

**FILE START**

**FILED**  
LOS ANGELES SUPERIOR COURT

*Handwritten:* A-100  
9/325

1 **MAKLER & BAKER LLP**  
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JAN 08 2010

JUNIA A. CLARKE, CLERK

BY DAWN ALEXANDER, DEPUTY

*Handwritten:* DEPT #52  
JUDGE SUSAN BRYANT-DEASON

8 Attorneys for Plaintiff  
9 STUART GRANT

10 SUPERIOR COURT IN THE STATE OF CALIFORNIA

11 FOR THE COUNTY OF LOS ANGELES

12 STUART GRANT, an individual;

Case number: **BC 429845**

13 Plaintiff,

COMPLAINT FOR DAMAGES

14 vs.

Song-Beverly Warranty Act  
Magnuson-Moss Warranty Act

15 TOYOTA MOTOR SALES USA, INC.,  
16 a corporation; and DOES ONE through  
17 TWENTY

18 Defendants.

19 Plaintiff alleges that, at all times relevant:

20 **FACTS COMMON TO ALL COUNTS**

21 1. Defendant Toyota Motor Sales USA, Inc. (hereinafter "Toyota") is a duly authorized  
22 corporation doing business in Los Angeles County, California.

23 2. Plaintiff does not know the true names of the Defendants sued herein as Does One  
24 through Twenty and sues said Defendants pursuant to the provisions of Code of Civil Procedure  
25 § 474.

26 3. On or about June 27, 2008, Plaintiff purchased a 2008 Toyota Sequoia  
27 STDBY67A48S002958 ("vehicle"), which was manufactured and warranted by Toyota.  
28

**COMPLAINT FOR DAMAGES**

CIT/CASE: 80427352 LEA/DEF#;  
RECEIPT #: 00481420094  
DATE PAID: 01/08/10 02:21:05 PM  
EXAMENT: \$355.00  
RECEIVED IN  
CHECK:  
CASH:  
CHANGE:  
CASH:  
355.00  
0310

1 4. In connection with the transaction, Toyota issued to Plaintiff an express warranty within  
 2 the meaning of Cal. Civil Code § 1791.2, which is also a written warranty within the meaning  
 3 of 15 U.S.C. § 2301(6). By the terms of the express written warranty, Toyota promised that the  
 4 vehicle's material and workmanship was defect free, undertook to preserve and maintain the  
 5 utility and performance of the vehicle and to provide compensation if there is a failure in utility  
 6 or performance, and agreed to refund, repair, replace, or take other remedial action with respect  
 7 to the vehicle.

8 5. Plaintiff purchased the vehicle primarily for personal, family or household purposes.

9 6. Subsequent to Plaintiff's transaction, the vehicle exhibited numerous defects and  
 10 nonconformities covered by the warranty which substantially impair the use, value and safety of  
 11 the motor vehicle to the Plaintiff.

12 7. Plaintiff delivered the nonconforming motor vehicle to Toyota's authorized repair  
 13 facilities for repairs pursuant to the terms of the warranty. Toyota has failed to repair or replace  
 14 the vehicle.

15 **FIRST CAUSE OF ACTION**  
 16 **Breach of Express Warranty—Song-Beverly Consumer Warranty Act**

- 17 8. Plaintiff incorporates all preceding paragraphs.  
 18 9. Plaintiff is a "buyer" as defined by Cal. Civ. Code § 1791(b).  
 19 10. The vehicle is a "consumer good" as defined by Cal. Civ. Code § 1791(a).  
 20 11. Toyota is a "manufacturer" as defined by Cal. Civ. Code § 1791(j).  
 21 12. Plaintiff's purchase of the vehicle was a "sale" as defined by Cal. Civ. Code 1791(n).  
 22 13. Toyota breached the express written warranty by failing to conform the vehicle to the  
 23 express written warranty within a reasonable number of repair attempts or within the warranty  
 24 period.  
 25 14. The above-described defects, malfunctions, and nonconformities substantially impair the  
 26 use, value, and safety of the vehicle.  
 27 15. Plaintiff has not made unreasonable or unintended use of the vehicle.

28 ///

1 16. Pursuant to Civil Code § 1793.2(d), Toyota must refund the price of the vehicle to  
2 Plaintiff.

3 17. Pursuant to Civil Code § 1794(a), Plaintiff is entitled to restitution of all consideration  
4 given to Toyota.

5 18. As a direct and proximate result of said breach of express warranty, Plaintiff has sustained,  
6 and continues to sustain, incidental and consequential damages in the approximate amount of  
7 \$75,000.00 according to proof.

8 18. The failure of Toyota to comply with the express warranty was willful in that Toyota had  
9 actual knowledge of the vehicle's defects and malfunctions, knew of its legal duties under the  
10 warranty and the law, but repeatedly refused to make necessary repairs and/or provide a refund.

11 19. Pursuant to Civil Code § 1794(c), Plaintiff is entitled to a civil penalty of two times the  
12 amount of his actual damages.

13 20. Pursuant to Civil Code § 1794(d), Plaintiff is entitled to reasonable attorney fees according  
14 to proof.

15 **SECOND CAUSE OF ACTION**  
16 **Breach of Implied Warranty—Song-Beverly Consumer Warranty Act**

17 21. Plaintiff incorporates by reference all preceding paragraphs.

18 22. Pursuant to Cal. Civ. Code § 1792, the vehicle was accompanied by the manufacturer's  
19 implied warranty of merchantability.

20 23. Pursuant to Civil Code § 1793, and because of the existence of the express warranty,  
21 Toyota may not disclaim, limit, or modify the implied warranties provided by the Song-Beverly  
22 Act.

23 24. Toyota breached the implied warranty of merchantability of Civil Code §§ 1791.1 and  
24 1792 in that the above-described defects, malfunctions, and nonconformities render the vehicle  
25 unfit for the ordinary purposes for which it is used and it would not pass without objection in the  
26 trade.

27 25. Pursuant to Civil Code § 1794(a), Plaintiff is entitled to restitution of all consideration  
28 given to Toyota.

1 26. As a direct and proximate result of said breach of implied warranty, Plaintiff has  
2 sustained, and continues to sustain, incidental and consequential damages in the approximate  
3 amount of \$75,000.00.

4 27. Pursuant to Civil Code § 1794(d), Plaintiff is entitled to reasonable attorney fees according  
5 to proof.

6 **THIRD CAUSE OF ACTION**  
7 **Breach of Written Warranty--Magnuson-Moss Warranty Act**

8 28. Plaintiff incorporates by reference all preceding paragraphs.

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

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

11 31. Toyota is a "supplier" and a "warrantor" as defined respectively by 15 U.S.C. § 2301(4)  
12 and (5).

13 32. The express written warranty is a "written warranty" as defined by 15 U.S.C. § 2301(6).

14 33. Toyota breached the written warranty by failing to conform the vehicle to the express  
15 warranty within a reasonable number of attempts, a reasonable amount of time or within the  
16 warranty period itself.

17 34. Prior to commencing this action, Plaintiff afforded Toyota reasonable opportunities to cure  
18 the failures and to comply with the terms of the written warranty.

19 35. Pursuant to 15 U.S.C. § 2310(d)(1), Plaintiff is entitled to the equitable remedies of  
20 rescission and restitution and/or damages. Plaintiff revokes acceptance of the vehicle and  
21 rescinds the contract. Plaintiff is entitled to restitution of all consideration given.

22 36. As a proximate result of the breach of written warranty, Plaintiff has sustained, and  
23 continues to sustain damages, both economic and noneconomic, in the approximate amount of  
24 \$75,000.00.

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

27 ///

28 ///

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

38. Plaintiff incorporates by reference all preceding paragraphs.

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

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

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

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

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for judgment against Toyota as follows:

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

DATED: November 9, 2009

MAKLER & BAKER LLP

By

  
 JULIANNA R. MAKLER  
 Attorneys for Plaintiff STUART GRANT

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <b>Julianna R. Makler (SBN 189138)</b> <b>MAKLER &amp; BAKER LLP</b> <b>3 W. Carrillo Street, Ste 216, Santa Barbara, CA 93101</b>  TELEPHONE NO.: (805) 965-4651 FAX NO.: (805) 965-4671 ATTORNEY FOR (Name): <b>Plaintiff Stuart Grant</b>		FOR COURT USE ONLY <b>FILED</b> <b>LOS ANGELES SUPERIOR COURT</b>  <b>JAN 08 2010</b>  <b>JUDITH A. CLARKE, CLERK</b>  <b>BY DAWN ALEXANDER, DEPUTY</b>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF <b>LOS ANGELES</b> STREET ADDRESS: <b>111 North Hill Street</b> MAILING ADDRESS: CITY AND ZIP CODE: <b>Los Angeles</b> BRANCH NAME: <b>Stanley Mosk Courthouse/Central District</b>		
CASE NAME: <b>STUART GRANT V. TOYOTA MOTOR SALES USA, INC.</b>		CASE NUMBER: <b>BC429345</b>
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> <b>Unlimited</b> (Amount demanded exceeds \$25,000) <input type="checkbox"/> <b>Limited</b> (Amount demanded is \$25,000 or less) <input type="checkbox"/> <b>Counter</b> <input type="checkbox"/> <b>Joinder</b> Complex Case Designation Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)		JUDGE: DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

<b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) <b>Non-PI/PD/WD (Other) Tort</b> <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) <b>Employment</b> <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	<b>Contract</b> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <b>Real Property</b> <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (28) <b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <b>Judicial Review</b> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<b>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</b> <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20) <b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input checked="" type="checkbox"/> Other complaint (not specified above) (42) <b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case  is  is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- |  |  |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties   | d. <input type="checkbox"/> Large number of witnesses  |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence   | f. <input type="checkbox"/> Substantial postjudgment judicial supervision  |
3. Remedies sought (check all that apply): a.  monetary    b.  nonmonetary; declaratory or injunctive relief    c.  punitive
4. Number of causes of action (specify): 4
5. This case  is  is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: January 8, 2009

Julianna R. Makler  
(TYPE OR PRINT NAME)

*Julianna Makler*  
(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**NOTICE**

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

**INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET**

**To Plaintiffs and Others Filing First Papers.** If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

**To Parties in Rule 3.740 Collections Cases.** A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

**To Parties in Complex Cases.** In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

**CASE TYPES AND EXAMPLES**

**Auto Tort**

- Auto (22)—Personal Injury/Property Damage/Wrongful Death
- Uninsured Motorist (48) *(if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)*

**Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort**

- Asbestos (04)
  - Asbestos Property Damage
  - Asbestos Personal Injury/Wrongful Death
- Product Liability *(not asbestos or toxic/environmental)* (24)
- Medical Malpractice (45)
  - Medical Malpractice—Physicians & Surgeons
  - Other Professional Health Care Malpractice
- Other PI/PD/WD (23)
  - Premises Liability (e.g., slip and fall)
  - Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
  - Intentional Infliction of Emotional Distress
  - Negligent Infliction of Emotional Distress
  - Other PI/PD/WD

**Non-PI/PD/WD (Other) Tort**

- Business Tort/Unfair Business Practice (07)
- Civil Rights (e.g., discrimination, false arrest) *(not civil harassment)* (08)
- Defamation (e.g., slander, libel) (13)
- Fraud (16)
- Intellectual Property (19)
- Professional Negligence (25)
  - Legal Malpractice
  - Other Professional Malpractice *(not medical or legal)*
- Other Non-PI/PD/WD Tort (35)

**Employment**

- Wrongful Termination (36)
- Other Employment (15)

**Contract**

- Breach of Contract/Warranty (06)
  - Breach of Rental/Lease
    - Contract *(not unlawful detainer or wrongful eviction)*
  - Contract/Warranty Breach—Seller Plaintiff *(not fraud or negligence)*
  - Negligent Breach of Contract/Warranty
  - Other Breach of Contract/Warranty
- Collections (e.g., money owed, open book accounts) (09)
  - Collection Case—Seller Plaintiff
  - Other Promissory Note/Collections Case
- Insurance Coverage *(not provisionally complex)* (18)
  - Auto Subrogation
  - Other Coverage
- Other Contract (37)
  - Contractual Fraud
  - Other Contract Dispute

**Real Property**

- Eminent Domain/Inverse Condemnation (14)
- Wrongful Eviction (33)
  - Other Real Property (e.g., quiet title) (26)
    - Writ of Possession of Real Property
    - Mortgage Foreclosure
    - Quiet Title
    - Other Real Property *(not eminent domain, landlord/tenant, or foreclosure)*

**Unlawful Detainer**

- Commercial (31)
- Residential (32)
- Drugs (38) *(if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)*

**Judicial Review**

- Asset Forfeiture (05)
- Petition Re: Arbitration Award (11)
- Writ of Mandate (02)
  - Writ—Administrative Mandamus
  - Writ—Mandamus on Limited Court Case Matter
  - Writ—Other Limited Court Case Review
- Other Judicial Review (39)
  - Review of Health Officer Order
  - Notice of Appeal—Labor Commissioner Appeals

**Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)**

- Antitrust/Trade Regulation (03)
- Construction Defect (10)
- Claims Involving Mass Tort (40)
- Securities Litigation (28)
- Environmental/Toxic Tort (30)
- Insurance Coverage Claims *(arising from provisionally complex case type listed above)* (41)
- Enforcement of Judgment
  - Enforcement of Judgment (20)
    - Abstract of Judgment (Out of County)
    - Confession of Judgment *(non-domestic relations)*
    - Sister State Judgment
    - Administrative Agency Award *(not unpaid taxes)*
    - Petition/Certification of Entry of Judgment on Unpaid Taxes
    - Other Enforcement of Judgment Case

**Miscellaneous Civil Complaint**

- RICO (27)
- Other Complaint *(not specified above)* (42)
  - Declaratory Relief Only
  - Injunctive Relief Only *(non-harassment)*
  - Mechanics Lien
  - Other Commercial Complaint Case *(non-tort/non-complex)*
  - Other Civil Complaint *(non-tort/non-complex)*

**Miscellaneous Civil Petition**

- Partnership and Corporate Governance (21)
- Other Petition *(not specified above)* (43)
  - Civil Harassment
  - Workplace Violence
  - Elder/Dependent Adult Abuse
  - Election Contest
  - Petition for Name Change
  - Petition for Relief From Late Claim
  - Other Civil Petition



SHORT TITLE: Grant v. Toyota Motor Sales USA, INC.	CASE NUMBER <b>BC429845</b>
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**CIVIL CASE COVER SHEET ADDENDUM AND STATEMENT OF LOCATION  
(CERTIFICATE OF GROUNDS FOR ASSIGNMENT TO COURTHOUSE LOCATION)**

**This form is required pursuant to LASC Local Rule 2.0 in all new civil case filings in the Los Angeles Superior Court.**

Item I. Check the types of hearing and fill in the estimated length of hearing expected for this case:

JURY TRIAL?  YES CLASS ACTION?  YES LIMITED CASE?  YES TIME ESTIMATED FOR TRIAL <sup>5</sup> \_\_\_\_\_  HOURS /  DAYS

Item II. Select the correct district and courthouse location (4 steps – If you checked "Limited Case", skip to Item III, Pg. 4):

**Step 1:** After first completing the Civil Case Cover Sheet Form, find the main civil case cover sheet heading for your case in the left margin below, and, to the right in Column A, the Civil Case Cover Sheet case type you selected.

**Step 2:** Check one Superior Court type of action in Column B below which best describes the nature of this case.

**Step 3:** In Column C, circle the reason for the court location choice that applies to the type of action you have checked. For any exception to the court location, see Los Angeles Superior Court Local Rule 2.0.

**Applicable Reasons for Choosing Courthouse Location (see Column C below)**

- |   |  |
|---|--|
| 1. Class Actions must be filed in the County Courthouse, Central District.      | 6. Location of property or permanently garaged vehicle.    |
| 2. May be filed in Central (Other county, or no Bodily Injury/Property Damage). | 7. Location where petitioner resides.                      |
| 3. Location where cause of action arose.  | 8. Location wherein defendant/respondent functions wholly. |
| 4. Location where bodily injury, death or damage occurred.                      | 9. Location where one or more of the parties reside.       |
| 5. Location where performance required or defendant resides.                    | 10. Location of Labor Commissioner Office.                 |

**Step 4:** Fill in the information requested on page 4 in Item III; complete Item IV. Sign the declaration.

	<b>A</b> Civil Case Cover Sheet Category No.	<b>B</b> Type of Action (Check only one)	<b>C</b> Applicable Reasons - See Step 3 Above
<b>Auto Tort</b>	Auto (22)	<input type="checkbox"/> A7100 Motor Vehicle - Personal Injury/Property Damage/Wrongful Death	1., 2., 4.
	Uninsured Motorist (46)	<input type="checkbox"/> A7110 Personal Injury/Property Damage/Wrongful Death – Uninsured Motorist	1., 2., 4.
<b>Other Personal Injury/Property Damage/Wrongful Death Tort</b>	Asbestos (04)	<input type="checkbox"/> A6070 Asbestos Property Damage	2.
		<input type="checkbox"/> A7221 Asbestos - Personal Injury/Wrongful Death	2.
	Product Liability (24)	<input type="checkbox"/> A7260 Product Liability (not asbestos or toxic/environmental)	1., 2., 3., 4., 6.
	Medical Malpractice (45)	<input type="checkbox"/> A7210 Medical Malpractice - Physicians & Surgeons	1., 2., 4.
		<input type="checkbox"/> A7240 Other Professional Health Care Malpractice	1., 2., 4.
Other Personal Injury Property Damage Wrongful Death (23)	<input type="checkbox"/> A7250 Premises Liability (e.g., slip and fall) <input type="checkbox"/> A7230 Intentional Bodily Injury/Property Damage/Wrongful Death (e.g., assault, vandalism, etc.) <input type="checkbox"/> A7270 Intentional Infliction of Emotional Distress <input type="checkbox"/> A7220 Other Personal Injury/Property Damage/Wrongful Death	1., 2., 4. 1., 2., 4. 1., 2., 3. 1., 2., 4.	
<b>Non-Personal Injury/Property Damage/Wrongful Death Tort</b>	Business Tort (07)	<input type="checkbox"/> A6029 Other Commercial/Business Tort (not fraud/breach of contract)	1., 2., 3.
	Civil Rights (08)	<input type="checkbox"/> A6006 Civil Rights/Discrimination	1., 2., 3.
	Defamation (13)	<input type="checkbox"/> A6010 Defamation (slander/libel)	1., 2., 3.
	Fraud (16)	<input type="checkbox"/> A6013 Fraud (no contract)	1., 2., 3.

