(*See section 13 - ECF Basics*).

Section 9. Service of Documents by Electronic Means

Transmission of the Clerk's Notice of Electronic Filing of a document shall constitute service of such document upon any Filing User in that case. It remains the duty of the attorney for a party to review regularly the docket sheet of the case. Attorneys and pro se parties who are not Filing Users shall be served with a paper copy of any electronically filed pleading or other document. Service of such paper copy must be made according to the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure and the Local Rules.

(*See section 19 - Service of Electronically Filed Documents*).

Section 10. Notice of Court Orders and Judgments

Immediately upon the entry of an order or judgment in a proceeding assigned to the ECF system, the Clerk will transmit to all Filing Users in the case, in electronic form, a Notice of Electronic Filing. Electronic transmission of the Notice of Electronic Filing constitutes the notice required by Fed.R.Crim.P. 49(c) and Fed.R.Civ.P. 77(d). It remains the duty of the attorney for a party to review regularly the docket sheet of the case. The Clerk must give notice in paper form to a person who is not a Filing User in accordance with the Federal Rules of Civil Procedure or the Federal Rules of Criminal Procedure.

(*See section 19 - Service of Electronically Filed Documents*).

Section 11. Technical Failures

A Filing User whose filing is made untimely as the result of a technical failure may seek appropriate relief from the Court.

(*See section 23 - ECF Computer System Information*).

Section 12. Public Access

A person may review at the Clerk's Office filings that have not been sealed by the Court. A person also may access the ECF system at the Court's Internet site www.nysd.uscourts.gov by obtaining a PACER log-in and

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password. A person who has PACER access may retrieve docket sheets in civil and criminal cases, documents in a civil case assigned to the ECF System, and documents in a criminal case filed after November 1, 2004. Only counsel for the government and for a defendant may retrieve documents in a criminal case filed prior to November 1, 2004. Only a Filing User under Rule 2 herein may file documents.

(*See section 13 - ECF Basics*).

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Part II. Electronic Case Filing Instructions

Section 13. ECF Basics

13.1 May letters be filed electronically?

No. Letters are submitted in the traditional manner on paper. An attorney should not file a letter electronically on the ECF system. The Judge may direct the Clerk to place a letter on the docket if it is deemed appropriate.

13.2 In brief, how do I file a document electronically?

(a) Use your secure SDNY ECF password (*see section 22 - ECF Passwords*) to log-in to the ECF system from any Internet connection.

(b) Select the appropriate category, CIVIL or CRIMINAL.

(c) Find the appropriate ECF Filing Event, or title, for your document. (*See below*).

(d) Indicate the party filing the document (hold down the control key to designate more than one party).

(e) Upload a PDF copy (*see section 23 - ECF Computer System Information*) of your document. Include any exhibits as attachments to the main document. File supporting documents separately.

(f) Print the final screen, the Notice of Electronic Filing (NEF), for your records.

(g) Service is complete provided all parties receive electronic notice of the filing (via the NEF email sent automatically by the Court - see the NEF for a list of who was/was not served electronically). If a party will not receive electronic notice via the NEF email, you must serve him/her in the traditional manner, on paper, then electronically file an affidavit of service (*see section 19 - Service of Electronically Filed Documents*).

(h) Submit a paper courtesy copy to the Judge if required (*see the Judge's Individual Practices at www.nysd.uscourts.gov*).

13.3 What is the secure website for electronic filing on the SDNY ECF system?

To file electronically go to **https://ecf.nysd.uscourts.gov**, or link to the filing website via the Court's public website (see below). You will need your SDNY ECF log-in and password to file electronically.

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13.4 What is the public website for information about the Court?

For publicly available information go to **www.nysd.uscourts.gov** (no password required). From the homepage click on ECF for information on Electronic Case Filing.

13.5 What are the mailing addresses for the Court?

United States District Court, 500 Pearl Street, New York, NY 10007; or United States District Court, 300 Quarropas Street, White Plains, NY 10601.

13.6 Is an electronically filed document filed in accordance with the Federal Rules of Civil Procedure?

Yes. Local Civil Rule 5.2 provides:

> A paper filed by electronic means in accordance with procedures promulgated by the Court is, for purposes of Federal Rule of Civil Procedure 5(e), filed in compliance with the local civil rules of the Southern and Eastern Districts of New York.

(*See section 3 - Consequences of Electronic Case Filing*).

13.7 Which cases are ECF cases?

Civil and criminal cases filed after December 2, 2003, are subject to electronic filing. Cases filed before that date, Social Security cases, habeas corpus cases and pro se cases will not be assigned to the ECF system and must be filed on paper.

(*See section 1 - Scope of Electronic Filing*).

13.8 Which Judges entertain ECF cases?

All of the Court's District Judges and Magistrate Judges are able to entertain ECF cases.

13.9 How can I tell if my case is an ECF case?

The docket sheet will include the letters "ECF" in the upper right corner and an entry titled "CASE DESIGNATED ECF". If you are not sure if you are required to file electronically, call the ECF Help Desk at (212)805-0800.

13.10 If a case is deemed an ECF case, am I required to file documents electronically?

Yes. In an ECF case the attorney is responsible for electronically filing documents over the Internet using a secure SDNY log-in and password. With certain exceptions outlined below the Clerk's Office will not accept paper filings in an ECF case.

(*See section 1 - Scope of Electronic Case Filing* and *section 18 -Non-Electronic Documents*).

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13.11 May I file documents electronically in a non-ECF (paper) case?

No. Do not file documents electronically in non ECF (paper) case. Only those cases filed after December 2, 2003 are subject to electronic filing. Pro Se cases, Social Security cases, habeas corpus cases and cases filed before December 2, 2003, will not be assigned to the ECF system and must be filed on paper.

(*See section 1 - Scope of Electronic Case Filing*).

13.12 Will the Court file documents electronically in a non-ECF (paper) case?

Yes, the Court may file Orders and Opinions in electronic format (pdf) in a non-ECF (paper) case. This will not convert a non-ECF case to an ECF case, and parties should continue to file documents on paper.

13.13 Can I file electronically at any time?

Yes. You can file electronically 24 hours a day, 7 days a week, 365 days a year from any Internet connection worldwide. Filing must be completed before midnight local time where the Court is located in order to be considered timely filed that day.

(*See section 3 - Consequences of Electronic Case Filing*).

13.14 When is an electronically filed document deemed filed?

An electronically filed document is deemed filed on the date and time stated on the Notice of Electronic Filing (also referred to herein as the "filing receipt") from the Court.

(*See section 3 - Consequences of Electronic Case Filing*).

13.15 What is a docket sheet, and how can I view one?

The docket sheet is the official record of all filings in a case. You can view the docket sheet, including images of electronically filed documents, via the PACER public access system (for details go to http://pacer.psc.uscourts.gov or call 800-676-6856). Or you can use one of the public access computers available in the Clerk's Office.

(*See section 12 - Public Access*).

13.16 Should I routinely view the docket sheet in my case?

Yes. In ECF cases, service is accomplished by an e-mail sent by the Court. However e-mail is not foolproof, and you may miss an e-mail message. Therefore it remains the duty of the attorney for a party to review regularly the docket sheet of the case in order not to miss a filing.

(*See section 9 - Service of Documents by Electronic Means*).

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13.17 How do I view an electronically filed document in an ECF case?

Click on Query, enter the case number, go to Docket Report, find the document and click on the blue number (hyperlink) next to that entry. A pdf copy of the complete document will then appear. If there is no blue hyperlink, then there is no electronic version of that document. In non-ECF (paper) cases you will not be able to view documents, only document summaries.

13.18 How will I know if it's appropriate to electronically file my document?

First, determine if your case is an ECF case - not all cases are ECF cases. When filing in an ECF case if you can find an ECF Filing Event that directly matches your document then it should be electronically filed. If you cannot find a matching ECF Filing Event it probably should not be electronically filed. The ECF Event Dictionary (a PDF document available on our public website at www.nysd.uscourts.gov) is very useful for finding your event and the category in which it is listed. See the list of non-ECF documents below or call the ECF Help Desk at (212)805-0800.

(*See section 24 - ECF Help Desk and Training*).

13.19 Must the caption indicate the case is an electronic (ECF) case?

Yes. The case number must be followed by the judge's initials in parenthesis, and "ECF CASE" below the case number. For example:

06 cv 1234 (ABC)
ECF Case

(*See section 8 - Signatures*).

13.20 How do I sign an electronically filed document?

The ECF log-in and password of the filing attorney serve as his/her electronic signature. The filing attorney may place an S/ in place of his/her signature. The attorney's name and contact information, including e-mail address, must appear below the signature line. Signatures for all other persons (clients, witnesses etc.) must be scanned in order to capture the actual ink signature.

(*See section 8 - Signatures*).

13.21 When filing must I choose a name for my document on the ECF Docket Sheet?

Yes. When filing electronically you will be asked to name your document by selecting the appropriate ECF Filing Event. The ECF Filing Event is essentially the title of the document on the docket sheet, such as Motion for Summary Judgment or Affidavit in Support of Motion.

13.22 How do I find the correct ECF Filing Event for my document?

ECF Filing Events are listed by category on the ECF system. Within each category is an alphabetical listing of available ECF Filing Events. You may use the search function to find your Filing Event. The ECF Event

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Dictionary (a pdf document available on our public website at www.nysd.uscourts.gov) is also very useful for finding your event and the category in which it's listed. Print the dictionary for future reference. If you cannot find the appropriate event for your document do not file it using the wrong event. Call the ECF Help Desk at (212)805-0800 for assistance if necessary.

(*See section 24 - ECF Help Desk and Training*).

13.23 Must I retain paper originals of documents I electronically file?

Yes. Filing Users must retain original versions of electronically filed documents for a period of time after filing. On request of the Court, the Filing User must provide original documents for review.

(*See section 7 - Retention Requirements*).

13.24 Should I continue to submit courtesy copies?

Yes, continue your current practice. In the past if you would have submitted a paper courtesy copy of a document, you should now submit a paper courtesy copy of the document in an ECF case. For example, most Judges require courtesy copies of motion papers. Read the Judge's Individual Practices for specific practices.

(*See section 3 - Consequences of Electronic Case Filing*).

13.25 Are Administrative Records filed electronically?

Yes, if possible. However, if the administrative record is too large to be scanned it may be served and filed in hard copy without prior motion and order of the Court.

