

TOYOTA

TOYOTA MOTOR NORTH AMERICA, INC.

WASHINGTON OFFICE

1850 M STREET, NW, SUITE 800, WASHINGTON, DC 20038

TEL: (202) 775-1707

FAX: (202) 483-8513

RECEIVED
NVS-213

2005 APR 12 A 7 28

OFFICE OF DEFECT
INVESTIGATION

April 11, 2005

Mr. Jeffrey Quandt
Chief - Vehicle Controls Division
Office of Defects Investigation
National Highway Traffic Safety Administration
400 Seventh St., SW
Washington, DC 20590

Re: NVS-213kmb; PE05-009

Dear Mr. Quandt:

This letter is being sent in response to your February 25, 2005 letter regarding PE05-009. Per our agreement, Toyota is submitting its response to Questions 1 through 7 and Question 12 of your inquiry under this cover, with the remainder of the response to be sent under separate cover on April 28, 2005. Also, due to the late availability of some consumer information, we will be supplementing the responses to Questions 3 and 5 with the remainder of our response.

Enclosed you will find two copies of this partial response and two CD-ROM's containing electronic versions of the attachments. Should you have any questions about this response, please contact Mr. Chris Santucci or Mr. Tsuyoshi Yokoi at (202) 775-1707.

Sincerely,



for

Chris Tinto
Vice President

TOYOTA MOTOR NORTH AMERICA, INC.

CT:cs
Attachment

04MY Lexus RX330 Brake Booster Investigation (PE05-009)

1. State, by model and model year, the number of subject vehicles Toyota has manufactured for sale or lease in the United States. Separately, for each subject vehicle manufactured to date by Toyota, state the following:
 - a. Vehicle identification number (VIN);
 - b. Make;
 - c. Model;
 - d. Model Year;
 - e. Date of manufacture;
 - f. Date warranty coverage commenced; and
 - g. The State in the United States where the vehicle was originally sold or leased (or delivered for sale or lease).

Provide the table in Microsoft Access 2000, or a compatible format, entitled "PRODUCTION DATA." See Enclosure 1, Data Collection Disc, for a pre-formatted table which provides further details regarding this submission.

Response 1

The number of MY 2004-2005 (until Feb. 28, 2005) Lexus RX330 vehicles Toyota has manufactured for sale or lease in the United States by model year and production facility is as follows:

Model	Model Year	Produced Plant	Number of Vehicle	Total
RX330	2004	Toyota Motor Kyushu (Japan)	98,267	120,917
	2005		22,650	
	2004	Toyota Motor Manufacturing Canada	49,802	80,190
	2005		30,388	
Total				201,107

In addition, detailed information for each vehicle is provided electronically on CD-ROM, in Microsoft Access 2000 format entitled "Attachment 1-PRODUCTION DATA (PE05-009)".

2. State the number of each of the following, received by Toyota, or of which Toyota is otherwise aware, which relate to, or may relate to, the alleged defect in the subject vehicles:
 - a. Consumer complaints, including those from fleet operators;
 - b. Field reports, including dealer field reports;
 - c. Reports involving a crash, injury, or fatality, based on claims against the manufacturer involving a death or injury, notices received by the manufacturer alleging or proving that a death or injury was caused by a possible defect in a subject vehicle, property damage claims, consumer complaints, 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," state the total number of each item (e.g., consumer complaints, field reports, etc.) separately. Multiple incidents involving the same vehicle are to be counted separately. Multiple reports of the same incident are also to be counted separately (i.e., a consumer complaint and a field report involving the same incident in which a crash occurred are to be counted as a crash report, a field report and a consumer complaint). In addition, for items "c" through "d," provide a summary description of the alleged problem and causal and contributing factors and Toyota's assessment of the problem, with a summary of the significant underlying facts and evidence. For items "e" and "f," identify the parties to the action, as well as the caption, court, docket number, and date on which the complaint or other document initiating the action was filed.

Response 2

Using the method for tabulation detailed in your question, there are 149 complaint reports that may relate to the alleged defect. Please note that Toyota did not include any consumer complaints where the customer did not actually experience the alleged defect, but had called to complain because they had heard about the issue from other sources.

There are 19 (nineteen) field reports that may relate to the alleged defect.

In the consumer complaints, 5 incidents have been reported where a vehicle crash was alleged. In addition, Toyota has received 1 legal related claim (i.e., PL claim) involving a crash that may relate to the alleged defect. There are no reports alleging that an injury and/or a fatality had occurred as well.

Toyota has received 1 property damage claim that may relate to the alleged defect, and this is duplicated with the previous legal claim.

There is 1 buy-back arbitration claim in process that may relate to the alleged defect.

There are no lawsuits in which Toyota is or was a defendant or codefendant.

In addition, Toyota has summarized the consumer complaints relating to the specific descriptions as requested under separate enclosure. Please see "Attachment 2-Consumer Complaints" and "Attachment 5b-Legal Claim Data" stored in Microsoft Excel 2000 format on the enclosed CD-ROM.

3. Separately, for each item (complaint, report, claim, notice, or matter) within the scope of your response to Request No. 2, state the following information:
 - a. Toyota's file number or other identifier used;
 - b. The category of the item, as identified in Request No. 2 (i.e., consumer complaint, field report, etc.);
 - c. Vehicle owner or fleet name (and fleet contact person), address, and telephone number;
 - d. Vehicle's VIN;
 - e. Vehicle's make, model and model year;
 - f. Vehicle's mileage at time of incident;
 - g. Incident date;
 - h. Report or claim date;
 - i. Whether a crash is alleged;

- j. Whether property damage is alleged;
- k. Number of alleged injuries, if any; and
- l. Number of alleged fatalities, if any.

Provide this information in Microsoft Access 2000, or a compatible format, entitled "REQUEST NUMBER TWO DATA." See Enclosure 1, Data Collection Disc, for a preformatted table which provides further details regarding this submission.

Response 3

The information for each item (complaint, report, claim, or matter) is provided electronically on CD-ROM, in Microsoft Access 2000 format entitled "Attachment 3-REQUEST NUMBER TWO DATA (PE05-009)."

It is important to note that this file is incomplete, due to the availability of some of the consumer information. Toyota will update this file with the final submission on April 28.

4. Produce copies of all documents related to each item within the scope of Request No. 2. Organize the documents separately by category (i.e., consumer complaints, field reports, etc.) and describe the method Toyota used for organizing the documents.

Response 4

Copies of all consumer complaints (Attachment 2), and all field information (Attachment 4-Field Information) are provided electronically on CD-ROM. In addition, paper copies of the legal related claims are included as Attachment 5a. Some consumer information is missing from the copies of the complaints. Toyota will update these copies on April 28.

5. State, by model and model year, a total count for all of the following categories of claims, collectively, that have been paid by Toyota to date that relate to, or may relate to, the alleged defect in the subject vehicles: warranty claims; extended warranty claims; claims for good will services that were provided; field, zone, or similar adjustments and reimbursements; and warranty claims or repairs made in accordance with a procedure specified in a technical service bulletin or customer satisfaction campaign.

Separately, for each such claim, state the following information:

- a. Toyota's claim number;
- b. Vehicle owner or fleet name (and fleet contact person) and telephone number;
- c. VIN;
- d. Repair date;
- e. Vehicle mileage at time of repair;
- f. Repairing dealer's or facility's name, telephone number, city and state or ZIP code;
- g. Labor operation number;
- h. Problem code;
- i. Replacement part number(s) and description(s);
- j. Concern stated by customer; and

k. Comment, if any, by dealer/technician relating to claim and/or repair.

Provide this information in Microsoft Access 2000, or a compatible format, entitled "WARRANTY DATA." See Enclosure 1, Data Collection Disc, for a pre-formatted table which provides further details regarding this submission.

Response 5

The total count of the warranty claims paid by Toyota that may relate to the alleged defect on the MY 2004-2005 Lexus RX330 is as follows. All of the affected vehicles are within the original warranty coverage period; there were no extended warranty claims or good will claims.

Model	Model Year	Produced Plant	Number of Claims
RX330	2004	Toyota Motor Kynaku (Japan)	93
	2005		
	2004	Toyota Motor Manufacturing Canada	3,515
	2005		
Total			3,608

The information for each claim is provided electronically on CD-ROM, in Microsoft Access 2000 format entitled "Attachment 6-WARRANTY DATA (PE05-009)".

It is important to note that this file is incomplete, due to the availability of some of the consumer information. Toyota will update this file with the final submission on April 28.

6. Describe in detail the search criteria used by Toyota to identify the claims identified in response to Request No. 5, including the labor operations, problem codes, part numbers and any other pertinent parameters used. Provide a list of all labor operations, labor operation descriptions, problem codes, and problem code descriptions applicable to the alleged defect in the subject vehicles. State, by make and model year, the terms of the new vehicle warranty coverage offered by Toyota on the subject vehicles (i.e., the number of months and mileage for which coverage is provided and the vehicle systems that are covered). Describe any extended warranty coverage option(s) that Toyota offered for the subject vehicles and state by option, model, and model year, the number of vehicles that are covered under each such extended warranty.

Response 6

The search criteria used by Toyota to identify the claims is the following:

Toyota searched the warranty database for those claims that replaced part numbers of 44610-***** (brake booster) and 47028-***** (brake master cylinder) on the all MY 2004-2005 RX330s. Toyota reviewed the comments in the claims to determine if it may be related to the alleged defect.

In the data the following labor operation codes were found:

46301 (brake booster assembly remove and replacement)

46110 (brake master cylinder assembly remove and replacement)

The terms that Toyota offers for new vehicle warranty coverage on MY 2004-2005 RX330 vehicles is 48 month or 50,000 miles from the vehicle's date-of-first-use (DFU or DOFU) whichever occurs first.

7. Produce copies of all service, warranty, and other documents that relate to, or may relate to, the alleged defect in the subject vehicles, that Toyota has issued to any dealers, regional or zone offices, field offices, fleet purchasers, or other entities. This includes, but is not limited to, bulletins, advisories, informational documents, training documents, or other documents or communications, with the exception of standard shop manuals. Also include the latest draft copy of any communication that Toyota is planning to issue within the next 120 days.

Response 7

Toyota issued a Technical Service Information Bulletin, titled "Brake Booster" (BR005-04), which may relate to the alleged defect. A copy of the bulletin is included as Attachment 7, and on CD-ROM in PDF format.

8. Describe all assessments, analyses, tests, test results, studies, surveys, simulations, investigations, inquiries and/or evaluations (collectively, "actions") that relate to, or may relate to, the alleged defect in the subject vehicles that have been conducted, are being conducted, are planned, or are being planned by, or for, Toyota. For each such action, provide the following information:
 - a. Action title or identifier;
 - b. The actual or planned start date;
 - c. The actual or expected end date;
 - d. Brief summary of the subject and objective of the action;
 - e. Engineering group(s)/supplier(s) responsible for designing and for conducting the action; and
 - f. A brief summary of the findings and/or conclusions resulting from the action.

For each action identified, provide copies of all documents related to the action, regardless of whether the documents are in interim, draft, or final form. Organize the documents chronologically by action.

Response 8

Toyota will respond to this inquiry on April 28.

9. Provide a table summarizing all testing conducted by, or for, Toyota to assess the performance of the brake system in the subject vehicles in the normal condition and in any and all "backup" conditions (e.g., loss of brake power assist, partial system failure). Include the following information in the table: (1) test number; (2) test date; (3) test vehicle description; (4) test description/configuration; and (5) the brake pedal effort, brake pedal travel, maximum deceleration, and stopping distance for each test run. Include in this response all material related to compliance testing/certification for Federal Motor Vehicle Safety Standard No. 135 S7.11, "Passenger Car Brake Systems/ Brake Power Unit or Brake Power Assist Unit Inoperative

(Depleted).” Provide copies of all test reports.

Response 9

Toyota will respond to this inquiry on April 28.

10. Describe all modifications or changes made by, or on behalf of, Toyota in the design, material composition, manufacture, quality control, supply, or installation of the subject components, from the start of production to date, which relate to, or may relate to, the alleged defect in the subject vehicles. For each such modification or change, provide the following information:

- a. The date or approximate date on which the modification or change was incorporated into vehicle production;
- b. A detailed description of the modification or change;
- c. The reason(s) for the modification or change;
- d. The part numbers (service and engineering) of the original component;
- e. The part number (service and engineering) of the modified component;
- f. Whether the original unmodified component was withdrawn from production and/or sale, and if so, when;
- g. When the modified component was made available as a service component; and
- h. Whether the modified component can be interchanged with earlier production components.

Also, provide the above information for any modification or change that Toyota is aware of which may be incorporated into vehicle production within the next 120 days.

Response 10

Toyota will respond to this inquiry on April 28.

11. Produce one of each of the following:

- a. Exemplar samples of each design version of the subject components;
- b. Field return samples of the subject components exhibiting the alleged defect; and
- c. Any kits that have been released, or developed, by Toyota for use in service repairs to the subject components/assemblies which relate, or may relate, to the alleged defect in the subject vehicles.

Response 11

Toyota will respond to this inquiry on April 28.

12. State the number of each of the following that Toyota has sold that may be used in the subject vehicles by component name, part number (both service and engineering/production), model and model year of the vehicle in which it is used and month/year of sale (*including the cut-off date for sales, if applicable*):

- a. Subject components; and
- b. Any kits that have been released, or developed, by Toyota for use in service repairs to the

subject components/assemblies.