Non-Personal Injury/Property Damage/  
Wrongful Death Tort (Cont'd.)

SHORT TITLE: Grant v. Toyota Motor Sales USA, INC.	CASE NUMBER
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Employment

Contract

Real Property

Judicial Review, Unlawful Detainer

A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Professional Negligence (25)	<input type="checkbox"/> A6017 Legal Malpractice <input type="checkbox"/> A6050 Other Professional Malpractice (not medical or legal)	1., 2., 3. 1., 2., 3.
Other (35)	<input type="checkbox"/> A6025 Other Non-Personal Injury/Property Damage tort	2., 3.
Wrongful Termination (36)	<input type="checkbox"/> A6037 Wrongful Termination	1., 2., 3.
Other Employment (15)	<input type="checkbox"/> A6024 Other Employment Complaint Case <input type="checkbox"/> A6109 Labor Commissioner Appeals	1., 2., 3. 10.
Breach of Contract/Warranty (06) (not insurance)	<input type="checkbox"/> A6004 Breach of Rental/Lease Contract (not Unlawful Detainer or wrongful eviction) <input type="checkbox"/> A6008 Contract/Warranty Breach - Seller Plaintiff (no fraud/negligence) <input type="checkbox"/> A6019 Negligent Breach of Contract/Warranty (no fraud) <input type="checkbox"/> A6028 Other Breach of Contract/Warranty (not fraud or negligence)	2., 5. 2., 5. 1., 2., 5. 1., 2., 5.
Collections (09)	<input type="checkbox"/> A6002 Collections Case-Seller Plaintiff <input type="checkbox"/> A6012 Other Promissory Note/Collections Case	2., 5., 6. 2., 5.
Insurance Coverage (18)	<input type="checkbox"/> A6015 Insurance Coverage (not complex)	1., 2., 5., 8.
Other Contract (37)	<input type="checkbox"/> A6009 Contractual Fraud <input type="checkbox"/> A6031 Tortious Interference <input type="checkbox"/> A6027 Other Contract Dispute (not breach/insurance/fraud/negligence)	1., 2., 3., 5. 1., 2., 3., 5. 1., 2., 3., 8.
Eminent Domain/Inverse Condemnation (14)	<input type="checkbox"/> A7300 Eminent Domain/Condemnation Number of parcels _____	2.
Wrongful Eviction (33)	<input type="checkbox"/> A6023 Wrongful Eviction Case	2., 6.
Other Real Property (26)	<input type="checkbox"/> A6018 Mortgage Foreclosure <input type="checkbox"/> A6032 Quiet Title <input type="checkbox"/> A6060 Other Real Property (not eminent domain, landlord/tenant, foreclosure)	2., 6. 2., 6. 2., 6.
Unlawful Detainer-Commercial (31)	<input type="checkbox"/> A6021 Unlawful Detainer-Commercial (not drugs or wrongful eviction)	2., 6.
Unlawful Detainer-Residential (32)	<input type="checkbox"/> A6020 Unlawful Detainer-Residential (not drugs or wrongful eviction)	2., 6.
Unlawful Detainer-Drugs (38)	<input type="checkbox"/> A6022 Unlawful Detainer-Drugs	2., 6.
Asset Forfeiture (05)	<input type="checkbox"/> A6108 Asset Forfeiture Case	2., 6.
Petition re Arbitration (11)	<input type="checkbox"/> A6115 Petition to Compel/Confirm/Vacate Arbitration	2., 5.

SHORT TITLE: Grant v. Toyota Motor Sales USA, INC.	CASE NUMBER
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Judicial Review (Cont'd.)

Provisionally Complex Litigation

Enforcement of Judgment

Miscellaneous Civil Complaints

Miscellaneous Civil Petitions

A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Writ of Mandate (02)	<input type="checkbox"/> A6151 Writ - Administrative Mandamus <input type="checkbox"/> A6152 Writ - Mandamus on Limited Court Case Matter <input type="checkbox"/> A6153 Writ - Other Limited Court Case Review	2., 8. 2. 2.
Other Judicial Review (39)	<input type="checkbox"/> A6150 Other Writ/Judicial Review	2., 8.
Antitrust/Trade Regulation (03)	<input type="checkbox"/> A6003 Antitrust/Trade Regulation	1., 2., 8.
Construction Defect (10)	<input type="checkbox"/> A6007 Construction defect	1., 2., 3.
Claims Involving Mass Tort (40)	<input type="checkbox"/> A6006 Claims Involving Mass Tort	1., 2., 8.
Securities Litigation (28)	<input type="checkbox"/> A6035 Securities Litigation Case	1., 2., 8.
Toxic Tort Environmental (30)	<input type="checkbox"/> A6036 Toxic Tort/Environmental	1., 2., 3., 8.
Insurance Coverage Claims from Complex Case (41)	<input type="checkbox"/> A6014 Insurance Coverage/Subrogation (complex case only)	1., 2., 5., 8.
Enforcement of Judgment (20)	<input type="checkbox"/> A6141 Sister State Judgment <input type="checkbox"/> A6160 Abstract of Judgment <input type="checkbox"/> A6107 Confession of Judgment (non-domestic relations) <input type="checkbox"/> A6140 Administrative Agency Award (not unpaid taxes) <input type="checkbox"/> A6114 Petition/Certificate for Entry of Judgment on Unpaid Tax <input type="checkbox"/> A6112 Other Enforcement of Judgment Case	2., 9. 2., 6. 2., 9. 2., 8. 2., 8. 2., 8., 9.
RICO (27)	<input type="checkbox"/> A6033 RICO Case	1., 2., 8.
Other Complaints (Not Specified Above) (42)	<input type="checkbox"/> A6030 Declaratory Relief Only <input type="checkbox"/> A6040 Injunctive Relief Only (not domestic/harassment) <input type="checkbox"/> A6011 Other Commercial Complaint Case (non-tort/non-complex) <input checked="" type="checkbox"/> A6000 Other Civil Complaint (non-tort/non-complex)	1., 2., 8. 2., 8. 1., 2., 8. 1., 2., 8.
Partnership Corporation Governance(21)	<input type="checkbox"/> A6113 Partnership and Corporate Governance Case	2., 8.
Other Petitions (Not Specified Above) (43)	<input type="checkbox"/> A6121 Civil Harassment <input type="checkbox"/> A6123 Workplace Harassment <input type="checkbox"/> A6124 Elder/Dependent Adult Abuse Case <input type="checkbox"/> A6190 Election Contest <input type="checkbox"/> A6110 Petition for Change of Name <input type="checkbox"/> A6170 Petition for Relief from Late Claim Law <input type="checkbox"/> A6100 Other Civil Petition	2., 3., 9. 2., 3., 9. 2., 3., 9. 2. 2., 7. 2., 3., 4., 8. 2., 9.

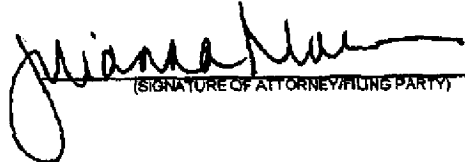
SHORT TITLE: Grant v. Toyota Motor Sales USA, INC.	CASE NUMBER
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Item III. Statement of Location: Enter the address of the accident, party's residence or place of business, performance, or other circumstance indicated in Item II., Step 3 on Page 1, as the proper reason for filing in the court location you selected.

REASON: CHECK THE NUMBER UNDER COLUMN C WHICH APPLIES IN THIS CASE		ADDRESS: 17511 Rayen St., Northridge, CA 91325	
<input type="checkbox"/> 1. <input checked="" type="checkbox"/> 2. <input type="checkbox"/> 3. <input type="checkbox"/> 4. <input type="checkbox"/> 5. <input type="checkbox"/> 6. <input type="checkbox"/> 7. <input type="checkbox"/> 8. <input type="checkbox"/> 9. <input type="checkbox"/> 10.			
CITY: Northridge	STATE: CA	ZIP CODE: 91325	

Item IV. Declaration of Assignment: I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that the above-entitled matter is properly filed for assignment to the Stanley Mosk courthouse in the Central District of the Los Angeles Superior Court (Code Civ. Proc., § 392 et seq., and LASC Local Rule 2.0, subds. (b), (c) and (d)).

Dated: January 8, 2010

  
(SIGNATURE OF ATTORNEY/FILING PARTY)

**PLEASE HAVE THE FOLLOWING ITEMS COMPLETED AND READY TO BE FILED IN ORDER TO PROPERLY COMMENCE YOUR NEW COURT CASE:**

1. Original Complaint or Petition.
2. If filing a Complaint, a completed Summons form for issuance by the Clerk.
3. Civil Case Cover Sheet form CM-010.
4. Complete Addendum to Civil Case Cover Sheet form LACIV 109 (Rev. 01/07), LASC Approved 03-04.
5. Payment in full of the filing fee, unless fees have been waived.
6. Signed order appointing the Guardian ad Litem, JC form FL-935, if the plaintiff or petitioner is a minor under 18 years of age, or if required by Court.
7. Additional copies of documents to be conformed by the Clerk. Copies of the cover sheet and this addendum must be served along with the summons and complaint, or other initiating pleading in the case.

CIVIL CASE COVER SHEET ADDENDUM AND STATEMENT OF LOCATION  
 LACIV 109 (Rev. 01/07)  
 LASC Approved 03-04

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9 **STUART GRANT**

10  
11  
12 **SUPERIOR COURT IN THE STATE OF CALIFORNIA**  
13 **FOR THE COUNTY OF LOS ANGELES**

14 **STUART GRANT, an individual;**

Case number: BC429345

15 Plaintiff,

**FIRST AMENDED COMPLAINT FOR  
DAMAGES AND INJUNCTIVE RELIEF**

16 vs.

17 **TOYOTA MOTOR SALES USA, INC., a**  
18 **corporation; and DOES ONE through**  
19 **TWENTY**

Song-Beverly Warranty Act  
Magnuson-Moss Warranty Act  
Unfair Competition Law

20 Defendants.

**CLASS ACTION**

21  
22  
23 **INTRODUCTION**

24 I. This lawsuit centers on the recall of more than 8.5 million vehicles manufactured by  
25 Toyota Motor Sales USA, Inc. These recalls have tarnished Toyota's reputation for making some  
26 of the most reliable vehicles on the road. It is the most prominent auto safety issue since reports  
27 surfaced in 2000 that many Firestone tires mounted on Ford Explorers failed.

28 ///

1 2. Prior to January 21, 2010, Toyota maintained one of the highest customer  
2 satisfaction records. Many consumers were willing to pay premium price for Toyota vehicles,  
3 spending thousands more than they would pay for comparable vehicles from other manufacturers.

4 3. Toyota vehicles have been recalled for numerous defects and nonconformities,  
5 including sudden acceleration caused by defective floor mats and/or faulty accelerator pedals and  
6 more recently braking system failures.

7 4. Defendant Toyota knew or should have known about the widespread safety issues in  
8 the vehicles it manufactured since at least 2007, and yet it has repeatedly failed to disclose such  
9 information to California consumers. Many consumers would never have purchased Toyota  
10 vehicles had they known about these defects and nonconformities which jeopardize safety and  
11 lives. Furthermore, the widespread recalls have seriously sliced Toyota vehicles' resale values  
12 by 3.5% to 5%.

13 5. Plaintiff STUART GRANT brings this action on behalf of himself and others similarly  
14 situated and on behalf of the general public as a private attorney general to stop this unlawful  
15 conduct and to provide restitution to victimized consumers.

16 **FACTS COMMON TO PLAINTIFF STUART GRANT**

17 6. Defendant Toyota Motor Sales USA, Inc. (hereinafter "Toyota") is a duly authorized  
18 corporation doing business in Los Angeles County, California.

19 7. Plaintiff does not know the true names of the Defendants sued herein as Does One  
20 through Twenty and sues said Defendants pursuant to the provisions of Code of Civil Procedure  
21 § 474.

22 8. On or about June 27, 2008, Plaintiff purchased a 2008 Toyota Sequoia, VIN  
23 5TDBY67A48S002958 ("vehicle"), which was manufactured and warranted by Toyota.

24 9. In connection with the transaction, Toyota issued to Plaintiff an express warranty within  
25 the meaning of Cal. Civil Code § 1791.2, which is also a written warranty within the meaning  
26 of 15 U.S.C. § 2301(6). By the terms of the express written warranty, Toyota promised that the  
27 vehicle's material and workmanship were defect free, undertook to preserve and maintain the  
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1 utility and performance of the vehicle and to provide compensation if there is a failure in utility  
2 or performance, and agreed to refund, repair, replace, or take other remedial action with respect  
3 to the vehicle.

4 10. Plaintiff purchased the vehicle primarily for personal, family or household purposes.

5 11. Subsequent to Plaintiff's transaction, the vehicle exhibited numerous defects and  
6 nonconformities covered by the warranty which substantially impair the use, value and safety of  
7 the motor vehicle to the Plaintiff.

8 12. Plaintiff delivered the nonconforming motor vehicle to Toyota's authorized repair  
9 facilities for repairs pursuant to the terms of the warranty. Toyota has failed to repair or replace  
10 the vehicle.

11 **FACTS RELATING TO CLASS ACTION ALLEGATIONS**

12 13. Since September 2007 to the date of the filing of this complaint, Defendant Toyota  
13 has recalled 8.5 million vehicles due to possible sudden acceleration. Toyota claims the defect  
14 stems from an alleged faulty accelerator pedals and the possibility that floor mats could jam the  
15 accelerator pedal.

16 14. As of January 26, 2010, Toyota stopped selling eight models in the United States and  
17 Canada, including its popular Camry (2007-2010 model years) and Corolla (2009-2010 model  
18 years), because of possible unintended acceleration. Other recalled Toyota vehicles for this defect  
19 include the 2009-2010 Avalon, 2010 Highlander, 2009-2010 Matrix, 2009-2010 RAV4, 2008-  
20 2010 Sequoia, and the 2007-2010 Tundra.

21 15. Plaintiff is informed and believes at least 19 deaths and 341 injuries stemming from 815  
22 separate crashes involving Toyotas and sudden acceleration.

23 16. On February 9, 2010, Toyota recalled 437,000 hybrid cars, including its latest Prius  
24 model to repair a software glitch in its antilock braking system.

25 17. These recalls have, and continue to, tarnish Toyota's reputation for making some of the  
26 most reliable vehicles on the road. It is the most prominent auto safety issue since reports surfaced  
27 in 2000 that many Firestone tires mounted on Ford Explorers failed.

1 18. Since 2003, nine U.S. investigations by the National Highway Traffic Safety  
2 Administration (hereafter "NHTSA"), into sudden acceleration complaints show Toyota  
3 repeatedly ruled out many owner complaints, dismissed several concerns as posing no danger,  
4 and modified models in production without offering similar changes to vehicles already on the  
5 road. Instead, Toyota has blamed the sudden acceleration events on driver error, saying it was  
6 impossible for the electronics to malfunction. Not until the 2007 floor mat investigation did any  
7 of the complaints lead to a recall.

8 19. Since the 1990s, NHTSA had concluded that most sudden acceleration complaints  
9 were caused by drivers mistakenly hitting the gas pedal instead of the brake. When a  
10 Massachusetts man asked in April 2003 for an investigation of 1997-2000 model Lexus sedans,  
11 citing 271 complaints of unintended acceleration, NHTSA rejected his request without querying  
12 Toyota for data.

13 20. In February 2004, a nurse from Maryland asked the agency to review the 2002 and  
14 2003 Lexus ES350 sedans, saying her throttle had malfunctioned several times and led to one  
15 crash. A month later, NHTSA launched a wider investigation into the electronic throttles on  
16 nearly 1 million Lexus and Toyota sedans, citing more than 100 complaints.