(*See section 5 - Attachments and Exhibits*).

13.26 In Consolidated and MDL cases can I file simultaneously in member cases?

Yes. When filing in Consolidated and Multi-District Litigation (MDL) cases you can save time by electronically filing a document simultaneously in the member case(s) using the computer function titled "Spread Text and Effects" (not available in related cases). Please observe the following MDL filing rules:

- In consolidated and MDL cases you must file all documents first under the Lead or MDL case number.

- You may then precisely designate the member case(s) in which you wish to simultaneously file.

- Do not file in all cases unless it is appropriate. Your document may not relate to all member cases.

- The case caption must include all the case numbers in which your document will be filed.

- Instructions for Spread Text and Effects and information on in-person training are available on-line at www.nysd.uscourts.gov

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13.27 What if I make a mistake in electronic filing?

Call the ECF Help Desk immediately at (212)805-0800.

(*See section 24 - ECF Help Desk and Training*).

Section 14. Opening a Civil Action

14.1 Electronically filed (ECF) cases are opened and service of the initiating documents (complaint, notice of removal, etc.) is accomplished in the traditional manner, on paper.

14.2 In order to alert your adversary(s) to the requirements of Electronic Case Filing and the Judge's Individual Practices you are required to deliver paper copies of the following documents to all parties (available at the courthouse, and www.nysd.uscourts.gov):

- **Electronic Case Filing Rules & Instructions** (this document)
- **The Individual Practices** of the assigned Judge

14.3 Then within 24 hours of the assignment of a case number, you are required to e-mail to the Clerk's Office (e-mail is not ECF filing) the initiating documents in PDF format only (such as Adobe Acrobat PDF, see section 21). Include a F.R.C.P. Rule 7.1 Statement (if applicable) and all exhibits. The case number followed by the Judge's initials and "ECF CASE" must appear in the case caption. Failure to do so within 24 hours will delay adding your PDF documents to the computerized ECF docket.

Each document must be in a separate PDF file no larger than 2.5 megabytes (separate large computer files into smaller parts if necessary, and label accordingly). The subject line of the e-mail and the name of the PDF file should list the case number followed by a brief document description (ex. "Re: 01cv1234 KMW-complaint").

Send a PDF copy of the initiating documents by e-mail (do not file on the ECF system) to:

- For new civil cases assigned to a Manhattan Judge e-mail to:
  caseopenings@nysd.uscourts.gov
  or **case_openings@nysd.uscourts.gov**
- For new civil cases assigned to a White Plains Judge e-mail to:
  wpclerk@nysd.uscourts.gov

14.4 File the Affidavit of Service (or the Acknowledgment of Service, Certificate of Service, Request for Waiver of Service, Summons Returned Executed/Unexecuted, Waiver of Service Executed/Unexecuted) for the initiating document (complaint, notice of removal, etc.) in the following manner:

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(a) Electronically file the Affidavit of Service for the initiating document on the ECF system (do not e-mail), and

(b) Deliver the original paper Affidavit of Service, with summons attached, to the Clerk's Office. Include a copy of the ECF Notice of Electronic Filing for this document (the filing receipt),

(See section 19 - Service of Electronically Filed Documents).

14.5 Subsequent documents, including the Defendant's Answer, must be filed electronically on the ECF system at **https://ecf.nysd.uscourts.gov**. With certain exceptions outlined below, the Clerk's Office will not accept a paper document for filing in an ECF case.

(*See section 1 - Scope of Electronic Filing* and *section 18 - Non-electronic Documents*).

Section 15. Motions

15.1 What ECF Filing Event should be used to file a motion?

A motion must be filed using an ECF Filing Event beginning with the word "Motion". The ECF system contains over 160 separate motion Filing Events for your use, all beginning with the word "Motion" (eg. "Motion for Summary Judgment", etc.). See the ECF Events Dictionary at www.nysd.uscourts.gov for a complete list of motions and supporting documents. Do not use the "Notice" filing event to file a motion.

15.2 Should I file supporting papers as attachments to the motion?

No. File supporting or response documents separately under the appropriate ECF Filing Event found in the category "Replies, Opposition and Supporting Documents". For example, a motion, an affidavit in support and a memorandum of law in support must be filed separately.

15.3 What ECF Filing Event should be used to file supporting papers?

Use the appropriate ECF Filing Events for supporting papers found in the category "Replies, Opposition and Supporting Documents" (eg. Affidavit in Support of Motion, Memorandum of Law in Support of Motion, etc.). Never use the ECF Filing Event for Motion to file supporting papers. For example, filing a motion, an affidavit in support and a memorandum of law in support, and labeling each one "Motion" would make it appear incorrectly that three motions were filed instead of one.

15.4 How do I file exhibits?

Exhibits shall be filed only as attachments to a document, such as a motion or an affidavit. Do not use the ECF Filing Event for "Motion" to file exhibits separately. Exhibits are the only items that should be attached to electronically filed documents. You are limited to electronically filing only relevant excerpts of exhibits.

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Excerpts must be clearly identified as such. If the exhibit is too large to be scanned and electronically filed call the ECF Help Desk at (212)805-0800.

(See section 5 - Attachments and Exhibits; see also section 24 - ECF Help Desk and Training).

Section 16. Default Judgments

16.1 How do I file a Default Judgment?

In one of the three ways outlined below. Consult the Individual Practices of the Judge to determine the appropriate method (at www.nysd.uscourts.gov). If the Judge's Individual Practices contain no specific rules regarding Default Judgments you should follow section 16.4 below.

If you wish to electronically file a Request to Enter Default Judgment before submitting a Default Judgment, you must file an unsigned Clerk's Certificate as an attachment to the Request. Then submit a paper copy of the proposed Clerk's Certificate to the Orders, Appeals & Judgments Clerk. The clerk will sign and return the Clerk's Certificate, and you may then move for a Default Judgment using the appropriate method outlined below.

When necessary, submit paper documents to the Orders, Appeals & Judgements Clerk in Manhattan (212-805-0143) or White Plains (914-390-4000) depending upon where the Judge sits. If sending documents by mail, enclose a return envelope with postage. For mailing addresses *see section 13 - ECF Basics*.

16.2 Default Judgment brought by Motion:

(a) Submit to the Orders, Appeals & Judgment Clerk two paper Clerk's Certificates. The clerk will sign and return both Certificates to the filing party.

(b) Electronically file the Motion for Default Judgment on the ECF system. The following items should be filed as attachments to the Motion: the signed Clerk's Certificate; and a copy of the Summons and Complaint with proof of service. The following supporting documents should be filed as separate ECF Filing Events: Affidavit in Support; and Statement of Damages (unless requesting an inquest).

(c) Electronically file an Affidavit of Service for the Motion for Default Judgment.

(d) Submit a courtesy copy of the Motion to the Judge, including the original signed Clerk's Certificate and a copy of the Affidavit of Service.

16.3 Default Judgment brought by Order to Show Cause (OSC):

(a) Submit to the Orders, Appeals & Judgments Clerk a paper original of the OSC. Include as exhibits to the Affidavit in Support a Clerk's Certificate and a proposed Default Judgment.

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Include courtesy copies of all documents.

(b) If signed by the Court, the Clerk's Office will electronically file only the Order. After the Order appears on the docket sheet, the attorney must electronically file all supporting papers.

(c) Electronically file an Affidavit of Service for the Order to Show Cause.

16.4 Default Judgment brought on by Default Judgment and Order:

(a) Submit to the Orders, Appeals & Judgments Clerk: a paper original of the proposed Default Judgment and Order; the Affidavit in Support; a Statement of Damages (unless requesting an inquest); a copy of the Summons and Complaint with proof of service; and a Clerk's Certificate. The papers will be forwarded to the Judge for signature.

(b) If signed by the Court, the Clerk's Office will electronically file only the Order. After the Order appears on the docket sheet, the attorney must electronically file all supporting papers.

Section 17. Appeals

17.1 Are appeals filed electronically?

No. Appeals in ECF and non-ECF cases must be filed in the traditional manner, on paper.

17.2 How do I file an appeal in an ECF case?

File the appeal in the traditional manner, on paper either at the courthouse or by mail. Include the filing fee if necessary. Then within 24 hours of filing the paper copy of your Appeal, you are required to e-mail to the Clerk's Office an electronic copy of the Appeal in PDF format. Include any exhibits. Each document must be in a separate PDF file no larger than 2.5 megabytes. The District Court case number followed by the Judge's initials and "ECF CASE" must appear in the document's case caption. When sending e-mail, the subject line of the e-mail should always list the case number followed by a document description (ex. "Re: 01cv1234-appeal"). Questions may be directed to the Orders, Appeals & Judgments Clerk in Manhattan at (212)805-0636, or in White Plains at (914)390-4000. Send the e-mail (do not file on the ECF system) to:

- For appeals from an ECF case assigned to a Manhattan Judge e-mail to:

appeals@nysd.uscourts.gov

- For appeals from an ECF case assigned to a White Plains Judge e-mail to:

wpclerk@nysd.uscourts.gov

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Section 18. Non-Electronic Documents

18.1 In an ECF case are there documents that I should not file electronically?

Yes, including:

- Letters, see instruction 18.2 below.
- Case initiating documents (complaint, notice of removal, etc.), see section 14;
- All types of complaints (3rd party, Interpleader etc.), see instruction 18.3 below;
- Proposed orders; proposed judgments, stipulations; consents, see instruction 18.4 below;
- Orders to show cause (with or without a temporary restraining order), see instruction 18.6 below;
- Motions for Admission pro hac vice, see instruction 18.7 below;
- Miscellaneous cases, see instruction 18.8 below;
- Sealed documents, see instruction 18.9 below;
- Surety bonds, see instruction 18.10 below;
- Bill of Costs, see instruction 18.11 below;
- Notices of Appeal, see section 17;

18.2 May letters be filed electronically?

No. Letters are submitted in the traditional manner on paper. An attorney should not file a letter electronically on the ECF system. The Judge may direct the Clerk to place a letter on the docket if it is deemed appropriate.