For each component part number, provide the supplier's name, address, and appropriate point of contact (name, title, and telephone number) Also identify by make, model and model year, any other vehicles of which Toyota is aware that contain the identical component, whether installed in production or in service, and state the applicable dates of production or service usage

Response 12

Part sales records of the subject vehicle "brake booster assembly" and "brake master cylinder" monthly sales volume is provided electronically in Microsoft Excel 2000 format, and submitted as "Attachment 8-Part Sales History."

Supplier information for both the brake booster and the brake master cylinder is as follows, by production facility:

Toyota Motor Manufacturing Canada:

Manufacturer Name: ADVICS North America, Inc.
Address: 45300 Polaris Ct., Plymouth, MI 48170-6039
Telephone: (734)-414-5100

Toyota Motor Kyushu (Japan):

Manufacturer Name: ADVICS Japan, Corporation
Address: 2-1 Showa-cho, Kariya-shi, Aichi-kan, Japan, 448-8688
Telephone: +81-566-63-8000

13. Describe (and represent graphically) the amount of boost gain provided by the vacuum brake booster assembly, measured in terms of hydraulic brake line pressure as a function of the force applied to the brake pedal by the driver, when the vacuum brake booster assembly is both normally functioning and inoperative/depleted. Also describe (and represent graphically) the relationship between brake pedal travel and the force applied to the brake pedal by the driver when the vacuum brake booster assembly is both normally functioning and inoperative/depleted.

In addition, state the following information:

- a. The brake pedal lever ratio;
- b. The maximum achievable brake pedal height;
- c. The maximum achievable range of brake pedal free play; and
- d. The minimum achievable pedal reserve distance for a normally functioning brake system.

Response 13

Toyota will respond to this inquiry on April 28.

14. Furnish Toyota's assessment of the alleged defect in the subject vehicle, including:

- a. The causal or contributory factor(s);
- b. The failure mechanism(s);
- c. The failure mode(s);
- d. The risk to motor vehicle safety that it poses; and
- e. The reports included with this inquiry.

Response 14

Toyota will respond to this inquiry on April 28.

ATTACHMENT 5a

COPIES OF LEGAL CLAIMS

MR-15-2285 13:27 FROM:LEXUS LEXINGTON KY 859878829

TD:13103814278

P:1

80018091

18488 THE LEXUS STORE OF LEXINGTON
2158 Nicholasville Road
Nicholasville, KY 40386
(888) 887-5000

LEXINGTON, KY
RPO#: [REDACTED]

SUS: [REDACTED] 04

ACKNOWLEDGED
DUPLICATE 1
PAGE 1

SERVICE ADVISOR: JILL HARRIS

DATE	TIME	DESCRIPTION	AMOUNT	DATE	TIME	DESCRIPTION	AMOUNT
01/08/04	11:24	SALES TAX	70.00				
01/08/04	11:24	REGISTRATION	69.00				
01/08/04	11:24	TITLE	69.00				
01/08/04	11:24	SALES TAX	70.00				
01/08/04	11:24	REGISTRATION	69.00				
01/08/04	11:24	TITLE	69.00				
01/08/04	11:24	SALES TAX	70.00				
01/08/04	11:24	REGISTRATION	69.00				
01/08/04	11:24	TITLE	69.00				

25:24 11/24/04 01:24 28/10/04
LUXURY OPTION FROM TYPE A/PRICE \$/TIME CODES
K 10W 25 -- 20 BRASS/BLACK VEHICLE
CAUSE: INTERNAL MALFUNCTION
40001 INTERNAL MALFUNCTION OF VAC BOOSTER
RESTRICTION IN BODY DAMAGE TO VEHICLE.
116 N. W. 9.48 48180-02004 11/24/04
1 44610 48220 BOOSTER

PC: 38.00
COPIES: 1 24745 50390 TITLES
BOTH COPIES: 4925 12920 5039 4979 50390 24745

SALES TAX TOTALS 162178 127626 0
VERSION 1 (SMP# 136,183004 11/22); 4137 FOUND THE VAC BOOSTER HAS AN
INTERNAL MALFUNCTION. REPAIR THE VAC BOOSTER. SEE REP.

4925 12920 5039 4979 50390 24745

DATE	TIME	DESCRIPTION	AMOUNT
01/08/04	11:24	SALES TAX	70.00
01/08/04	11:24	REGISTRATION	69.00
01/08/04	11:24	TITLE	69.00
01/08/04	11:24	SALES TAX	70.00
01/08/04	11:24	REGISTRATION	69.00
01/08/04	11:24	TITLE	69.00

DATE	TIME	DESCRIPTION	AMOUNT
01/08/04	11:24	SALES TAX	70.00
01/08/04	11:24	REGISTRATION	69.00
01/08/04	11:24	TITLE	69.00
01/08/04	11:24	SALES TAX	70.00
01/08/04	11:24	REGISTRATION	69.00
01/08/04	11:24	TITLE	69.00

SERVICE FILE COPY LEADS

CLAIM CHECK

CUSTOMER # 4C018891

18400

THE LEXUS

2159

WORKORDER

Alcohol

PAGE 1

(8)

LEXINGTON, KY

HOME

DOB

SERVICE ADVISOR: 319 BARRY WANG

0100/STAY 04	10000000	00000000	00000000	00000000	00000000	00000000	00000000
20000004	01000004	31.64	10000004		79.00	CASH	
10000004	15.24						

Autosports Inc
 Inv # 8289
 Amount \$ 625.00
 P.O.# 11153

SURVEY

EXPLANATION OF WORKORDER

Any work done on the parts and accessories and finally are made by the manufacturer. The manufacturer's instructions and specifications should be followed as closely as possible. The work should be done in a safe manner, with regard to the work order, customer's property and that of the work order. The manufacturer's instructions should be followed as closely as possible. The work should be done in a safe manner, with regard to the work order, customer's property and that of the work order.

ADMINISTRATIVE FOR REPAIRS

I hereby authorize the repair work herein set forth to be done using only the necessary parts and labor that are not responsible for loss or damage to vehicle or contents, and I agree to pay for any labor done beyond what is stated in the work order. I understand that the work order may be amended or changed by the technician or customer. I understand that the work order may be amended or changed by the technician or customer. I understand that the work order may be amended or changed by the technician or customer.

PRELIMINARY RETRAITE

AUTHORIZED BY	DATE	TIME	BY
TECHNICIAN (1)			
TECHNICIAN (2)			
TECHNICIAN (3)			

I HEREBY AUTHORIZE THAT I HAVE REVIEWED & GAVE FINAL APPROVAL OF THE ABOVE REPAIRS.

TECHNICIAN COPY LEXUS

#136



- C - cut starter. brake pedal goes to floor. Has no bubbles.
- C - front tire vac booster has an internal malfunction.
- R - Replace the vac booster pump F.T.s.

PLATE	PLATE	SALE	SALE	TAX	OFF
19	19	19	19	19	410

PLATE	PLATE	SALE	SALE	TAX	OFF
20	20	20	20	20	20

BB)

4127

LEXUS ROADSIDE ASSISTANCE

To: LEXUS STORE OF LEXINGTON 8598878829
From: Lexus Roadside Assistance
Attention: SERVICE DEPARTMENT
Message: The following vehicle has a Roadside Case opened and will be delivered to your dealership shortly.

Case Number: 0403311
Caller Name: [REDACTED]
Open Date: 6/10/2004 12:42:35 PM
Condition: BRAKE PROBLEM, BRAKE FLUID LEAK
RS Phone: (859)234-0842
Lead/Mark:
Loaner Requested: NO

Vehicle Information
VIN: 2T2HA91LX4 [REDACTED] **Estimated Odometer:** 00000
Year/Model/Class: 2004 / RX330 / RX330
Delivery Date: 3/29/2004
Selling Dealer:
Color: SILVER **License Plate/State:**

Owner Information
Name: [REDACTED]
Address: [REDACTED]
City/State/Zip: LEXINGTON, KY [REDACTED]
Home Phone: [REDACTED] (859) [REDACTED]
Alternate phone/Type: BUSINESS [REDACTED] ext. 0000

Note: If the roadside event occurred after service department hours it may be stored at the towing company for morning delivery the following business day.

If you have any questions, or to change or update your on-line fax number, please contact Lexus Roadside Assistance at 1(800) 255-3087 and refer to the case number above.

Thank You

Lexus Roadside Assistance

ROBERT M. SILVERMAN
CRAIG THOR KIMMEL

Member, PA Bar
Member, NJ Bar
Member, DE Bar
Member, NY Bar
Member, MD Bar



KIMMEL & SILVERMAN

P.C.

1-800-LEMON LAW
www.lemonlaw.com

CORPORATE HEADQUARTERS
30 E. Butler Pike
Ambler, PA 19002
P (215) 340-8888
F (215) 340-8817

WESTERN PA OFFICE
218 Dept. Street, Suite 203
Pittsburgh, PA 15219
P (412) 564-1001
F (412) 564-1003

NEW JERSEY OFFICE
Executive Offices
1930 E. Marlton Pike, Suite TL1
Cherry Hill, NJ 08033
P (856) 489-8134
F (856) 236-7544

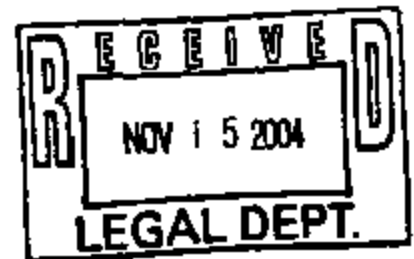
MARYLAND OFFICE
10451 Hill Lane Circle, Suite 400
Owings Mills, MD 21117
P (410) 336-8331
F (410) 336-8296

DELAWARE OFFICE
301 Silverdale Road, Suite 118
Wilmington, DE 19806
P (302) 791-9172
F (302) 791-9476

PLEASE REMIT ALL CORRESPONDENCE TO THE AMBLER OFFICE
November 8, 2004

CERTIFIED MAIL/RETURN RECEIPT REQUESTED

Toyota Motor Sales, U.S.A., Inc.
19001 S. Western Avenue
Torrance, CA 90509



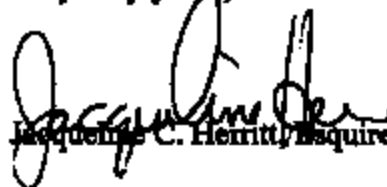
RE: [REDACTED] v. Toyota Motor Sales, U.S.A., Inc.
Docket No. OCN-L-3042-04

Dear Sir/Madam:

Enclosed please find a copy of the Summons and Complaint which has been filed in the Superior Court of New Jersey, Ocean County. You are being served pursuant to the New Jersey Rules of Civil Procedure, Rule 4:4-4(b)(1)(c).

Please refer the attached to the legal department. Note: a responsive pleading is due 35 days after the receipt of the Complaint, NJRCP 4:4-7.

Very truly yours,


Jacqueline C. Herritt, Esquire

JCH/ky
Enclosure

Attorney(s): JACQUELINE C. HERRITT, ESQUIRE
Address: Executive Quarters
1930 E. Marlton Pike, Suite T11
Cherry Hill, NJ 08003
Telephone No.: 856-429-8334
Attorney(s) for Plaintiff(s):



	Plaintiff(s)
vs.	
Toyota Motor Sales, U.S.A., Inc.	Defendant(s)

SUPERIOR COURT OF NEW JERSEY
DIVISION
OCEAN COUNTY

DOCKET NO. OCN-L-3042-04
CIVIL ACTION

SUMMONS

From the State of New Jersey
To the Defendant(s) named above:

The plaintiff, named above, has filed a lawsuit against you in the Superior Court of New Jersey. The complaint attached to this summons states the basis for this lawsuit. If you dispute this complaint, you or your attorney must file a written answer or motion and proof of service with the deputy clerk of the Superior Court in the county listed above within 35 days from the date you received this summons, not counting the date you received it. (The address of each deputy clerk of the Superior Court is provided.) If the complaint is one in foreclosure, then you must file your written answer or motion and proof of service with the Clerk of the Superior Court, Hughes Justice Complex, CN-971, Trenton, NJ 0 8625. A filing fee* payable to the Clerk of the Superior Court and a completed Case Information Statement (available from the deputy clerk of the Superior Court) must accompany your answer or motion when it is filed. You must also send a copy of your answer or motion to plaintiff's attorney whose name and address appear above, or to plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file and serve a written answer or motion (with fee and completed Case Information Statement) if you want the court to hear your defense.

If you do not file and serve a written answer or motion within 35 days, the court may enter a judgment against you for the relief plaintiff demands, plus interest and costs of suit. If judgment is entered against you, the Sheriff may seize your money, wages or property to pay all or part of the judgment.

If you cannot afford an attorney, you may call the Legal Services office in the county where you live. A list of these office is provided. If you do not have an attorney and are not eligible for free legal assistance, you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A list of these numbers is also provided.