17 21. From the start, Toyota pushed NHTSA to narrowly define the problem as short bursts  
18 where the engine surged to "something less than a wide-open throttle." It compared many of the  
19 complaints to the prior sudden acceleration cases that NHTSA had previously deemed driver  
20 error. Toyota also claimed the computer could not open the throttle without the accelerator pedal  
21 being pressed, and contended even if built-in safety checks failed, stepping on the brakes would  
22 stop the car.

23 22. The recalls since September 2007 have now created a stigma of unreliability and  
24 safety concern which will be retained in all Toyota vehicles, not just those vehicles recalled.  
25 Kelley Blue Book, a leading used-car value service, is lowering its estimated prices for the  
26 recalled models by 3.5% to 5%. That's enough to lower the value of each vehicle by between  
27 \$800-\$1,500.

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1  
2 **FIRST CAUSE OF ACTION**  
3 **Violations of the Song-Beverly Consumer Warranty Act**  
4 **On Behalf of Plaintiff Stuart Grant Only**

5 23. Plaintiff incorporates all preceding paragraphs.

6 24. Plaintiff is a "buyer" as defined by Cal. Civ. Code § 1791(b).

7 25. The vehicle is a "consumer good" as defined by Cal. Civ. Code § 1791(a).

8 26. Toyota is a "manufacturer" as defined by Cal. Civ. Code § 1791(j).

9 27. Plaintiff's purchase of the vehicle was a "sale" as defined by Cal. Civ. Code 1791(n).

10 28. Toyota violated the Song-Beverly Act by failing to conform the vehicle to the express  
11 written warranty within a reasonable number of repair attempts or within the warranty period and  
12 failing to promptly replace the vehicle or make restitution to the plaintiff.

13 29. The above-described defects, malfunctions, and nonconformities substantially impair the  
14 use, value, and safety of the vehicle.

15 30. Plaintiff has not made unreasonable or unintended use of the vehicle.

16 31. Pursuant to Civil Code § 1793.2(d), Toyota must refund the price of the vehicle to  
17 Plaintiff.

18 32. Pursuant to Civil Code § 1794(a), Plaintiff is entitled to restitution of all consideration  
19 given to Toyota.

20 33. As a direct and proximate result of said violations of the Song-Beverly Act, Plaintiff has  
21 sustained, and continues to sustain, incidental and consequential damages in the approximate  
22 amount of \$75,000.00 according to proof.

23 34. The failure of Toyota to comply with the express warranty was willful in that Toyota had  
24 actual knowledge of the vehicles' defects and malfunctions, knew of its legal duties under the  
25 warranty and the law, but repeatedly refused to make necessary repairs and/or provide a refund.

26 35. Pursuant to Civil Code § 1794(c), Plaintiff is entitled to a civil penalty of two times the  
27 amount of his actual damages.

28 36. Pursuant to Civil Code § 1794(d), Plaintiff is entitled to reasonable attorney fees according  
to proof.

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**SECOND CAUSE OF ACTION**  
**Violations of the Magnuson-Moss Warranty Act**  
**On Behalf of Plaintiff Stuart Grant Only**

37. Plaintiff incorporates by reference all preceding paragraphs.

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

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

40. Toyota is a "supplier" and a "warrantor" as defined respectively by 15 U.S.C. § 2301(4) and (5).

41. The express written warranty is a "written warranty" as defined by 15 U.S.C. § 2301(6).

42. Toyota violated the Magnuson-Moss Warranty Act by failing to conform the vehicle to the express warranty within a reasonable number of attempts, a reasonable amount of time or within the warranty period itself. Defendant failed to cure its failure to comply with the Act.

43. Prior to commencing this action, Plaintiff afforded Toyota reasonable opportunities to cure the failures and to comply with the Act.

44. Pursuant to 15 U.S.C. § 2310(d)(1), Plaintiff is entitled to the equitable remedies of rescission and restitution and/or damages. Plaintiff revokes acceptance of the vehicle and rescinds the contract. Plaintiff is entitled to restitution of all consideration given.

45. As a proximate result of the breach of written warranty, Plaintiff has sustained, and continues to sustain damages, both economic and noneconomic, in the approximate amount of \$75,000.00.

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

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**THIRD CAUSE OF ACTION**  
**Breach of Express Warranty**  
**On Behalf of Plaintiff Stuart Grant and Others Similarly Situated**

47. Plaintiff incorporates by reference all preceding paragraphs.

48. Plaintiff brings this action on behalf of himself and others similarly situated on behalf of a class of all California consumers who purchased the following Toyota vehicles: 2007-2010 Camry, 2009-2010 Corolla 2009-2010, 2009-2010 Avalon, 2010 Highlander, 2009-2010 Matrix, 2009-2010 RAV4, 2008-2010 Sequoia, 2007-2010 Tundra

1 and the 2010 Prius.

2 49. The proposed Class is so numerous that joinder is impracticable. The members of  
3 the class are ascertainable through Defendants' records.

4 50. At all times mentioned, on or about January 2007, Toyota utilized media,  
5 professional publications and salespersons to urge the use and purchase of Toyota vehicles,  
6 including but not limited to and expressly warranted to members of the general public herein,  
7 that the vehicle and its component parts were free from latent defects or inherent risk of failure  
8 and were effective, proper and safe for their intended use.

9 51. Plaintiff and others similarly situated relied upon said express warranty  
10 representations of Toyota in the purchase of Toyota vehicles.

11 52. Defendant breached its warranties by selling vehicles that did not conform to the  
12 promises in the warranties given to Plaintiff and others similarly situated with their purchases.

13 53. After Plaintiff sustained the damages complained herein as a result of the defective  
14 condition of his vehicle, notice was given by Plaintiff, who has satisfied all terms of the contract  
15 and requirements, except as may be excused by misconduct of the Defendant. This complaint  
16 shall serve as further notice of damage as result of the defective condition of Toyota vehicles on  
17 behalf of Plaintiff and others similarly situated.

18 54. Questions of law and fact of common and general interest to the class exist as to all  
19 members of the class and predominate over any questions affecting only individual members of  
20 the class. The common questions include, among others, the following:

21 a. Whether Defendant Toyota breached the express warranty given in the sale of  
22 2007-2010 Camry, 2009-2010 Corolla 2009-2010, 2009-2010 Avalon, 2010 Highlander, 2009-  
23 2010 Matrix, 2009-2010 RAV4, 2008-2010 Sequoia, 2007-2010 Tundra and 2010 Prius.

24 55. Plaintiff's claims are typical of the claims of the class, as all such claims arise out  
25 of purchase of vehicles manufactured by Defendant where members of the class have been  
26 damaged by its breach of the express warranty.

27 56. Plaintiff will fairly and adequately protect the interest of the members of the  
28 class. Plaintiff has no interests antagonistic to the class. Plaintiff has retained counsel

1 experienced in the prosecution of class actions, including and especially consumer class actions.

2 57. A class action is also superior to other available methods for the fair and efficient  
3 adjudication of this controversy because the damages suffered by each individual member are  
4 relatively small compared to the expense and burden of prosecuting individual cases.

5 58. If individual class members were required to bring separate actions, courts  
6 throughout California would be confronted by a multiplicity of lawsuits burdening the court  
7 system while also creating the risk of inconsistent rulings and contradictory judgments. In  
8 contrast to proceeding on a case-by-case basis, in which inconsistent results will magnify the  
9 delay and expense to all parties and the court system, this class action presents far fewer  
10 management difficulties while providing unitary adjudication, economies of scale and  
11 comprehensive supervision by a single court.

12 **FOURTH CAUSE OF ACTION**  
13 **Breach of Implied Warranty--Song-Beverly Consumer Warranty Act**  
**On Behalf of Plaintiff Stuart Grant and Others Similarly Situated**

14 59. Plaintiff incorporates by reference all preceding paragraphs.

15 60. Plaintiff brings this action on behalf of himself and others similarly  
16 situated on behalf of a class of all California consumers who purchased Toyota vehicles  
17 manufactured by Toyota Motor Sales in the three years preceding the filing of this lawsuit.

18 61. The proposed Class is so numerous that joinder is impracticable. The members of  
19 the class are ascertainable through Defendants' records.

20 62. Pursuant to Cal. Civ. Code § 1792, Toyota vehicles purchased by California consumers  
21 was accompanied by the manufacturer's implied warranty of merchantability.

22 63. Pursuant to Civil Code § 1793, and because of the existence of the express warranty,  
23 Toyota may not disclaim, limit, or modify the implied warranties provided by the Song-Beverly  
24 Act.

25 64. Questions of law and fact of common and general interest to the class exist as to all  
26 members of the class and predominate over any questions affecting only individual members of  
27 the class. The common questions include, among others, the following:

28 ///

1 a. Whether Defendant Toyota's breached the implied warranty of merchantability of  
2 Civil Code §§ 1791.1 and 1792 in that the above-described defects, malfunctions, and  
3 nonconformities render its vehicle unfit for the ordinary purposes for which it is used and it  
4 would not pass without objection in the trade.

5 65. Plaintiff's' claims are typical of the claims of the class, as all such claims arise out  
6 of purchase of vehicles manufactured by Defendant where members of the class have been  
7 damaged by its breach of the implied warranty of merchantability..

8 66. Plaintiff will fairly and adequately protect the interest of the members of the  
9 class. Plaintiff has no interests antagonistic to the class. Plaintiff has retained counsel  
10 experienced in the prosecution of class actions, including and especially consumer class actions.

11 67. A class action is also superior to other available methods for the fair and efficient  
12 adjudication of this controversy because the damages suffered by each individual member are  
13 relatively small compared to the expense and burden of prosecuting individual cases.

14 68. If individual class members were required to bring separate actions, courts  
15 throughout California would be confronted by a multiplicity of lawsuits burdening the court  
16 system while also creating the risk of inconsistent rulings and contradictory judgments. In  
17 contrast to proceeding on a case-by-case basis, in which inconsistent results will magnify the  
18 delay and expense to all parties and the court system, this class action presents far fewer  
19 management difficulties while providing unitary adjudication, economies of scale and  
20 comprehensive supervision by a single court.

21 69. Pursuant to Civil Code § 1794(a), Plaintiff and others similarly situated are entitled to  
22 restitution of all consideration.

23 70. As a direct and proximate result of said breach of implied warranty, Plaintiff and others  
24 similarly situated have sustained, and continue to sustain, incidental and consequential damages.

25 71. Pursuant to Civil Code § 1794(d), Plaintiff is entitled to reasonable attorney fees according  
26 to proof.

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**FIFTH CAUSE OF ACTION**  
**Breach of Implied Warranty—Magnuson-Moss Warranty Act**  
**On Behalf of Plaintiff Stuart Grant and Others Similarly Situated**

72. Plaintiff incorporates by reference all preceding paragraphs.

73. Plaintiff brings this action on behalf of himself and others similarly situated on behalf of a class of all California consumers who purchased Toyota vehicles manufactured by Toyota Motor Sales in the three years preceding the filing of this lawsuit.

74. The proposed Class is so numerous that joinder is impracticable. The members of the class are ascertainable through Defendants' records.

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

76. Pursuant to 15 U.S.C. § 2310(d)(1), and because of said breaches of implied warranties, Plaintiff and other similarly situated are entitled to the equitable remedies of rescission and restitution and/or damages.

77. Questions of law and fact of common and general interest to the class exist as to all members of the class and predominate over any questions affecting only individual members of the class. The common questions include, among others, the following:

a. Whether Defendant Toyota's breached the implied warranty of merchantability contained in 15 U.S.C. § 2310(d)(1) in that the above-described defects, malfunctions, and nonconformities render its vehicle unfit for the ordinary purposes for which it is used and it would not pass without objection in the trade.

78. Plaintiff's claims are typical of the claims of the class, as all such claims arise out of purchase of vehicles manufactured by Defendant where members of the class have been damaged by its breach of the implied warranty of merchantability.

79. Plaintiff will fairly and adequately protect the interest of the members of the class. Plaintiff has no interests antagonistic to the class. Plaintiff has retained counsel experienced in the prosecution of class actions, including and especially consumer class actions.

///

1 80. A class action is also superior to other available methods for the fair and efficient  
2 adjudication of this controversy because the damages suffered by each individual member are  
3 relatively small compared to the expense and burden of prosecuting individual cases.

4 81. If individual class members were required to bring separate actions, courts  
5 throughout California would be confronted by a multiplicity of lawsuits burdening the court  
6 system while also creating the risk of inconsistent rulings and contradictory judgments. In  
7 contrast to proceeding on a case-by-case basis, in which inconsistent results will magnify the  
8 delay and expense to all parties and the court system, this class action presents far fewer  
9 management difficulties while providing unitary adjudication, economies of scale and  
10 comprehensive supervision by a single court.

11 82. As a proximate result of the breaches of implied warranty, Plaintiff and others similarly  
12 situated have sustained, and continues to sustain, damages, both economic and noneconomic.

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

15 **SIXTH CAUSE OF ACTION**  
16 **Violation of the Unfair Competition Law (Business and Professions Code section 17200 et**  
17 **seq.)**

18 **On Behalf of Plaintiff Stuart Grant and Others Similarly Situated**

19 84. Plaintiff incorporates by reference all preceding paragraphs.

20 85. The business acts and practices of Defendant as herein above described  
21 constitute fraudulent, unfair and unlawful business practices in violation of Business and  
22 Professions Code § 17200 et seq. without limitation:

23 1. Defendant's practice of failing to disclose to consumers known safety defects and  
24 nonconformities in the vehicles it manufactures to induce consumers to purchase its vehicles.

25 2. Defendants' practice of knowingly making false representations and  
26 concealing material facts about the vehicles it manufactures to induce consumers to purchase its  
27 vehicles.

28 3. Defendant's practice breached its warranties by selling vehicles that did not  
conform to the promises in the express warranties given to Plaintiff and others similarly situated

1 with their purchases, as set forth and described in the Third Cause of Action

2 4. Defendant's violations of the Song-Beverly Consumer Warranty Act, Civil Code  
3 §§ 1791.1 and 1792, as set forth and described in the Fourth Cause of Action, above.

4 5. Defendants' violations of the Magnuson-Moss Warranty Act, Civil Code §15  
5 U.S.C. § 2310(d)(1), and because of said breaches of implied warranties, as set forth and  
6 described in the Fifth Cause of Action, above.

7 86. The business acts and practices of Defendant as herein above described constitute  
8 unfair business practices in violation of the Unfair Competition Law in that such acts and  
9 practices are patently unfair and substantially injurious to consumers and offensive to established  
10 California public policy.

11 87. Pursuant to Business and Professions Code §17203, Plaintiff, individually, and  
12 on behalf of all members of the general public who are, has been or may be subjected to these  
13 business acts and practices of defendants hereby request injunctive relief prohibiting such  
14 practices in the future, and such other orders as may be necessary to restore to any identifiable  
15 person in interest, any money or property, real or personal, which may have been acquired by  
16 Defendant by means of such business practices. In addition, pursuant to Code of Civil Procedure  
17 §1021.5, Plaintiff is entitled to recover his reasonable attorney's fees, costs and expenses incurred  
18 in bringing this action.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff respectfully prays for judgment against Toyota as follows:

21 On Behalf of Plaintiffs Individually:

- 22 1. That the contract be adjudged rescinded.
- 23 2. For restitution of all consideration paid.
- 24 3. For incidental and consequential damages.
- 25 4. For actual and statutory damages.
- 26 5. For reasonable attorney fees according to proof.
- 27 6. For costs and expenses incurred herein.
- 28 7. For such other relief as the Court deems proper.



1 8. For a civil penalty of two times Plaintiff's damages.

2 On Behalf of the Class as Described in the Third, Fourth, Fifth and Sixth Causes of Action:

3 1. A grant of restitution to Plaintiff and all members of the general public who  
4 have been affected by the aforementioned business practices and issue such other orders as may  
5 be necessary to restore to any identifiable person in interest, any money or property, real or  
6 personal, which may have been acquired by defendants by means of such practices;

7 2. Injunctive relief prohibiting Defendant's unlawful, deceptive and fraudulent  
8 conduct;


9 3. An award reasonable attorney's fees and costs;

10 4. An award of pre-judgment interest;

11 5. An award of such other and further relief as the court deems appropriate.

12 DATED: February 10, 2010

MAKLER & BAKER LLP

13  
14  
15 By   
16 JULIANNA R. MAKLER  
17 Attorneys for Plaintiff STUART GRANT  
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**FILED**  
LOS ANGELES SUPERIOR COURT

*Handwritten:* A-100  
9/325

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JAN 08 2010

JUNIA A. CLARKE, CLERK

BY DAWN ALEXANDER, DEPUTY

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JUDGE SUSAN BRYANT-DEASON

Attorneys for Plaintiff  
STUART GRANT

SUPERIOR COURT IN THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

11 STUART GRANT, an individual;

Case number: **BC 429845**

12 Plaintiff,

COMPLAINT FOR DAMAGES

13 vs.