18.3 Are Amended Complaints, Third Party Complaints, Interpleader Complaints, etc. filed electronically?

No. All complaints, no matter what type, are filed the same way:

(a) Deliver the paper original to the appropriate Clerk's Office (Manhattan or White Plains), and

(b) E-mail a PDF copy of the document within 24 hours, including exhibits and Rule 7.1 Disclosure Statement (if required) to the Clerk's Office. Send the e-mail to:

- For cases assigned to a Manhattan Judge e-mail to:

caseopenings@nysd.uscourts.gov

or **case_openings@nysd.uscourts.gov**

- For cases assigned to a White Plains Judge e-mail to:

wpclerk@nysd.uscourts.gov

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18.4 Are Proposed Orders, Proposed Judgments, Stipulations or Consents filed electronically?

No. Any document that requires the signature of a Judge should not be electronically filed. Proposed orders, judgments, stipulations and consents should not be submitted through the ECF system. Instead they should be sent by e-mail to the Clerk. Proposed orders should be submitted in word processing format (WordPerfect or Word) rather than as a pdf document. Stipulations should be submitted in pdf format. Stipulations must contain ink signatures. Faxed signatures are acceptable, the last person to sign may e-mail it to the clerk. [Please note, effective August 1, 2008, Stipulations of Voluntary Dismissal pursuant to F.R.C.P. Rule 41(a)(1)(A)(ii) do not require the signature of a Judge, and should be electronically filed in ECF cases.] Questions may be directed to the Orders, Appeals & Judgments Clerk in Manhattan at (212)805-0143 or in White Plains at (914)390-4000. E-mail the proposed order, judgment or stipulation to:

- For cases assigned to a Manhattan Judge e-mail to:

judgments@nysd.uscourts.gov

- For cases assigned to a White Plains Judge e-mail to:

wpclerk@nysd.uscourts.gov

18.5 Must a Stipulation or Consent include a traditional ink signature?

Yes. You cannot substitute s/ for a traditional ink signature for these documents. Faxed signatures are acceptable.

(*See section 8 - Signatures*).

18.6 Are Orders to Show Cause filed electronically?

No. An Order to Show Cause (with or without a Temporary Restraining Order) must be submitted in the traditional manner, on paper, to the Orders, Appeals & Judgments clerk. If signed by the Court, the Clerk's Office will electronically file only the Order. After the Order appears on the docket sheet, the attorney must electronically file all supporting papers

18.7 Are Motions for Admission pro hac vice filed electronically?

No. A Motion for Admission pro hac vice is filed in the traditional manner, on paper. See the Attorney Admissions page at www.nysd.uscourts.gov for details and sample forms.

18.8 Are Miscellaneous cases filed electronically?

No. Miscellaneous cases are filed in the traditional manner, in paper form. Miscellaneous cases are those that use an "M" docket number (eg. "M 8-85") instead of a traditional case number, and require payment of a Miscellaneous filing fee for each document.

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18.9 Are sealed documents filed electronically?

No. Sealed documents are filed in the traditional manner, in paper form. The sealed envelope must contain the paper document and a CD-ROM containing a pdf copy of the document. A copy of the Judge's sealing order must be attached to the outside of the envelope.

(*See section 6 - Sealed Documents*).

18.10 Are surety bonds filed electronically?

No. Surety bonds are filed in the traditional manner, on paper. Include a copy of the Court's Order regarding the bond.

18.11 Is a Bill of Costs filed electronically?

No. A Bill of Costs should be filed in the traditional manner, in paper form. See Local Civil Rule 54.1 for details. See also the required Bill of Costs form at www.nysd.uscourts.gov.

Section 19. Service of Electronically Filed Documents

19.1 How is service accomplished for electronically filed documents?

After you register for an ECF password (*see section 22 - ECF Passwords*) you will receive a Notice of Electronic Filing (NEF) by e-mail whenever there is activity in your case, including court orders and filings by your adversary. That e-mail from the Court constitutes service. A hyperlink to a PDF image of any electronically filed document will be included (not all activity includes a PDF document). Print a copy of the document and the NEF for your records. The Clerk's Office will no longer mail paper copies of electronically filed documents.

(See section 9 - Service of Documents by Electronic Means).

19.2 Am I required to serve a paper copy of an electronically filed document?

Maybe. If all parties will receive electronic notification of the filing, then service is complete upon transmission by the Court of the Notice of Electronic Filing email (NEF) and you are not required to serve a paper copy.

If any party will not receive a NEF, you are required to accomplish service on that party in the traditional manner, on paper. Then you must electronically file an Affidavit of Service (see below).

The Notice of Electronic Filing receipt will inform you who will receive notice of the filing "electronically" (by e-mail from the Court) and who will receive notice "by other means" (traditional service on paper).

(*See section 9 - Service of Documents by Electronic Means*).

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19.3 Am I required to electronically file an Affidavit of Service in an ECF case?

Only two circumstances require the electronic filing of an Affidavit of Service in an ECF case:

(a) The Affidavit of Service for the initiating document (complaint, notice of removal, etc.) must be filed as follows:

(1) Electronically file the Affidavit of Service for the initiating document on the ECF system (do not send by e-mail), and

(2) Deliver the original paper Affidavit of Service with summons attached to the Clerk's Office. Attach a copy of the ECF filing receipt for this document. And

(b) An Affidavit of Service must be electronically filed anytime a party is served with a paper document. This usually occurs when a party will not receive electronic notice of the filing (via e-mail) from the Court. See the Notice of Electronic Filing (NEF) for a list of who was or was not served electronically.

(*See section 9 - Service of Documents by Electronic Means*).

19.4 Is a filing timely if it is completed before midnight?

Yes. Filing must be completed before midnight local time where the Court is located in order to be considered timely filed that day.

(*See section 3 - Consequences of Electronic Case Filing*).

19.5 Do I receive a receipt (Notice of Electronic Filing) when I file electronically?

Yes. When you successfully complete an electronic filing the final screen will display a NOTICE OF ELECTRONIC FILING (NEF), or filing receipt. Print a copy for your records. The NEF receipt will tell you what was filed, by whom, when it was filed and if a document number was assigned on the docket sheet (not all case activity merits a document number). If you do not see the NEF screen your filing may not have been successful and you are advised to check the docket sheet.

19.6 Should I routinely view the docket sheet in my case?

Yes. Although service is accomplished in ECF cases by an e-mail sent by the Court, e-mail is not foolproof and you risk missing an e-mail message. Therefore it remains the duty of the attorney for a party to review regularly the docket sheet of the case in order not to miss a filing.

(*See section 9 - Service of Documents by Electronic Means*).

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Section 20. Attorney Appearances

20.1 How does an attorney's name appear on the docket sheet?

The attorney who signs the initiating document will be added to the docket sheet when the Clerk's Office opens the case on the ECF system. The attorney responding to that filing must add his or her own name to the docket sheet the first time he or she appears in the case. When electronically filing the first document, the responding attorney must: (a) click to create an "Association" with the client (i.e. represent the client); (b) click the "Notice" box to receive electronic notice of case activity; and (c) click the "Lead" attorney box if applicable. If the responding attorney is not offered the opportunity to create an "association" with the client on his/her first electronic filing, he/she must electronically file a Notice of Appearance in order to appear on the docket.

20.2 If the attorney's name is on the docket sheet why doesn't he/she receive e-mail notification of filings?

It could be because his or her name was added to the docket sheet before the attorney obtained an ECF password. In that case the attorney's name and firm address will appear at the top of the docket sheet, but the e-mail address will be missing. If this is the case the solution is to obtain an ECF password. Or it could be because the attorney filed a Notice of Appearance but failed to check the "Notice" box when creating an association with the client to indicate that he or she would like to receive e-mail notification of activity in the case. In this case, call the ECF Help Desk at (212)805-0800.

(*See section 24 - ECF Help Desk and Training*).

20.3 How do I electronically file a Notice of Appearance in an ECF case?

If an attorney joins a case already in progress he or she must electronically file a Notice of Appearance. When electronically filing the Notice of Appearance, the attorney must: (a) click to create an "Association" with the client (i.e. represent the client); (b) click the "Notice" box to receive electronic notice of case activity; and (c) click the "Lead" attorney box if applicable. Please note the ECF system will not allow an attorney to electronically file a Notice of Appearance on behalf of another attorney. The Notice of Appearance and the ECF password must belong to the same attorney.

(*See section 2 - Eligibility, Registration, Passwords*).

20.4 How do I file a Motion for Admission pro hac vice in an ECF case?

In the traditional manner, on paper. After the Order of Admission pro hac vice is signed, the attorney must apply for an ECF password. See the Attorney Admissions page at www.nysd.uscourts.gov for details and sample forms.

20.5 Am I required to notify the Court when my contact information changes?

Yes. Local Civil Rule 1.3 requires an attorney to notify the court when his/her contact information changes.

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For information go to www.nysd.uscourts.gov or call the Attorney Admissions Clerk at (212) 805-0645. Follow the steps below to change your contact information:

(a) If you have a pending case provide notice to the Court and your adversary(s) by electronically filing a NOTICE OF CHANGE OF ADDRESS in each open case where you remain the attorney of record, or

(b) If you do not have a pending case mail written notice of the change to: Attorney Admissions Clerk, United States District Court, 500 Pearl Street, NY, NY 10007.

20.6 What if only my e-mail address has changed?

You can make a simple change of your e-mail address yourself on the ECF system. To update your primary e-mail address click on Maintain Your Account and E-mail Information. However, if your other contact information has changed you must follow the directions above to update your full contact information.

20.7 Can I specify additional e-mail addresses to receive notification of activity in my cases?

Yes. You can add an alternate e-mail address for yourself, or add a colleague's e-mail address. On the ECF system click on Utilities, Maintain Your Account, and E-mail Information.

20.8 Can I receive electronic notification of activity in cases where I do not represent a party?

Yes. You can add cases to your e-mail notification list on the SDNY ECF system even if you don't represent a party to the case. Click on Utilities, Maintain Your Account, and E-mail Information.

Section 21. Privacy and Public Access to ECF Cases

21.1 Has electronic filing expanded public access to documents?

Yes, documents filed electronically on the ECF system are more widely available than ever before. Electronic documents can now be viewed over the Internet via a PACER account. In order to protect people's privacy and reduce the threat of identity theft, parties should be cautious when filing sensitive information.

21.2 Who is responsible for redacting sensitive information from filed documents?

It is the sole responsibility of counsel and the parties to be sure that all documents comply with the rules of this Court requiring redaction of personal identifiers. Neither the judge nor the Clerk of Court will review documents for compliance with this rule.

