



**Service of Process
Transmittal**

01/15/2010

CT Log Number 516012459



TO: Dorothy Sutton, Administrative Assistant
Toyota Motor Sales, U.S.A., Inc.
19001 S. Western Ave., HQ11
Torrance, CA 90501

RE: Process Served in Utah

FOR: Toyota Motor Sales, U.S.A., Inc. (Domestic State: CA)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: [REDACTED] Pltf. vs. Toyota Motor Sales, U.S.A., Inc., Dfts.

DOCUMENT(S) SERVED: Summons, Complaint

COURT/AGENCY: United States District Court, District of Utah, UT
Case # 110CV00003

NATURE OF ACTION: Product Liability Litigation - Manufacturing Defect - Action for injunctive, equitable, and declarative relief on behalf of herself and all other similarly situated owners or lessees of 2006 model year Toyota Corolla and Toyota Matrix.

ON WHOM PROCESS WAS SERVED: C T Corporation System, Salt Lake City, UT

DATE AND HOUR OF SERVICE: By Process Server on 01/15/2010 at 14:40

APPEARANCE OR ANSWER DUE: Within 21 days

ATTORNEY(S) / SENDER(S): Erik A. Chrisitansen
Parsons Behle & Latimer
201 South Main Street, Suite 1800
PO Box 445898
Salt Lake City, UT 84145-0898

ACTION ITEMS: SOP Papers with Transmittal, via Fed Ex Standard Overnight , 790692707616
Image SOP
Email Notification, Shari Goldsworthy shari_goldsworthy@toyota.com
Email Notification, Webster Burns webster_burns@toyota.com
Email Notification, Dorothy Sutton dorothy_sutton@toyota.com

SIGNED: C T Corporation System
ADDRESS: 136 East South Temple
Suite 2100
Salt Lake City, UT 84111
TELEPHONE: 801-364-5101

UNITED STATES DISTRICT COURT
for the
DISTRICT OF UTAH, NORTHERN DIVISION

[Redacted], On Behalf Of
Herself And All Others Similarly Situated,
Plaintiff
v.
TOYOTA MOTOR SALES, U.S.A., INC.,
Defendant

Civil Action No. 1:10CV00003

Summons in a Civil Action

To: (Defendant's name and address)

Toyota Motor Sales U.S.A., Inc
c/o CT Corporation System
136 East South Temple, Suite 2100
Salt Lake City, UT 84111

TIME 1445 DATE 1-15-10
SERVED Kim Miyake
RELATIONSHIP CT CORP
ADDRESS 136 E. South Temple #2100
SERVER
TO'S LEGAL PROCESS je 964-9393

A lawsuit has been filed against you.

Within 21 (twenty-one) days after service of this summons on you (not counting the day you received it), you must
serve
on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The
answer or motion must be served on the plaintiff's attorney, whose name and address are:

Erik A. Christiansen
Parsons Behle & Latimer
201 South Main Street, Suite 1800
P.O. Box 45898
Salt Lake City, Utah 84145-0898

If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You also
must file your answer or motion with the court.

Date: January 15, 2010

D. MARK JONES
Name of clerk of court
Deputy clerk's signature

Proof of Service

I declare under penalty of perjury that I served the summons and complaint in this case on _____,
by:

- (1) personally delivering a copy of each to the individual at this place, _____; or
- (2) leaving a copy of each at the individual's dwelling or usual place of abode with _____
who resides there and is of suitable age and discretion; or
- (3) delivering a copy of each to an agent authorized by appointment or by law to receive it whose name is
_____; or
- (4) returning the summons unexecuted to the court clerk on _____; or
- (5) other (*specify*) _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

Date: _____

Server's signature

Printed name and title

Server's address

FILED
U.S. DISTRICT COURT

2010 JAN 13 P 4: 30

RECEIVED
BY: [Signature]
CLERK

ERIK A, CHRISTIANSEN (7372)
PARSONS BEHLE & LATIMER
One Utah Center
201 South Main Street, Suite 1800
Post Office Box 45898
Salt Lake City, UT 84145-0898
Telephone: (801) 532-1234
Facsimile: (801) 536-6111
Attorneys for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

[Redacted] On Behalf Of
Herself And All Others Similarly Situated)

Plaintiff,)

vs.)