Song-Beverly Warranty Act  
Magnuson-Moss Warranty Act

14 TOYOTA MOTOR SALES USA, INC.,  
15 a corporation; and DOES ONE through  
16 TWENTY

17 Defendants.

19 Plaintiff alleges that, at all times relevant:

20 **FACTS COMMON TO ALL COUNTS**

21 1. Defendant Toyota Motor Sales USA, Inc. (hereinafter "Toyota") is a duly authorized  
22 corporation doing business in Los Angeles County, California.

23 2. Plaintiff does not know the true names of the Defendants sued herein as Does One  
24 through Twenty and sues said Defendants pursuant to the provisions of Code of Civil Procedure  
25 § 474.

26 3. On or about June 27, 2008, Plaintiff purchased a 2008 Toyota Sequoia  
27 5TDBY67A48S002958 ("vehicle"), which was manufactured and warranted by Toyota.

COMPLAINT FOR DAMAGES

CIT/CASE: 80427352 LEA/DEF#;  
RECEIPT #: 00481420094  
DATE PAID: 01/08/10 02:21:05 PM  
EXAMENT: \$355.00  
RECEIVED IN  
CHECK:  
CASH:  
CHANGE:  
CASH:  
355.00  
0310

1 4. In connection with the transaction, Toyota issued to Plaintiff an express warranty within  
 2 the meaning of Cal. Civil Code § 1791.2, which is also a written warranty within the meaning  
 3 of 15 U.S.C. § 2301(6). By the terms of the express written warranty, Toyota promised that the  
 4 vehicle's material and workmanship was defect free, undertook to preserve and maintain the  
 5 utility and performance of the vehicle and to provide compensation if there is a failure in utility  
 6 or performance, and agreed to refund, repair, replace, or take other remedial action with respect  
 7 to the vehicle.

8 5. Plaintiff purchased the vehicle primarily for personal, family or household purposes.

9 6. Subsequent to Plaintiff's transaction, the vehicle exhibited numerous defects and  
 10 nonconformities covered by the warranty which substantially impair the use, value and safety of  
 11 the motor vehicle to the Plaintiff.

12 7. Plaintiff delivered the nonconforming motor vehicle to Toyota's authorized repair  
 13 facilities for repairs pursuant to the terms of the warranty. Toyota has failed to repair or replace  
 14 the vehicle.

15 **FIRST CAUSE OF ACTION**  
 16 **Breach of Express Warranty—Song-Beverly Consumer Warranty Act**

- 17 8. Plaintiff incorporates all preceding paragraphs.  
 18 9. Plaintiff is a "buyer" as defined by Cal. Civ. Code § 1791(b).  
 19 10. The vehicle is a "consumer good" as defined by Cal. Civ. Code § 1791(a).  
 20 11. Toyota is a "manufacturer" as defined by Cal. Civ. Code § 1791(j).  
 21 12. Plaintiff's purchase of the vehicle was a "sale" as defined by Cal. Civ. Code 1791(n).  
 22 13. Toyota breached the express written warranty by failing to conform the vehicle to the  
 23 express written warranty within a reasonable number of repair attempts or within the warranty  
 24 period.  
 25 14. The above-described defects, malfunctions, and nonconformities substantially impair the  
 26 use, value, and safety of the vehicle.  
 27 15. Plaintiff has not made unreasonable or unintended use of the vehicle.

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1 16. Pursuant to Civil Code § 1793.2(d), Toyota must refund the price of the vehicle to  
2 Plaintiff.

3 17. Pursuant to Civil Code § 1794(a), Plaintiff is entitled to restitution of all consideration  
4 given to Toyota.

5 18. As a direct and proximate result of said breach of express warranty, Plaintiff has sustained,  
6 and continues to sustain, incidental and consequential damages in the approximate amount of  
7 \$75,000.00 according to proof.

8 18. The failure of Toyota to comply with the express warranty was willful in that Toyota had  
9 actual knowledge of the vehicle's defects and malfunctions, knew of its legal duties under the  
10 warranty and the law, but repeatedly refused to make necessary repairs and/or provide a refund.

11 19. Pursuant to Civil Code § 1794(c), Plaintiff is entitled to a civil penalty of two times the  
12 amount of his actual damages.

13 20. Pursuant to Civil Code § 1794(d), Plaintiff is entitled to reasonable attorney fees according  
14 to proof.

15 **SECOND CAUSE OF ACTION**  
16 **Breach of Implied Warranty—Song-Beverly Consumer Warranty Act**

17 21. Plaintiff incorporates by reference all preceding paragraphs.

18 22. Pursuant to Cal. Civ. Code § 1792, the vehicle was accompanied by the manufacturer's  
19 implied warranty of merchantability.

20 23. Pursuant to Civil Code § 1793, and because of the existence of the express warranty,  
21 Toyota may not disclaim, limit, or modify the implied warranties provided by the Song-Beverly  
22 Act.

23 24. Toyota breached the implied warranty of merchantability of Civil Code §§ 1791.1 and  
24 1792 in that the above-described defects, malfunctions, and nonconformities render the vehicle  
25 unfit for the ordinary purposes for which it is used and it would not pass without objection in the  
26 trade.

27 25. Pursuant to Civil Code § 1794(a), Plaintiff is entitled to restitution of all consideration  
28 given to Toyota.

1 26. As a direct and proximate result of said breach of implied warranty, Plaintiff has  
2 sustained, and continues to sustain, incidental and consequential damages in the approximate  
3 amount of \$75,000.00.

4 27. Pursuant to Civil Code § 1794(d), Plaintiff is entitled to reasonable attorney fees according  
5 to proof.

6 **THIRD CAUSE OF ACTION**  
7 **Breach of Written Warranty--Magnuson-Moss Warranty Act**

8 28. Plaintiff incorporates by reference all preceding paragraphs.

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

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

11 31. Toyota is a "supplier" and a "warrantor" as defined respectively by 15 U.S.C. § 2301(4)  
12 and (5).

13 32. The express written warranty is a "written warranty" as defined by 15 U.S.C. § 2301(6).

14 33. Toyota breached the written warranty by failing to conform the vehicle to the express  
15 warranty within a reasonable number of attempts, a reasonable amount of time or within the  
16 warranty period itself.

17 34. Prior to commencing this action, Plaintiff afforded Toyota reasonable opportunities to cure  
18 the failures and to comply with the terms of the written warranty.

19 35. Pursuant to 15 U.S.C. § 2310(d)(1), Plaintiff is entitled to the equitable remedies of  
20 rescission and restitution and/or damages. Plaintiff revokes acceptance of the vehicle and  
21 rescinds the contract. Plaintiff is entitled to restitution of all consideration given.

22 36. As a proximate result of the breach of written warranty, Plaintiff has sustained, and  
23 continues to sustain damages, both economic and noneconomic, in the approximate amount of  
24 \$75,000.00.

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

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

38. Plaintiff incorporates by reference all preceding paragraphs.

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

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

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

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

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for judgment against Toyota as follows:

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

DATED: November 9, 2009

MAKLER & BAKER LLP

By   
 JULIANNA R. MAKLER  
 Attorneys for Plaintiff STUART GRANT

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14 Attorneys for Plaintiff  
15 **STUART GRANT**

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**SUPERIOR COURT IN THE STATE OF CALIFORNIA**  
**FOR THE COUNTY OF LOS ANGELES**

14 **STUART GRANT, an individual;**

Case number: BC429345

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Plaintiff,

**FIRST AMENDED COMPLAINT FOR  
DAMAGES AND INJUNCTIVE RELIEF**

vs.

17 **TOYOTA MOTOR SALES USA, INC., a**  
18 **corporation; and DOES ONE through**  
19 **TWENTY**

Song-Beverly Warranty Act  
Magnuson-Moss Warranty Act  
Unfair Competition Law

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Defendants.

**CLASS ACTION**

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**INTRODUCTION**

1. This lawsuit centers on the recall of more than 8.5 million vehicles manufactured by Toyota Motor Sales USA, Inc. These recalls have tarnished Toyota's reputation for making some of the most reliable vehicles on the road. It is the most prominent auto safety issue since reports surfaced in 2000 that many Firestone tires mounted on Ford Explorers failed.

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1 2. Prior to January 21, 2010, Toyota maintained one of the highest customer  
2 satisfaction records. Many consumers were willing to pay premium price for Toyota vehicles,  
3 spending thousands more than they would pay for comparable vehicles from other manufacturers.

4 3. Toyota vehicles have been recalled for numerous defects and nonconformities,  
5 including sudden acceleration caused by defective floor mats and/or faulty accelerator pedals and  
6 more recently braking system failures.

7 4. Defendant Toyota knew or should have known about the widespread safety issues in  
8 the vehicles it manufactured since at least 2007, and yet it has repeatedly failed to disclose such  
9 information to California consumers. Many consumers would never have purchased Toyota  
10 vehicles had they known about these defects and nonconformities which jeopardize safety and  
11 lives. Furthermore, the widespread recalls have seriously sliced Toyota vehicles' resale values  
12 by 3.5% to 5%.

13 5. Plaintiff STUART GRANT brings this action on behalf of himself and others similarly  
14 situated and on behalf of the general public as a private attorney general to stop this unlawful  
15 conduct and to provide restitution to victimized consumers.

16 **FACTS COMMON TO PLAINTIFF STUART GRANT**

17 6. Defendant Toyota Motor Sales USA, Inc. (hereinafter "Toyota") is a duly authorized  
18 corporation doing business in Los Angeles County, California.

19 7. Plaintiff does not know the true names of the Defendants sued herein as Does One  
20 through Twenty and sues said Defendants pursuant to the provisions of Code of Civil Procedure  
21 § 474.

22 8. On or about June 27, 2008, Plaintiff purchased a 2008 Toyota Sequoia, VIN  
23 5TDBY67A48S002958 ("vehicle"), which was manufactured and warranted by Toyota.

24 9. In connection with the transaction, Toyota issued to Plaintiff an express warranty within  
25 the meaning of Cal. Civil Code § 1791.2, which is also a written warranty within the meaning  
26 of 15 U.S.C. § 2301(6). By the terms of the express written warranty, Toyota promised that the  
27 vehicle's material and workmanship were defect free, undertook to preserve and maintain the  
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1 utility and performance of the vehicle and to provide compensation if there is a failure in utility  
2 or performance, and agreed to refund, repair, replace, or take other remedial action with respect  
3 to the vehicle.

4 10. Plaintiff purchased the vehicle primarily for personal, family or household purposes.

5 11. Subsequent to Plaintiff's transaction, the vehicle exhibited numerous defects and  
6 nonconformities covered by the warranty which substantially impair the use, value and safety of  
7 the motor vehicle to the Plaintiff.

8 12. Plaintiff delivered the nonconforming motor vehicle to Toyota's authorized repair  
9 facilities for repairs pursuant to the terms of the warranty. Toyota has failed to repair or replace  
10 the vehicle.

11 **FACTS RELATING TO CLASS ACTION ALLEGATIONS**

12 13. Since September 2007 to the date of the filing of this complaint, Defendant Toyota  
13 has recalled 8.5 million vehicles due to possible sudden acceleration. Toyota claims the defect  
14 stems from an alleged faulty accelerator pedals and the possibility that floor mats could jam the  
15 accelerator pedal.

16 14. As of January 26, 2010, Toyota stopped selling eight models in the United States and  
17 Canada, including its popular Camry (2007-2010 model years) and Corolla (2009-2010 model  
18 years), because of possible unintended acceleration. Other recalled Toyota vehicles for this defect  
19 include the 2009-2010 Avalon, 2010 Highlander, 2009-2010 Matrix, 2009-2010 RAV4, 2008-  
20 2010 Sequoia, and the 2007-2010 Tundra.

21 15. Plaintiff is informed and believes at least 19 deaths and 341 injuries stemming from 815  
22 separate crashes involving Toyotas and sudden acceleration.

23 16. On February 9, 2010, Toyota recalled 437,000 hybrid cars, including its latest Prius  
24 model to repair a software glitch in its antilock braking system.

25 17. These recalls have, and continue to, tarnish Toyota's reputation for making some of the  
26 most reliable vehicles on the road. It is the most prominent auto safety issue since reports surfaced  
27 in 2000 that many Firestone tires mounted on Ford Explorers failed.

1 18. Since 2003, nine U.S. investigations by the National Highway Traffic Safety  
2 Administration (hereafter "NHTSA"), into sudden acceleration complaints show Toyota  
3 repeatedly ruled out many owner complaints, dismissed several concerns as posing no danger,  
4 and modified models in production without offering similar changes to vehicles already on the  
5 road. Instead, Toyota has blamed the sudden acceleration events on driver error, saying it was  
6 impossible for the electronics to malfunction. Not until the 2007 floor mat investigation did any  
7 of the complaints lead to a recall.

8 19. Since the 1990s, NHTSA had concluded that most sudden acceleration complaints  
9 were caused by drivers mistakenly hitting the gas pedal instead of the brake. When a  
10 Massachusetts man asked in April 2003 for an investigation of 1997-2000 model Lexus sedans,  
11 citing 271 complaints of unintended acceleration, NHTSA rejected his request without querying  
12 Toyota for data.

13 20. In February 2004, a nurse from Maryland asked the agency to review the 2002 and  
14 2003 Lexus ES350 sedans, saying her throttle had malfunctioned several times and led to one  
15 crash. A month later, NHTSA launched a wider investigation into the electronic throttles on  
16 nearly 1 million Lexus and Toyota sedans, citing more than 100 complaints.

17 21. From the start, Toyota pushed NHTSA to narrowly define the problem as short bursts  
18 where the engine surged to "something less than a wide-open throttle." It compared many of the  
19 complaints to the prior sudden acceleration cases that NHTSA had previously deemed driver  
20 error. Toyota also claimed the computer could not open the throttle without the accelerator pedal  
21 being pressed, and contended even if built-in safety checks failed, stepping on the brakes would  
22 stop the car.

23 22. The recalls since September 2007 have now created a stigma of unreliability and  
24 safety concern which will be retained in all Toyota vehicles, not just those vehicles recalled.  
25 Kelley Blue Book, a leading used-car value service, is lowering its estimated prices for the  
26 recalled models by 3.5% to 5%. That's enough to lower the value of each vehicle by between  
27 \$800-\$1,500.

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2 **FIRST CAUSE OF ACTION**  
3 **Violations of the Song-Beverly Consumer Warranty Act**  
4 **On Behalf of Plaintiff Stuart Grant Only**

5 23. Plaintiff incorporates all preceding paragraphs.

6 24. Plaintiff is a "buyer" as defined by Cal. Civ. Code § 1791(b).

7 25. The vehicle is a "consumer good" as defined by Cal. Civ. Code § 1791(a).

8 26. Toyota is a "manufacturer" as defined by Cal. Civ. Code § 1791(j).

9 27. Plaintiff's purchase of the vehicle was a "sale" as defined by Cal. Civ. Code 1791(n).

10 28. Toyota violated the Song-Beverly Act by failing to conform the vehicle to the express  
11 written warranty within a reasonable number of repair attempts or within the warranty period and  
12 failing to promptly replace the vehicle or make restitution to the plaintiff.

13 29. The above-described defects, malfunctions, and nonconformities substantially impair the  
14 use, value, and safety of the vehicle.

15 30. Plaintiff has not made unreasonable or unintended use of the vehicle.

16 31. Pursuant to Civil Code § 1793.2(d), Toyota must refund the price of the vehicle to  
17 Plaintiff.

18 32. Pursuant to Civil Code § 1794(a), Plaintiff is entitled to restitution of all consideration  
19 given to Toyota.

20 33. As a direct and proximate result of said violations of the Song-Beverly Act, Plaintiff has  
21 sustained, and continues to sustain, incidental and consequential damages in the approximate  
22 amount of \$75,000.00 according to proof.

23 34. The failure of Toyota to comply with the express warranty was willful in that Toyota had  
24 actual knowledge of the vehicles' defects and malfunctions, knew of its legal duties under the  
25 warranty and the law, but repeatedly refused to make necessary repairs and/or provide a refund.

26 35. Pursuant to Civil Code § 1794(c), Plaintiff is entitled to a civil penalty of two times the  
27 amount of his actual damages.

28 36. Pursuant to Civil Code § 1794(d), Plaintiff is entitled to reasonable attorney fees according  
to proof.

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**SECOND CAUSE OF ACTION**  
**Violations of the Magnuson-Moss Warranty Act**  
**On Behalf of Plaintiff Stuart Grant Only**

37. Plaintiff incorporates by reference all preceding paragraphs.

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

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

40. Toyota is a "supplier" and a "warrantor" as defined respectively by 15 U.S.C. § 2301(4) and (5).

41. The express written warranty is a "written warranty" as defined by 15 U.S.C. § 2301(6).

42. Toyota violated the Magnuson-Moss Warranty Act by failing to conform the vehicle to the express warranty within a reasonable number of attempts, a reasonable amount of time or within the warranty period itself. Defendant failed to cure its failure to comply with the Act.

43. Prior to commencing this action, Plaintiff afforded Toyota reasonable opportunities to cure the failures and to comply with the Act.

44. Pursuant to 15 U.S.C. § 2310(d)(1), Plaintiff is entitled to the equitable remedies of rescission and restitution and/or damages. Plaintiff revokes acceptance of the vehicle and rescinds the contract. Plaintiff is entitled to restitution of all consideration given.