21.3 Am I required to redact certain sensitive information in a document?

Yes. Amendments to Federal Rule of Civil Procedure 5.2 and Criminal Procedure 49.1 require that personal

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identification information be redacted from documents filed with the court. You should not include sensitive information in any document filed with the Court unless such inclusion is necessary and relevant to the case. This applies to both ECF cases and non-ECF (paper) cases. In compliance with the E-Government Act of 2002, a party wishing to file a document containing the personal data identifiers listed below must file a redacted version in the public file:

- Social Security Numbers: include only the last four digits of the number.
- Names of Minor Children: include only the initials of the child.
- Dates of Birth: include only the year.
- Financial Account #'s: include only the last four digits of these numbers.
- Home Addresses: include only the City and State.

21.4 Is there other sensitive information that I should consider redacting?

Yes. Caution should be exercised when filing documents that contain the following:

- Personal identifying numbers (PIN #'s), such as a driver's license number
- Medical records, treatment and diagnosis
- Employment history
- Individual financial information
- Proprietary or trade secret information
- Information regarding an individual's cooperation with the government

21.5 Am I required to file sensitive information under seal?

No. In addition to the redacted public filing a party may file, but is not required to file, the personal data identifiers listed above by filing under seal.

You may file under seal either: (a) a reference list, or (b) an original, unredacted version of the document.

If you find it necessary to file sensitive information, the Court prefers a reference list to the filing of a complete document. The reference list shall contain the complete personal data identifier(s) and the redacted identifier(s) used in its (their) place in the filing. The reference list may be amended as of right.

21.6 Are sealed documents filed electronically?

No. Sealed documents are filed in the traditional manner, in paper form. The sealed envelope must contain the paper document and a CD-ROM containing a pdf copy of the document. A copy of the Judge's sealing order must be attached to the outside of the envelope.

(*See section 6 - Sealed Documents*).

21.7 Who should maintain custody of original unredacted documents?

Parties are responsible for maintaining possession of original, unredacted documents, and information redacted

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from publicly filed documents. The Court may later require counsel to furnish the unredacted information.

21.8 What if I mistakenly file sensitive or confidential information?

(a) Immediately contact the ECF Help Desk at (212)805-0800. The filing will be temporarily sealed and made invisible to the public.

(b) After notifying the ECF Help Desk, the filing party must ask the Judge, in writing, for the entry to be formally sealed by the Court.

(c) Electronically file a redacted version of the mistaken filing.

Section 22. ECF Passwords

22.1 To file electronically in this Court, do I need an ECF password from the United States District Court for the Southern District of New York?

Yes. To file electronically in this District Court you must have an ECF log-in and password issued by this Court. This password is unique, and is not the same as a password from another District or Bankruptcy Court, or a PACER password. Protect the security of your password by reporting a lost or stolen password immediately to the ECF Help Desk at (212)805-0800.

(*See section 2 - Eligibility, Registration , Passwords*).

22.2 Is my SDNY ECF password the same as my PACER password?

No. Your SDNY ECF password is unique and is not the same as your password for the PACER public access system. For information on PACER go to http://pacer.psc.uscourts.gov or call 800-676-6856.

22.3 Must I be an attorney admitted to this Court to obtain an ECF password?

Yes. ECF passwords are available only to attorneys in good standing with this Court.

22.4 How do I obtain an ECF password if I am already admitted to practice in this Court?

An attorney admitted to practice in this court may register for an ECF password on-line at www.nysd.uscourts.gov. From the homepage click on CM/ECF, then Attorney Registration. You will need your SDNY bar code (your first and last initials followed by four numbers of your own choosing), and the exact date you were admitted to practice in this Court (the date is printed on your Certificate of Good Standing). Contact the Attorney Admissions Office at (212) 805-0645 if you have forgotten any of this information. Click to submit your application on-line, and wait for your ECF password to arrive by e-mail.

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22.5 How do I obtain an ECF password if I am not yet admitted to practice in this Court?

The application to be fully admitted to the bar of this court includes a request for an ECF password. Go to www.nysd.uscourts.gov and from the homepage click on Attorney Admission. The application to the bar of this Court requires you to: **(a)** submit your application on-line, and **(b)** deliver a paper copy of that application and the appropriate fee to the Clerk's Office. Your ECF password will be sent by e-mail after you are sworn-in. If you wish to practice in one case only, you should move for admission Pro Hac Vice (see instructions below).

22.6 How do I obtain an ECF password if I am admitted to practice pro hac vice?

An attorney may be admitted to practice in one case by moving for admission pro hac vice. For complete pro hac vice motion instructions go to www.nysd.uscourts.gov, then click on Attorney Admission. Immediately after a motion to be admitted pro hac vice is granted, the attorney is required to register on-line for an ECF password at www.nysd.uscourts.gov. Enter the date the order was signed and enter XXXXXX for the bar code. Click to submit your application on-line, and wait for your ECF password to arrive by e-mail.

22.7 Do I need a new ECF password if I change law firms?

No. Your ECF password will remain the same even if you change your contact information. Local Civil Rule 1.3 requires an attorney to notify the court when his/her contact information changes. For information go to www.nysd.uscourts.gov or call the Attorney Admissions Clerk at (212) 805-0645. Follow the steps below to change your contact information:

(a) If you have a pending case provide notice to the Court and your adversary(s) by electronically filing a NOTICE OF CHANGE OF ADDRESS in each open case where you remain the attorney of record, or

(b) If you do not have a pending case mail written notice of the change to: Attorney Admissions Clerk, United States District Court, 500 Pearl Street, NY, NY 10007.

22.8 How will I know if my ECF password application was submitted successfully on-line?

When you are ready click the "Submit" button on the bottom of the form. The screen will turn red and you will be asked to review your answers for accuracy. After review click "Proceed". If the screen turns green your application was successfully submitted.

22.9 How long does it take to obtain an ECF password?

Your ECF password will be sent to you by e-mail, within 48 hours of your on-line request. Print a copy for your records.

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Section 23. ECF Computer System Information

23.1 What Internet browser should I use to file electronically on the ECF system?

Each new version of ECF is tested with specific Internet browsers before release. Check the ECF log-in page for a list of approved Internet browsers.

23.2 What is a PDF file and how do I create one?

All documents filed on the ECF system must be PDF computer files (portable document format). A PDF file is created by scanning a printed document using PDF writer software such as Adobe Acrobat (go to Adobe.com for details). PDF files cannot be altered, providing security to the filer and the Court.

23.3 Can I file electronically at the courthouse?

Yes, you may scan and electronically file documents using the document scanners and computers available at the ECF Help Desk in the Clerk's Office. Bring your paper documents and your SDNY ECF log-in and password.

23.4 Is there a limit to the size of a document that can be filed on ECF?

Yes. No single PDF computer file may be larger than 2.5 megabytes (2.5 mb). No single filing event including attachments (eg. Affidavit in Support with exhibits attached) may be larger than 15 megabytes. If the filing is too large, the ECF system will not allow it to be filed, and you will not see a Notice of Electronic Filing (filing receipt) screen. To determine the size of an Adobe Acrobat PDF file click on File, Document Properties, Summary.

23.5 What if my document exceeds the file size limit?

Scan your documents at low resolution. Within the Adobe Acrobat program, on the "Scan Manager" screen, adjust the settings for black and white and 200 dpi (dots per inch). This creates a good quality picture and allows you to fit more pages into a single PDF file. If that doesn't work, separate an oversized file into 2 or more parts. Simply label each file 1a, 1b, 1c, etc. Only relevant excerpts of exhibits should be electronically filed (see below). Finally, if you still experience problems call the ECF Help Desk at (212)805-0800.

(*See section 24 - ECF Help Desk and Training*).

23.6 Do I need the Court's permission to file on paper in an ECF case?

Yes. If your document is too large to file electronically after following the directions above, you may seek permission from the Judge to file on paper. Call the ECF Help Desk first for guidance at (212)805-0800.

(*See section 5 - Attachments and Exhibits*).

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23.7 Must I file only relevant excerpts of exhibits?

Yes. You are limited to electronically filing only relevant excerpts of exhibits. Excerpts must be clearly identified as such.

(*See section 5 - Attachments and Exhibits*).

23.8 What if a technical failure prevents me from filing electronically?

If a technical failure prevents you from filing electronically, follow the steps below:

(a) Do not attempt to file paper documents in ECF cases except for emergency filings (eg. Temporary Restraining Order).

(b) If the problem concerns the Filing User's equipment or Internet Service Provider (ISP), and the Court's ECF system remains in service, the Filing User may use the document scanners at the ECF Help Desk in the Clerk's Office to file electronically. Bring your paper documents and your SDNY ECF password.

(c) If the Court's ECF system is out of order you should electronically file your document as soon as the system is restored.

(d) If you missed a filing deadline when the ECF system was out of order, attach a statement to your filing explaining how the interruption in service prevented you from filing in a timely fashion.

(*See section 11 - Technical Failures*)

Section 24. ECF Help Desk & Training

24.1 How can I learn how to file electronically?

The Court offers several options for ECF training. Details are available on the CM/ECF page at www.nysd.uscourts.gov

(a) In-person training classes are offered weekly for attorneys and support staff (approx. 2 hours).

(b) Step by step filing instructions can be found on-line in the course materials for our in-person training. From the CM/ECF page click on Training. Then click on Instructor Led Training, and click on the course title.

(c) "ECF 101" is a short interactive web-based introduction to electronic filing available on-line.

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24.2 How do I sign up for free e-mail alerts concerning ECF news?

Sign up for free e-mail alerts from the Court at www.nysd.uscourts.gov. From the homepage click on CM/ECF, then POC. You will receive periodic e-mails alerting you to planned ECF service interruptions for maintenance, and unplanned interruptions due to technical difficulties. You will also receive periodic ECF Newsletter e-mails containing news and helpful filing hints. You do not need to be an attorney to sign up for free e-mail alerts.

24.3 How do I contact the ECF Help Desk?

The ECF telephone Help Desk is available from 8:30 AM to 7:00 PM Monday through Friday at (212) 805-0800. Or you can e-mail your ECF questions to **helpdesk@nysd.uscourts.gov**

The preceding Rules for Electronic Case Filing were approved by the Board of Judges of the Southern District of New York on May 28, 2008.

The preceding Electronic Case Filing Instructions were written by the Clerk of Court under the authority of the ECF Rules and were last revised on August 1, 2008.

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10 CIV 1014

JS 44C/SDNY
REV. 1/2008

JUDGE CASTEL

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 use of the Clerk of Court for the purpose of initiating the civil docket sheet.