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

Defendant.)

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Case: 1:10cv00003
Assigned To : Alba, Samuel
Assign. Date : 1/14/2010
Description: Winzler v Toyota

NATURE OF THE ACTION

1. Plaintiff [Redacted] ("Plaintiff" or "Winzler") brings this action for injunctive, equitable, and declarative relief on behalf of herself and all other similarly situated owners or lessees of 2006 model year Toyota Corolla and Toyota Corolla Matrix automobiles in the United States equipped with the 1ZZ-FE engine. As detailed below, the public record demonstrates that, due to a defect in the aforementioned vehicles, they are prone to engine stalling, leaving the vehicles inoperable without any prior warning, often times on busy

roadways, freeways, or intersections, thereby not only rendering the vehicles defective and non-merchantable, but also raising a safety issue of paramount concern. On November 30, 2009, the United States Department of Transportation's National Highway Traffic and Safety Administration ("NHTSA"), after receiving dozens of complaints from aggrieved owners or lessees of these vehicles who complained of experiencing this unforeseen engine stalling, began a Preliminary Investigation into the matter. The engine stalling is believed to be attributable to a latent defect in the Engine Control Module ("ECM") of the Toyota Corolla and Corolla Matrix vehicles. Indeed, without publicly acknowledging the existence of a problem or defect, Toyota has issued a Technical Service Bulletin directed at its service technicians, alerting them of the need to replace the ECM. Many of the customers who complained to NHTSA about experiencing engine stalling, however, also commented that they were unable to timely get this replacement ECM even after their vehicle experienced the unforeseen stalling because the part was on backorder and unavailable. Despite this record, which is largely acknowledged by Defendant Toyota Motor Sales, U.S.A., Inc. ("Toyota" or "Defendant"), Toyota has undertaken no steps to remedy this clear and present danger. Plaintiff brings this action seeking equitable, declaratory, and injunctive relief only, and specifically seeks a Court order requiring Defendant to, *inter alia*, create a fund available to remedy the defective condition in the 2006 Toyota Corolla and Corolla Matrix vehicles equipped with the 1ZZ-FE engine, that makes them unduly prone to sustain engine stalling, and requiring Defendant to bear the cost of a notice to the Class Members, as approved by the Court, notifying these vehicle owners and lessees of the availability of funds to remedy this defect. Specifically exempted from this case is any attempt

to obtain redress for any personal injuries that owners of the subject vehicles may have sustained as a result of the defects alleged herein.

PARTIES

2. Plaintiff [REDACTED] is a resident of Ogden, Utah. Plaintiff is the owner of a 2006 Toyota Corolla equipped with the 1ZZ-FE engine. Plaintiff's Toyota is among those vehicles that the NHTSA investigation has identified as being prone to sustaining engine stalls.

3. Defendant Toyota Motor Sales U.S.A., Inc. is a corporation having its principal place of business at 19001 South Western Avenue in Torrance, California. Defendant is the Toyota sales, marketing, and distribution subsidiary devoted to the United States market. Founded in 1957 in California, Toyota Motor Sales, U.S.A., Inc., currently employs more than 6,500 people. Its current headquarters in Torrance, California supervises 14 regional offices. Toyota Motor Sales, U.S.A., Inc., oversees sales in 50 states of Toyota, Lexus, and Scion products through a network of over 1,200 Toyota dealers (of whom more than 900 also sell Scion vehicles) and over 200 Lexus dealers. Toyota Motor Sales, U.S.A., Inc. develops Toyota's television campaigns and other nationwide marketing materials, and supervises dealer marketing to ensure that dealers present a uniform image. Toyota Motor Sales, U.S.A., Inc., also manages regional distribution, which occurs through 12 parts centers and five vehicle centers. Toyota Motor Sales, U.S.A., Inc. was the entity responsible for injecting the 2006 Toyota Corolla and Toyota Corolla Matrix vehicles into the United States stream of commerce.