45. As a proximate result of the breach of written warranty, Plaintiff has sustained, and continues to sustain damages, both economic and noneconomic, in the approximate amount of \$75,000.00.

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

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**THIRD CAUSE OF ACTION**  
**Breach of Express Warranty**  
**On Behalf of Plaintiff Stuart Grant and Others Similarly Situated**

47. Plaintiff incorporates by reference all preceding paragraphs.

48. Plaintiff brings this action on behalf of himself and others similarly situated on behalf of a class of all California consumers who purchased the following Toyota vehicles: 2007-2010 Camry, 2009-2010 Corolla 2009-2010, 2009-2010 Avalon, 2010 Highlander, 2009-2010 Matrix, 2009-2010 RAV4, 2008-2010 Sequoia, 2007-2010 Tundra

1 and the 2010 Prius.

2 49. The proposed Class is so numerous that joinder is impracticable. The members of  
3 the class are ascertainable through Defendants' records.

4 50. At all times mentioned, on or about January 2007, Toyota utilized media,  
5 professional publications and salespersons to urge the use and purchase of Toyota vehicles,  
6 including but not limited to and expressly warranted to members of the general public herein,  
7 that the vehicle and its component parts were free from latent defects or inherent risk of failure  
8 and were effective, proper and safe for their intended use.

9 51. Plaintiff and others similarly situated relied upon said express warranty  
10 representations of Toyota in the purchase of Toyota vehicles.

11 52. Defendant breached its warranties by selling vehicles that did not conform to the  
12 promises in the warranties given to Plaintiff and others similarly situated with their purchases.

13 53. After Plaintiff sustained the damages complained herein as a result of the defective  
14 condition of his vehicle, notice was given by Plaintiff, who has satisfied all terms of the contract  
15 and requirements, except as may be excused by misconduct of the Defendant. This complaint  
16 shall serve as further notice of damage as result of the defective condition of Toyota vehicles on  
17 behalf of Plaintiff and others similarly situated.

18 54. Questions of law and fact of common and general interest to the class exist as to all  
19 members of the class and predominate over any questions affecting only individual members of  
20 the class. The common questions include, among others, the following:

21 a. Whether Defendant Toyota breached the express warranty given in the sale of  
22 2007-2010 Camry, 2009-2010 Corolla 2009-2010, 2009-2010 Avalon, 2010 Highlander, 2009-  
23 2010 Matrix, 2009-2010 RAV4, 2008-2010 Sequoia, 2007-2010 Tundra and 2010 Prius.

24 55. Plaintiff's claims are typical of the claims of the class, as all such claims arise out  
25 of purchase of vehicles manufactured by Defendant where members of the class have been  
26 damaged by its breach of the express warranty.

27 56. Plaintiff will fairly and adequately protect the interest of the members of the  
28 class. Plaintiff has no interests antagonistic to the class. Plaintiff has retained counsel

1 experienced in the prosecution of class actions, including and especially consumer class actions.

2 57. A class action is also superior to other available methods for the fair and efficient  
3 adjudication of this controversy because the damages suffered by each individual member are  
4 relatively small compared to the expense and burden of prosecuting individual cases.

5 58. If individual class members were required to bring separate actions, courts  
6 throughout California would be confronted by a multiplicity of lawsuits burdening the court  
7 system while also creating the risk of inconsistent rulings and contradictory judgments. In  
8 contrast to proceeding on a case-by-case basis, in which inconsistent results will magnify the  
9 delay and expense to all parties and the court system, this class action presents far fewer  
10 management difficulties while providing unitary adjudication, economies of scale and  
11 comprehensive supervision by a single court.

12 **FOURTH CAUSE OF ACTION**  
13 **Breach of Implied Warranty--Song-Beverly Consumer Warranty Act**  
**On Behalf of Plaintiff Stuart Grant and Others Similarly Situated**

14 59. Plaintiff incorporates by reference all preceding paragraphs.

15 60. Plaintiff brings this action on behalf of himself and others similarly  
16 situated on behalf of a class of all California consumers who purchased Toyota vehicles  
17 manufactured by Toyota Motor Sales in the three years preceding the filing of this lawsuit.

18 61. The proposed Class is so numerous that joinder is impracticable. The members of  
19 the class are ascertainable through Defendants' records.

20 62. Pursuant to Cal. Civ. Code § 1792, Toyota vehicles purchased by California consumers  
21 was accompanied by the manufacturer's implied warranty of merchantability.

22 63. Pursuant to Civil Code § 1793, and because of the existence of the express warranty,  
23 Toyota may not disclaim, limit, or modify the implied warranties provided by the Song-Beverly  
24 Act.

25 64. Questions of law and fact of common and general interest to the class exist as to all  
26 members of the class and predominate over any questions affecting only individual members of  
27 the class. The common questions include, among others, the following:

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1 a. Whether Defendant Toyota's breached the implied warranty of merchantability of  
2 Civil Code §§ 1791.1 and 1792 in that the above-described defects, malfunctions, and  
3 nonconformities render its vehicle unfit for the ordinary purposes for which it is used and it  
4 would not pass without objection in the trade.

5 65. Plaintiff's' claims are typical of the claims of the class, as all such claims arise out  
6 of purchase of vehicles manufactured by Defendant where members of the class have been  
7 damaged by its breach of the implied warranty of merchantability..

8 66. Plaintiff will fairly and adequately protect the interest of the members of the  
9 class. Plaintiff has no interests antagonistic to the class. Plaintiff has retained counsel  
10 experienced in the prosecution of class actions, including and especially consumer class actions.

11 67. A class action is also superior to other available methods for the fair and efficient  
12 adjudication of this controversy because the damages suffered by each individual member are  
13 relatively small compared to the expense and burden of prosecuting individual cases.

14 68. If individual class members were required to bring separate actions, courts  
15 throughout California would be confronted by a multiplicity of lawsuits burdening the court  
16 system while also creating the risk of inconsistent rulings and contradictory judgments. In  
17 contrast to proceeding on a case-by-case basis, in which inconsistent results will magnify the  
18 delay and expense to all parties and the court system, this class action presents far fewer  
19 management difficulties while providing unitary adjudication, economies of scale and  
20 comprehensive supervision by a single court.

21 69. Pursuant to Civil Code § 1794(a), Plaintiff and others similarly situated are entitled to  
22 restitution of all consideration.

23 70. As a direct and proximate result of said breach of implied warranty, Plaintiff and others  
24 similarly situated have sustained, and continue to sustain, incidental and consequential damages.

25 71. Pursuant to Civil Code § 1794(d), Plaintiff is entitled to reasonable attorney fees according  
26 to proof.

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**FIFTH CAUSE OF ACTION**  
**Breach of Implied Warranty—Magnuson-Moss Warranty Act**  
**On Behalf of Plaintiff Stuart Grant and Others Similarly Situated**

72. Plaintiff incorporates by reference all preceding paragraphs.

73. Plaintiff brings this action on behalf of himself and others similarly situated on behalf of a class of all California consumers who purchased Toyota vehicles manufactured by Toyota Motor Sales in the three years preceding the filing of this lawsuit.

74. The proposed Class is so numerous that joinder is impracticable. The members of the class are ascertainable through Defendants' records.

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

76. Pursuant to 15 U.S.C. § 2310(d)(1), and because of said breaches of implied warranties, Plaintiff and other similarly situated are entitled to the equitable remedies of rescission and restitution and/or damages.

77. Questions of law and fact of common and general interest to the class exist as to all members of the class and predominate over any questions affecting only individual members of the class. The common questions include, among others, the following:

a. Whether Defendant Toyota's breached the implied warranty of merchantability contained in 15 U.S.C. § 2310(d)(1) in that the above-described defects, malfunctions, and nonconformities render its vehicle unfit for the ordinary purposes for which it is used and it would not pass without objection in the trade.

78. Plaintiff's claims are typical of the claims of the class, as all such claims arise out of purchase of vehicles manufactured by Defendant where members of the class have been damaged by its breach of the implied warranty of merchantability.

79. Plaintiff will fairly and adequately protect the interest of the members of the class. Plaintiff has no interests antagonistic to the class. Plaintiff has retained counsel experienced in the prosecution of class actions, including and especially consumer class actions.

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1 80. A class action is also superior to other available methods for the fair and efficient  
2 adjudication of this controversy because the damages suffered by each individual member are  
3 relatively small compared to the expense and burden of prosecuting individual cases.

4 81. If individual class members were required to bring separate actions, courts  
5 throughout California would be confronted by a multiplicity of lawsuits burdening the court  
6 system while also creating the risk of inconsistent rulings and contradictory judgments. In  
7 contrast to proceeding on a case-by-case basis, in which inconsistent results will magnify the  
8 delay and expense to all parties and the court system, this class action presents far fewer  
9 management difficulties while providing unitary adjudication, economies of scale and  
10 comprehensive supervision by a single court.

11 82. As a proximate result of the breaches of implied warranty, Plaintiff and others similarly  
12 situated have sustained, and continues to sustain, damages, both economic and noneconomic.

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

15 **SIXTH CAUSE OF ACTION**  
16 **Violation of the Unfair Competition Law (Business and Professions Code section 17200 et**  
17 **seq.)**

18 **On Behalf of Plaintiff Stuart Grant and Others Similarly Situated**

19 84. Plaintiff incorporates by reference all preceding paragraphs.

20 85. The business acts and practices of Defendant as herein above described  
21 constitute fraudulent, unfair and unlawful business practices in violation of Business and  
22 Professions Code § 17200 et seq. without limitation:

23 1. Defendant's practice of failing to disclose to consumers known safety defects and  
24 nonconformities in the vehicles it manufactures to induce consumers to purchase its vehicles.

25 2. Defendants' practice of knowingly making false representations and  
26 concealing material facts about the vehicles it manufactures to induce consumers to purchase its  
27 vehicles.

28 3. Defendant's practice breached its warranties by selling vehicles that did not  
conform to the promises in the express warranties given to Plaintiff and others similarly situated

1 with their purchases, as set forth and described in the Third Cause of Action

2 4. Defendant's violations of the Song-Beverly Consumer Warranty Act, Civil Code  
3 §§ 1791.1 and 1792, as set forth and described in the Fourth Cause of Action, above.

4 5. Defendants' violations of the Magnuson-Moss Warranty Act, Civil Code §15  
5 U.S.C. § 2310(d)(1), and because of said breaches of implied warranties, as set forth and  
6 described in the Fifth Cause of Action, above.

7 86. The business acts and practices of Defendant as herein above described constitute  
8 unfair business practices in violation of the Unfair Competition Law in that such acts and  
9 practices are patently unfair and substantially injurious to consumers and offensive to established  
10 California public policy.

11 87. Pursuant to Business and Professions Code §17203, Plaintiff, individually, and  
12 on behalf of all members of the general public who are, has been or may be subjected to these  
13 business acts and practices of defendants hereby request injunctive relief prohibiting such  
14 practices in the future, and such other orders as may be necessary to restore to any identifiable  
15 person in interest, any money or property, real or personal, which may have been acquired by  
16 Defendant by means of such business practices. In addition, pursuant to Code of Civil Procedure  
17 §1021.5, Plaintiff is entitled to recover his reasonable attorney's fees, costs and expenses incurred  
18 in bringing this action.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff respectfully prays for judgment against Toyota as follows:

21 On Behalf of Plaintiffs Individually:

- 22 1. That the contract be adjudged rescinded.
- 23 2. For restitution of all consideration paid.
- 24 3. For incidental and consequential damages.
- 25 4. For actual and statutory damages.
- 26 5. For reasonable attorney fees according to proof.
- 27 6. For costs and expenses incurred herein.
- 28 7. For such other relief as the Court deems proper.

1 8. For a civil penalty of two times Plaintiff's damages.

2 On Behalf of the Class as Described in the Third, Fourth, Fifth and Sixth Causes of Action:

3 1. A grant of restitution to Plaintiff and all members of the general public who  
4 have been affected by the aforementioned business practices and issue such other orders as may  
5 be necessary to restore to any identifiable person in interest, any money or property, real or  
6 personal, which may have been acquired by defendants by means of such practices;

7 2. Injunctive relief prohibiting Defendant's unlawful, deceptive and fraudulent  
8 conduct;

9 3. An award reasonable attorney's fees and costs;

10 4. An award of pre-judgment interest;

11 5. An award of such other and further relief as the court deems appropriate.

12 DATED: February 10, 2010

MAKLER & BAKER LLP

13  
14  
15 By 

JULIANNA R. MAKLER

Attorneys for Plaintiff STUART GRANT  
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**Service of Process  
Transmittal**

02/12/2010

CT Log Number 516155963

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

**RE: Process Served in California**

**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:** Stuart Grant, etc., Pltf. vs. Toyota Motor Sales USA, Inc., etc., et al., Dfts.  
*Name discrepancy noted.*

**DOCUMENT(S) SERVED:** Summons, First Amended Complaint

**COURT/AGENCY:** Los Angeles County, Superior Court, Hill Street, CA  
Case # BC429345

**NATURE OF ACTION:** Product Liability Litigation - Breach of Warranty - Class Action - 2008 Toyota Sequoia, VIN 5TDBY67A48S002958 - Failing to confirm the vehicle to the express written warranty within a reasonable number of repair attempts

**ON WHOM PROCESS WAS SERVED:** C T Corporation System, Los Angeles, CA

**DATE AND HOUR OF SERVICE:** By Process Server on 02/12/2010 at 14:55

**APPEARANCE OR ANSWER DUE:** Within 30 days after service

**ATTORNEY(S) / SENDER(S):** Julianna R. Makler  
Makler & Baker LLP  
3 W. Carrillo Street  
Suite 216  
Santa Barbara, CA 93101  
805-965-4651

**ACTION ITEMS:** SOP Papers with Transmittal, via Fed Ex Standard Overnight , 792175522179  
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  
**PER:** Nancy Flores  
**ADDRESS:** 818 West Seventh Street  
Los Angeles, CA 90017  
**TELEPHONE:** 213-337-4615

Page 1 of 1 / MV

Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of package only, not contents.

2/12 @ 2:50P

Jan 08 2010 15:32 FAX

MIRKLER & MIRKLER LLP

10033054071

F-5-0

SUSA-100

**SUMMONS  
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:  
(AVISO AL DEMANDADO):**

**TOYOTA MOTOR SALES USA, INC., a corporation; and DOES ONE  
through TWENTY**

**YOU ARE BEING SUED BY PLAINTIFF:  
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

**STUART GRANT, AN INDIVIDUAL**

**FOR COUNTY USE ONLY  
(SOLO PARA USO DE LA CORTE)**  
**CONFORMED COPY  
OF ORIGINAL FILED**  
Los Angeles Superior Court

JAN 08 2010

John A. Clarke, Executive Officer/Clerk

By [Signature] Deputy  
**DAWN ALEXANDER**

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **(AVISO! Le han demandado. Si no responde dentro de 30 días, le corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.)**

**Tiene 30 DÍAS DE CALENDARIO** después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegerán. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted puede usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le de un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y le corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos en línea de fuera en el sitio web de California Legal Services ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO: Por ley, la corte tiene derecho a retener las cuotas y los costos judiciales por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desecher el caso.**

The name and address of the court is:  
(El nombre y dirección de la corte es): **Los Angeles County Superior Court**

**111 North Hill Street  
Los Angeles, CA 90012**

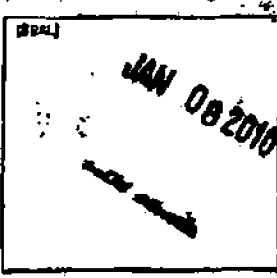
CASE NUMBER:  
(Número del Caso): **BC420845**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:  
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
**Juliana R. Makler, Esq., 3 W. Century Blvd., Suite 200, Burbank, CA 91501 (805) 965-4651**

**JOHN A. CLARKE**

DATE: [Redacted] by **DAWN ALEXANDER**, Deputy  
(Fecha) [Redacted] (Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)  
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



**NOTICE TO THE PERSON SERVED: You are served**

- as an individual defendant.
- as the person sued under the fictitious name of (specify):
- on behalf of (specify): **Toyota Motor Sales USA, Inc., a corporation**  
under:  CCP 418.10 (corporation)  CCP 418.60 (minor)  
 CCP 418.20 (defunct corporation)  CCP 418.70 (conservatee)  
 CCP 418.40 (association or partnership)  CCP 418.90 (authorized person)  
 other (specify):
- by personal delivery on (date):

1 **MAKLER & BAKER LLP**  
2 Julianna R. Makler (SBN 189138)  
3 Terry L. Baker (SBN 214365)  
4 3 W. Carrillo Street, Suite 216  
5 Santa Barbara, CA 93101  
6 Tel: (805) 965-4651  
7 Fax: (805) 965-4671

8 **GRIFFIN & ASSOCIATES**  
9 David R. Griffin (SBN 76619)  
10 501 W. Broadway, Suite 800  
11 San Diego, CA 92101  
12 Tel: (619) 222-0888  
13 Fax: (619) 923-3680

14 Attorneys for Plaintiff  
15 **STUART GRANT**

16 **SUPERIOR COURT IN THE STATE OF CALIFORNIA**

17 **FOR THE COUNTY OF LOS ANGELES**

18 **STUART GRANT, an individual;**

19 Case number: BC429345

20 Plaintiff,

21 **FIRST AMENDED COMPLAINT FOR  
22 DAMAGES AND INJUNCTIVE RELIEF**

23 vs.