FEB 08 2010

PLAINTIFFS	DEFENDANTS
Barbara Iglesias, Individually And On Behalf Of All Others Similarly Situated	Toyota Motor Corporation, et al.
ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)	ATTORNEYS (IF KNOWN)
Jill S. Abrams, Esq., Abbey Spanier Rodd & Abrams, LLP 212 East 39th Street, New York, NY 10016 212-889-3700	

CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)
(DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

Claims arise under 15 U.S.C. §§2301-2312, NY GBL §§349 & 350 and breach of contract, express and implied warranties

Has this or a similar case been previously filed in SDNY at any time? No? ☑ Yes? ☐ Judge Previously Assigned _____

If yes, was this case Vol.☐ Invol. ☐ Dismissed. No☐ Yes ☐ If yes, give date _____ & Case No. _____

(PLACE AN [x] IN ONE BOX ONLY) NATURE OF SUIT

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

ACTIONS UNDER STATUTES

CIVIL RIGHTS

- [ ] 441 VOTING
- [ ] 442 EMPLOYMENT
- [ ] 443 HOUSING/ ACCOMMODATIONS
- [ ] 444 WELFARE
- [ ] 445 AMERICANS WITH DISABILITIES - EMPLOYMENT
- [ ] 446 AMERICANS WITH DISABILITIES -OTHER
- [ ] 440 OTHER CIVIL RIGHTS

PRISONER PETITIONS

- [ ] 510 MOTIONS TO VACATE SENTENCE 28 USC 2255
- [ ] 530 HABEAS CORPUS
- [ ] 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 RR & 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

ACTIONS UNDER STATUTES

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 & BANKING
- [ ] 450 COMMERCE
- [ ] 460 DEPORTATION
- [ ] 470 RACKETEER INFLUENCED & CORRUPT ORGANIZATION ACT (RICO)
- [ ] 480 CONSUMER CREDIT
- [ ] 490 CABLE/SATELLITE TV
- [ ] 810 SELECTIVE SERVICE
- [ ] 850 SECURITIES/ COMMODITIES/ EXCHANGE
- [ ] 875 CUSTOMER CHALLENGE 12 USC 3410
- [X] 890 OTHER STATUTORY ACTIONS
- [ ] 891 AGRICULTURAL ACTS
- [ ] 892 ECONOMIC STABILIZATION ACT
- [ ] 893 ENVIRONMENTAL MATTERS
- [ ] 894 ENERGY ALLOCATION ACT
- [ ] 895 FREEDOM OF INFORMATION ACT
- [ ] 900 APPEAL OF FEE DETERMINATION UNDER EQUAL ACCESS TO JUSTICE
- [ ] 950 CONSTITUTIONALITY OF STATE STATUTES

$400

Check if demanded in complaint:

☒ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DO YOU CLAIM THIS CASE IS RELATED TO A CIVIL CASE NOW PENDING IN S.D.N.Y.? IF SO, STATE:

DEMAND $_____ OTHER _____ JUDGE _____ DOCKET NUMBER_____

Check YES only if demanded in complaint
JURY DEMAND: ☑ YES ☐ NO

NOTE: Please submit at the time of filing an explanation of why cases are deemed related.

(PLACE AN x IN ONE BOX ONLY)

ORIGIN

☑ 1 Original Proceeding ☐ 2a. Removed from State Court ☐ 2b. Removed from State Court AND at least one party is pro se. ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from (Specify District) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judge Judgment

(PLACE AN x IN ONE BOX ONLY)

BASIS OF JURISDICTION

1 U.S. PLAINTIFF ☐ 2 U.S. DEFENDANT ☒ 3 FEDERAL QUESTION (U.S. NOT A PARTY) ☐ 4 DIVERSITY

IF DIVERSITY, INDICATE CITIZENSHIP BELOW. (28 USC 1322, 1441)

CITIZENSHIP OF PRINCIPAL PARTIES (FOR DIVERSITY CASES ONLY)

(Place an [X] in one box for Plaintiff and one box for Defendant)

	PTF	DEF		PTF	DEF		PTF	DEF
CITIZEN OF THIS STATE	[ ]1	[ ]1	CITIZEN OR SUBJECT OF A FOREIGN COUNTRY	[ ]3	[ ]3	INCORPORATED and PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE	[ ]5	[ ]5
CITIZEN OF ANOTHER STATE	[ ]2	[ ]2	INCORPORATED or PRINCIPAL PLACE OF BUSINESS IN THIS STATE	[ ]4	[ ]4	FOREIGN NATION	[ ]6	[ ]6

PLAINTIFF(S) ADDRESS(ES) AND COUNTY(IES)

Barbara Iglesias
825 East 170th Street
Apt. 3L
Bronx, New York 10459

DEFENDANT(S) ADDRESS(ES) AND COUNTY(IES)

See Attached Sheet.

DEFENDANT(S) ADDRESS UNKNOWN

REPRESENTATION IS HEREBY MADE THAT, AT THIS TIME, I HAVE BEEN UNABLE, WITH REASONABLE DILIGENCE, TO ASCERTAIN THE RESIDENCE ADDRESSES OF THE FOLLOWING DEFENDANTS:

Check one: THIS ACTION SHOULD BE ASSIGNED TO: ☐ WHITE PLAINS ☑ MANHATTAN
(DO NOT check either box if this a PRISONER PETITION.)

DATE 2/8/2010 SIGNATURE OF ATTORNEY OF RECORD

RECEIPT #

ADMITTED TO PRACTICE IN THIS DISTRICT
[ ] NO
[X] YES (DATE ADMITTED Mo. 09 Yr. 1983)
Attorney Bar Code # JA-1578

Magistrate Judge is to be designated by the Clerk of the Court.

Magistrate Judge MAG. PECK is so Designated.

J. Michael McMahon, Clerk of Court by _____ Deputy Clerk, DATED _____.

UNITED STATES DISTRICT COURT (NEW YORK SOUTHERN)

IGLESIAS V. TOYOTA MOTOR CORPORATION, ET AL.

DEFENDANTS' ADDRESSES

Toyota Motor Corporation 1 Toyota-cho Toyota City, Aichi Prefecture 471-8571, Japan	Toyota Motor Manufacturing, Indiana, Inc. 4000 South Tulip Tree Drive Princeton, IN 47670-4000
Toyota Motor Sales, U.S.A., Inc. 19001 South Western Avenue Torrance, California	Toyota Motor Manufacturing, Texas, Inc. 1 Lone Star Pass San Antonio, TX 78264-3413
Toyota Motor North America, Inc. 9 West 57th Street, Suite 4900 New York, New York	Toyota Motor Manufacturing, Kentucky, Inc. 1001 Cherry Blossom Way Georgetown, KY 40324
Toyota Motor Engineering & Manufacturing North America, Inc. 25 Atlantic Avenue Erlanger, Kentucky	New United Motor Manufacturing, Inc. 45500 Fremont Boulevard Fremont, CA 94538-6368
Lexus Toyota City Aichi Prefecture, Japan	Subaru of Indiana Automotive, Inc. 5500 State Road 38 East Lafayette, IN 47905
CTS Corporation 905 West Boulevard Elkhart, Indiana	

AO440 (Rev 8/01) Summons in a Civil Action

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Barbara Iglesias, Individually and On Behalf Of All Others Similarly Situated,

Plaintiff,

vs.

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

Defendants.

SUMMONS IN A CIVILACTION

JUDGE CASTEL

CASE NO.:

10 CIV 1014

TO: Subaru of Indiana Automotive, Inc.
c/o Thomas V. Easterday
5500 State Road 38 East
Lafayette, IN 47905

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY, (name and address)

JILL S. ABRAMS, ESQ.
ABBEY SPANIER RODD & ABRAMS, LLP
212 East 39th Street,
New York, New York 10016
(212) 889-3700

an answer to the complaint which is herewith served upon you, within twenty (20) days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

J. MICHAEL McMAHON

CLERK

DEPUTY CLERK

DATE

FEB 08 2010

AO440 (Rev 8/01) Summons in a Civil Action

RETURN OF SERVICE

Service of the Summons and Complaint was made by me[1]	DATE
NAME OF SERVER	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: _____

☐ Other (specify): _____

_____

_____

STATEMENT OF SERVICE FEES

TRAVEL	SERVICES	TOTAL
		$0.00

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.

JOINT DEFENSE AGREEMENT

This Agreement is made and entered into on this 16th day of October, 2006, by and between:

Toyota Motor Sales, U.S.A., Inc., a corporation organized and existing under the laws of the State of California ("TMS"); and

Subaru of Indiana Automotive, Inc., a corporation organized and existing under the laws of the State of Indiana (**"Joint Defense Partner"**).

WHEREAS, Toyota Motor Manufacturing, Northern Kentucky, Inc., a corporation organized and existing under the laws of the Commonwealth of Kentucky (**"TMMNK"**) and the Joint Defense Partner have entered into the Manufacturing Agreement for Toyota Vehicles dated _October 16, 2006_ (**"Basic Agreement"**) for the Toyota brand motor vehicles to be manufactured by the Joint Defense Partner for TMMNK (**"Toyota Vehicles"**);

WHEREAS, TMS, engaging in the sale and distribution of Toyota, Lexus and Scion brand motor vehicles in the continental part of the United States including Alaska, Puerto Rico and U.S. Virgin Islands and Mexico (**"Territory"**), is appointed by TMMNK as the "PL Designee" under the Basic Agreement for the Toyota Vehicles to be distributed in the Territory; and

WHEREAS, the Joint Defense Partner desires to execute a "Joint Defense Agreement" with TMS in accordance with the Basic Agreement, and TMS agrees thereto.

NOW, THEREFORE, the parties hereto agree as follows:

Article 1. – Basic Scheme of Joint Defense Program

The parties hereto hereby agree to implement a joint defense program (**"Joint Defense Program"**) for any actual or potential claims, actions or proceedings brought in the Territory and based on the alleged product liabilities of such Toyota Vehicles as distributed in the Territory and/or the components thereof (**"PL Claims"**) where:

(i) The Joint Defense Partner shall tender to TMS full power and control over the defense of the PL Claims brought against the Joint Defense Partner;

(ii) TMS shall manage the defense of any and all PL Claims at its discretion; and

(iii) The parties hereto shall cooperate with each other in the defense of the PL Claims.