Dated: October 18, 2004

Donald Phelan
Superior Court Clerk

Name of Defendant to be Served: Toyota Motor Sales, U.S.A., Inc.
Address of the Defendant to be Served: 19001 South Western Avenue, Torrance, CA 90509
* \$105.00 FOR CHANCERY DIVISION CASES OR \$135.00 FOR LAW DIVISION CASES

OCEAN COUNTY SUPERIOR COURT
OCEAN COUNTY COURTHOUSE
CIVIL LAW DIVISION
TOMS RIVER NJ 08754

TRACK ASSIGNMENT NOTICE

COURT TELEPHONE NO. (732) 929-2016
COURT HOURS

DATE: OCTOBER 20, 2004
RE: [REDACTED] VS TOYOTA MOTOR SALES USA INC
DOCKET: OCE L -003042 04

THE ABOVE CASE HAS BEEN ASSIGNED TO: TRACK 1.

DISCOVERY IS 150 DAYS AND MORE FROM THE FIRST ANSWER OR 90 DAYS
FROM SERVICE ON THE FIRST DEFENDANT, WHICHEVER COMES FIRST.

THE PRETRIAL JUDGE ASSIGNED IS: HON DONALD F. CAMPBELL

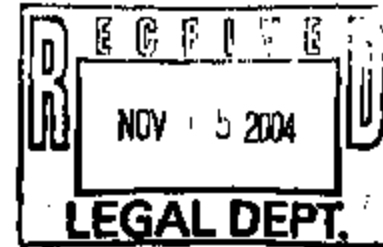
IF YOU HAVE ANY QUESTIONS, CONTACT TEAM 001
AT: (732) 929-4772.

IF YOU BELIEVE THAT THE TRACK IS INAPPROPRIATE YOU MUST FILE A
CERTIFICATION OF GOOD CAUSE WITHIN 30 DAYS OF THE FILING OF YOUR PLEADING.
PLAINTIFF MUST SERVE COPIES OF THIS FORM ON ALL OTHER PARTIES IN ACCORDANCE
WITH R.4:SA-2.

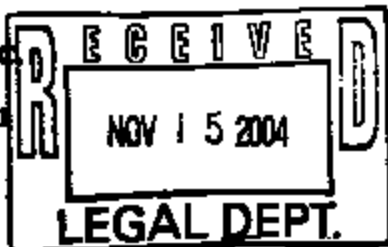
ATTENTION:

ATT: JACQUELIN C. HERRITT
KINGEL & SILVERMAN
1930 EAST STATE HIGHWAY 70
EXECUTIVE NEWS SUITE T11
CHERRY HILL NJ 08003

JUEVW2



Jacqueline C. Herritt, Esquire
KIMMEL & SILVERMAN, P.C.
Executive Quarters
1930 E. Marlon Pkwy, Suite T11
Cherry Hill, NJ 08003
(856) 429-8334



ATTORNEY FOR PLAINTIFF

JURY TRIAL DEMANDED.

[REDACTED]
Point Pleasant, New Jersey [REDACTED]

v.

TOYOTA MOTOR SALES, USA, INC.
19001 South Western Avenue
Torrance, CA 90509

SUPERIOR COURT OF NEW JERSEY
OCEAN COUNTY

CIVIL ACTION

NO. *CONL-3042-04*

COMPLAINT

1. Plaintiff, [REDACTED] is an adult individual citizen and legal resident of the State of New Jersey, 605 Delaware Avenue, Point Pleasant, New Jersey 08742.

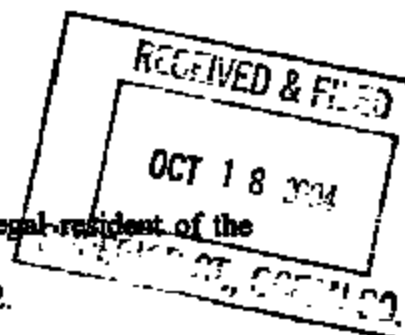
2. Defendant, Toyota Motor Sales, USA, Inc., is a corporation qualified to do and regularly conduct business in the State of New Jersey, with its address and principal place of business located at 19001 South Western Avenue, Torrance, CA 90509, and can be served at this address.

BACKGROUND

3. On or about December 12, 2003, Plaintiff purchased a new 2004 Lexus RX 330, manufactured and warranted by Defendant, bearing the Vehicle Identification Number 2T2HA31UX4 [REDACTED]

4. The vehicle was purchased in the State of New Jersey and is registered in the State of New Jersey.

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



Lemon Law, totaled more than \$43,823.73. A true and correct copy of the contract is attached hereto, made a part hereof, and marked Exhibit "A".

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

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

8. The parties' bargain includes an express 4-year / 50,000 mile warranty, as well as other guarantees, affirmations and undertakings as stated in Defendant's warranty materials and owner's manual.

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

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

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

COUNT I
NEW JERSEY MOTOR VEHICLE WARRANTY ACT

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

13. Plaintiff is a "Consumer" as defined by N.J.S.A. 56:12-30.

14. Defendant is a "Manufacturer" as defined by N.J.S.A. 56:12-30.

15. Ray Catena Lexus, is and/or was at the time of sale a "Dealer or Motor Vehicle Dealer" in the business of buying, selling, and/or exchanging vehicles as defined by N.J.S.A. 56:12-30.

16. On or about December 12, 2003, Plaintiff took possession of the above mentioned vehicle and experienced nonconformities as defined by N.J.S.A. 56:12-29 et seq., which substantially impair the use, value and/or safety of the vehicle.

17. Defendant through its authorized dealer failed to provide written notification that the vehicle was covered by the New Jersey Motor Vehicle Warranty Act as provided in N.J.S.A. 56:12-34(c). Plaintiff believes and therefore avers said failure is a per se violation of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., as well as a violation of the New Jersey Motor Vehicle Warranty Act.

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

19. Section 56:12-32 of the New Jersey Motor Vehicle Warranty Act provides:

- a. If, during the period specified in section 3 of this act, the manufacturer or its dealer is unable to repair or correct a nonconformity within a reasonable time, the manufacturer shall accept return of the motor vehicle from the consumer. The manufacturer shall provide the consumer with a full refund of the purchase price of the original motor vehicle including any stated credit or allowance for the consumer's used motor vehicle, the cost of any options or other modifications arranged, installed, or made by the manufacturer or its dealer within 30 days after the date of original delivery, and any other charges or fees including, but not limited to, sales tax, license and registration fees, finance charges, reimbursement for towing and reimbursement for actual expenses incurred by the consumer for the rental of a motor vehicle equivalent to the consumer's motor vehicle and limited to the period during which the consumer's motor vehicle was out of service due to a nonconformity, less a reasonable allowance for vehicle use.

20. Section 56:12-33 of the New Jersey Motor Vehicle Warranty Act provides a presumption of a reasonable number of repair attempts:

- a. It is presumed that a manufacturer or its dealer is unable to repair or correct a nonconformity within a reasonable time if, within the first 18,000 miles of operation or during the period of two years following the date of original delivery of the motor vehicle to a consumer, whichever is the earlier date:
 - (1) Substantially the same nonconformity has been subject to repair three or more times by the manufacturer or its dealer and the nonconformity continues to exist; or
 - (2) The motor vehicle is out of service by reason of repair for one or more nonconformities for a cumulative total of 20 or more calendar days since the original delivery of the motor vehicle and a nonconformity continues to exist.
- b. The presumption contained in sub-section a. of this section shall apply against a manufacturer only if the manufacturer has received written notification, by or on behalf of the consumer, by certified mail

return receipt requested, of a potential claim pursuant to the provisions of this act and has had one opportunity to repair or correct the defect or condition within 10 calendar days following receipt of the notification. Notification by the consumer shall take place any time after the motor vehicle has had substantially the same nonconformity subject to repair two or more times or has been out of service by reason of repair for a cumulative total of 20 or more calendar days.

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

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

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

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

25. During the first 24 months and/or 18,000 miles, Plaintiff complained on at least three (3) occasions about defects and or non-conformities to the following vehicle components: abnormal air bag light on, thumping in dashboard over bumps, vibration when braking, clunk in transmission when stopped, defective windshield and rear power hatch. True and correct copies of all invoices in Plaintiff possession are attached hereto, made a part hereof, and marked Exhibit "B".

26. Plaintiff has been and will continue to be financially damaged due to Defendant's intentional, reckless, wanton, and negligent failure to comply with the provisions of N.J.S.A. 56:12-29 et seq.

27. Plaintiff has provided Defendant with a final repair opportunity prior to filing the within Complaint.

28. Pursuant to N.J.S.A. 56:12-29 et seq., Plaintiff seeks relief for losses due to the nonconformities and defects in the above-mentioned vehicle in addition to reasonable attorney fees and all court costs.

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

COUNT II
MAGNUSON-MOSS (FTC) WARRANTY IMPROVEMENT ACT

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

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

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

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

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

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

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

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

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

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

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

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

40. Plaintiff avers Defendant's Dispute Resolution Program is not in compliance with 16 CFR 703 by the FTC for the period of time this claim was submitted.

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

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

COUNT III **UNIFORM COMMERCIAL CODE**

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

43. The defects and nonconformities existing within the vehicle constitute a breach of contractual and statutory obligations of Defendant, including but not limited to the following:

- a. Express Warranty;
- b. Implied Warranty Of merchantability; and
- c. Implied Warranty Of Fitness For A Particular Purpose.

44. At the time of obtaining possession of the vehicle and at all times subsequent thereto, Plaintiff has justifiably relied upon Defendant's express warranties and implied warranties of fitness for a particular purpose and implied warranties of merchantability.

45. At the time of obtaining possession of the vehicle and at all times subsequent thereto, Defendant was aware Plaintiff was relying upon Defendant's express and implied warranties, obligations, and representations with regard to the subject vehicle.

46. Plaintiff has incurred damages as a direct and proximate result of the breach and failure of Defendant to honor its express and implied warranties.

47. Such damages include, but are not limited to, the contract price of the vehicle plus all collateral charges, including attorney fees and costs, as well as other expenses, the full extent of which are not yet known.

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

COUNT IV
NEW JERSEY CONSUMER FRAUD ACT

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

49. Plaintiff is a "Person" as defined by N.J.S.A. 56:8-1(d).

50. Defendant is a "Person" as defined by N.J.S.A. 56:8-1(d).

51. Defendant's actions surrounding the sale and servicing of the subject vehicle were unconscionable. Defendant's agents also acted with a reckless and callous disregard for Plaintiff's rights in negotiating and handling Plaintiff's warranty claims.

52. Defendant's actions surrounding the sale and servicing of said vehicle constitute a unconscionable commercial practice, deception, fraud, false pretense, false promise, and/or misrepresentation. Defendant and its agents acted affirmatively in such a manner as to be an unlawful commercial practice.

53. Defendant acted knowingly with the intent to cause Plaintiff's reliance thereupon.

54. Defendant knowingly concealed, suppressed, or omitted facts material to the transactions at issue, in that Defendant was aware the defect(s)/condition(s) could not be repaired, and that the ineffectual repairs were performed by incompetent or unqualified individuals. Defendant's failure to verify the defect(s) or condition(s) constitutes a refusal to perform the repairs under its statutory or contractual obligations.

55. Defendant through its authorized dealer failed to provide written notification that the vehicle was covered by the New Jersey Motor Vehicle Warranty Act N.J.S.A. 56:12-34(c) and Plaintiff believes and therefore avers said failure is a per se violation of the New Jersey Consumer Fraud Act N.J.S.A. 56:8-1 et seq. as well as a violation of the New Jersey Motor Vehicle Warranty Act.

56. Plaintiff believes and therefore avers that the defect(s) or condition(s) outlined previously is/are an inherent design defect and that as such the Defendant must certify the existence of this defect or condition to the Division of Consumer Affairs. Defendant has failed to file this certification and this failure is a violation of the New Jersey Consumer Fraud Act N.J.S.A. 56:8-1 et seq.

57. Defendant's failure to supply an itemized legible statement of repair is an unlawful practice pursuant to the New Jersey Consumer Fraud Act N.J.S.A. 56:8-2.

58. The Act prohibits the aforementioned action of Defendant in the sale and attempted repair of the subject vehicle.

59. Plaintiff believes and therefore avers the reckless, wanton and willful failure of Defendant to comply with the terms of the written warranties constitutes an unfair method of competition.

60. As a result of Defendant's unlawful conduct, Plaintiff has and will continue to suffer ascertainable financial loss proximately caused by the Defendant's conduct. Said losses are outlined as follows:

- a. Plaintiff is entitled to a full refund N.J.S.A. 56:8-2.11-12;
- b. Plaintiff's vehicle, given the defect/condition, is worthless;
- c. Plaintiff lost time from work and other money as a result of having to take the vehicle in for the repeated repair attempts;
- d. Plaintiff has been relegated to finding alternative means of transportation while the vehicle was in for repairs and while the vehicle has been in its present condition. As a result, Plaintiff has incurred additional transportation costs; and
- e. Plaintiff has expended sums to maintain, store, insure, register, and other expenses for transportation.

WHEREFORE, Plaintiff respectfully demands judgment against Defendant for compensatory damages, treble damages, attorney fees, costs of suit, and any further relief as the Court may deem just and proper.

KIMMEL & SILVERMAN, P.C.