24 **TOYOTA MOTOR SALES USA, INC., a**  
25 **corporation; and DOES ONE through**  
26 **TWENTY**

27 Song-Beverly Warranty Act  
28 Magnuson-Moss Warranty Act  
Unfair Competition Law

29 Defendants.

30 **CLASS ACTION**

31 **INTRODUCTION**

32 I. This lawsuit centers on the recall of more than 8.5 million vehicles manufactured by  
33 Toyota Motor Sales USA, Inc. These recalls have tarnished Toyota's reputation for making some  
34 of the most reliable vehicles on the road. It is the most prominent auto safety issue since reports  
35 surfaced in 2000 that many Firestone tires mounted on Ford Explorers failed.

36 ///

1 2. Prior to January 21, 2010, Toyota maintained one of the highest customer  
2 satisfaction records. Many consumers were willing to pay premium price for Toyota vehicles,  
3 spending thousands more than they would pay for comparable vehicles from other manufacturers.

4 3. Toyota vehicles have been recalled for numerous defects and nonconformities,  
5 including sudden acceleration caused by defective floor mats and/or faulty accelerator pedals and  
6 more recently braking system failures.

7 4. Defendant Toyota knew or should have known about the widespread safety issues in  
8 the vehicles it manufactured since at least 2007, and yet it has repeatedly failed to disclose such  
9 information to California consumers. Many consumers would never have purchased Toyota  
10 vehicles had they known about these defects and nonconformities which jeopardize safety and  
11 lives. Furthermore, the widespread recalls have seriously sliced Toyota vehicles' resale values  
12 by 3.5% to 5%.

13 5. Plaintiff STUART GRANT brings this action on behalf of himself and others similarly  
14 situated and on behalf of the general public as a private attorney general to stop this unlawful  
15 conduct and to provide restitution to victimized consumers.

16 **FACTS COMMON TO PLAINTIFF STUART GRANT**

17 6. Defendant Toyota Motor Sales USA, Inc. (hereinafter "Toyota") is a duly authorized  
18 corporation doing business in Los Angeles County, California.

19 7. Plaintiff does not know the true names of the Defendants sued herein as Does One  
20 through Twenty and sues said Defendants pursuant to the provisions of Code of Civil Procedure  
21 § 474.

22 8. On or about June 27, 2008, Plaintiff purchased a 2008 Toyota Sequoia, VIN  
23 5TDBY67A48S002958 ("vehicle"), which was manufactured and warranted by Toyota.

24 9. In connection with the transaction, Toyota issued to Plaintiff an express warranty within  
25 the meaning of Cal. Civil Code § 1791.2, which is also a written warranty within the meaning  
26 of 15 U.S.C. § 2301(6). By the terms of the express written warranty, Toyota promised that the  
27 vehicle's material and workmanship were defect free, undertook to preserve and maintain the  
28

1 utility and performance of the vehicle and to provide compensation if there is a failure in utility  
2 or performance, and agreed to refund, repair, replace, or take other remedial action with respect  
3 to the vehicle.

4 10. Plaintiff purchased the vehicle primarily for personal, family or household purposes.

5 11. Subsequent to Plaintiff's transaction, the vehicle exhibited numerous defects and  
6 nonconformities covered by the warranty which substantially impair the use, value and safety of  
7 the motor vehicle to the Plaintiff.

8 12. Plaintiff delivered the nonconforming motor vehicle to Toyota's authorized repair  
9 facilities for repairs pursuant to the terms of the warranty. Toyota has failed to repair or replace  
10 the vehicle.

11 **FACTS RELATING TO CLASS ACTION ALLEGATIONS**

12 13. Since September 2007 to the date of the filing of this complaint, Defendant Toyota  
13 has recalled 8.5 million vehicles due to possible sudden acceleration. Toyota claims the defect  
14 stems from an alleged faulty accelerator pedals and the possibility that floor mats could jam the  
15 accelerator pedal.

16 14. As of January 26, 2010, Toyota stopped selling eight models in the United States and  
17 Canada, including its popular Camry (2007-2010 model years) and Corolla (2009-2010 model  
18 years), because of possible unintended acceleration. Other recalled Toyota vehicles for this defect  
19 include the 2009-2010 Avalon, 2010 Highlander, 2009-2010 Matrix, 2009-2010 RAV4, 2008-  
20 2010 Sequoia, and the 2007-2010 Tundra.

21 15. Plaintiff is informed and believes at least 19 deaths and 341 injuries stemming from 815  
22 separate crashes involving Toyotas and sudden acceleration.

23 16. On February 9, 2010, Toyota recalled 437,000 hybrid cars, including its latest Prius  
24 model to repair a software glitch in its antilock braking system.

25 17. These recalls have, and continue to, tarnish Toyota's reputation for making some of the  
26 most reliable vehicles on the road. It is the most prominent auto safety issue since reports surfaced  
27 in 2000 that many Firestone tires mounted on Ford Explorers failed.



1 18. Since 2003, nine U.S. investigations by the National Highway Traffic Safety  
2 Administration (hereafter "NHTSA"), into sudden acceleration complaints show Toyota  
3 repeatedly ruled out many owner complaints, dismissed several concerns as posing no danger,  
4 and modified models in production without offering similar changes to vehicles already on the  
5 road. Instead, Toyota has blamed the sudden acceleration events on driver error, saying it was  
6 impossible for the electronics to malfunction. Not until the 2007 floor mat investigation did any  
7 of the complaints lead to a recall.

8 19. Since the 1990s, NHTSA had concluded that most sudden acceleration complaints  
9 were caused by drivers mistakenly hitting the gas pedal instead of the brake. When a  
10 Massachusetts man asked in April 2003 for an investigation of 1997-2000 model Lexus sedans,  
11 citing 271 complaints of unintended acceleration, NHTSA rejected his request without querying  
12 Toyota for data.

13 20. In February 2004, a nurse from Maryland asked the agency to review the 2002 and  
14 2003 Lexus ES350 sedans, saying her throttle had malfunctioned several times and led to one  
15 crash. A month later, NHTSA launched a wider investigation into the electronic throttles on  
16 nearly 1 million Lexus and Toyota sedans, citing more than 100 complaints.

17 21. From the start, Toyota pushed NHTSA to narrowly define the problem as short bursts  
18 where the engine surged to "something less than a wide-open throttle." It compared many of the  
19 complaints to the prior sudden acceleration cases that NHTSA had previously deemed driver  
20 error. Toyota also claimed the computer could not open the throttle without the accelerator pedal  
21 being pressed, and contended even if built-in safety checks failed, stepping on the brakes would  
22 stop the car.

23 22. The recalls since September 2007 have now created a stigma of unreliability and  
24 safety concern which will be retained in all Toyota vehicles, not just those vehicles recalled.  
25 Kelley Blue Book, a leading used-car value service, is lowering its estimated prices for the  
26 recalled models by 3.5% to 5%. That's enough to lower the value of each vehicle by between  
27 \$800-\$1,500.

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1  
2 **FIRST CAUSE OF ACTION**  
3 **Violations of the Song-Beverly Consumer Warranty Act**  
4 **On Behalf of Plaintiff Stuart Grant Only**

5 23. Plaintiff incorporates all preceding paragraphs.

6 24. Plaintiff is a "buyer" as defined by Cal. Civ. Code § 1791(b).

7 25. The vehicle is a "consumer good" as defined by Cal. Civ. Code § 1791(a).

8 26. Toyota is a "manufacturer" as defined by Cal. Civ. Code § 1791(j).

9 27. Plaintiff's purchase of the vehicle was a "sale" as defined by Cal. Civ. Code 1791(n).

10 28. Toyota violated the Song-Beverly Act by failing to conform the vehicle to the express  
11 written warranty within a reasonable number of repair attempts or within the warranty period and  
12 failing to promptly replace the vehicle or make restitution to the plaintiff.

13 29. The above-described defects, malfunctions, and nonconformities substantially impair the  
14 use, value, and safety of the vehicle.

15 30. Plaintiff has not made unreasonable or unintended use of the vehicle.

16 31. Pursuant to Civil Code § 1793.2(d), Toyota must refund the price of the vehicle to  
17 Plaintiff.

18 32. Pursuant to Civil Code § 1794(a), Plaintiff is entitled to restitution of all consideration  
19 given to Toyota.

20 33. As a direct and proximate result of said violations of the Song-Beverly Act, Plaintiff has  
21 sustained, and continues to sustain, incidental and consequential damages in the approximate  
22 amount of \$75,000.00 according to proof.

23 34. The failure of Toyota to comply with the express warranty was willful in that Toyota had  
24 actual knowledge of the vehicles' defects and malfunctions, knew of its legal duties under the  
25 warranty and the law, but repeatedly refused to make necessary repairs and/or provide a refund.

26 35. Pursuant to Civil Code § 1794(c), Plaintiff is entitled to a civil penalty of two times the  
27 amount of his actual damages.

28 36. Pursuant to Civil Code § 1794(d), Plaintiff is entitled to reasonable attorney fees according  
to proof.

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**SECOND CAUSE OF ACTION**  
**Violations of the Magnuson-Moss Warranty Act**  
**On Behalf of Plaintiff Stuart Grant Only**

37. Plaintiff incorporates by reference all preceding paragraphs.

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

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

40. Toyota is a "supplier" and a "warrantor" as defined respectively by 15 U.S.C. § 2301(4) and (5).

41. The express written warranty is a "written warranty" as defined by 15 U.S.C. § 2301(6).

42. Toyota violated the Magnuson-Moss Warranty Act by failing to conform the vehicle to the express warranty within a reasonable number of attempts, a reasonable amount of time or within the warranty period itself. Defendant failed to cure its failure to comply with the Act.

43. Prior to commencing this action, Plaintiff afforded Toyota reasonable opportunities to cure the failures and to comply with the Act.

44. Pursuant to 15 U.S.C. § 2310(d)(1), Plaintiff is entitled to the equitable remedies of rescission and restitution and/or damages. Plaintiff revokes acceptance of the vehicle and rescinds the contract. Plaintiff is entitled to restitution of all consideration given.

45. As a proximate result of the breach of written warranty, Plaintiff has sustained, and continues to sustain damages, both economic and noneconomic, in the approximate amount of \$75,000.00.

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

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**THIRD CAUSE OF ACTION**  
**Breach of Express Warranty**  
**On Behalf of Plaintiff Stuart Grant and Others Similarly Situated**

47. Plaintiff incorporates by reference all preceding paragraphs.

48. Plaintiff brings this action on behalf of himself and others similarly situated on behalf of a class of all California consumers who purchased the following Toyota vehicles: 2007-2010 Camry, 2009-2010 Corolla 2009-2010, 2009-2010 Avalon, 2010 Highlander, 2009-2010 Matrix, 2009-2010 RAV4, 2008-2010 Sequoia, 2007-2010 Tundra

1 and the 2010 Prius.

2 49. The proposed Class is so numerous that joinder is impracticable. The members of  
3 the class are ascertainable through Defendants' records.

4 50. At all times mentioned, on or about January 2007, Toyota utilized media,  
5 professional publications and salespersons to urge the use and purchase of Toyota vehicles,  
6 including but not limited to and expressly warranted to members of the general public herein,  
7 that the vehicle and its component parts were free from latent defects or inherent risk of failure  
8 and were effective, proper and safe for their intended use.

9 51. Plaintiff and others similarly situated relied upon said express warranty  
10 representations of Toyota in the purchase of Toyota vehicles.

11 52. Defendant breached its warranties by selling vehicles that did not conform to the  
12 promises in the warranties given to Plaintiff and others similarly situated with their purchases.

13 53. After Plaintiff sustained the damages complained herein as a result of the defective  
14 condition of his vehicle, notice was given by Plaintiff, who has satisfied all terms of the contract  
15 and requirements, except as may be excused by misconduct of the Defendant. This complaint  
16 shall serve as further notice of damage as result of the defective condition of Toyota vehicles on  
17 behalf of Plaintiff and others similarly situated.

18 54. Questions of law and fact of common and general interest to the class exist as to all  
19 members of the class and predominate over any questions affecting only individual members of  
20 the class. The common questions include, among others, the following:

21 a. Whether Defendant Toyota breached the express warranty given in the sale of  
22 2007-2010 Camry, 2009-2010 Corolla 2009-2010, 2009-2010 Avalon, 2010 Highlander, 2009-  
23 2010 Matrix, 2009-2010 RAV4, 2008-2010 Sequoia, 2007-2010 Tundra and 2010 Prius.

24 55. Plaintiff's claims are typical of the claims of the class, as all such claims arise out  
25 of purchase of vehicles manufactured by Defendant where members of the class have been  
26 damaged by its breach of the express warranty.

27 56. Plaintiff will fairly and adequately protect the interest of the members of the  
28 class. Plaintiff has no interests antagonistic to the class. Plaintiff has retained counsel

1 experienced in the prosecution of class actions, including and especially consumer class actions.

2 57. A class action is also superior to other available methods for the fair and efficient  
3 adjudication of this controversy because the damages suffered by each individual member are  
4 relatively small compared to the expense and burden of prosecuting individual cases.

5 58. If individual class members were required to bring separate actions, courts  
6 throughout California would be confronted by a multiplicity of lawsuits burdening the court  
7 system while also creating the risk of inconsistent rulings and contradictory judgments. In  
8 contrast to proceeding on a case-by-case basis, in which inconsistent results will magnify the  
9 delay and expense to all parties and the court system, this class action presents far fewer  
10 management difficulties while providing unitary adjudication, economies of scale and  
11 comprehensive supervision by a single court.

12 **FOURTH CAUSE OF ACTION**  
13 **Breach of Implied Warranty--Song-Beverly Consumer Warranty Act**  
**On Behalf of Plaintiff Stuart Grant and Others Similarly Situated**

14 59. Plaintiff incorporates by reference all preceding paragraphs.

15 60. Plaintiff brings this action on behalf of himself and others similarly  
16 situated on behalf of a class of all California consumers who purchased Toyota vehicles  
17 manufactured by Toyota Motor Sales in the three years preceding the filing of this lawsuit.

18 61. The proposed Class is so numerous that joinder is impracticable. The members of  
19 the class are ascertainable through Defendants' records.

20 62. Pursuant to Cal. Civ. Code § 1792, Toyota vehicles purchased by California consumers  
21 was accompanied by the manufacturer's implied warranty of merchantability.

22 63. Pursuant to Civil Code § 1793, and because of the existence of the express warranty,  
23 Toyota may not disclaim, limit, or modify the implied warranties provided by the Song-Beverly  
24 Act.

25 64. Questions of law and fact of common and general interest to the class exist as to all  
26 members of the class and predominate over any questions affecting only individual members of  
27 the class. The common questions include, among others, the following:

28 ///

1 a. Whether Defendant Toyota's breached the implied warranty of merchantability of  
2 Civil Code §§ 1791.1 and 1792 in that the above-described defects, malfunctions, and  
3 nonconformities render its vehicle unfit for the ordinary purposes for which it is used and it  
4 would not pass without objection in the trade.

5 65. Plaintiff's' claims are typical of the claims of the class, as all such claims arise out  
6 of purchase of vehicles manufactured by Defendant where members of the class have been  
7 damaged by its breach of the implied warranty of merchantability..

8 66. Plaintiff will fairly and adequately protect the interest of the members of the  
9 class. Plaintiff has no interests antagonistic to the class. Plaintiff has retained counsel  
10 experienced in the prosecution of class actions, including and especially consumer class actions.

11 67. A class action is also superior to other available methods for the fair and efficient  
12 adjudication of this controversy because the damages suffered by each individual member are  
13 relatively small compared to the expense and burden of prosecuting individual cases.

14 68. If individual class members were required to bring separate actions, courts  
15 throughout California would be confronted by a multiplicity of lawsuits burdening the court  
16 system while also creating the risk of inconsistent rulings and contradictory judgments. In  
17 contrast to proceeding on a case-by-case basis, in which inconsistent results will magnify the  
18 delay and expense to all parties and the court system, this class action presents far fewer  
19 management difficulties while providing unitary adjudication, economies of scale and  
20 comprehensive supervision by a single court.

21 69. Pursuant to Civil Code § 1794(a), Plaintiff and others similarly situated are entitled to  
22 restitution of all consideration.

23 70. As a direct and proximate result of said breach of implied warranty, Plaintiff and others  
24 similarly situated have sustained, and continue to sustain, incidental and consequential damages.

25 71. Pursuant to Civil Code § 1794(d), Plaintiff is entitled to reasonable attorney fees according  
26 to proof.

27 ///

28 ///

**FIFTH CAUSE OF ACTION**  
**Breach of Implied Warranty—Magnuson-Moss Warranty Act**  
**On Behalf of Plaintiff Stuart Grant and Others Similarly Situated**

72. Plaintiff incorporates by reference all preceding paragraphs.

73. Plaintiff brings this action on behalf of himself and others similarly situated on behalf of a class of all California consumers who purchased Toyota vehicles manufactured by Toyota Motor Sales in the three years preceding the filing of this lawsuit.