TOY-RQ-05E-00010609

Article 2. – TMS's Obligations

Under the Joint Defense Program, TMS shall assume the following obligations:

(i) Subject to the conditions under Article 4 hereof, TMS shall defend, indemnify and hold harmless the Joint Defense Partner from and against any cost, expenses, or liability to third parties arising out of or relating to the PL Claims;

(ii) TMS shall procure and maintain product liability insurance coverage for the PL Claims under such terms and conditions as TMS deems appropriate, and shall name the Joint Defense Partner as an additional insured thereof; and

(iii) TMS shall keep the Joint Defense Partner advised as to the status of each PL Claim brought against the Joint Defense Partner.

Article 3. – Joint Defense Partner's Obligations

Under the Joint Defense Program, the Joint Defense Partner shall assume the following obligations:

(i) The Joint Defense Partner shall inform TMS immediately when the Joint Defense Partner becomes aware of any real or threatened PL Claims, and shall forward to TMS the summons, complaints and any other documents relating to the PL Claims immediately following the receipt of such documents by the Joint Defense Partner;

(ii) The Joint Defense Partner shall provide TMS, upon TMS's request, with any necessary information to undertake an effective defense of the PL Claims, including but not limited to, information, documents, and deponents and/or trial witnesses to the fullest extent reasonably possible relating to the Toyota Vehicles and/or the PL Claims;

(iii) The Joint Defense Partner shall refrain from making any settlement or entering into any negotiation with plaintiffs or claimants of the PL Claims or otherwise taking any other actions relating to the PL Claims without prior agreement of TMS; and

(iv) The Joint Defense Partner shall pay to TMS the fee for the Joint Defense Program ("**Joint Defense Fee**") annually to be separately decided and negotiated by TMS and the Joint Defense Partner for the Toyota Vehicles to be manufactured for the time period specifically to be noticed by TMMNK ("**Model Year Toyota Vehicles**") before the start of sales and purchase of such Model Year Toyota Vehicles between the Joint Defense Partner and TMMNK.

TOY-RQ-05E-00010610

Article 4. – Limitations on Indemnification

The obligations of TMS to indemnify the Joint Defense Partner under Article 2 (i) shall be subject to the following conditions:

(i) The Joint Defense Partner shall bear the costs for its obligations under Article 3; and

(ii) The Joint Defense Partner shall indemnify and hold harmless TMS, TMMNK or their affiliated companies from and against:

1. any damages, including punitive damages, granted against the Joint Defense Partner for any PL Claims resulting out of (i) the Joint Defense Partner's gross negligence, willful misconduct, dishonesty, or violation of any federal, state or local statutes, ordinances or regulations, or (ii) the Joint Defense Partner's breach of its obligations under the Basic Agreement or this Agreement; and

2. any settlement amount agreed with plaintiffs or claimants of any PL Claims which after consultation between TMS and the Joint Defense Partner are determined to have resulted out of (i) the Joint Defense Partner's gross negligence, willful misconduct, dishonesty, or violation of any federal, state or local statutes, ordinances or regulations, or (ii) the Joint Defense Partner's breach of its obligations under the Basic Agreement or this Agreement.

Article 5. – Effectuation and Termination of the Agreement

(a) This Agreement shall come into effect on the date when the Basic Agreement comes into force and shall continue unless this Agreement terminates pursuant to paragraph (b) hereof.

(b) This Agreement shall terminate;

(i) when the parties hereto agree to terminate this Agreement;

(ii) when one of the parties hereto defaults in any of its obligations under this Agreement and the non-defaulting party gives the defaulting party written notice to terminate this Agreement for the reason in spite of its request for rectification of the default with a time limit of thirty (30) days, the request is not fully met within the period;

(iii) when either party files a petition in bankruptcy, or a petition in bankruptcy is filed against it, or either party becomes insolvent, bankrupt, or makes a general assignment

TOY-RQ-05E-00010611

for the benefit of creditors, or goes into liquidation or receivership, or discontinue a material part of the business activities; or

(iv) when the Joint Defense Fee is failed to be agreed by the parties hereto within sixty (60) days from the date when TMS makes a first offer of the Joint Defense Fee to the Joint Defense Partner.

(c) When this Agreement is terminated under the preceding paragraph (b) or Article 7 (d), all the obligations of one party to the other shall cease for the following Model Year Toyota Vehicles after the termination, and unless otherwise agreed upon between the parties hereto, this Agreement remains effective for the Model Year Toyota Vehicles for which the Joint Defense Fee has been paid.

(d) The Joint Defense Fee shall not be refundable on or after the termination of this Agreement.

Article 6. - Maintenance of Confidentiality

The documents and/or information provided by the parties shall be used solely for the defense of the PL Claims, and shall not be disclosed to any third party except TMMNK and Fuji Heavy Industries Ltd., and their respective affiliated companies or other entities which have relation to the PL Claims, unless otherwise specifically agreed upon between the parties hereto. The same shall apply to the contents of this Agreement. This Article 6 shall survive the termination of this Agreement.

Article 7. - Force Majeure

(a) In the event that a party finds itself unable, by reason of the Force Majeure as defined herein, to carry out its obligation hereunder in whole or in part, the obligations of the party to this Agreement to the extent that it is affected by such Force Majeure shall be suspended as long as the impossibility so caused lasts. The term **"Force Majeure"** as used herein means any event, whether accidental or not, beyond the control of the party affected by such event, but not necessarily unpredictable by such party, including, but not limited to, any natural calamity, war (whether declared or not), civil war, terrorism, riot, sabotage, blockade, fire, explosion, wind, flood, earthquake or weather which materially interrupts transportation systems. Notwithstanding anything in this Article to the contrary, no delay or failure of the party to perform its obligations hereunder shall be excused if and to the extent that it is caused by (a) labor problems of the party, its subcontractors and/or its contractors such as, by way of example and not by way of limitation, lockouts, strikes and slowdowns; or (b) the inability of the party, its subcontractors and/or its suppliers to obtain power, material(s), labor, equipment or transportation.

TOY-RQ-05E-00010612

(b) The party affected by the Force Majeure shall give immediate notice to the other with the details and supporting evidence thereof setting forth the particulars of the Force Majeure.

(c) The parties shall make all the reasonable efforts to find alternate solutions to overcome the Force Majeure condition.

(d) If such Force Majeure condition lasts more than six (6) months, the part or parts of this Agreement which are in suspension may be terminated immediately by the party not affected by the Force Majeure, upon a notice to the other party, and such termination shall be effective upon receipt of such notice.

Article 8. - Severability

In the event that any provision of this Agreement becomes null or unenforceable or invalidated by any laws of federal, state or local statute, ordinance or regulation, such provision or part thereof shall be deemed divisible and nullified, and the remaining provisions shall remain in full force and effect.

Article 9. - Nonwaiver

The failure of the party hereto to exercise any right hereunder or to insist upon performance of any of the terms and conditions of this Agreement to the other shall not be construed as a waiver of such right or a relinquishment of any right to insist upon future performance of any such terms and conditions to the other.

Article 10. - Communication

Any notices permitted or required by this Agreement shall be deemed made on the day personally delivered in writing or mailed by certified or registered mail, postage paid, to the other at the address set forth below or to such other persons and address as the parties hereto may designate in writing:

If to TMS: Toyota Motor U.S.A., Inc.
19001 South Western Avenue, Torrance
California 90501
Attention: Legal Service Group

With a copy to: Toyota Motor Corporation
1 Toyota-Cho
Toyota, Aichi 471-8571 Japan
Attention: Product Law Dept. of Legal Div.

TOY-RQ-05E-00010613

Toyota Motor Manufacturing, Northern Kentucky, Inc.
25 Atlantic Avenue
Erlanger, Kentucky 41018
Attention: President

If to the Joint Defense Partner: Subaru of Indiana Automotive, Inc.
5500 State Road 38 East
Lafayette, Indiana 47905
Attention: General Counsel

With a copy to: Fuji Heavy Industries, Ltd.
1-7-2, Nishi-shinjuku
Shinjuku-ku, Tokyo 160-8316 Japan
Attention: Legal

Article 11. –Alternative Dispute Resolution

Subject to either party's right to seek injunctive relief, in the event of a dispute concerning this Agreement or the party's obligations hereunder, the parties shall endeavor in good faith to settle the dispute through negotiation. If the dispute cannot be resolved through negotiation or another mutually agreeable dispute resolution mechanism, the parties agree to submit the matter in dispute to binding arbitration for the final award thereto. Written notice of the intent to submit a matter to arbitration shall be given by the party requesting the same. The arbitration proceedings shall be conducted in accordance with the International Institute for Conflict Prevention and Resolution Rules for Non-Administered Arbitration of Business Disputes, or, if the parties so agree, the relevant rules of another arbitration entity or organization. In any case, regardless of any rules of the selected arbitration organization to the contrary, three (3) arbitrators shall be used to decide the outcome of the arbitration. Each party shall select one (1) arbitrator, and the two selected arbitrators will then select a third arbitrator. Such arbitration shall be conducted utilizing the English language and held in (i) Torrance, California if requested by SIA; (ii) Lafayette, Indiana if requested by TMS; or (iii) if the parties agree upon another location, such other location.

Article 12. - Governing Law

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of California, without regard to principles of conflicts of laws.

TOY-RQ-05E-00010614

Article 13. - Entire Agreement

(a) This Agreement shall supersede and nullify any negotiations, agreements or promises between the parties hereto which have been made prior to the execution of this Agreement and that are also contradictory to any provision hereof.

(b) This Agreement shall not be nullified or modified by any means, unless the fact of nullification or modification, as the case may be, is expressed in writing duly signed by duly authorized representatives of the parties.

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be duly executed by their respective duly authorized representatives as of the day and year first above written.

Signed for:

TOYOTA MOTOR SALES, U.S.A., INC.

By: Dian Ogilvie

Print Name: Dian Ogilvie

Its: Senior Vice President & General Counsel

SUBARU OF INDIANA AUTOMOTIVE, INC.

By: H. Oikawa

Print Name: Hiroyuki Oikawa

Its: President & CEO

TOY-RQ-05E-00010615

JS 44C/SDNY
REV. 1/2008

10 CIV 1014

JUDGE CASTEL

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 use of the Clerk of Court for the purpose of initiating the civil docket sheet.