By: 

JACQUELINE C. HERRITT, ESQUIRE

Attorney for Plaintiff

Executive Quarters

1930 E. Marlton Pike, Suite T11

Cherry Hill, NJ 08003

(856) 429-8334

JURY-DEMAND

Plaintiff hereby demands a trial by jury as to all the issues

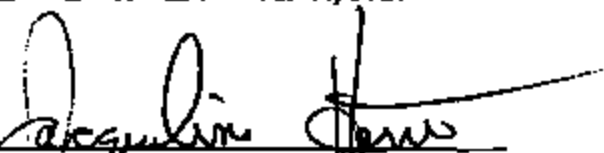
KIMMEL & SILVERMAN, P.C.

By: 
JACQUELINE C. HERRITT, ESQUIRE
Attorney for Plaintiff

CERTIFICATION PURSUANT TO R.4:15-1

Upon knowledge and belief I hereby certify that there are no other actions or arbitrations related to this suit pending or presently contemplated.


KIMMEL & SILVERMAN, P.C.

By: 
JACQUELINE C. HERRITT, ESQUIRE
Attorney for Plaintiff

CERTIFICATION OF NOTICE

Pursuant to N.J.S.A. 56:8-20 Plaintiff is mailing a copy of this Complaint to the Office of the Attorney General, Richard J. Hughes Justice Complex, 25 West Market Street in the City of Trenton, County of Mercer, in the state of New Jersey on *October 14, 2004*

KIMMEL & SILVERMAN, P.C.

By: 

JACQUELINE C. HERRITT, ESQUIRE
Attorney for Plaintiff

NEW JERSEY RETAIL INSTALLMENT CONTRACT

12/12/2003

NOTE - A TABLE OF CONTENTS FOR THIS CONTRACT APPEARS AS PARAGRAPH NO. 25 ON THE REVERSE SIDE
 1. **NATURE OF CONTRACT:** If this box is checked, this is a simple interest contract WITH a "Balloon Payment" at the last scheduled payment. (The Balloon Payment portion is not available if the cash price of the vehicle is \$10,000 or less.) If this box is not checked, this is a simple interest contract WITHOUT a "Balloon Payment" as the last scheduled payment.

Buyer (and Co-Buyer) Name and Address (Include County and Zip Code) POINT PLEASANT NJ OCEAN	Creditor (Seller) Name and Address CHESS MANHATTAN BANK USA, N.A. 600 WESTERN AVENUE OAKRIDGE NJ 07765
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2. **WHO IS BOUND:** You, the Buyer (and Co-Buyer, if any), may buy the vehicle described below for cash or on credit. By signing below, you choose to buy the vehicle on credit under the terms on the front and back of this Contract and are individually liable for any amount due, in this Contract, "you", "us", and "our" mean the creditor named above and, after assignment, the creditor's assignee, Chase Manhattan Bank USA, N.A., and/or any other assignee.
 3. **DESCRIPTION OF VEHICLE:** You agree to buy and we agree to sell the following vehicle:

New, Used or Demo	Year	Weight (lbs.)	Make and Model	Body Type	Vehicle Identification No.	Key No.	Use for which purchased
NEW	2004		LEXUS RX 330	UGN 4X4	2T2HA31UX4		personal

If truck - Describe body, gross vehicle weight and major items of equipment sold:

4. **NOTICE TO BUYERS OF USED OR DEMONSTRATION VEHICLES:** The information you see on the window form for this vehicle is part of this Contract. Information on the window form overrides any contrary provisions in the contract of sale.

FEDERAL TRUTH-IN-LENDING DISCLOSURES

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	AMOUNT FINANCED	TOTAL OF PAYMENTS	TOTAL SALE PRICE
The cost of your credit as a yearly rate. 5.39 %	The dollar amount the credit will cost you. \$ 4197.73	The amount of credit provided to you or on your behalf. \$ 29353.07	The amount you will have paid after you have made all payments as scheduled. \$ 33650.80	The total cost of your purchase on credit including your downpayment of \$ 10272.83 \$ 43823.73

PAYMENT SCHEDULE: Your payment schedule will be 60 monthly payments of \$ 559.81 due on the same day of each month starting on 01/11/2004
BALLOON PAYMENT: If this Contract is checked with "Balloon Payment" above, your payment schedule will be N/A monthly payments of \$ N/A each, due on the same day of each month starting on N/A and then your last payment will be \$ N/A due on N/A
PREPAYMENT: You have the right to pay off this Contract early. If you do so, you will not have to pay a penalty.
SECURITY: You are giving us a security interest in the motor vehicle being purchased.
LATE FEE: If a payment is more than 10 days late, you may be charged \$10.00.
OTHER TERMS: Please read this Contract, including the reverse side, for additional information on security interests, prepayment, default, and our right to require prepayment in full before the scheduled maturity date.

ITEMIZATION OF THE AMOUNT FINANCED

1. Cash Price (including any accessories, installation of accessories, and sales taxes of \$ 1506.00)	\$ 39506.00
2. Downpayment:	
A. Net Trade-In Your Trade-In is a <u>2001 INFINITI 130</u> Year <u>2001</u> Model <u>130</u>	\$ 272.93
B. Cash Downpayment	10000.00
C. Total Downpayment (A + B)	10272.83
3. Unpaid Balance of Cash Price (1 - 2C):	29353.07
4. Other Charges including Amounts Paid to Others on Your Behalf:	
A. Cost of Optional Credit Insurance for the Term(s) Specified in Paragraph of this Contract	

B. Official Fees Paid to Government Agencies
 C. Government License and/or Registration Fees (Itemize)
 D. Government Certificate of Title Fees
 E. Other Charges (Describe who will receive payment and purpose)
 For Optional Gap Coverage
 To _____ For _____
 F. Total Other Charges and Amounts Paid to Others on Your Behalf
 (A + B + C + D + E)
 5. Amount Financed (Unpaid Balance) (3 + 4F): _____
 We may retain, or receive, a portion of these amounts.

7. **PROMISE TO PAY:** You promise to pay us the Amount Financed shown above, plus a Finance Charge determined by applying a daily rate of _____ of the Annual Percentage Rate shown above to the unpaid balance of the Amount Financed each day.
8. **PAYMENTS BEFORE OR AFTER DUE DATE:** This is a simple interest contract. This means that the amount of the Finance Charge shown above may vary depending upon when your payments are received. If no late charge and/or returned check charge is owed, we credit each payment first to accrued Finance Charge and then to the unpaid balance of the Amount Financed. If a late charge and/or returned check charge is owed, we credit each payment first to accrued Finance Charge, then to the scheduled unpaid balance of the Amount Financed, then to unpaid late charge and/or returned check charge, and then to the unpaid balance of the Amount Financed. We compute your Finance Charge each day on the unpaid balance of the Amount Financed. The earlier you make payments before their due dates, the less Finance Charge you will owe. The later you make payments after they are due, the greater the Finance Charge. We will send you a check for any amount owed you if it is \$1.00 or more. After you make your last payment, we will advise you of any additional amount owed (if it is \$1.00 or more).
9. **BALLOON PAYMENT:** IF THIS CONTRACT IS CHECKED WITH "BALLOON PAYMENT" ABOVE, THIS CONTRACT IS NOT PAYABLE IN INSTALLMENTS OF EQUAL AMOUNTS. THE LAST SCHEDULED PAYMENT IS SUBSTANTIALLY LARGER THAN EACH OF THE OTHER SCHEDULED PAYMENTS. The due date and amount of this last scheduled payment are shown above. That amount may be less than what the vehicle will be worth at the time such payment is due. Paragraph 10 appearing on the reverse entitled "LAST PAYMENT OPTIONS" applies and the odometer reading referred to in Section (B)(4) of such paragraph is _____.
10. **LOCATION OF VEHICLE:** The vehicle will be kept at the above address of the Buyer, unless another address is listed:

 (Street and Town)

CREDIT INSURANCE

Credit life and credit disability, accident and health insurance are not required to obtain Credit and will not be provided under this Contract unless you sign for them and agree to pay the additional cost. The policies or certificates issued by the insurer will describe the terms and conditions in further detail.

If you want the following insurance, sign below:

Life (Buyer Co-Buyer Both) at a premium of \$ _____ for a term of _____

Credit Life Insurance will pay your debt on this Contract up to \$ _____

Disability, Accident and Health (Buyer Only) at a premium of \$ _____ for a term of _____

Credit disability, accident and health insurance will pay your debt on this Contract up to \$ _____

The name of the insurer is _____ Name _____ of _____ Home Office Address _____

Buyer Signature _____ Date _____ Co-Buyer Signature _____

2. **PROPERTY INSURANCE:** Insurance coverage for loss or damage to the vehicle (collision, fire and theft) is required and you have the option of furnishing the required insurance either through your existing policies or you may purchase equivalent insurance coverage through anyone you wish acceptable to the Seller. If you elect to purchase this coverage through the Seller, it will be limited by _____ for the initial term of _____ at a premium of _____ but each charge is not included in this Contract.

3. **THIS DOES NOT INCLUDE INSURANCE ON YOUR LIABILITY FOR BODILY INJURY OR PROPERTY DAMAGE. WITHOUT SUCH INSURANCE, YOU MAY NOT OPERATE THIS VEHICLE ON PUBLIC HIGHWAYS.**

BY SIGNING THIS CONTRACT YOU ACKNOWLEDGE THAT IT CONTAINS AN "AGREEMENT TO ARBITRATE DISPUTES" ON THE REVERSE SIDE, THAT YOU HAVE READ IT AND AGREE TO ITS TERMS.

IMPORTANT: READ THE ADDITIONAL TERMS ON REVERSE SIDE BEFORE SIGNING BELOW.

NOTICE TO RETAIL BUYER: Do not sign this contract if blank. You are entitled to a copy of the contract at the time you sign. Keep it to protect your legal rights.

4. **ACKNOWLEDGEMENT:** You acknowledge that you have read both sides of this Agreement, agreed to all terms, and received a complete copy of the same from the Seller.

Buyer _____ Co-Buyer Signs _____

Creditor-Seller Signs _____

By signing here, the Creditor-Seller accepts this Contract and also agrees to the terms of the Seller's Assignment of this Contract as set forth in the Dealer's Agreement with assignee.

BUYER'S COPY



RAY CATENA LEXUS OF MONMOUTH

18 CINDY LANE
OCEAN, N.J. 07712
732-493-2100
www.raycatena.com

ORDER NO. 9569	ADDRESS GREGG PATRINO	TAG NO. 20 911	INVOICE DATE 12/26/03	INVOICE NO. LECS220612
	LABOR HOUR 90.00	TAXES 1,295	COLOR FLINT MICA/	WHEEL NO. 42041
POINT PLEASANT, NJ	YEAR / MAKE / MODEL 04/LEXUS/RX 330/wgn 4x4		DELIVERY DATE 12/12/03	DELIVERY MILES 20
	VEHICLE ID NO. 2 T 2 H A 3 1 U X 4		SALES DEALER NO.	PRODUCTION DATE
	P.T.E. NO.	P.O. NO.	A.O. DATE 12/26/03	
				MD: 1299

JOB 1 CHARGES

LABOR
 DISCOUNT RETEST
 OIL
 WASH
 ADJUST

JOB 1 TOTALS

JOB 2 CHARGES

LABOR
 OIL
 WASH
 ADJUST

JOB 2 TOTALS

COMMENTS

WAS
 1.1 CAS
 1.1 VIB
 1.1 DIS

THANK YOU FOR

CALLING



RAY CATENA LEXUS OF MONMOUTH

18 CINDY LANE
 OCEAN, N.J. 07712
 732-493-2100
 www.raycatena.com

ORDER NO.	9569	ADVISOR	ANDREW SEIBERT	17	YEAR NO.	540	WORK DATE	03/05/04	WORK NO.	LECS226241	
		LABOR RATE	50.00	LEASER NO.		REISAGE	5,589	COLOR	FLINT MICA/	STOCK NO.	42041
		YEAR / MAKE / MODEL	04 / LEXUS / RX 330 / WGN 4X4				DELIVERY DATE	12/12/03	DELIVERY MILE	20	
	POINT PLEASANT, NJ	VEHICLE ID. NO.	Z T 2 H A 3 1 U X 4				DELIVER DEALER NO.		PRODUCTION DATE		
		K.Y.E. NO.		P.O. NO.		P.O. DATE	03/05/04				
		COMMENTS									

NO: 5592

JOB# 1 CHARGES

LABOR

CUSTOMER REQUESTS 5000 MILE SERVICE
 REPLACE ENGINE OIL & FILTER. INSPECT TIRE PRESSURE & TIRE WEAR. CHECK/REPLENISH ALL FLUIDS. INSPECT ENGINE DRIVE BELTS & HOSES. CHECK ENGINE AIR FILTER. INSPECT BRAKE PADS/DRUMS, LINES AND HOSES. PERFORM INSPECTION OF STEERING LINKAGES. INSPECT BALL JOINTS AND BUSH COMPS. CHECK DRIVE SHAFT BOOTS. INSPECT CHASSIS NUTS & BOLTS. RETURDUE DRIVE SHAFT FLANGE BOLTS. WASH & VACUUM VEHICLE. ROTATE TIRES.