JURISDICTION AND VENUE

4. Count I of this complaint states a claim for strict products liability premised on the negligent design of the 2006 Toyota Corolla and Toyota Corolla Matrix vehicles equipped with the 1ZZ-FE engine and/or its components. Count I seeks equitable, declaratory, and injunctive relief, praying for an order from this Court requiring Defendant to create a fund available to remedy the defective vehicles, and requiring Defendant to bear the cost of notice to the absent Class Members, as approved by the Court, apprising them of the availability of funds to remedy this defect.

5. Count II of this complaint states a claim for strict products liability premised on the negligent manufacture of the 2006 Toyota Corolla and Toyota Corolla Matrix vehicles equipped with the 1ZZ-FE engine and/or its components. Count II seeks equitable, declaratory, and injunctive relief, praying for an order from this Court requiring Defendant to create a fund available to remedy the defective vehicles, and requiring Defendant to bear the cost of notice to the absent Class Members, as approved by the Court, apprising them of the availability of funds to remedy this defect.

6. Count III states a claim for strict products liability premised on Defendant's failure to warn of the 2006 Toyota Corolla and Toyota Corolla Matrix vehicles equipped with the 1ZZ-FE engine and/or its components to experience engine stalls. Count III seeks equitable, declaratory, and injunctive relief, praying for an order from this Court requiring Defendant to create a fund available to remedy the defective vehicles, and requiring Defendant to bear the cost of notice to

the absent Class Members, as approved by the Court, apprising them of the availability of funds to remedy this defect.

7. Count IV of this action states a claim for negligence, in that Defendant breached its duty of reasonable care to Plaintiff and to the putative Class Members. As a proximate result of Defendant's breach, Plaintiff and the putative Class Members have sustained injury by having a vehicle of non-merchantable quality, and or equipped with defective components that make the vehicle prone to experiencing engine stalling. Count IV seeks equitable, declaratory, and injunctive relief, praying for an order from this Court requiring Defendant to create a fund available to remedy the defective vehicles, and requiring Defendant to bear the cost of notice to the absent Class Members, as approved by the Court, apprising them of the availability of funds to remedy this defect.

8. Count V of this action states a claim for Defendant's breach of the implied warranty of merchantability, alleging that the 2006 Toyota Corolla and Toyota Corolla Matrix vehicles equipped with the 1ZZ-FE engine and/or their components were not of merchantable quality when manufactured, offered for sale, and/or sold. Count V seeks equitable, declaratory, and injunctive relief, praying for an order from this Court requiring Defendant to create a fund available to remedy the defective vehicles, and requiring Defendant to bear the cost of notice to the absent Class Members, as approved by the Court, apprising them of the availability of funds to remedy this defect.

9. Count VI of this action states a claim for breach of Defendant's express warranties as

to the subject vehicles. Count VI seeks equitable, declaratory, and injunctive relief, praying for an order from this Court requiring Defendant to create a fund available to remedy the defective vehicles, and requiring Defendant to bear the cost of notice to the absent Class Members, as approved by the Court, apprising them of the availability of funds to remedy this defect.

10. The pending NHTSA Preliminary Evaluation has revealed that approximately 397,000 model year 2006 Toyota Corolla and Toyota Corolla Matrix vehicles equipped with the 1ZZ-FE engine were manufactured by Toyota for sale in the United States, and would fall within the universe of the investigation being undertaken by NHTSA as to the vehicles' proclivity for experiencing engine stalling. Thus, the overall cost to Defendant of complying with the injunctive relief sought would easily exceed \$75,000. Further, as owners of an affected Toyota automobile, Plaintiff and the putative Class Members would each have a common and undivided interest in any fund created as a result of this lawsuit to remedy the alleged defects. Plaintiff, therefore, satisfies the statutory minimum amount in controversy (\$75,000) to assert federal subject matter jurisdiction based on diversity of citizenship, 28 U.S.C. § 1332. Plaintiff, a resident of Utah, is of diverse citizenship than Defendant Toyota Motor Sales, U.S.A., Inc., a resident of California.