FEB 08 2010

PLAINTIFFS	DEFENDANTS
Barbara Iglesias, Individually And On Behalf Of All Others Similarly Situated	Toyota Motor Corporation, et al.

ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Jill S. Abrams, Esq., Abbey Spanier Rodd & Abrams, LLP
212 East 39th Street, New York, NY 10016
212-889-3700

ATTORNEYS (IF KNOWN)

CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)
(DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

Claims arise under 15 U.S.C. §§2301-2312, NY GBL §§349 & 350 and breach of contract, express and implied warranties

Has this or a similar case been previously filed in SDNY at any time? No? ☑ Yes? ☐ Judge Previously Assigned _____

If yes, was this case Vol. ☐ Invol. ☐ Dismissed. No ☐ Yes ☐ If yes, give date _____ & Case No. _____

(PLACE AN [x] IN ONE BOX ONLY)

NATURE OF SUIT

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

ACTIONS UNDER STATUTES

CIVIL RIGHTS

[ ] 441 VOTING
[ ] 442 EMPLOYMENT
[ ] 443 HOUSING/ ACCOMMODATIONS
[ ] 444 WELFARE
[ ] 445 AMERICANS WITH DISABILITIES - EMPLOYMENT
[ ] 446 AMERICANS WITH DISABILITIES -OTHER
[ ] 440 OTHER CIVIL RIGHTS

PRISONER PETITIONS

[ ] 510 MOTIONS TO VACATE SENTENCE 28 USC 2255
[ ] 530 HABEAS CORPUS
[ ] 535 DEATH PENALTY
[ ] 540 MANDAMUS & OTHER
[ ] 550 CIVIL RIGHTS
[ ] 555 PRISON CONDITION

ACTIONS UNDER STATUTES

FORFEITURE/PENALTY

[ ] 610 AGRICULTURE
[ ] 620 OTHER FOOD & DRUG
[ ] 625 DRUG RELATED SEIZURE OF PROPERTY 21 USC 881
[ ] 630 LIQUOR LAWS
[ ] 640 RR & 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 & BANKING
[ ] 450 COMMERCE
[ ] 460 DEPORTATION
[ ] 470 RACKETEER INFLUENCED & CORRUPT ORGANIZATION ACT (RICO)
[ ] 480 CONSUMER CREDIT
[ ] 490 CABLE/SATELLITE TV
[ ] 810 SELECTIVE SERVICE
[ ] 850 SECURITIES/ COMMODITIES/ EXCHANGE
[ ] 875 CUSTOMER CHALLENGE 12 USC 3410
[X] 890 OTHER STATUTORY ACTIONS
[ ] 891 AGRICULTURAL ACTS
[ ] 892 ECONOMIC STABILIZATION ACT
[ ] 893 ENVIRONMENTAL MATTERS
[ ] 894 ENERGY ALLOCATION ACT
[ ] 895 FREEDOM OF INFORMATION ACT
[ ] 900 APPEAL OF FEE DETERMINATION UNDER EQUAL ACCESS TO JUSTICE
[ ] 950 CONSTITUTIONALITY OF STATE STATUTES

894609

Check if demanded in complaint:

☒ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DO YOU CLAIM THIS CASE IS RELATED TO A CIVIL CASE NOW PENDING IN S.D.N.Y.? IF SO, STATE:

DEMAND $_____ OTHER _____ JUDGE _____ DOCKET NUMBER_____

Check YES only if demanded in complaint
JURY DEMAND: ☑ YES ☐ NO

NOTE: Please submit at the time of filing an explanation of why cases are deemed related.

(PLACE AN x IN ONE BOX ONLY) **ORIGIN**

☑ 1 Original Proceeding ☐ 2a. Removed from State Court ☐ 2b. Removed from State Court **AND** at least one party is pro se. ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from (Specify District) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judge Judgment

(PLACE AN x IN ONE BOX ONLY) **BASIS OF JURISDICTION** ***IF DIVERSITY, INDICATE CITIZENSHIP BELOW. (28 USC 1322, 1441)***

1 U.S. PLAINTIFF ☐ 2 U.S. DEFENDANT ☒ 3 FEDERAL QUESTION (U.S. NOT A PARTY) ☐ 4 DIVERSITY

CITIZENSHIP OF PRINCIPAL PARTIES (FOR DIVERSITY CASES ONLY)

(Place an [X] in one box for Plaintiff and one box for Defendant)

	PTF	DEF		PTF	DEF		PTF	DEF
CITIZEN OF THIS STATE	[ ]1	[ ]1	CITIZEN OR SUBJECT OF A FOREIGN COUNTRY	[ ]3	[ ]3	INCORPORATED and PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE	[ ]5	[ ]5
CITIZEN OF ANOTHER STATE	[ ]2	[ ]2	INCORPORATED or PRINCIPAL PLACE OF BUSINESS IN THIS STATE	[ ]4	[ ]4	FOREIGN NATION	[ ]6	[ ]6

PLAINTIFF(S) ADDRESS(ES) AND COUNTY(IES)

Barbara Iglesias
825 East 170th Street
Apt. 3L
Bronx, New York 10459

DEFENDANT(S) ADDRESS(ES) AND COUNTY(IES)

See Attached Sheet.

DEFENDANT(S) ADDRESS UNKNOWN
REPRESENTATION IS HEREBY MADE THAT, AT THIS TIME, I HAVE BEEN UNABLE, WITH REASONABLE DILIGENCE, TO ASCERTAIN THE RESIDENCE ADDRESSES OF THE FOLLOWING DEFENDANTS:

Check one: THIS ACTION SHOULD BE ASSIGNED TO: ☐ WHITE PLAINS ☑ MANHATTAN
(DO NOT check either box if this a PRISONER PETITION.)

DATE 2/8/2010 SIGNATURE OF ATTORNEY OF RECORD

ADMITTED TO PRACTICE IN THIS DISTRICT
[ ] NO
[X] YES (DATE ADMITTED Mo. 09 Yr. 1983)
Attorney Bar Code # JA-1578

RECEIPT #

Magistrate Judge is to be designated by the Clerk of the Court.

Magistrate Judge M.A.G. PECK is so Designated.

J. Michael McMahon, Clerk of Court by _____ Deputy Clerk, DATED _____.

UNITED STATES DISTRICT COURT (NEW YORK SOUTHERN)

IGLESIAS V. TOYOTA MOTOR CORPORATION, ET AL.

DEFENDANTS' ADDRESSES

Toyota Motor Corporation 1 Toyota-cho Toyota City, Aichi Prefecture 471-8571, Japan	Toyota Motor Manufacturing, Indiana, Inc. 4000 South Tulip Tree Drive Princeton, IN 47670-4000
Toyota Motor Sales, U.S.A., Inc. 19001 South Western Avenue Torrance, California	Toyota Motor Manufacturing, Texas, Inc. 1 Lone Star Pass San Antonio, TX 78264-3413
Toyota Motor North America, Inc. 9 West 57th Street, Suite 4900 New York, New York	Toyota Motor Manufacturing, Kentucky, Inc. 1001 Cherry Blossom Way Georgetown, KY 40324
Toyota Motor Engineering & Manufacturing North America, Inc. 25 Atlantic Avenue Erlanger, Kentucky	New United Motor Manufacturing, Inc. 45500 Fremont Boulevard Fremont, CA 94538-6368
Lexus Toyota City Aichi Prefecture, Japan	Subaru of Indiana Automotive, Inc. 5500 State Road 38 East Lafayette, IN 47905
CTS Corporation 905 West Boulevard Elkhart, Indiana	

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 2-19-10

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
BARBARA IGLESIAS,

Plaintiff(s),

-against-

TOYOTA MOTOR CORPORATION, et al.,
Defendant(s).

ECF CASE

ORDER

INITIAL PRETRIAL CONFERENCE

10 Civ. 1014 (PKC)

P. KEVIN CASTEL, United States District Judge.

Counsel for all parties are directed to appear before the undersigned for an initial pretrial conference, in accordance with Rule 16 of the Federal Rules of Civil Procedure on April 30, 2010 at 12:30 p.m. in Courtroom 12C at the United States Courthouse, 500 Pearl Street, New York, New York. **COUNSEL FOR PLAINTIFF IS DIRECTED TO IMMEDIATELY SEND A COPY OF THIS NOTICE TO ALL PARTIES.** Principal trial counsel must appear at this and all subsequent conferences.

This case has been designated an electronic case and has been assigned to me for all purposes. By the date of the initial pretrial conference counsel for all parties are required to register as filing users in accordance with the Procedures for Electronic Case Filing and file a Notice of Appearance.

The parties are directed to submit a joint letter five business days prior to the conference addressing the following in separate paragraphs: (1) a brief description of the case, including the factual and legal bases for the claim(s) and defense(s); (2) any contemplated motions; and (3) the prospect for settlement. For the Court's convenience, the parties are requested to set forth the date and time of the Conference in the opening paragraph of the joint letter. The parties are directed to consult the undersigned's Individual Practices and to confer on a Case Management Plan. See the Court's internet site: www.nysd.uscourts.gov/judges/USDJ/castel.htm. The jointly proposed Case Management Plan should be submitted in writing to the Court at the conference. Requests for adjournment of the conference will be considered only if made in writing and otherwise in accordance with the undersigned's Individual Practices.

SO ORDERED.

P. Kevin Castel
United States District Judge

Dated: New York, New York
February 19, 2010

Karl Geercken
Kristin Ann Meister
ALSTON & BIRD LLP
90 Park Avenue
New York, NY 10016
(212) 210-9400
Attorneys for Defendant *Toyota Motor Sales U.S.A., Inc.*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BARBARA IGLESIAS, Individually and On Behalf Of All Others Similarly Situated, Plaintiff, v. TOYOTA MOTOR CORPORATION, TOYOTA MOTOR SALES, U.S.A., INC., TOYOTA MOTOR NORTH AMERICA, INC., TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC., 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, Defendants.	10 Civ. 1014 (PKC) **STIPULATION AND PROPOSED ORDER TO STAY PROCEEDING**

WHEREAS, Defendant Toyota Motor Sales, U.S.A., Inc. ("Toyota") and Plaintiff Barbara Iglesias ("Iglesias"), by and through their respective counsel of record, hereby stipulate with reference to the following facts:

IT IS HEREBY STIPULATED AND AGREED THAT:

1) The parties have concurrently herewith agreed to stay this action 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 and such stay shall apply to all parties, whether signatories to this stipulation or not, there being no objection by any party to the stay.