5000 MILE SERVICE PERFORMED.

QTY	FP-NUMBER	DESCRIPTION	UNIT PRICE	WARRANTY
1	99915-YZZ01	FILTER, OIL		
6	08279-1QT30-01	BT 10430 MOTOR OI		
			TOTAL - PARTS	0.00

JOB# 1 TOTALS

JOB# 1 JOURNAL PREFIX JECS JOB# 1 TOTAL

JOB# 2 CHARGES

LABOR

C/S AT ANY SPEEDS. WHEN VEHICLE HOLTS BUMPS HEARDS A TAPPING NOT BATTLE COMING FROM RIGHT SIDE OF DASHBOARD. CHECK AND ADVISE.
 "A" PILLAR LOOSE.
 REMOVED "A" PILLAR GARNISH. INSULATED HOODROOF DRAINAGE AUDIO ANTENNA, BARNISH. REMOVED SPEAKER COVER ON DASHBOARD. INSULATED. REMOVED GLOVE BOX ASSY. INSULATED TOP AND BOTTOM END. ROAD TESTED VEHICLE. NO ABNORMAL NOISE HEARD.

QTY	FP-NUMBER	DESCRIPTION	UNIT PRICE	WARRANTY
1	94950-08094	CLIP		
			TOTAL - PARTS	0.00

2 TOTALS

JOB# 2 JOURNAL PREFIX JECS JOB# 2 TOTAL

0.00

RTS



RAY CATENA LEXUS OF MONMOUTH

18 CINDY LANE
OCEAN, N.J. 07712
732-493-2100
www.raycatena.com

CLERY NO. 9569	SALES REP. ALINDY SEIDLER	TAX NO. 75 609	DATE OF SALE 04/02/04	VEHICLE NO. LECS228551
	LEASER PRICE 50.00	FINANCE 7,739	COLOR FLINT MICA	DATE OF REG. 42041
POINT PLEASANT, NJ	YEAR / MAKE / MODEL 04/LEXUS/RX 330/WGN 4X4		DATE OF DELIVERY 12/12/03	DELIVERY MILE 20
	VEHICLE ID. NO. 2T2HA31UX4		DELIVERY MILE/PLATE NO.	PRODUCTION DATE
	F.T.E. NO.		DATE OF SALE 04/01/04	
COMMENTS				NO: 7746

LABOR

CHIP IN WINDSHIELD REPAIRED
REPAIRED CHIP IN WINDSHIELD

SUBLET FOR VEH. DRW. 12307 4233

JOB 1 TOTALS

JOB 2 CHARGES

LABOR

CUSTOMER STATES NOISE IN DRIVESHIFT AREA
TECH TEST, DROVE WITH SHIFTER
NOISE IN DASH AT THIS TIME
FOUND CAR LON ON BUS BELTED
IF NOISE PERSISTS PLEASE
TO MAKE APPOINTMENT

JOB 2 TOTALS

TOTALS

THANK YOU FOR YOUR BUSINESS!!

CUSTOMER SIGNATURE

PAGE 1 OF 1

CUSTOMER COPY

REAR OF INVOICE | 02/20/04



RA. CATENA LEXUS OF MONMOUTH
 18 CINDY LANE
 OCEAN, N.J. 07712
 732-493-2100
 www.raycatena.com

CLIENT NO. 9569	MICHAEL NOLAN	7	305	DATE OF SALE 04/15/04	VEHICLE NO. LECS229203
POINT PLEASANT, NJ	90.00	ALIAS NO.	8,262	DEALER FLINT MICA/	VEHICLE NO. 42041
	04/LEXUS/RX 330/WGN 4X4			DATE OF DELIVERY 12/12/03	DELIVERY MILES 20
	2TZA31UX4			DEALER DEALER NO.	PRODUCTION DATE
	P.T.E.R.O.			04/06/04	

NO: 8269

LABOR

WORK ORDER

LABOR

DESCRIPTION

QTY **UNIT** **PRICE** **TOTAL**

1 **HOUR** **8.00** **8.00**

2 **CHARGES** **0.00** **0.00**

TOTALS **3** **8.00** **8.00**

ADJUST STATES YEARS

2 **TOTALS**

ESTIMATE

CUSTOMER HERE

DATE

COMMENTS

DATE



RAY CATENA LEXUS OF MONMOUTH

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DL/INT NO. 9569	ADDRESS MICHAEL NOLAN	TAX ID 7 305	SALES DATE 04/15/04	INVOICE NO. LECS229203
POINT PLEASANT, NJ	UNIT PRICE 90.00	LICENSE NO.	MSRP 8,262	COLOR FLINT MICA/
	YEAR / MAKE / MODEL 04/LEXUS/RX 330/WGN 4X4		DELIVERY DATE 12/12/03	DELIVERY MILE 20
	VEHICLE ID NO. 2T2HA31UX4		BILLING DEBIT NO.	PRODUCTION CODE
	F.T.E. NO.		R.A. DATE 04/08/04	
COMMENTS				NO: 8269

 * [] CASH [] CHECK CK NO. [] *
 * [] VISA [] MASTERCARD [] DISCOVER *
 * [] AMER EXPRESS [] OTHER [] CASH *

 THANK YOU FOR YOUR BUSINESS!!

CUSTOMER SIGNATURE

[REDACTED SIGNATURE]

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RAY CATENA LEXUS OF MONMOUTH

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CLIENT NO. 9569	ADDRESS MIKE DALEY	50	UNIT NO. 60	DATE OF SALE 05/04/04	SALES CONTROL NO. LECS231572
	PRICE 90,000	LOAN NO.	MESSAGE 9,517	COLOR FLINT MICA/	STOCK NO. 42041
POINT PLEASANT, NJ	TYPE / MAKE / MODEL 04/LEXUS/RX 330/MGN 4X4			DELIVERY DATE 12/12/03	DELIVERY MILE 20
	VIN 2T2HA31UX4			BILLING ORDER NO.	PRODUCTION DATE
	P. T. E. NO.	P. C. NO.	P. O. DATE 05/04/04		
COMMENTS					NO: 9521

JOB# 1 CHARGES

LABOR
C/S THAT WHEN BRAKING STEERING WHEEL VIBRATES
ROTOR'S MARPED
RESURFACED FRONT BRAKE DRUMS REPLACED SHOCKS
TEST DRIVE VIBRATION

PARTS
QTY---FP-NUMBER---DESCRIPTION
1 04405-48100 KIT: DISC/SHOCK

JOB# 1 TOTALS

JOB# 2 CHARGES

LABOR
C/S THAT AS VEHICLE COMES TO A STOP VEHICLE SHAKES AS IF TAPPED IN REAR
INSPECTED TRACED TO SHOCK COILVER LINES MAKING NOISE
FEELING, ORDERED NEW SHOCKS WILL CALL WHEN

PARTS
QTY---FP-NUMBER---DESCRIPTION
0 38907-48001 SHOCK S/A
PART ON SPECIAL ORDER ** QUANTITY **

JOB# 2 TOTALS

JOB# 3 CHARGES

LABOR
C/S THAT WHEN ACCERATING VEHICLE SHIFTS INTO 2ND GEAR
VEHICLE SHIFTS INTO 2ND GEAR
TEST DRIVE VEHICLE TO CONFIRM LOCATION OF SHIFTS
ALL WORKING AS DESIGNED (SOFT) STEERING ALL
STORED, LATEST SOFTWARE IN EQU

JOB# 3 TOTALS

JOB# 3 JOURNAL-PREFER LEXUS

COMMENTS
DOL



RAY CATENA LEXUS OF MONMOUTH

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732-493-2100
www.raycatena.com

ORDER NO. 9569	NAME DALEY	56	60	DATE 05/04/04	LECS231572
	90.00		9,517	FLINT MICA/	42041
POINT PLEASANT, NJ	04/LEXUS/RX 330/MGN 4X4			12/12/03	DELIVERY WEEK 20
	Z1ZHA31UX4				
				05/04/04	
COMMENTS					MO: 9521

TOTALS

* [] CASH [] CHECK CK NO

* [] VISA [] MASTERCARD

* [] AMER EXPRESS [] OTHER

THANK YOU FOR YOUR BUSINESS

CUSTOMER SIGNATURE

[REDACTED]

RAY CATENA LEXUS OF MONMOUTH



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732-493-2100
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WORK ORDER NO. 9569	TECHNICIAN MICHAEL NOLAN	VEHICLE NO. 360	DATE 05/18/04	WARRANTY NO. LECS232837
POINT PLEASANT, NJ	YEAR 04	MAKE LEXUS	MODEL RX 330	TRIM FLINT MICA/
	VEHICLE NO. 212HA31UX4	PRICE 10,438	DELIVERY DATE 12/12/03	DELIVERY MILES 20
	P.T.R. NO.	P.O. NO.	DATE 05/18/04	NO: 10449

LABOR
JOB 1 09LEZ180 AUTO TRANS DIAGNOSIS
C/S THAT WHEN COMING TO A STOP VEHICLE FEELS
TAPPED FROM BEHIND. INSTALL 50 PARTS
TSB TC082-04
REPLACED TRANS OIL COOLER

PARTS
QTY 1 FP NUMBER 32907-48031

JOB 1 TOTALS

JOB 2 CHARGES

LABOR
JOB 2 30LEZ100 BODY DIAGNOSIS
C/S THAT VEHICLE IS MAKING RATTLE NOISE
DASH AREA. CUSTOMER MUST DRIVE WITH SHIP
-TECH ROAD TESTED WITH CUSTOMER AND DID NOT
ABNORMAL NOISES.
RE-INSULATED PILLAR TRIM PLATES WHERE THE
BOARD ASSEMBLY AS A PRECAUTION.

JOB 2 TOTALS

JOB 3 CHARGES

LABOR
JOB 3 30LEZ998 BODY DIAGNOSIS
CUST STATES A PIECE OF THE TRUNK LIP
REINSTALLED RIGHT FRONT ROOF WEATHER
SECURED

JOB 3 TOTALS

JOB 4 CHARGES

LABOR
JOB 4 30LEZ126 LEFT REAR LATCH ASSEMBLY
CUST STATES REAR POWER HATCH DID NOT
TSB ELD02-04
REPLACED REAR POWER HATCH CONTROL UNIT TO RESOLVE

PARTS	QTY	FP NUMBER	DESCRIPTION	UNIT PRICE	WARRANTY
	1	89222-0E011	COMPUTER, MULTIP		0.00
TOTAL - PARTS					



RA. CATENA LEXUS OF MONMOUTH

18 CINDY LANE
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732-493-2100
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CLIENT NO. 9569	BUYER MICHAEL NOLAN	DOB NO. 7 360	REGISTRATION 05/18/04	SALES ID LECS232837
	LEASE PRICE 90.00	LEASE NO.	LEASE 10,438	SALES ID 42041
POINT PLEASANT, NJ	VEHICLE MAKE / MODEL 04/LEXUS/RX 330/WGN 4X4		DELIVERY DATE 12/12/03	DELIVERY MILE 20
	VEHICLE ID NO. ZTZA31UX4		DEALER DEALER NO.	PRODUCTION DATE
	V. T. R. NO.	P. O. NO.	REG. DATE 05/18/04	
	COMMENTS			MO: 10449

ORDER # 4 TOTALS

ORDER # 6 CHARGES

LABOR

19.5 OIL SERVICE

THANK YOU FOR YOUR BUSINESS

CUSTOMER SIGNATURE

PAGE 2 OF 2



RAY CATENA LEXUS OF MONMOUTH

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9569

MINDY SEIDLER 75 613 05/27/04 LECS233621
90.00 11,041 FLINT MICA/ 42041
04/LEXUS/RX 330/WGN 4X4 12/12/03 20
2 T 2 H A 3 1 U X 4

POINT PLEASANT, NJ

05/26/04

NO: 11054

JOB# 1 CHARGES

LABOR
CUST STATES PULSATION IN STEERING WHEEL WHEN BANKING
HEARS CLICKING NOISE IN PEDAL AND HAS TO APPLY FOOT
HARD ON PEDAL
VEHICLE ROAD TESTED BY SHOP FOREMAN WITH CUSTOMER AT CUSTOMER
HOUSE, COULDN'T DUPLICATE CONDITION

JOB# 1 TOTALS

JOB# 1 JOURNAL PREFIX LECS JOB# 1 TOTAL 0.00

JOB# 2 CHARGES

LABOR
CUST STATES HEARS DASH IN RATTLE MORE ON DRIVERS SIDE
VEHICLE ROAD TESTED BY SHOP FOREMAN AND CUSTOMER AT CUSTOMER
HOUSE, NO NOISE HEARD, COULDN'T VERIFY ANY NOISE

JOB# 2 TOTALS

JOB# 2 JOURNAL PREFIX LECS JOB# 2 TOTAL 0.00

JOB# 3 CHARGES

LABOR
CUST STATES HESITATION UPON SHIFTING GEARS, GOES FROM 1 TO 4
RPM'S WITH A/C ON THEN EVENS OUT
VEHICLE WAS ROAD TESTED BY SHOP FOREMAN WITH CUSTOMER,
NO ABNORMAL SHIFTING FELT BY SHOP FOREMAN

JOB# 3 TOTALS

JOB# 3 JOURNAL PREFIX LECS JOB# 3 TOTAL 0.00

REMARKS

*Thank you,
Mindy.
Just for your
records*



RAY CATENA LEXUS OF MONMOUTH

18 CINDY LANE
OCEAN, N.J. 07712
732-483-2100
www.raycatena.com

9569

MINDY SEIDLER 75 613 05/27/04 LECS233621
90.00 11,041 FLINT WICA/ 42041
04/LEXUS/RX 330/MGN 4X4 12/12/03 20
2 T 2 H A 3 1 U X 4

POINT PLEASANT, NJ

05/26/04

NO: 11054

TOTALS-----

*****		TOTAL LABOR....	0.00
* [] CASH [] CHECK CK NO. [] *		TOTAL PARTS....	0.00
* [] VISA [] MASTERCARD [] DISCOVER *		TOTAL SUBLET....	0.00
* [] AMER XPRESS [] OTHER [] CHARGE *		TOTAL S.O.G....	0.00
*****		TOTAL MISC CHG.	0.00
		TOTAL MISC DISC	0.00
		TOTAL TAX.....	0.00
		TOTAL INVOICE \$	0.00

THANK YOU FOR YOUR BUSINESS!!