11. This Court also independently has subject-matter jurisdiction under the Class Action Fairness Act, as this action involves a putative class action comprising an alleged class whose members are of diverse states than the citizenship of Defendant. Further, to the extent that any claim in this action does not or would not independently satisfy the requirements of 28 U.S.C. § 1332 or the requirements of the Class Action Fairness Act, this Court would still have

supplemental subject matter jurisdiction over such claims under 28 U.S.C. § 1367 because all of the claims forming part of this class action complaint arise from the same nucleus of operative facts.

12. Venue in this judicial district is also proper as Plaintiff is a resident of this judicial district. The alleged defect of which Plaintiff complains is present within his vehicle, which is also located within this judicial district. Defendant distributes and injects vehicles within the stream of commerce into this district. Venue in this judicial district is, therefore, proper under 28 U.S.C. § 1391.

THE VEHICLE AND THE UNDERLYING ALLEGED DEFECTIVE COMPONENTS

13. The Toyota Corolla is one of the nation's most popular automobiles. In its investigation into the alleged defect making the vehicle more prone to experience engine stalling, NHTSA estimates that approximately 397,000 model year 2006 Toyota Corolla and Toyota Corolla Matrix vehicles equipped with the 1ZZ-FE engine have been manufactured and offered for sale in the United States.

14. NHTSA'S investigation has centered around reports that the foregoing vehicles are prone to experiencing unforeseen engine stalls without any prior indication or warning. As a result, the vehicles are rendered inoperable, and often are immovable at the place where the stalling happened to be experienced, whether that by a busy roadway, highway, intersection, or other local where a sudden immovable vehicle would clearly pose a safety hazard.

15. NHTSA's investigation into engine stalling in the 2006 Toyota Corolla and

Corolla Matrix vehicles is limited to those vehicles equipped with Toyota's 1ZZ-FE engine. The 1ZZ-FE engine is a straight-4 piston engine series. The ZZ series uses an aluminum, engine block and aluminum double overhead cam 4-valve cylinder heads, a first for Toyota. The 1ZZ-FE engine is currently built in Buffalo, West Virginia. Its prior production in Cambridge, Ontario was discontinued in December 2007.

16. As reported by the Los Angeles Times on December 5, 2009:

NHTSA's records of complaints show numerous incidents of Corolla and Matrix vehicles stalling, often in situations in which other vehicles could strike the car. One such event details a Corolla that stalled in heavy traffic in December of last year, blocking a right-turn lane for two hours until it could be towed.

In another complaint, a consumer writes, "you NHTSA folks might want to give a call over to Toyota NA corporate headquarters before some young people have there [sic] lives destroyed by an engine stall in high speed commuter traffic."

17. NHTSA's investigation appears to be centered around the vehicles Electronic Control Modules ("ECM"), for which Toyota has previously issued technical service bulletins to its dealers and mechanics. Clearly, by its nature, any defect in the ECM or other internal machinations of the vehicle's engine or components that would cause it to unforeseeable stall without warning, would be a latent defect that would not be apparent to an average and reasonable consumer through an ordinary visual inspection of the vehicle. Further, Defendant fraudulently concealed the existence of a defect and of the undue propensity of the 2006 Toyota

Corollas and Corolla Matrix vehicles equipped with the 1ZZ-FE engine to stall. It affirmatively failed to disclose to buyers, owners, and leasees of the vehicles the occurrences of reported vehicle stalls or the disproportionate number of such reports being made to NHTSA. Even after NHTSA began its investigation, Defendant failed to notify affected owners or lessees about the potential dangers, leaving Plaintiff to find out about the reported fire incidents, if at all, solely from reports issued by or about NHTSA's investigation. The effect of this fraudulent concealment was to deny Plaintiff and the class members the ability to determine, even upon reasonable inquiry, that they may have legal claims against Toyota. As a result, any statute of limitations period that would otherwise apply to the claims asserted herein was tolled by operation of law.