2) Should the JPML determine that this action should be transferred to a consolidated

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Multidistrict Litigation ("MDL") proceeding and enter an Order transferring same, the parties consent and agree to adhere to the Scheduling Order entered in that proceeding, including deadlines established for Defendants to answer, or otherwise respond to any complaint in the MDL.

3) Should the JPML determine that this action should *not* be transferred to a consolidated MDL proceeding, the time for Defendants to answer, or otherwise respond to, Plaintiff's Complaint shall be not less than 60 days after the JPML's decision and Order not to transfer this action to an MDL proceeding. The parties further agree to confer, in good faith, regarding scheduling in this action and any coordination of discovery with any MDL that is established, to ensure efficiency and conservation of judicial resources.

4) 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.

Dated: February 25, 2010
New York, New York

ALSTON & BIRD LLP

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Kristin Ann Meister
90 Park Avenue
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(212) 210-9400
Attorneys for Defendant *Toyota Motor Sales, U.S.A., Inc.*

ABBEY SPANIER RODD & ABRAMS, LLP

Jill Abrams
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New York, NY 10016
(212) 889-3700

Attorneys for Plaintiff *Barbara Iglesias*

SO ORDERED: _____

TOY-RQ-05E-00010621

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BARBARA IGLESIAS, Individually and On Behalf Of All Others Similarly Situated,

Plaintiff,

v.

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

Defendants.

10 Civ. 1014 (PKC)

NOTICE OF APPEARANCE

To the Clerk of this court and all parties of record:

Enter my appearance as counsel in this case for defendant

TOYOTA MOTOR SALES, U.S.A., INC.

I certify that I am admitted to practice in this court.

Dated: February 26, 2010

Karl Geercken
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TOY-RQ-05E-00010622

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BARBARA IGLESIAS, Individually and On Behalf Of All Others Similarly Situated,

Plaintiff,

v.

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

Defendants.

10 Civ. 1014 (PKC)

NOTICE OF APPEARANCE

To the Clerk of this court and all parties of record:

Enter my appearance as counsel in this case for defendant

TOYOTA MOTOR SALES, U.S.A., INC.

I certify that I am admitted to practice in this court.

Dated: February 26, 2010

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TOY-RQ-05E-00010623

Karl Geercken
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Attorneys for Defendant *Toyota Motor Sales U.S.A., Inc.*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BARBARA IGLESIAS, Individually and On Behalf Of All Others Similarly Situated,

Plaintiff,

v.

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

Defendants.

10 Civ. 1014 (PKC)

DEFENDANT TOYOTA MOTOR SALES, U.S.A., INC.'S RULE 7.1 DISCLOSURE STATEMENT

Pursuant to Rule 7.1 of the Federal Rules of Civil Procedure, Defendant Toyota Motor Sales, U.S.A., Inc. hereby makes the following disclosure. Toyota Motor Corporation is the only publicly-held corporation owning 10% or more of Toyota Motor Sales, U.S.A., Inc.'s stock.

Respectfully submitted this 1 day of March, 2010.

ALSTON & BIRD LLP

Karl Geercken
Kristin Ann Meister
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Attorneys for Defendant *Toyota Motor Sales, U.S.A., Inc.*

TOY-RQ-05E-00010624

(A) SEC, 5,

USDS SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: _____
DATE FILED: 3-1-10

Karl Geercken
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Attorneys for Defendant *Toyota Motor Sales U.S.A., Inc.*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BARBARA IGLESIAS, Individually and On Behalf Of All Others Similarly Situated, Plaintiff, v. TOYOTA MOTOR CORPORATION, TOYOTA MOTOR SALES, U.S.A., INC., TOYOTA MOTOR NORTH AMERICA, INC., TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC., 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, Defendants.	10 Civ. 1014 (PKC) **STIPULATION AND ~~PROPOSED~~ ORDER TO STAY PROCEEDING**

WHEREAS, Defendant Toyota Motor Sales, U.S.A., Inc. ("Toyota") and Plaintiff Barbara Iglesias ("Iglesias"), by and through their respective counsel of record, hereby stipulate with reference to the following facts:

IT IS HEREBY STIPULATED AND AGREED THAT:

1) The parties have concurrently herewith agreed to stay this action 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 and such stay shall apply to all parties, whether signatories to this stipulation or not, there being no objection by any party to the stay.

2) Should the JPML determine that this action should be transferred to a consolidated

Multidistrict Litigation ("MDL") proceeding and enter an Order transferring same, the parties consent and agree to adhere to the Scheduling Order entered in that proceeding, including deadlines established for Defendants to answer, or otherwise respond to any complaint in the MDL.

3) Should the JPML determine that this action should *not* be transferred to a consolidated MDL proceeding, the time for Defendants to answer, or otherwise respond to, Plaintiff's Complaint shall be not less than 60 days after the JPML's decision and Order not to transfer this action to an MDL proceeding. The parties further agree to confer, in good faith, regarding scheduling in this action and any coordination of discovery with any MDL that is established, to ensure efficiency and conservation of judicial resources.

4) 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.

April 30, 2010 conference is vacated.

Dated: February 25, 2010
New York, New York

ALSTON & BIRD LLP

Karl Geercken
Kristin Ann Meister
90 Park Avenue
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Attorneys for Defendant *Toyota Motor Sales, U.S.A., Inc.*

ABBEY SPANIER RODD & ABRAMS, LLP

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Jeremy Nash
212 East 39th Street
New York, NY 10016
(212) 889-3700

Attorneys for Plaintiff *Barbara Iglesias*

SO ORDERED:

USDS

3-1-10

LEGAL02/31780712v2

TOY-RQ-05E-00010626

U.S. District Court
United States District Court for the Southern District of New York (Foley Square)
CIVIL DOCKET FOR CASE #: 1:10-cv-01014-PKC

Iglesias et al v. Toyota Motor Corporation et al
Assigned to: Judge P. Kevin Castel
Cause: 15:2301 Magnuson-Moss Warranty Act

Date Filed: 02/08/2010
Jury Demand: Plaintiff
Nature of Suit: 890 Other Statutory Actions
Jurisdiction: Federal Question

Plaintiff

Barbara Iglesias
Individually

represented by **Jill Sharyn Abrams**
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212 East 39th Street
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

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ATTORNEY TO BE NOTICED

Plaintiff

Barbara Iglesias
on behalf of all others similarly situated

represented by **Jill Sharyn Abrams**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Jeremy Nathan Nash
(See above for address)
ATTORNEY TO BE NOTICED

Orin Robert Kurtz
(See above for address)
ATTORNEY TO BE NOTICED

V.

Defendant

Toyota Motor Corporation

Defendant

Toyota Motor Sales, USA., Inc.

represented by **Karl Geercken**
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ATTORNEY TO BE NOTICED

Defendant

Toyota Motor North America, Inc.

Defendant

Toyota Motor Engineering &Manufacturing North America, Inc.

Defendant

Lexus Toyota Motor Manufacturing, Indiana, Inc.

Defendant

Toyota Motor Manufacturing, Texas, Inc.

Defendant

Toyota Motor Manufacturing, Kentucky, Inc.

Defendant

New United Motor Manufacturing, Inc.

Defendant

Subaru of Indiana Automotive, Inc.

Defendant

CTS Corporation

Defendant

Doe Defendants 1 through 10

Date Filed	#	Docket Text
02/08/2010	1	COMPLAINT against Toyota Motor Sales, USA., Inc., Toyota Motor North America, Inc., Toyota Motor Engineering &Manufacturing North America, Inc., 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, Doe Defendants 1 through 10, Toyota Motor Corporation. (Filing Fee $ 350.00, Receipt Number 894009)Document filed by Barbara Iglesias(Individually), Barbara Iglesias(on behalf of all others similarly situated).(ama) (Entered: 02/11/2010)
02/08/2010		SUMMONS ISSUED as to Toyota Motor Sales, USA., Inc., Toyota Motor North America, Inc., Toyota Motor Engineering &Manufacturing North America, Inc., 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, Doe Defendants 1 through 10, Toyota Motor Corporation. (ama) (Entered: 02/11/2010)
02/08/2010		Magistrate Judge Andrew J. Peck is so designated. (ama) (Entered: 02/11/2010)
02/08/2010		Case Designated ECF. (ama) (Entered: 02/11/2010)
02/19/2010	2	ORDER INITIAL PRETRIAL CONFERENCE: Initial Conference set for 4/30/2010 at 12:30 PM in Courtroom 12C, 500 Pearl Street, New York, NY 10007 before Judge P. Kevin Castel. (Signed by Judge P. Kevin Castel on 2/19/2010) (jfe) (Entered: 02/19/2010)
02/26/2010	3	NOTICE OF APPEARANCE by Karl Geercken on behalf of Toyota Motor Sales, USA., Inc. (Geercken, Karl) (Entered: 02/26/2010)
02/26/2010	4	NOTICE OF APPEARANCE by Kristin Ann Meister on behalf of Toyota Motor Sales, USA., Inc. (Meister, Kristin) (Entered: 02/26/2010)
03/01/2010	5	RULE 7.1 CORPORATE DISCLOSURE STATEMENT. No Corporate Parent. Document filed by Toyota Motor Sales, USA., Inc..(Meister, Kristin) (Entered: 03/01/2010)
03/01/2010	6	STIPULATION AND ORDER TO STAY PROCEEDING: 1) The parties have concurrently herewith agreed to stay this action 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 USC § 1407 and such stay shall apply to all parties, whether signatories to this stipulation or not, there being no objection by any party to the stay. 2) Should the JPML determine that this action should be transferred to a consolidated Multidistrict Litigation ("MDL") proceeding and enter an Order transferring same, the parties consent and agree to adhere to the Scheduling Order entered in that proceeding, including deadlines established for Defendants to answer, or otherwise respond to any complaint in the MDL.3) Should the JPML determine that this action should not be transferred to aconsolidated MDL proceeding, the time for Defendants to answer, or otherwise respond to, Plaintiff's Complaint shall be not less than 60 days after the JPML's decision and Order not to transfer this action to an MDL proceeding. The parties further agree to confer, in good faith, regarding scheduling in this action and any coordination of discovery with any MDL that is established, to ensure efficiency and conservation of judicial resources. 4) 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. April 30, 2010 conference is vacated. (Signed by Judge P. Kevin Castel on 3/1/10) (db) (Entered: 03/01/2010)