CUSTOMER SIGNATURE



RAY CATENA LEXUS OF MONMOUTH

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CLIENT NO. 9569	SALES REP. GREGG PATRINO	20	YEAR NO. 774	DATE 07/30/04	INVENTORY NO. LECS239889
	MSRP 50,000	LICENSE NO.	MSRP 15,074	DEALER FLINT MICA/	STOCK NO. 42041
POINT PLEASANT, NJ	YEAR MAKE / MODEL 04/LEXUS/RX 330/MGN 4X4			DELIVERY DATE 12/12/03	DELIVERY MILE 20
	VIN ZT2HA31UX4			SELLING DEALER NO.	PRODUCTION DATE
	P.T. I.D.	P.O. NO.		07/30/04	
					MO: 15076

JOB 1 CHANGES

LABOR

CUSTOMER REQUESTS 15000 MILE
CHANGE ENGINE OIL & FILTER
SERVICE BATTERY. CHECK BELT
CHECK ALL INSTRUMENTS & LIGHTS
BALL JOINTS, BUST COVERS
PIPES & MOUNTINGS. INSPECT
FILTER, ROTATE TIRES AND
TEST FOR PROPER ENGINE AND
AND VACUUM

15000 MILE SERVICE, PERFORMED

PARTS	QTY	FP NUMBER	UNIT PRICE	
	1	17801-0HD10		INTER
	1	90915-Y2301		INTER
	1	90438-1203L		INTER
	6	00279-30754-01		INTER
	1	33336-12916		INTER
	1	A200		INTER
	1	85214-0E020		INTER
	1	85214-44140		INTER
	1	85214-0E010		INTER

TOTALS

CASH CHECK VISA MASTERCARD AMEX OTHER
 DISCOUNT TAX TOTAL INVOICE \$ **0.00**

THANK YOU FOR YOUR BUSINESS!!

CUSTOMER SIGNATURE



RAY CATENA LEXUS OF MONMOUTH

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732-493-2100
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CUSTOMER NO.	9569	SALES REP	ANDY SEIDLER	75	710	DATE	08/05/04	SALES NO.	LECS240424	
		LABOR PRICE	90.00	LABORER NO.		RETAIL PRICE	15,436	SALES	FLINT MICA/	
		VEH / MAKE / MODEL	04/LEXUS/RX 330/MGN 4X4				DELIVERY DATE	12/12/03	DELIVERY MILES	20
		VEHICLE ID NO.	2Y2HA31UX4				SALES DISPLAY NO.		PRODUCTION DATE	
		F.T.E. NO.		F.O. NO.		DATE	08/05/04			
								Comments	NO: 15438	

JOB 1 CHARGES

LABOR
REPLACE REAR WIPER INSERT
REPLACED REAR WIPER INSERT

PARTS
QTY --- FP NUMBER
1 --- 85214-06010

JOB 1 TOTALS

JOB 2 CHARGES

LABOR
PERFORM FULL DETAIL
PERFORM FULL DETAIL - HAND WASH

JOB 2 TOTALS

COMMENTS

TOTALS

* CASH CHECK VISA
 * VISA MASTERCARD DISCOVER
 * AMER EXPRESS OTHER

THANK YOU FOR YOUR BUSINESS!!

CUSTOMER SIGNATURE

Detail Dept.

LAVIN, O'NEIL, RICCI, CEDRONE & DISIPIO

By: **JO E. PEIFER, Esquire**
1300 Route 73, Suite 307
Mount Laurel, New Jersey 08054
(856) 778-5544

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

Plaintiff

v.

TOYOTA MOTOR SALES, U.S.A., INC.
Defendant

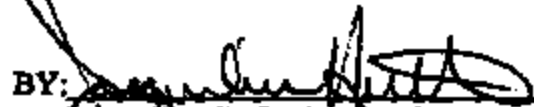
: SUPERIOR COURT OF NEW JERSEY
: LAW DIVISION- OCEAN COUNTY

: CIVIL ACTION

: DOCKET NO. OCN-L-3042-04
: STIPULATION FOR EXTENSION OF
: TIME

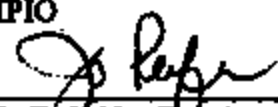
It is hereby STIPULATED by and between counsel for plaintiff, Jacqueline C. Herritt, Esquire and counsel for defendant, Jo E. Peifer, Esquire, that defendant, Toyota Motor Sales, U.S.A., Inc., has an extension of time of thirty days in which to answer plaintiff's Complaint.

NIMMEL & SILVERMAN

BY: 
Jacqueline C. Herritt, Esquire
Attorney for Plaintiff,
William A. Bradshaw

Date: 11/24/04

LAVIN, O'NEIL, RICCI, CEDRONE & DISIPIO

BY: 
Jo E. Peifer, Esquire
Attorney for Defendant,
Toyota Motor Sales, U.S.A., Inc.

Date: 11/30/04

RECEIVED & FILED
JAN 18 2005
SUPERIOR CT., OCEAN CO

CIVIL CASE INFORMATION STATEMENT (CIS)

Use for Initial Law Division - Civil Part pleadings (not motions) under Rule 4:3-1. Pleading will be rejected for filing, under Rule 1:5-8(a) if information above the black bar is not completed or if attorney's signature is not affixed.

FOR USE BY CLERK'S OFFICE ONLY

PAYMENT TYPE:	OK	CG	CA
CHK / CK NO:			
AMOUNT:			
OVERPAYMENT:			
BATCH NUMBER:			

ATTORNEY / FRO BE NAME: Barri A. Deon, Esquire	TELEPHONE NUMBER: (860) 778-8544	COUNTY OF VENUE: Ocean County
---	-------------------------------------	----------------------------------

FIRM NAME (if applicable): Levin, O'Neil, Ricci, Cedrone & DiStasio	DOCKET NUMBER (When Available): OCJ-1-3042-04
--	--

OFFICE ADDRESS: Levin, O'Neil, Ricci, Cedrone & DiStasio 1388 Route 73 Suite 367 Mount Laurel, NJ 08054	DOCUMENT TYPE: Action with Separate Defenses
JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	

NAME OF PARTY (e.g. John Doe, Plaintiff) Toyota Motor Sales, U.S.A., Inc., Defendant	CAPTION: [REDACTED] v. Toyota Motor Sales, U.S.A., Inc.
--	--

CASE TYPE NUMBER: (See reverse side for filing) 812	IS THIS A PROFESSIONAL MALPRACTICE CASE? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
IF YOU HAVE CHECKED "YES", SEE N.J.S.A. 2A:53A-27 AND APPLICABLE CASE LAW REGARDING YOUR OBLIGATION TO FILE AN AFFIDAVIT OF MERIT	

RELATED CASES PENDING? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	IF YES, LIST DOCKET NUMBERS
---	-----------------------------

DO YOU ANTICIPATE/ALREADY ANY PARTIES (other than out of state members of household)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	NAME OF DEFENDANT'S PRIMARY INSURANCE COMPANY, IF KNOWN <input type="checkbox"/> STATE <input type="checkbox"/> UNINSURED
---	--



CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING FEE AND DISAPPORTIONATE FEE ALLOCATION

A. DO PARTIES HAVE A CURRENT, PAST OR RECURRENT RELATIONSHIP? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	IF YES, IS THAT <input type="checkbox"/> EMPLOYER, EMPLOYEE <input type="checkbox"/> FRIEND/NEIGHBOR RELATIONSHIP <input type="checkbox"/> FAMILIAL <input type="checkbox"/> BUSINESS <input type="checkbox"/> OTHER (explain)
---	--

B. DOES THE STATUTE GOVERNING THIS CASE PROVIDE FOR PAYMENT OF FEES BY THE LOSING PARTY? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<div style="border: 2px solid black; padding: 5px; width: 100%;"> <p style="text-align: center; font-weight: bold; font-size: 1.2em;">RECEIVED & FILED</p> <p style="text-align: center; font-weight: bold; font-size: 1.2em;">JAN 18 2005</p> <p style="text-align: center; font-weight: bold; font-size: 1.2em;">SUPERIOR CT., OCEAN CO</p> </div>
--	--

USE THIS SPACE TO ALERT THE COURT TO ANY SPECIAL CASE CHARACTERISTICS THAT MAY WARRANT INDIVIDUAL MANAGEMENT OR ACCELERATED DISPOSITION:

DOES YOUR CLIENT NEED ANY DISABILITY ACCOMMODATIONS? YES NO IF YES PLEASE IDENTIFY: _____

WILL AN INTERPRETER BE NEEDED? YES NO IF YES PLEASE IDENTIFY: _____

ATTORNEY SIGNATURE: Barri Deon DISCOVERY END DATE IS: _____

Revised Effective 8/1/04 6.17.05

CIVIL CASE INFORMATION SHEET (CIS)

Use for initial pleadings (not motions) under Rule 4:5-1

CASE TYPE (Choose one and enter number of case type in appropriate space on the reverse side)

Track I - 150 days' discovery

151	NAME CHANGE
175	FORFEITURE
302	TENANCY
300	REAL PROPERTY
502	BOOK ACCOUNT
505	OTHER INSURANCE CLAIM (INCLUDING DECLARATORY JUDGMENT ACTIONS)
506	PIP COVERAGE
510	UM OR UIM CLAIM
511	ACTION ON NEGOTIABLE INSTRUMENT
512	LEMON LAW
550	CONTRACT/COMMERCIAL TRANSACTION
501	SUMMARY ACTION
502	OPEN PUBLIC RECORDS ACT (SUMMARY ACTION)

Track II - 300 days' discovery

305	CONSTRUCTION
509	EMPLOYMENT (other than CEPA or LAD)
602	ASSAULT AND BATTERY
603	AUTO NEGLIGENCE-PERSONAL INJURY
605	PERSONAL INJURY
610	AUTO NEGLIGENCE-PROPERTY DAMAGE
608	TORT-OTHER

Track III - 450 days' discovery

008	CIVIL RIGHTS
301	CONDEMNATION
604	MEDICAL MALPRACTICE
606	PRODUCT LIABILITY
607	PROFESSIONAL MALPRACTICE
608	TOXIC TORT
609	DEFAMATION
616	WHISTLEBLOWER/CONSCIENTIOUS EMPLOYEE PROTECTION ACT (CEPA) CASES
617	INVERSE CONDEMNATION
618	LAW AGAINST DISCRIMINATION (LAD) CASES

Track IV Active Case Management by Individual Judge/450 days' discovery

155	ENVIRONMENTAL/ENVIRONMENTAL COVERAGE LITIGATION
308	MT. LAUREL
508	COMPLEX COMMERCIAL
613	REPETITIVE STRESS SYNDROME
701	ACTION IN LIEU OF PREROGATIVE WRITS

Mass Tort (Track IV)

240	REDUX/PHEN-FEN (formerly "DIET DRUG")	204	PPA
246	REZULIN	801	ASBESTOS
247	PROPLISID	816	VIOXX
248	CIBA GIEGY		

899 OTHER (Briefly describe nature of action): _____

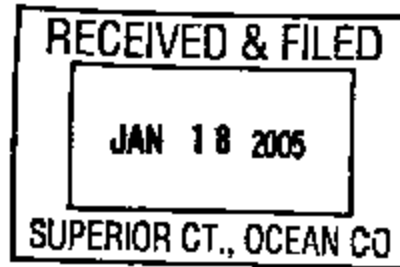
If you believe this case requires a track other than that provided above, please indicate the reason on side 1, in the space under "Case Characteristics."

Please check off each applicable category:

Verbal Threshold Putative Class Action Title 59

LAVIN, O'NEIL, RICCI, CEDRONE & DISIPIO
1300 Route 73
Suite 307
Mount Laurel, NJ 08054
(856) 778-5544

By: **Jo E. Peifer, Esquire**
Barri A. Orlow, Esquire
Attorneys for Defendant, Toyota Motor Sales, U.S.A., Inc.



_____ :
Plaintiff, :

v. :

TOYOTA MOTOR SALES, U.S.A., INC., :

Defendant. :

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - OCEAN COUNTY

CIVIL ACTION

DOCKET NO. OCN-L-3042-04

**ANSWER OF DEFENDANT, TOYOTA
MOTOR SALES, U.S.A., INC. TO
PLAINTIFF'S COMPLAINT WITH
SEPARATE DEFENSES, JURY DEMAND,
DEMAND FOR STATEMENT OF
DAMAGES CLAIMED AND
DESIGNATION OF TRIAL COUNSEL**

Defendant, Toyota Motor Sales, U.S.A., Inc., (hereinafter referred to as "TMS"), by and through its attorneys, Lavin, O'Neil, Ricci, Cedrone & DiSipio, hereby responds to plaintiff's Complaint as follows:

1. Denied. After reasonable investigation, TMS is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph and, therefore, said allegations are denied.

