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.").