74. The proposed Class is so numerous that joinder is impracticable. The members of the class are ascertainable through Defendants' records.

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

76. Pursuant to 15 U.S.C. § 2310(d)(1), and because of said breaches of implied warranties, Plaintiff and other similarly situated are entitled to the equitable remedies of rescission and restitution and/or damages.

77. Questions of law and fact of common and general interest to the class exist as to all members of the class and predominate over any questions affecting only individual members of the class. The common questions include, among others, the following:

a. Whether Defendant Toyota's breached the implied warranty of merchantability contained in 15 U.S.C. § 2310(d)(1) in that the above-described defects, malfunctions, and nonconformities render its vehicle unfit for the ordinary purposes for which it is used and it would not pass without objection in the trade.

78. Plaintiff's claims are typical of the claims of the class, as all such claims arise out of purchase of vehicles manufactured by Defendant where members of the class have been damaged by its breach of the implied warranty of merchantability.

79. Plaintiff will fairly and adequately protect the interest of the members of the class. Plaintiff has no interests antagonistic to the class. Plaintiff has retained counsel experienced in the prosecution of class actions, including and especially consumer class actions.

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1 80. A class action is also superior to other available methods for the fair and efficient  
2 adjudication of this controversy because the damages suffered by each individual member are  
3 relatively small compared to the expense and burden of prosecuting individual cases.

4 81. If individual class members were required to bring separate actions, courts  
5 throughout California would be confronted by a multiplicity of lawsuits burdening the court  
6 system while also creating the risk of inconsistent rulings and contradictory judgments. In  
7 contrast to proceeding on a case-by-case basis, in which inconsistent results will magnify the  
8 delay and expense to all parties and the court system, this class action presents far fewer  
9 management difficulties while providing unitary adjudication, economies of scale and  
10 comprehensive supervision by a single court.

11 82. As a proximate result of the breaches of implied warranty, Plaintiff and others similarly  
12 situated have sustained, and continues to sustain, damages, both economic and noneconomic.

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

15 **SIXTH CAUSE OF ACTION**  
16 **Violation of the Unfair Competition Law (Business and Professions Code section 17200 et**  
17 **seq.)**

18 **On Behalf of Plaintiff Stuart Grant and Others Similarly Situated**

19 84. Plaintiff incorporates by reference all preceding paragraphs.

20 85. The business acts and practices of Defendant as herein above described  
21 constitute fraudulent, unfair and unlawful business practices in violation of Business and  
22 Professions Code § 17200 et seq. without limitation:

23 1. Defendant's practice of failing to disclose to consumers known safety defects and  
24 nonconformities in the vehicles it manufactures to induce consumers to purchase its vehicles.

25 2. Defendants' practice of knowingly making false representations and  
26 concealing material facts about the vehicles it manufactures to induce consumers to purchase its  
27 vehicles.

28 3. Defendant's practice breached its warranties by selling vehicles that did not  
conform to the promises in the express warranties given to Plaintiff and others similarly situated



1 with their purchases, as set forth and described in the Third Cause of Action

2 4. Defendant's violations of the Song-Beverly Consumer Warranty Act, Civil Code  
3 §§ 1791.1 and 1792, as set forth and described in the Fourth Cause of Action, above.

4 5. Defendants' violations of the Magnuson-Moss Warranty Act, Civil Code §15  
5 U.S.C. § 2310(d)(1), and because of said breaches of implied warranties, as set forth and  
6 described in the Fifth Cause of Action, above.

7 86. The business acts and practices of Defendant as herein above described constitute  
8 unfair business practices in violation of the Unfair Competition Law in that such acts and  
9 practices are patently unfair and substantially injurious to consumers and offensive to established  
10 California public policy.

11 87. Pursuant to Business and Professions Code §17203, Plaintiff, individually, and  
12 on behalf of all members of the general public who are, has been or may be subjected to these  
13 business acts and practices of defendants hereby request injunctive relief prohibiting such  
14 practices in the future, and such other orders as may be necessary to restore to any identifiable  
15 person in interest, any money or property, real or personal, which may have been acquired by  
16 Defendant by means of such business practices. In addition, pursuant to Code of Civil Procedure  
17 §1021.5, Plaintiff is entitled to recover his reasonable attorney's fees, costs and expenses incurred  
18 in bringing this action.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff respectfully prays for judgment against Toyota as follows:

21 On Behalf of Plaintiffs Individually:

- 22 1. That the contract be adjudged rescinded.
- 23 2. For restitution of all consideration paid.
- 24 3. For incidental and consequential damages.
- 25 4. For actual and statutory damages.
- 26 5. For reasonable attorney fees according to proof.
- 27 6. For costs and expenses incurred herein.
- 28 7. For such other relief as the Court deems proper.

1 8. For a civil penalty of two times Plaintiff's damages.

2 On Behalf of the Class as Described in the Third, Fourth, Fifth and Sixth Causes of Action:

3 1. A grant of restitution to Plaintiff and all members of the general public who  
4 have been affected by the aforementioned business practices and issue such other orders as may  
5 be necessary to restore to any identifiable person in interest, any money or property, real or  
6 personal, which may have been acquired by defendants by means of such practices;

7 2. Injunctive relief prohibiting Defendant's unlawful, deceptive and fraudulent  
8 conduct;


9 3. An award reasonable attorney's fees and costs;

10 4. An award of pre-judgment interest;

11 5. An award of such other and further relief as the court deems appropriate.

12 DATED: February 10, 2010

MAKLER & BAKER LLP

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15 By   
16 JULIANNA R. MAKLER  
17 Attorneys for Plaintiff STUART GRANT  
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CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <b>Julianna R. Makler (SBN 189138)</b> <b>MAKLER &amp; BAKER LLP</b> <b>3 W. Carrillo Street, Ste 216, Santa Barbara, CA 93101</b>  TELEPHONE NO.: (805) 965-4651 FAX NO.: (805) 965-4671 ATTORNEY FOR (Name): <b>Plaintiff Stuart Grant</b>		FOR COURT USE ONLY <b>FILED</b> <b>LOS ANGELES SUPERIOR COURT</b>  <b>JAN 08 2010</b>  <b>JUDITH A. CLARKE, CLERK</b>  <b>BY DAWN ALEXANDER, DEPUTY</b>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF <b>LOS ANGELES</b> STREET ADDRESS: 111 North Hill Street MAILING ADDRESS: CITY AND ZIP CODE: <b>Los Angeles</b> BRANCH NAME: <b>Stanley Mosk Courthouse/Central District</b>		
CASE NAME: <b>STUART GRANT V. TOYOTA MOTOR SALES USA, INC.</b>		CASE NUMBER: <b>BC429345</b>
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> <b>Unlimited</b> (Amount demanded exceeds \$25,000)	<input type="checkbox"/> <b>Limited</b> (Amount demanded is \$25,000 or less)	<b>Complex Case Designation</b> <input type="checkbox"/> <b>Counter</b> <input type="checkbox"/> <b>Joinder</b> Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

<b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46)	<b>Contract</b> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37)	<b>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</b> <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)
<b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23)	<b>Real Property</b> <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (28)	<b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20)
<b>Non-PI/PD/WD (Other) Tort</b> <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35)	<b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38)	<b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input checked="" type="checkbox"/> Other complaint (not specified above) (42)
<b>Employment</b> <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	<b>Judicial Review</b> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)

2. This case  is  is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- |  |  |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties   | d. <input type="checkbox"/> Large number of witnesses  |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence   | f. <input type="checkbox"/> Substantial postjudgment judicial supervision  |
3. Remedies sought (check all that apply): a.  monetary    b.  nonmonetary; declaratory or injunctive relief    c.  punitive
4. Number of causes of action (specify): 4
5. This case  is  is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: January 8, 2009

Julianna R. Makler  
(TYPE OR PRINT NAME)

*Julianna Makler*  
(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**NOTICE**

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

**INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET**

**To Plaintiffs and Others Filing First Papers.** If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

**To Parties in Rule 3.740 Collections Cases.** A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

**To Parties in Complex Cases.** In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

**CASE TYPES AND EXAMPLES**

**Auto Tort**

- Auto (22)—Personal Injury/Property Damage/Wrongful Death
- Uninsured Motorist (48) *(if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)*

**Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort**

- Asbestos (04)
  - Asbestos Property Damage
  - Asbestos Personal Injury/Wrongful Death
- Product Liability *(not asbestos or toxic/environmental)* (24)
- Medical Malpractice (45)
  - Medical Malpractice—Physicians & Surgeons
  - Other Professional Health Care Malpractice
- Other PI/PD/WD (23)
  - Premises Liability (e.g., slip and fall)
  - Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
  - Intentional Infliction of Emotional Distress
  - Negligent Infliction of Emotional Distress
  - Other PI/PD/WD

**Non-PI/PD/WD (Other) Tort**

- Business Tort/Unfair Business Practice (07)
- Civil Rights (e.g., discrimination, false arrest) *(not civil harassment)* (08)
- Defamation (e.g., slander, libel) (13)
- Fraud (16)
- Intellectual Property (19)
- Professional Negligence (25)
  - Legal Malpractice
  - Other Professional Malpractice *(not medical or legal)*
- Other Non-PI/PD/WD Tort (35)

**Employment**

- Wrongful Termination (36)
- Other Employment (15)

**Contract**

- Breach of Contract/Warranty (06)
  - Breach of Rental/Lease Contract *(not unlawful detainer or wrongful eviction)*
  - Contract/Warranty Breach—Seller Plaintiff *(not fraud or negligence)*
  - Negligent Breach of Contract/Warranty
  - Other Breach of Contract/Warranty
- Collections (e.g., money owed, open book accounts) (09)
  - Collection Case—Seller Plaintiff
  - Other Promissory Note/Collections Case
- Insurance Coverage *(not provisionally complex)* (18)
  - Auto Subrogation
  - Other Coverage
- Other Contract (37)
  - Contractual Fraud
  - Other Contract Dispute

**Real Property**

- Eminent Domain/Inverse Condemnation (14)
- Wrongful Eviction (33)
  - Other Real Property (e.g., quiet title) (26)
    - Writ of Possession of Real Property
    - Mortgage Foreclosure
    - Quiet Title
    - Other Real Property *(not eminent domain, landlord/tenant, or foreclosure)*

**Unlawful Detainer**

- Commercial (31)
- Residential (32)
- Drugs (38) *(if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)*

**Judicial Review**

- Asset Forfeiture (05)
- Petition Re: Arbitration Award (11)
- Writ of Mandate (02)
  - Writ—Administrative Mandamus
  - Writ—Mandamus on Limited Court Case Matter
  - Writ—Other Limited Court Case Review
- Other Judicial Review (39)
  - Review of Health Officer Order
  - Notice of Appeal—Labor Commissioner Appeals

**Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)**

- Antitrust/Trade Regulation (03)
- Construction Defect (10)
- Claims Involving Mass Tort (40)
- Securities Litigation (28)
- Environmental/Toxic Tort (30)
- Insurance Coverage Claims *(arising from provisionally complex case type listed above)* (41)
- Enforcement of Judgment
  - Enforcement of Judgment (20)
    - Abstract of Judgment (Out of County)
    - Confession of Judgment *(non-domestic relations)*
    - Sister State Judgment
    - Administrative Agency Award *(not unpaid taxes)*
    - Petition/Certification of Entry of Judgment on Unpaid Taxes
    - Other Enforcement of Judgment Case

**Miscellaneous Civil Complaint**

- RICO (27)
- Other Complaint *(not specified above)* (42)
  - Declaratory Relief Only
  - Injunctive Relief Only *(non-harassment)*
  - Mechanics Lien
  - Other Commercial Complaint Case *(non-tort/non-complex)*
  - Other Civil Complaint *(non-tort/non-complex)*

**Miscellaneous Civil Petition**

- Partnership and Corporate Governance (21)
- Other Petition *(not specified above)* (43)
  - Civil Harassment
  - Workplace Violence
  - Elder/Dependent Adult Abuse
  - Election Contest
  - Petition for Name Change
  - Petition for Relief From Late Claim
  - Other Civil Petition

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**CIVIL CASE COVER SHEET ADDENDUM AND STATEMENT OF LOCATION  
(CERTIFICATE OF GROUNDS FOR ASSIGNMENT TO COURTHOUSE LOCATION)**

**This form is required pursuant to LASC Local Rule 2.0 in all new civil case filings in the Los Angeles Superior Court.**

Item I. Check the types of hearing and fill in the estimated length of hearing expected for this case:

JURY TRIAL?  YES CLASS ACTION?  YES LIMITED CASE?  YES TIME ESTIMATED FOR TRIAL <sup>5</sup> \_\_\_\_\_  HOURS /  DAYS

Item II. Select the correct district and courthouse location (4 steps – If you checked "Limited Case", skip to Item III, Pg. 4):

**Step 1:** After first completing the Civil Case Cover Sheet Form, find the main civil case cover sheet heading for your case in the left margin below, and, to the right in Column A, the Civil Case Cover Sheet case type you selected.

**Step 2:** Check one Superior Court type of action in Column B below which best describes the nature of this case.

**Step 3:** In Column C, circle the reason for the court location choice that applies to the type of action you have checked. For any exception to the court location, see Los Angeles Superior Court Local Rule 2.0.

**Applicable Reasons for Choosing Courthouse Location (see Column C below)**

- |   |  |
|---|--|
| 1. Class Actions must be filed in the County Courthouse, Central District.      | 6. Location of property or permanently garaged vehicle.    |
| 2. May be filed in Central (Other county, or no Bodily Injury/Property Damage). | 7. Location where petitioner resides.                      |
| 3. Location where cause of action arose.  | 8. Location wherein defendant/respondent functions wholly. |
| 4. Location where bodily injury, death or damage occurred.                      | 9. Location where one or more of the parties reside.       |
| 5. Location where performance required or defendant resides.                    | 10. Location of Labor Commissioner Office.                 |

**Step 4:** Fill in the information requested on page 4 in Item III; complete Item IV. Sign the declaration.

	<b>A</b> Civil Case Cover Sheet Category No.	<b>B</b> Type of Action (Check only one)	<b>C</b> Applicable Reasons - See Step 3 Above
<b>Auto Tort</b>	Auto (22)	<input type="checkbox"/> A7100 Motor Vehicle - Personal Injury/Property Damage/Wrongful Death	1., 2., 4.
	Uninsured Motorist (46)	<input type="checkbox"/> A7110 Personal Injury/Property Damage/Wrongful Death – Uninsured Motorist	1., 2., 4.
<b>Other Personal Injury/Property Damage/Wrongful Death Tort</b>	Asbestos (04)	<input type="checkbox"/> A6070 Asbestos Property Damage	2.
		<input type="checkbox"/> A7221 Asbestos - Personal Injury/Wrongful Death	2.
	Product Liability (24)	<input type="checkbox"/> A7260 Product Liability (not asbestos or toxic/environmental)	1., 2., 3., 4., 6.
	Medical Malpractice (45)	<input type="checkbox"/> A7210 Medical Malpractice - Physicians & Surgeons	1., 2., 4.
<input type="checkbox"/> A7240 Other Professional Health Care Malpractice		1., 2., 4.	
<b>Other Personal Injury Property Damage Wrongful Death (23)</b>	<input type="checkbox"/> A7250 Premises Liability (e.g., slip and fall)	1., 2., 4.	
	<input type="checkbox"/> A7230 Intentional Bodily Injury/Property Damage/Wrongful Death (e.g., assault, vandalism, etc.)	1., 2., 4.	
	<input type="checkbox"/> A7270 Intentional Infliction of Emotional Distress	1., 2., 3.	
	<input type="checkbox"/> A7220 Other Personal Injury/Property Damage/Wrongful Death	1., 2., 4.	
<b>Non-Personal Injury/Property Damage/Wrongful Death Tort</b>	Business Tort (07)	<input type="checkbox"/> A6029 Other Commercial/Business Tort (not fraud/breach of contract)	1., 2., 3.
	Civil Rights (08)	<input type="checkbox"/> A6006 Civil Rights/Discrimination	1., 2., 3.
	Defamation (13)	<input type="checkbox"/> A6010 Defamation (slander/libel)	1., 2., 3.
	Fraud (16)	<input type="checkbox"/> A6013 Fraud (no contract)	1., 2., 3.

Non-Personal Injury/Property Damage/  
Wrongful Death Tort (Cont'd.)