18. To date, despite the published reports or complaints of actual engine stalls and associated safety concerns, Defendant has done nothing to rectify the situation.

19. Toyota's duty to provide a safe and non-defective vehicle to consumers arises not merely from its contractual obligations and duties under the common law, but Toyota's duty to ensure the safety and defect-free nature of the vehicles that it manufactures and injects into the United States' stream of commerce arises independently under the Federal Motor Vehicle Safety Act ("FMVSA"). A manufacturer and distributor of a vehicle that is unduly prone to experience unforeseen engine stalls on busy roadways, as is alleged with the 2006 Toyota Corolla and Toyota Matrix vehicles, breaches its independent duty under the FMVSA when it injects or causes its vehicles to be injected into the United States' stream of commerce.

CLASS ACTION ALLEGATIONS

20. Pursuant to Federal Rule of Civil Procedure 23, Plaintiff brings this action as a class action on behalf of himself and all other similarly situated owners and lessees of model year 2006 Toyota Corolla and Corolla Matrix vehicles equipped with the 1ZZ-FE engine. Plaintiff reserves the right to refine this class definition upon the attainment of discovery.

21. Although the exact number of class members is presently unknown, Plaintiff is informed and believes and thereon alleges that the class will number hundreds of thousands of consumers. NHTSA has reported that there were approximately 397,000 such vehicles manufactured and offered for sale in the United States. Therefore, a class comprising even a small fraction of the owners or lessees of these vehicles would readily satisfy the numerosity requirement for class certification. The members of the class are so numerous that joinder of all members is impracticable.

22. Class certification is also appropriate because there is an identifiable class on whose behalf this class action would be prosecuted. Specifically, Plaintiff seeks to represent a class of all owners and lessees of 2006 Toyota Corolla and Corolla Matrix vehicles equipped with the 1ZZ-FE engine in the United States.

23. Class certification is also appropriate because there are questions of fact and/or law that are common to the class members. Among these common questions of fact and/or law are:

- a. Whether Defendant is responsible for injecting allegedly defective vehicles in to the United States' stream of commerce;

- b. Whether the 2006 Toyota Corolla and Corolla Matrix vehicles equipped with the 1ZZ-FE engine are unduly prone to experience engine stalling;
- c. Whether the 2006 Toyota Corolla and Corolla Matrix vehicles equipped with the 1ZZ-FE engine are defective, and if so, the nature of the defect;
- d. Whether Defendant breached any duty imposed upon it by law;
- e. Whether class members are entitled to the relief sought, and if so, the proper scope of such relief.

24. Plaintiff's claims are typical of the claims of the absent class members in that Plaintiff, like all the absent class members, claims that she is either the owner or lessee of a 2006 Toyota Corolla and Corolla Matrix vehicles equipped with the 1ZZ-FE engine that is defective in that it is unduly prone to experience engine stalling. Plaintiff is a member of the class she seeks to represent, and the claims she advances on her own behalf are identical to the claims asserted on behalf of the class.

25. Plaintiff is an adequate class representative in that, as a member of the class and a current owner of an allegedly defective 2006 Toyota Corolla and Corolla Matrix vehicles equipped with the 1ZZ-FE engine, her interests are entirely aligned with those of the class. There are no individual conflicts that prevent Plaintiff from adequately representing the class. Plaintiff has also retained competent counsel experienced in class action litigation.

26. Class certification is proper because Defendant has acted or refused to act on grounds generally applicable to the entire class. Specifically, Defendant has injected into the stream of commerce the allegedly defective 2006 Toyota Corolla and Corolla Matrix vehicles

equipped with the 1ZZ-FE engine, and has refused to take any action to rectify the alleged defect and/or propensity of the vehicle to experience engine stalling. Absent a class action, there would be a risk of inconsistent rulings with respect to Defendant's duties to each of the thousands of owners or lessees of the 2006 Toyota Corolla and Corolla Matrix vehicles equipped with the 1ZZ-FE engine.

