FOURTH CAUSE OF ACTION
Breach of Implied Warranty--Magnuson-Moss Warranty Act

38. Plaintiff incorporates by reference all preceding paragraphs.

39. Pursuant to 15 U.S.C. § 2301(7), the breaches by Toyota of the state-law implied warranty of merchantability as set forth above also constitute breaches of implied warranties pursuant to the Magnuson-Moss Act.

40. Pursuant to 15 U.S.C. § 2310(d)(1), and because of said breaches of implied warranties, Plaintiff is entitled to the equitable remedies of rescission and restitution and/or damages. Plaintiff revokes acceptance, rescinds the contract, and claims full restitution.

41. As a proximate result of the breaches of implied warranty, Plaintiff has sustained, and continues to sustain, damages, both economic and noneconomic, in the approximate amount of $75,000.00.

42. Pursuant to 15 U.S.C. § 2310(d)(2), Plaintiff is entitled to attorney fees and expenses reasonably incurred in connection with this action.

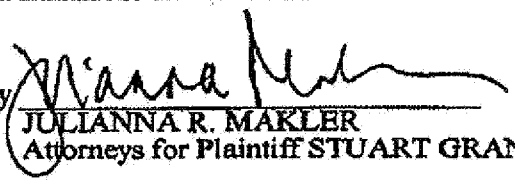
PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Toyota as follows:

1. That the contract be adjudged rescinded.
2. For restitution of all consideration given to Toyota.
3. For incidental and consequential damages.
4. For actual and statutory damages.
5. For reasonable attorney fees according to proof.
6. For costs and expenses incurred herein.
7. For such other relief as the Court deems proper.
8. For a civil penalty of two times Plaintiff's damages.

DATED: November 9, 2009

MAKLER & BAKER LLP

By 
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