2. Admitted in part, denied in part. It is admitted that TMS is a corporation that conducts business in the State of New Jersey. It is also admitted that TMS is a corporation incorporated in the State of California with its principal place of business at 19001 South Western Avenue, Torrance, CA 90501. To the extent the allegations of this paragraph constitute conclusions of law, no response is required.

BACKGROUND

3. Admitted in part, denied in part. It is denied that TMS manufactured the subject vehicle. It is admitted that TMS distributed the subject 2004 Lexus RX 330, bearing VIN: 2T2HA31UX4 [REDACTED] (hereinafter referred to as the "subject vehicle") to an authorized Lexus dealership. Certain limited express warranties were extended to the original purchaser/lessee of the subject vehicle and any and all warranties applicable hereto are limited to those set forth therein. As to the remaining allegations set forth in this paragraph, after reasonable investigation, TMS is without sufficient knowledge or information to form a belief as to the truth of these allegations and, therefore, said allegations are denied.

4. Denied. After reasonable investigation, TMS is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph and, therefore, said allegations are denied.

5. Denied. After reasonable investigation, TMS is without sufficient knowledge or information to form a belief as to the truth of these allegations and, therefore, said allegations are denied. Plaintiff's Exhibit "A" speaks for itself, and after reasonable investigation, TMS is without sufficient knowledge or information to form a belief as to the truth as to the remainder of the allegations contained therein.

6. Denied. Insofar as the allegations set forth in this paragraph constitute conclusions of law, no response is required. It is denied that TMS made any express and/or implied warranties, guarantees, affirmations, promises and/or undertakings with respect to the subject vehicle other than certain limited express warranties which would have been extended to the original purchaser/lessee of the subject vehicle and any and all warranties applicable hereto are limited to those set forth therein. As to the remaining allegations set forth in this paragraph, after reasonable investigation, TMS is without sufficient knowledge or information to form a belief as to the truth of these allegations and, therefore, said allegations are denied.

7. Denied. Insofar as the allegations set forth in this paragraph constitute conclusions of law, no response is required. It is denied that TMS made any express and/or implied warranties, guarantees,

affirmations, and/or undertakings with respect to the subject vehicle other than certain limited express warranties which would have been extended to the original purchaser/lessee of the subject vehicle and any and all warranties applicable hereto are limited to those set forth therein.

8. Denied. Insofar as the allegations set forth in this paragraph constitute conclusions of law, no response is required. It is denied that TMS made any express and/or implied warranties, guarantees, affirmations, and/or undertakings with respect to the subject vehicle other than certain limited express warranties which would have been extended to the original purchaser/lessee of the subject vehicle and any and all warranties applicable hereto are limited to those set forth therein.

9. Denied. Insofar as the allegations set forth in this paragraph refer to plaintiff's state of mind, no response is required. It is denied that the subject vehicle is "worthless" and/or is unable to be utilized for its intended purposes, either as alleged in plaintiff's Complaint or in any other manner whatsoever. It is further denied that the subject vehicle contained any nonconformities which substantially impair its use, value and/or safety, either as alleged in plaintiff's Complaint or in any other manner whatsoever. It is also denied that TMS repaired the subject vehicle and denied that any repairs were ineffective.

10. Denied. Insofar as the allegations set forth in this paragraph constitute conclusions of law, no response is required. As to the remaining allegations set forth in this paragraph, after reasonable investigation, TMS is without sufficient knowledge or information to form a belief as to the truth of these allegations and, therefore, said allegations are denied.

11. Denied. Insofar as the allegations set forth in this paragraph constitute conclusions of law, no response is required.

ANSWER TO COUNT I
NEW JERSEY MOTOR VEHICLE WARRANTY ACT

12. TMS incorporates herein by reference its response to all allegations contained in plaintiff's Complaint as though said responses were fully set forth at length herein.

13. Denied. To the extent the allegations set forth in this paragraph constitute conclusions of law, no response is required.

14. Denied. To the extent the allegations set forth in this paragraph constitute conclusions of law, no response is required.

15. Denied. To the extent the allegations set forth in this paragraph constitute conclusions of law, no response is required.

16. Denied. To the extent the allegations set forth in this paragraph constitute conclusions of law, no response is required. It is denied that plaintiff experienced and/or continues to experience nonconformities which substantially impair the use, value or safety of the subject vehicle, either as alleged in plaintiff's Complaint or in any other manner whatsoever.

17. Denied. Insofar as the allegations set forth in this paragraph constitute conclusions of law, no response is required. It is denied that TMS violated any provision of the New Jersey Motor Vehicle Warranty Act and/or the New Jersey Consumer Fraud Act, either as alleged in plaintiff's Complaint or in any other manner whatsoever.

18. Denied. Insofar as the allegations set forth in this paragraph constitute conclusions of law, no response is required. It is denied that the plaintiff experienced and/or continues to experience nonconformities which substantially impair the use, value and/or safety of the subject vehicle, either as alleged in plaintiff's Complaint or in any other manner whatsoever. It is denied that TMS violated and/or breached any warranties, either as alleged in plaintiff's Complaint or in any other manner whatsoever.

19. Denied. To the extent the allegations set forth in this paragraph constitute conclusions of law, no response is required.

20. Denied. To the extent the allegations set forth in this paragraph constitute conclusions of law, no response is required.

21. Denied. To the extent the allegations set forth in this paragraph constitute conclusions of law, no response is required. By way of further response, it is denied that the subject vehicle contained and/or contained any nonconformities which substantially impair its use, value and/or safety, either as alleged in plaintiff's Complaint or in any other manner whatsoever. As to the remaining allegations set forth in this paragraph, after reasonable investigation, TMS is without sufficient knowledge or information to form a belief as to the truth of these allegations and, therefore, said allegations are denied.

22. Denied. It is denied that the subject vehicle contained and/or contains any nonconformities which substantially impair its use, value and/or safety, either as alleged in plaintiff's Complaint or in any other manner whatsoever. As to the remaining allegations set forth in this paragraph, after reasonable investigation, TMS is without sufficient knowledge or information to form a belief as to the truth of these allegations and, therefore, said allegations are denied.

23. Denied. Insofar as the allegations set forth in this paragraph constitute conclusions of law, no response is required. It is denied that the subject vehicle contained and/or contains any nonconformities which substantially impair its use, value and/or safety, either as alleged in plaintiff's Complaint or in any other manner whatsoever. It is also denied that TMS repaired the subject vehicle. As to the remaining allegations set forth in this paragraph, after reasonable investigation, TMS is without sufficient knowledge or information to form a belief as to the truth of these allegations and, therefore, said allegations are denied.

24. Denied. Insofar as the allegations set forth in this paragraph constitute conclusions of law, no response is required. It is denied that the subject vehicle contained and/or contains any nonconformities which substantially impair its use, value and/or safety, either as alleged in plaintiff's Complaint or in any other manner whatsoever. It is also denied that TMS repaired the subject vehicle and denied that any repairs were ineffective. As to the remaining allegations set forth in this paragraph, after reasonable investigation,

TMS is without sufficient knowledge or information to form a belief as to the truth of these allegations and, therefore, said allegations are denied.

25. Denied. It is denied that the subject vehicle contained and/or contains any defects and/or nonconformities which substantially impair its use, value and/or safety, either as alleged in plaintiff's Complaint or in any other manner whatsoever. Plaintiff's Exhibit "B" speaks for itself and after reasonable investigation, TMS is without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein. As to the remaining allegations, after reasonable investigation, TMS is without sufficient knowledge or information to form a belief as to the truth of these allegations.

26. Denied. To the extent the allegations contained in this paragraph constitute conclusions of law, no response is required. It is denied that TMS intentionally, recklessly, wantonly and/or negligently failed to comply with the provisions of N.J.S.A. § 56:12-29, et seq., either as alleged in plaintiff's Complaint or in any other manner whatsoever. If plaintiff sustained any injuries, damages or losses, TMS denies any and all liability for same.

27. Denied. It is denied that TMS is in the business of repairing Lexus motor vehicles and/or that TMS performed any repairs to the subject vehicle. As to the remaining allegations set forth in this paragraph, after reasonable investigation, TMS is without sufficient knowledge or information to form a belief as to the truth of these allegations and, therefore, said allegations are denied.

28. Denied. To the extent the allegations of this paragraph constitute conclusions of law, no response is required. It is denied that the subject vehicle contained and/or contains any defects and/or nonconformities which substantially impair its use, value and/or safety, either as alleged in plaintiff's Complaint or in any other manner whatsoever. If plaintiff sustained any injuries, damages or losses, TMS denies any and all liability for same.

WHEREFORE, defendant, TMS, demands judgment in its favor and against plaintiff on all claims asserted in plaintiff's Complaint, together with costs of suit and attorney's fees.

ANSWER TO COUNT II
MAGNUSON-MOSS FEDERAL TRADE COMMISSION WARRANTY IMPROVEMENT ACT

29. TMS incorporates herein by reference its response to all allegations contained in plaintiff's Complaint as though said responses were fully set forth at length herein.

30. Denied. To the extent the allegations set forth in this paragraph constitute conclusions of law, no response is required.

31. Denied. To the extent the allegations set forth in this paragraph constitute conclusions of law, no response is required.

32. Denied. To the extent the allegations set forth in this paragraph constitute conclusions of law, no response is required.

33. Denied. It is denied that TMS is engaged in the business of repairing Lexus motor vehicles and/or that TMS performed any repairs to the subject vehicle. It is denied that TMS made any express and/or implied warranties, guarantees, affirmations, promises and/or contracts with respect to the subject vehicle other than certain limited express warranties were extended to the original purchaser/lessee of the subject vehicle and any and all warranties applicable hereto are limited to those set forth therein.

34. Denied. To the extent the allegations set forth in this paragraph constitute conclusions of law, no response is required.

35. Denied. Insofar as the allegations set forth in this paragraph constitute conclusions of law, no response is required. It is denied that TMS performed any repairs to the subject vehicle and that any repair attempts were ineffective. It is further denied that TMS breached and/or failed to comply with any warranties, either as alleged in plaintiff's Complaint or in any other manner whatsoever.

36. Denied. To the extent the allegations set forth in this paragraph constitute conclusions of law, no response is required.

37. Denied. Insofar as the allegations set forth in this paragraph constitute conclusions of law, no response is required. It is denied that TMS made any express and/or implied warranties and/or contracts with respect to the subject vehicle other than certain limited express warranties which were extended to the original purchaser/lessee of the subject vehicle and any and all warranties applicable to the subject vehicle are limited to those set forth therein. As to the remaining allegations set forth in this paragraph, after reasonable investigation, TMS is without sufficient knowledge or information to form a belief as to the truth of these allegations and, therefore, said allegations are denied.

38. Denied. Insofar as the allegations set forth in this paragraph constitute conclusions of law, no response is required. It is denied that TMS breached and/or failed to comply with any warranties, either as alleged in plaintiff's Complaint or in any other manner whatsoever. If plaintiff sustained any injuries, damages or losses, TMS denies any and all liability for same.

39. Denied. Insofar as the allegations set forth in this paragraph constitute conclusions of law, no response is required. It is denied that TMS breached and/or violated any warranties, contractual obligations, and/or statutory obligations, either as alleged in plaintiff's Complaint or in any other manner whatsoever. It is also denied that TMS engaged in any unfair trade practice, either as alleged in plaintiff's Complaint or in any other manner whatsoever.

40. Denied. To the extent the allegations set forth in this paragraph constitute conclusions of law, no response is required. It is denied that TMS' informal dispute resolution program did not comply with 16 C.F.R. 703.

41. Denied. Insofar as the allegations set forth in this paragraph constitute conclusions of law, no response is required. If plaintiff sustained any injuries, damages or losses, TMS denies any and all liability for same.

WHEREFORE, defendant, TMS, demands judgment in its favor and against plaintiff on all claims asserted in plaintiff's Complaint, together with costs of suit and attorney's fees.

**ANSWER TO COUNT III
UNIFORM COMMERCIAL CODE**

42. TMS incorporates herein by reference its response to all allegations contained in plaintiff's Complaint as though said responses were fully set forth at length herein.

43. (a)-(c), inclusive. Denied. Insofar as the allegations set forth in this paragraph constitute conclusions of law, no response is required. It is denied that the subject vehicle contained and/or contains any defects and/or nonconformities which substantially impair its use, value and/or safety, either as alleged in plaintiff's Complaint or in any other manner whatsoever. Certain limited express warranties were extended to the original purchaser/lessee of the subject vehicle and any and all warranties applicable hereto are limited to those set forth therein. It is denied that TMS breached any contractual and/or statutory obligations, either as alleged in paragraphs 43(a)-(c), inclusive, or in any other manner whatsoever.

44. Denied. To the extent the allegations of this paragraph constitute conclusions of law, no response is required. Insofar as the allegations set forth in this paragraph refer to plaintiff's state of mind, no response is required. It is denied that TMS made any express and/or implied warranties other than certain limited express warranties which would have been extended to the original purchaser/lessee of the subject vehicle and any and all warranties applicable hereto are limited to those set forth therein.