27. A class action presents a superior form of adjudication over individual litigation. The costs of litigating this action against a large and sophisticated defendant like Defendant in comparison to the recovery or relief sought would make individual litigation impracticable. In addition, forcing individual litigation would risk the result of inconsistent rulings with respect to Defendant duties owed to the various vehicle owners and lessees.

28. A class action is manageable. The proposed class represents an identifiable community that can be readily identified, and the relief sought is one that can be overseen by the Court.

COUNT I
(STRICT LIABILITY—DEFECTIVE DESIGN)

29. Plaintiff hereby incorporates by reference each and every allegation of this complaint with the same force and effect as if it had been fully restated herein.

30. The 2006 Toyota Corolla and Corolla Matrix vehicles equipped with the 1ZZ-FE engine are defectively designed automobiles in that they contain a design defect or flaw that causes the vehicles to be unduly prone to experience engine stalling. The defect appears to be related to the vehicles' ECMs. The defect at issue is a latent one that would not be apparent to a reasonable consumer upon reasonable inspection. The defective design renders the 2006 Toyota

Corolla and Corolla Matrix vehicles equipped with the 1ZZ-FE engine inherently dangerous for their foreseeable and intended use of vehicular transport.

31. As a proximate and foreseeable result of this defective design, Plaintiff and the members of the class have been injured by being forced to operate an inherently dangerous vehicle, subjecting them to unreasonable risk of experiencing unforeseen engine stalling without any warning and bodily harm, and leaving them without recourse.

32. Defendant is strictly liable for this design defect.

33. Plaintiff and the class members are entitled to declaratory, equitable, and injunctive relief against Defendant, wherein Defendant would be required by this Court's Order to create an equitable fund to remedy the defect in the 2006 Toyota Corolla and Corolla Matrix vehicles equipped with the 1ZZ-FE engine that makes the vehicles unduly prone to experience engine stalling, and to bear the cost of notice (as ordered by the Court) to class members alerting them as to the availability of a fund set up by Defendant to remedy this defect.

COUNT II

(STRICT LIABILITY – DEFECTIVE MANUFACTURE)

34. Plaintiff hereby incorporates by reference each and every allegation of this complaint with the same force and effect as if it had been fully restated herein.

35. The 2006 Toyota Corolla and Corolla Matrix vehicles equipped with the 1ZZ-FE engine were defectively manufactured automobile in that they contain a manufacturing defect or flaw that causes the vehicles to be unduly prone to experiencing engine stalling. The defect appears to be related to the vehicles' ECMs. The defect at issue is a latent one that would not be

apparent to a reasonable consumer upon reasonable inspection. The defective manufacture renders the 2006 Toyota Corolla and Corolla Matrix vehicles equipped with the 1ZZ-FE engine inherently dangerous for their foreseeable and intended use of vehicular transport.

36. As a proximate and foreseeable result of this defective manufacture, Plaintiff and the members of the class have been injured by being forced to operate an inherently dangerous vehicle, subjecting them to unreasonable risk of experiencing unforeseen engine stalling without warning and bodily harm, and leaving them without recourse.

37. Defendant is strictly liable for this defect.

38. Plaintiff and the class members are entitled to declaratory, equitable, and injunctive relief against Defendant, wherein Defendant would be required by this Court's Order to create an equitable fund to remedy the defect in the 2006 Toyota Corolla and Corolla Matrix vehicles equipped with the 1ZZ-FE engine that makes the vehicles unduly prone to experience engine stalling, and to bear the cost of notice (as ordered by the Court) to class members alerting them as to the availability of a fund set up by Defendant to remedy this defect.

COUNT III
(STRICT LIABILITY – FAILURE TO WARN)

39. Plaintiff hereby incorporates by reference each and every allegation of this complaint with the same force and effect as if it had been fully restated herein.

40. The 2006 Toyota Corolla and Corolla Matrix vehicles equipped with the 1ZZ-FE engine do not contain any warning alerting their users that the vehicles are unduly prone to experience engine stalling. This omission or failure to warn is unreasonable, and renders the vehicles inherently dangerous. Because the defect at issue is a latent one that would not be

apparent to a reasonable consumer upon reasonable inspection, Defendant had a duty to provide a warning about it to the vehicle owners and lessees. The failure to warn renders the 2006 Toyota Corolla and Corolla Matrix vehicles equipped with the 1ZZ-FE engine inherently dangerous for their foreseeable and intended use of vehicular transport.

41. As a proximate and foreseeable result of this failure to warn, Plaintiff and the members of the class have been injured by being forced to operate an inherently dangerous vehicle, subjecting them to unreasonable risk of experiencing unforeseen engine stalling without warning and bodily harm, and leaving them without recourse.

42. Defendant is strictly liable for this failure to warn.

43. Plaintiff and the class members are entitled to declaratory, equitable, and injunctive relief against Defendant, wherein Defendant would be required by this Court's Order to create an equitable fund to remedy the defect in the 2006 Toyota Corolla and Corolla Matrix vehicles equipped with the 1ZZ-FE engine that makes the vehicles unduly prone to experience engine stalling, and to bear the cost of notice (as ordered by the Court) to class members alerting them as to the availability of a fund set up by Defendant to remedy this defect.

COUNT IV
(NEGLIGENCE)

44. Plaintiff hereby incorporates by reference each and every allegation of this complaint with the same force and effect as if it had been fully restated herein.

45. As the distributor into the United States' stream of commerce of a mass produced

vehicle that would foreseeably be used by thousands of consumers, Defendant owed Plaintiff and the class members a duty of reasonable care with respect to the distribution of its 2006 Toyota Corolla and Corolla Matrix vehicles equipped with the 1ZZ-FE engine.

46. Defendant breached this duty of reasonable care by distributing a defective vehicle that was unduly prone to experiencing engine stalling, and that contained no warnings to that effect.

47. As a proximate and foreseeable result of this breach, Plaintiff and the members of the class have been injured by being forced to operate an inherently dangerous vehicle, subjecting them to unreasonable risk of experiencing unforeseen engine stalling without warning and bodily harm, and leaving them without recourse.

48. Plaintiff and the class members are entitled to declaratory, equitable, and injunctive relief against Defendant, wherein Defendant would be required by this Court's Order to create an equitable fund to remedy the defect in the 2006 Toyota Corolla and Corolla Matrix vehicles equipped with the 1ZZ-FE engine that makes the vehicles unduly prone to experience engine stalling, and to bear the cost of notice (as ordered by the Court) to class members alerting them as to the availability of a fund set up by Defendant to remedy this defect.

COUNT V
(BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY)

49. Plaintiff hereby incorporates by reference each and every allegation of this complaint with the same force and effect as if it had been fully restated herein.

50. Defendant is a merchant with respect to the distribution, sale, and leasing of Toyota automobiles in the United States.

51. By operation of law, an implied warranty of merchantability from Defendant attached to each sale and lease of the 2006 Toyota Corolla and Corolla Matrix vehicles equipped with the 1ZZ-FE engine, warranting that the vehicles were of merchantable quality.

52. Because the 2006 Toyota Corolla and Corolla Matrix vehicles equipped with the 1ZZ-FE engine contain a defect that renders them unduly prone to catch fire, and lack any warning to that effect, they are of unmerchantable quality, and Defendant has breached its implied warranty of merchantability.

53. The 2006 Toyota Corolla and Corolla Matrix vehicles equipped with the 1ZZ-FE engine are not merchantable because, *inter alia*: they would not pass without objection in the trade under the contract description; they are not of fair average quality within the description; they are not fit for the ordinary uses for which such vehicles are used; and, they are not adequately labeled.