45. Denied. To the extent the allegations of this paragraph constitute conclusions of law, no response is required. Insofar as the allegations set forth in this paragraph refer to plaintiff's state of mind, no response is required. It is denied that TMS made any express and/or implied warranties, obligations and/or

representations other than certain limited express warranties which would have been extended to the original purchaser/lessee of the subject vehicle and any and all warranties applicable hereto are limited to those set forth therein.

46. Denied. To the extent the allegations of this paragraph constitute conclusions of law, no response is required. It is denied that TMS breached and/or failed to honor any warranties, either as alleged in plaintiff's Complaint or in any other manner whatsoever. If plaintiff sustained any injuries, damages or losses, TMS denies any and all liability for same.

47. Denied. To the extent the allegations of this paragraph constitute conclusions of law, no response is required. If plaintiff sustained any injuries, damages or losses, TMS denies any and all liability for same.

WHEREFORE, defendant, TMS, demands judgment in its favor and against plaintiff on all claims asserted in plaintiff's Complaint, together with costs of suit and attorney's fees.

**ANSWER TO COUNT IV
NEW JERSEY CONSUMER FRAUD ACT**

48. TMS incorporates herein by reference its response to all allegations contained in plaintiff's Complaint as though said responses were fully set forth at length herein.

49. Denied. To the extent the allegations set forth in this paragraph constitute conclusions of law, no response is required.

50. Denied. To the extent the allegations set forth in this paragraph constitute conclusions of law, no response is required.

51. Denied. Insofar as the allegations set forth in this paragraph constitute conclusions of law, no response is required. It is denied that TMS sold the subject vehicle directly to plaintiff and/or that TMS serviced the subject vehicle. It is denied that TMS acted in an unconscionable manner, either as alleged in

plaintiff's Complaint or in any other manner whatsoever. It is also denied that TMS acted with reckless and/or callous disregard, either as alleged in plaintiff's Complaint or in any other manner whatsoever.

52. Denied. Insofar as the allegations set forth in this paragraph constitute conclusions of law, no response is required. It is denied that TMS sold the subject vehicle directly to plaintiff and/or that TMS serviced the subject vehicle. It is denied that any conduct of TMS constitutes an unconscionable commercial practice, deception, fraud, false pretense, false promise and/or misrepresentation, either as alleged in plaintiff's Complaint or in any other manner whatsoever. It is denied that TMS engaged in any "unlawful commercial practice," either as alleged in plaintiff's Complaint or in any other manner whatsoever.

53. Denied. Insofar as the allegations set forth in this paragraph constitute conclusions of law, no response is required. Insofar as the allegations set forth in this paragraph refer to plaintiff's state of mind, no response is required.

54. Denied. Insofar as the allegations set forth in this paragraph constitute conclusions of law, no response is required. It is denied that TMS sold the subject vehicle directly to plaintiff and/or that TMS serviced the subject vehicle. It is denied that TMS performed any repairs to the subject vehicle and denied that there were ineffective repairs to the subject vehicle. By way of further response, TMS is not in the business of repairing motor vehicles. It is denied that TMS concealed, suppressed or omitted any material facts, either as alleged in plaintiff's Complaint or in any other manner whatsoever. Insofar as the allegations in this paragraph refer to plaintiff's state of mind, no response is required. It is denied that any defects and/or "conditions" exist and/or existed in the subject vehicle, either as alleged in plaintiff's Complaint or in any other manner whatsoever. As to the remaining allegations set forth in this paragraph, after reasonable investigation, TMS is without sufficient knowledge or information to form a belief as to the truth of these allegations and, therefore, said allegations are denied.

55. Denied. Insofar as the allegations set forth in this paragraph constitute conclusions of law, no response is required. It is denied that TMS violated any provision of the New Jersey Motor Vehicle Warranty Act and/or the New Jersey Consumer Fraud Act, either as alleged in plaintiff's Complaint or in any other manner whatsoever.

56. Denied. Insofar as the allegations set forth in this paragraph constitute conclusions of law, no response is required. It is denied that TMS designed the subject vehicle. It is also denied that there are any design defects and/or "conditions" in the subject vehicle, either as alleged in plaintiff's Complaint or in any other manner whatsoever. It is further denied that TMS violated the New Jersey Consumer Fraud Act, N.J.S.A. § 56:8-1, et seq., either as alleged in plaintiff's Complaint or in any other manner whatsoever.

57. Denied. Insofar as the allegation set forth in this paragraph constitute conclusions of law, no response is required. It is further denied that TMS violated any provision of the New Jersey Consumer Fraud Act, N.J.S.A. § 56:8-2, either as alleged in plaintiff's Complaint or in any other manner whatsoever.

58. Denied. Insofar as the allegations set forth in this paragraph constitute conclusions of law, no response is required. It is denied that TMS sold the subject vehicle directly to plaintiff. It is also denied that TMS performed any repairs the subject vehicle.

59. Denied. Insofar as the allegations set forth in this paragraph constitute conclusions of law, no response is required. It is denied that TMS recklessly, wantonly and/or willfully failed to comply with and/or breached any warranties, either as alleged in plaintiff's Complaint or in any other manner whatsoever.

60. (s)-(e), inclusive. Denied. Insofar as the allegations in this paragraph constitute conclusions of law, no response is required. It is denied that any conduct attributable to TMS was "unlawful" either as alleged in plaintiff's Complaint or in any other manner whatsoever. If plaintiff sustained any injuries, damages or losses, TMS denies any and all liability for same.

WHEREFORE, defendant, TMS, demands judgment in its favor and against plaintiff on all claims asserted in plaintiff's Complaint, together with costs of suit and attorney's fees.

FIRST SEPARATE DEFENSE —

Plaintiff's Complaint fails to state a claim upon which relief can be granted.

SECOND SEPARATE DEFENSE

Plaintiff may have been contributorily and/or comparatively negligent and therefore, the damages and/or losses of plaintiff, if any, are limited by the New Jersey Comparative Negligence Act.

THIRD SEPARATE DEFENSE

Plaintiff's claims may be barred in whole or in part by the applicable Statutes of Limitations.

FOURTH SEPARATE DEFENSE

Plaintiff may have assumed the risk of plaintiff's activities and/or the risk of a known danger.

FIFTH SEPARATE DEFENSE

Any conduct allegedly causing liability on the part of defendant, TMS, was not a substantial cause of plaintiff's alleged injuries, damages and/or losses.

SIXTH SEPARATE DEFENSE

The injuries, damages and/or losses allegedly sustained by plaintiff may have been caused entirely by, or contributed to by, the negligent acts or omissions of individuals and/or entities other than defendant, TMS.

SEVENTH SEPARATE DEFENSE

Negligent acts or omissions of individuals and/or entities other than defendant, TMS, constitute intervening, superseding acts of negligence.

EIGHTH SEPARATE DEFENSE

The subject vehicle, including, its component parts, may have been misused, abnormally used, abused, neglected and/or had an authorized alteration done by plaintiff and/or other individuals for whom

TMS is not responsible which is the result of a nonconformity, defect or condition, if plaintiff is able to establish same existed.

NINTH SEPARATE DEFENSE

The alleged nonconformity, defect or condition, of the subject vehicle does not substantially impair the use, value, or safety of the subject vehicle.

TENTH SEPARATE DEFENSE

The plaintiff has not resorted, as required under the warranty, to the informal dispute settlement procedure established by TMS which comply with 16 C.F.R. Part 703, and therefore, plaintiff is not permitted to pursue a claim under the Magnuson-Moss Warranty Act.

ELEVETH SEPARATE DEFENSE

The injuries and/or losses allegedly sustained by plaintiff were not proximately caused by defendant, TMS.

TWELFTH SEPARATE DEFENSE

The vehicle referred to in plaintiff's Complaint including its component parts may have been substantially altered and/or changed after it left the possession and control of the manufacturer and/or distributor.

THIRTEENTH SEPARATE DEFENSE

The vehicle referred to in plaintiff's Complaint complied with any and all applicable federal, state and local laws, standards and regulations.

FOURTEENTH SEPARATE DEFENSE

Plaintiff may have failed to mitigate plaintiff's alleged damages.

FIFTEENTH SEPARATE DEFENSE

Any damages and/or injuries which plaintiff may have sustained were caused by the improper, abnormal, unforeseeable and unintended use of the vehicle referred to in plaintiff's Complaint by plaintiff and/or other persons for whom TMS is not responsible.

SIXTEENTH SEPARATE DEFENSE

Plaintiff and/or entities and/or other persons not in the control of defendant, TMS, may be responsible for the destruction and/or spoliation of evidence resulting in prejudice to defendant in its ability to prepare a defense to plaintiff's claims.

SEVENTEENTH SEPARATE DEFENSE

Defendant, TMS, pleads the release, if any, that may have been executed by plaintiff, and states that such release eliminates and/or diminishes the alleged liability of TMS and/or damages in this action and/or may bar plaintiff's recovery.

EIGHTEENTH SEPARATE DEFENSE

Plaintiff may be barred from maintaining his claims based upon estoppel and waiver.

NINETEENTH SEPARATE DEFENSE

Venue in Ocean County may be improper and/or inconvenient.

TWENTIETH SEPARATE DEFENSE

Defendant, TMS, hereby reserves the right, upon completion of its investigation and discovery, to file such additional defenses, separate defenses, counterclaims and/or third-party Complaints as may be appropriate.

TWENTY-FIRST SEPARATE DEFENSE

Defendant hereby reserves the right to file a Motion to Dismiss plaintiff's claims on the ground that plaintiff has no legal cause of action against this defendant.

TWENTY-SECOND SEPARATE DEFENSE

The plaintiff has not resorted, as required under the warranty, to the informal dispute settlement procedure established by TMS which comply with 16 C.F.R. Part 703, and therefore, plaintiff is not permitted to pursue a claim under the New Jersey Motor Vehicle Warranty Act.

JURY DEMAND

Defendant, TMS, hereby demands a trial by jury constituting of 12 members on all of the triable issues of this Complaint in accordance with R. 1:8-2(b) and R. 4:35-1(a).

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, Jo E. Peifer, Esquire is hereby designated as trial counsel for defendant, TMS, in this matter.

DEMAND FOR STATEMENT OF DAMAGES CLAIMED

Defendant, TMS, demands, pursuant to R. 4:5-2, that within five days after service hereof, plaintiff serve a written statement as to the amount of damages claimed against TMS.

CERTIFICATION PURSUANT TO R. 4:6-1 AND R. 4:5-1

I, Barri A. Orlow, Esquire, hereby certify to the best of my knowledge, information and belief:

1. That the matter in controversy in this action is not the subject of any other action pending in any other court or any other arbitration proceeding, other than those identified by plaintiff in her Complaint;
2. No arbitration proceeding is currently contemplated;
3. There are no other parties, at the present time, that need to be joined in this action; and
4. A copy of the Answer of this defendant was served within the time period provided by R. 4:6-1 and all extensions thereto.

LAVIN, O'NEIL, RICCI, CEDRONE & DISIPIO

BY: Barri Orlow
Jo E. Peifer, Esquire
Barri A. Orlow, Esquire
Attorneys for Defendant,
Toyota Motor Sales, U.S.A., Inc.

DATED: 1/17/05

PROOF OF SERVICE

The undersigned hereby certifies that:

On January 17, 2005, I mailed to the addressee listed below, first class U.S. Mail, postage prepaid, a copy of the within Answers to Plaintiff's Complaint with Separate Defenses, Jury Demand, Request for Statement of Damages and Designation of Trial Counsel.

The foregoing statement made by me is true. I am aware that if the statement is willfully false, I am subject to punishment.

Jacqueline Herritt, Esquire
KIMMEL & SILVERMAN
89 Haddon Avenue North
Haddonfield, NJ 08033

By: 

Lisa Mignogna, Legal Assistant

ATTACHMENT 7

COPY OF SERVICE BULLETIN



**Technical Service
Information Bulletin**
September 17, 2004

TSIB

Brake Booster
Models:
'04 RX 330 (NAP)

BRAKES
BR005-04

Introduction To improve the overall brake pedal feeling during cold starts, the brake booster assembly has been changed.

Applicable Vehicles

- 2004 model year RX 330 (NAP) vehicles produced **BEFORE** the Production Change Effective VINs shown below.

Production Change Information

MODEL	PLANT	DRIVELINE	PRODUCTION CHANGE EFFECTIVE VIN
RX 330	TMMC	2WD	2T2GA31U#4 [REDACTED]
		4WD	2T2HA31UH# [REDACTED]

Parts Information

MODEL	PREVIOUS PART NUMBER	CURRENT PART NUMBER	PART NAME	QTY
2WD	44810-0E010	Same	Brake Booster	1
4WD	44810-0E020	Same		1

Repair Procedure

1. Remove and replace the brake booster following the procedures outlined in the Technical Information System (TIS), 2004 model year RX 330 Repair Manual: *Brake: Brake Booster Assy.*
2. Road test the vehicle to confirm repair.

Warranty Information

OP CODE	DESCRIPTION	TIME	OFF	T1	T2
463011	R & R Brake Booster	1.9	44810-0E010 (2WD) 44810-0E020 (4WD)	38	48

Applicable Warranty*:

This repair is covered under the Lexus Comprehensive Warranty. This warranty is in effect for 48 months or 50,000 miles, whichever occurs first, from the vehicle's in-service date.

* Warranty application is limited to correction of a problem based upon a customer's specific complaint.