54. As a proximate and foreseeable result of this breach, Plaintiff and the members of the class have been injured by being forced to operate an inherently dangerous vehicle, subjecting them to unreasonable risk of experiencing unforeseen engine stalling and bodily harm, and leaving them without recourse.

55. Plaintiff and the class members are entitled to declaratory, equitable, and injunctive relief against Defendant, wherein Defendant would be required by this Court's Order to create an equitable fund to remedy the defect in the 2006 Toyota Corolla and Corolla Matrix vehicles equipped with the 1ZZ-FE engine that makes the vehicles unduly prone to experience

engine stalling, and to bear the cost of notice (as ordered by the Court) to class members alerting them as to the availability of a fund set up by Defendant to remedy this defect.

COUNT VI
(BREACH OF EXPRESS WARRANTY)

56. Plaintiff hereby incorporates by reference each and every allegation of this complaint with the same force and effect as if it had been fully restated herein.

57. Defendant expressly warranted Plaintiff's and the class members' 2006 Toyota Corolla and Corolla Matrix vehicles equipped with the 1ZZ-FE engine with a "bumper to bumper" express warranty.

58. Defendant breached that express warranty when it distributed the 2006 Toyota Corolla and Corolla Matrix vehicles equipped with the 1ZZ-FE engine with the subject defect described herein, which caused the vehicles to be unduly prone to experience engine stalling.

59. As a proximate and foreseeable result of this breach, Plaintiff and the members of the class have been injured by being forced to operate an inherently dangerous vehicle that does not conform to the representations made in the express warranty, and subjecting Plaintiff and the class members to unreasonable risk of experiencing unforeseen engine stalling and bodily harm.

60. Plaintiff and the class members are entitled to declaratory, equitable, and injunctive relief against Defendant, wherein Defendant would be required by this Court's Order to create an equitable fund to remedy the defect in the 2006 Toyota Corolla and Corolla Matrix vehicles equipped with the 1ZZ-FE engine makes the vehicles unduly prone to catch fire, and to

bear the cost of notice (as ordered by the Court) to class members alerting them as to the availability of a fund set up by Defendant to remedy this defect.

PRAYER FOR RELIEF

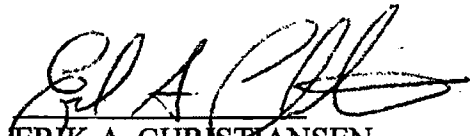
WHEREFORE, Plaintiff and the class members pray for judgment against Defendant as follows:

- a) That the Court determine that this action may be litigated as a class action, and that Plaintiff and his counsel be appointed class representative and class counsel, respectively;
- b) That Defendant be permanently enjoined from continuing in any manner the violations alleged herein;
- c) That judgment be entered against Defendant and in favor of Plaintiff and the class members on all counts;
- d) That Defendant be required by this Court's Order to create an equitable fund to be made available to remedy the defects alleged herein, and that Defendant be ordered to bear the cost of notifying the absent class members as to the availability of this fund to remedy the defects alleged herein;
- e) That the Court order the creation of a common fund from which Plaintiff and his counsel shall be awarded their reasonable costs of suit, including reasonable attorneys' fees and expenses incurred in prosecuting this class action and in conferring a common benefit upon the class members;

f) That Plaintiff and the class members be awarded all such other relief as this Court deems just and proper.


Plaintiff requests a jury trial on all counts so triable.

Dated this 13th day of January, 2010.


ERIK A. CHRISTENSEN
PARSONS BEHLE & LATIMER
Attorneys for Plaintiffs

JURY DEMAND

Plaintiff respectfully requests a trial by jury on all claims and causes of action properly triable before a jury.


ERIK A. CHRISTIANSEN
PARSONS BEHLE & LATIMER
Attorneys for Plaintiffs

Additional Plaintiff's Counsel (pro hac vice application to be filed):

Roy A. Katriel
THE KATRIEL LAW FIRM
1101 30th Street, NW Suite 500
Washington, DC 20007
Telephone: (202) 625-4342
Facsimile: (202) 330-5593