SHORT TITLE: Grant v. Toyota Motor Sales USA, INC.	CASE NUMBER
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Employment

Contract

Real Property

Judicial Review, Unlawful Detainer

A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Professional Negligence (25)	<input type="checkbox"/> A6017 Legal Malpractice <input type="checkbox"/> A6050 Other Professional Malpractice (not medical or legal)	1., 2., 3. 1., 2., 3.
Other (35)	<input type="checkbox"/> A6025 Other Non-Personal Injury/Property Damage tort	2., 3.
Wrongful Termination (36)	<input type="checkbox"/> A6037 Wrongful Termination	1., 2., 3.
Other Employment (15)	<input type="checkbox"/> A6024 Other Employment Complaint Case <input type="checkbox"/> A6109 Labor Commissioner Appeals	1., 2., 3. 10.
Breach of Contract/Warranty (06) (not insurance)	<input type="checkbox"/> A6004 Breach of Rental/Lease Contract (not Unlawful Detainer or wrongful eviction) <input type="checkbox"/> A6008 Contract/Warranty Breach - Seller Plaintiff (no fraud/negligence) <input type="checkbox"/> A6019 Negligent Breach of Contract/Warranty (no fraud) <input type="checkbox"/> A6028 Other Breach of Contract/Warranty (not fraud or negligence)	2., 5. 2., 5. 1., 2., 5. 1., 2., 5.
Collections (09)	<input type="checkbox"/> A6002 Collections Case-Seller Plaintiff <input type="checkbox"/> A6012 Other Promissory Note/Collections Case	2., 5., 6. 2., 5.
Insurance Coverage (18)	<input type="checkbox"/> A6015 Insurance Coverage (not complex)	1., 2., 5., 8.
Other Contract (37)	<input type="checkbox"/> A6009 Contractual Fraud <input type="checkbox"/> A6031 Tortious Interference <input type="checkbox"/> A6027 Other Contract Dispute (not breach/insurance/fraud/negligence)	1., 2., 3., 5. 1., 2., 3., 5. 1., 2., 3., 8.
Eminent Domain/Inverse Condemnation (14)	<input type="checkbox"/> A7300 Eminent Domain/Condemnation Number of parcels _____	2.
Wrongful Eviction (33)	<input type="checkbox"/> A6023 Wrongful Eviction Case	2., 6.
Other Real Property (26)	<input type="checkbox"/> A6018 Mortgage Foreclosure <input type="checkbox"/> A6032 Quiet Title <input type="checkbox"/> A6060 Other Real Property (not eminent domain, landlord/tenant, foreclosure)	2., 6. 2., 6. 2., 6.
Unlawful Detainer-Commercial (31)	<input type="checkbox"/> A6021 Unlawful Detainer-Commercial (not drugs or wrongful eviction)	2., 6.
Unlawful Detainer-Residential (32)	<input type="checkbox"/> A6020 Unlawful Detainer-Residential (not drugs or wrongful eviction)	2., 6.
Unlawful Detainer-Drugs (38)	<input type="checkbox"/> A6022 Unlawful Detainer-Drugs	2., 6.
Asset Forfeiture (05)	<input type="checkbox"/> A6108 Asset Forfeiture Case	2., 6.
Petition re Arbitration (11)	<input type="checkbox"/> A6115 Petition to Compel/Confirm/Vacate Arbitration	2., 5.

SHORT TITLE: Grant v. Toyota Motor Sales USA, INC.	CASE NUMBER
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Judicial Review (Cont'd.)

A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Writ of Mandate (02)	<input type="checkbox"/> A6151 Writ - Administrative Mandamus <input type="checkbox"/> A6152 Writ - Mandamus on Limited Court Case Matter <input type="checkbox"/> A6153 Writ - Other Limited Court Case Review	2., 8. 2. 2.
Other Judicial Review (39)	<input type="checkbox"/> A6150 Other Writ/Judicial Review	2., 8.

Provisionally Complex  
Litigation

Antitrust/Trade Regulation (03)	<input type="checkbox"/> A6003 Antitrust/Trade Regulation	1., 2., 8.
Construction Defect (10)	<input type="checkbox"/> A6007 Construction defect	1., 2., 3.
Claims Involving Mass Tort (40)	<input type="checkbox"/> A6006 Claims Involving Mass Tort	1., 2., 8.
Securities Litigation (28)	<input type="checkbox"/> A6035 Securities Litigation Case	1., 2., 8.
Toxic Tort Environmental (30)	<input type="checkbox"/> A6036 Toxic Tort/Environmental	1., 2., 3., 8.
Insurance Coverage Claims from Complex Case (41)	<input type="checkbox"/> A6014 Insurance Coverage/Subrogation (complex case only)	1., 2., 5., 8.

Enforcement  
of Judgment

Enforcement of Judgment (20)	<input type="checkbox"/> A6141 Sister State Judgment <input type="checkbox"/> A6160 Abstract of Judgment <input type="checkbox"/> A6107 Confession of Judgment (non-domestic relations) <input type="checkbox"/> A6140 Administrative Agency Award (not unpaid taxes) <input type="checkbox"/> A6114 Petition/Certificate for Entry of Judgment on Unpaid Tax <input type="checkbox"/> A6112 Other Enforcement of Judgment Case	2., 9. 2., 6. 2., 9. 2., 8. 2., 8. 2., 8., 9.
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Miscellaneous Civil  
Complaints

RICO (27)	<input type="checkbox"/> A6033 RICO Case	1., 2., 8.
Other Complaints (Not Specified Above) (42)	<input type="checkbox"/> A6030 Declaratory Relief Only <input type="checkbox"/> A6040 Injunctive Relief Only (not domestic/harassment) <input type="checkbox"/> A6011 Other Commercial Complaint Case (non-tort/non-complex) <input checked="" type="checkbox"/> A6000 Other Civil Complaint (non-tort/non-complex)	1., 2., 8. 2., 8. 1., 2., 8. 1., 2., 8.

Miscellaneous Civil Petitions

Partnership Corporation Governance(21)	<input type="checkbox"/> A6113 Partnership and Corporate Governance Case	2., 8.
Other Petitions (Not Specified Above) (43)	<input type="checkbox"/> A6121 Civil Harassment <input type="checkbox"/> A6123 Workplace Harassment <input type="checkbox"/> A6124 Elder/Dependent Adult Abuse Case <input type="checkbox"/> A6190 Election Contest <input type="checkbox"/> A6110 Petition for Change of Name <input type="checkbox"/> A6170 Petition for Relief from Late Claim Law <input type="checkbox"/> A6100 Other Civil Petition	2., 3., 9. 2., 3., 9. 2., 3., 9. 2. 2., 7. 2., 3., 4., 8. 2., 9.

SHORT TITLE: Grant v. Toyota Motor Sales USA, INC.	CASE NUMBER
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Item III. Statement of Location: Enter the address of the accident, party's residence or place of business, performance, or other circumstance indicated in Item II., Step 3 on Page 1, as the proper reason for filing in the court location you selected.

REASON: CHECK THE NUMBER UNDER COLUMN C WHICH APPLIES IN THIS CASE		ADDRESS: 17511 Rayen St., Northridge, CA 91325	
<input type="checkbox"/> 1. <input checked="" type="checkbox"/> 2. <input type="checkbox"/> 3. <input type="checkbox"/> 4. <input type="checkbox"/> 5. <input type="checkbox"/> 6. <input type="checkbox"/> 7. <input type="checkbox"/> 8. <input type="checkbox"/> 9. <input type="checkbox"/> 10.			
CITY: Northridge	STATE: CA	ZIP CODE: 91325	

Item IV. Declaration of Assignment: I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that the above-entitled matter is properly filed for assignment to the Stanley Mosk courthouse in the Central District of the Los Angeles Superior Court (Code Civ. Proc., § 392 et seq., and LASC Local Rule 2.0, subds. (b), (c) and (d)).

Dated: January 8, 2010

  
(SIGNATURE OF ATTORNEY/FILING PARTY)

**PLEASE HAVE THE FOLLOWING ITEMS COMPLETED AND READY TO BE FILED IN ORDER TO PROPERLY COMMENCE YOUR NEW COURT CASE:**

1. Original Complaint or Petition.
2. If filing a Complaint, a completed Summons form for issuance by the Clerk.
3. Civil Case Cover Sheet form CM-010.
4. Complete Addendum to Civil Case Cover Sheet form LACIV 109 (Rev. 01/07), LASC Approved 03-04.
5. Payment in full of the filing fee, unless fees have been waived.
6. Signed order appointing the Guardian ad Litem, JC form FL-935, if the plaintiff or petitioner is a minor under 18 years of age, or if required by Court.
7. Additional copies of documents to be conformed by the Clerk. Copies of the cover sheet and this addendum must be served along with the summons and complaint, or other initiating pleading in the case.

CIVIL CASE COVER SHEET ADDENDUM AND STATEMENT OF LOCATION  
 LACIV 109 (Rev. 01/07) LASC Approved 03-04



<p>ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):                  Julianna R Makler, 189138                  MAKLER &amp; BAKER LLP                  3 W. Carrillo Street Suite 216                  SANTA BARBARA, CA 93101-2259                  TELEPHONE NO.: (805) 965-4651                  ATTORNEY FOR (Name): Plaintiff</p>	<p>FOR COURT USE ONLY  <b>FILED</b>                  SUPERIOR COURT OF CALIFORNIA                  COUNTY OF LOS ANGELES                  JAN 25 2010                  John A. Clarker Executive Officer/Clerk                  By <i>[Signature]</i>                  GLORIETTA ROBINSON Deputy</p>
<p>SUPERIOR COURT OF CALIFORNIA, COUNTY OF                  Superior Court of California, Los Angeles County                  111 N. Hill Street                  Los Angeles, CA 90012-3117</p>	<p>CASE NUMBER:                  BC429345 <i>Dept. 52</i></p>
<p>PLAINTIFF/PETITIONER: Grant                  DEFENDANT/RESPONDENT: Toyota Motor Sales USA, INC., et al.</p>	<p>Ref. No. or File No.:                  NONE</p>
<p><b>PROOF OF SERVICE OF SUMMONS</b></p>	

- At the time of service I was a citizen of the United States, at least 18 years of age and not a party to this action.
- I served copies of: Summons, Complaint For Damages

**BY FAX**

- Party served: Toyota Motor Sales USA, INC., a corporation
  - Person Served: CT CORPORATION - Maria Sanchez - Person authorized to accept service of process
- Address where the party was served: 818 West Seventh Street 2nd Floor  
 Los Angeles, CA 90017

5. I served the party  
 a. **by personal service.** I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) or (date): 1/21/2010 (2) at (time): 2:50 PM

6. The "Notice to the Person Served" (on the summons) was completed as follows:  
 c. on behalf of:

Toyota Motor Sales USA, INC., a corporation  
 under: CCP 416.10 (corporation)

- Name: Jimmy Lizama
  - Address: One Legal - 194-Marin  
 504 Redwood Blvd #223  
 Novato, CA 94947  
 415-491-0606
  - Telephone number:
  - The fee for service was: \$ 29.00
  - I am:
    - (3) registered California process server.
    - (i) Employee or independent contractor.
    - (ii) Registration No.: 4553
    - (iii) County LOS ANGELES

8. I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.  
 Date: 1/22/2010

**Jimmy Lizama**  
 (NAME OF PERSON WHO SERVED PAPERS)

*[Signature]*  
 (SIGNATURE)

**FILED**  
LOS ANGELES SUPERIOR COURT

FEB 05 2010

BY Tony Isanza  
TONY ISANZA, DEPUTY

NOTICE SENT TO:

Makler, Julianna Robesky  
Makler & Barker LLP's  
3 W. Carrillo Street, Suite 216  
Santa Barbara CA 93101

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

STUART GRANT

Plaintiff(s),

CASE NUMBER

BC429345

VS.

TOYOTA MOTOR SALES USA INC

Defendant(s).

**NOTICE OF STATUS CONFERENCE  
AND ORDER**

To plaintiff/petitioner and self-represented parties: Notice is hereby given that the Status Conference in the above-entitled action will be held on March 11, 2010 at 8:30 am in Department 52 of the Central District, located at 111 North Hill Street, Los Angeles, California 90012. Re: Initial Status Conference AND/OR ENTRY OF DEFAULT

At the Status Conference the Court will determine the present status of the case, how to achieve compliance with time standards, whether any party has not been diligent in pursuing the case, and will make appropriate orders intended to move this matter forward to final disposition.

- Plaintiff/Petitioner and self-represented parties must appear at the Status Conference unless within five days before the status conference, the following has occurred:
  - Arbitration Award has been filed.
  - Judgment has been entered.
  - A Request for Dismissal of the entire action has been filed.
  - Other: \_\_\_\_\_
- A Request for Trial De Novo has been filed.
- Statement of Agreement has been filed.

**ORDER**

Plaintiff/Petitioner is ordered to give notice of said hearing forthwith to any party served with summons and complaint before the status conference hearing and file a Proof of Service in this department within five days before the hearing.

Failure to comply or appear may result in an Order to Show Cause re the imposition of sanctions.

Dated: February 5, 2010

Susan Bryant-Deason  
Judicial Officer

**CERTIFICATE OF MAILING**

I, the below named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the Notice of Status Conference and Order upon each party or counsel named above by depositing in the United States mail at the courthouse in Los Angeles, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown above with the postage thereon fully prepaid.

Dated: February 5, 2010

John A. Clarke, EXECUTIVE OFFICER/CLERK

By [Signature], Deputy Clerk

NOTICE OF STATUS CONFERENCE AND ORDER  
&a170CLASC Local Rules, Chapter 7

**FILED**  
TONY ISANZA, DEPUTY

LACIV 167 (REV. 01/07)  
LASC Approved 06-04

Cal. Rules of Court, rule 2.2 et seq.

2/12 @ 2:50P

Jan 08 2010 15:32 FAX

MIRKLER & MIRKLER LLP

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**SUMMONS  
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:  
(AVISO AL DEMANDADO):**

**TOYOTA MOTOR SALES USA, INC., a corporation; and DOBS ONE  
through TWENTY**

**YOU ARE BEING SUED BY PLAINTIFF:  
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

**STUART GRANT, AN INDIVIDUAL**

**FOR COUNTY USE ONLY  
(SOLO PARA USO DE LA CORTE)**  
**CONFORMED COPY  
OF ORIGINAL FILED**  
**Los Angeles Superior Court**

**JAN 08 2010**

John A. Clarke, Executive Officer/Clerk

By Dawn Alexander Deputy  
**DAWN ALEXANDER**

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **(AVISO! Le han demandado. Si no responde dentro de 30 días, le corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.)**

**Tiene 30 DÍAS DE CALENDARIO** después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegerán. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted puede usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.suocorte.ca.gov](http://www.suocorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incomparecencia y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos en línea de fuera en el sitio web de California Legal Services ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California ([www.suocorte.ca.gov](http://www.suocorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a retener las cuotas y los costos judiciales por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desecher el caso.

The name and address of the court is:  
(El nombre y dirección de la corte es): **Los Angeles County Superior Court**

**111 North Hill Street  
Los Angeles, CA 90012**

CASE NUMBER:  
(Número del Caso): **BC420845**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:  
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
**John A. Clarke, Esq., 3 W. Century Blvd., Suite 200, Burbank, CA 91501 (805) 965-4651**

DATE: \_\_\_\_\_, signed by \_\_\_\_\_ Deputy  
(Fecha) \_\_\_\_\_ (Secretario) **DAWN ALEXANDER** (Acuerdo)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)  
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



**NOTICE TO THE PERSON SERVED: You are served**

- as an individual defendant.
- as the person sued under the fictitious name of (specify):
- on behalf of (specify): **Toyota Motor Sales USA, Inc., a corporation**  
 under:  CCP 418.10 (corporation)  CCP 418.60 (minor)  
 CCP 418.20 (defunct corporation)  CCP 418.70 (conservatee)  
 CCP 418.40 (association or partnership)  CCP 418.90 (authorized person)  
 other (specify):
- by personal delivery on (date):

2/12 @ 2:50P

Jan 08 2010 15:32 FAX

MIRKLER & MIRKLER LLP

10033054071

F-5-0

SUMA-100

**SUMMONS  
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:  
(AVISO AL DEMANDADO):**

**TOYOTA MOTOR SALES USA, INC., a corporation; and DOBS ONE  
through TWENTY**

**YOU ARE BEING SUED BY PLAINTIFF:  
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

**STUART GRANT, AN INDIVIDUAL**

**FOR COUNTY USE ONLY  
(SOLO PARA USO DE LA CORTE)**  
**CONFORMED COPY  
OF ORIGINAL FILED**  
**Los Angeles Superior Court**

**JAN 08 2010**

John A. Clarke, Executive Officer/Clerk  
By [Signature] Deputy  
**DAWN ALEXANDER**

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

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The name and address of the court is:  
(El nombre y dirección de la corte es): **Los Angeles County Superior Court**

**111 North Hill Street  
Los Angeles, CA 90012**

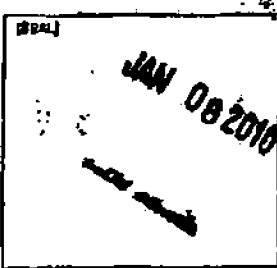
CASE NUMBER:  
(Número del Caso): **BC420845**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:  
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
**Juliana R. Makler, Esq., 3 W. Century Blvd., Suite 200, Burbank, CA 91501 (805) 965-4651**

**JOHN A. CLARKE**

DATE: \_\_\_\_\_, signed by **DAWN ALEXANDER**, Deputy  
(Fecha) \_\_\_\_\_ (Secretaria) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)  
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



**NOTICE TO THE PERSON SERVED: You are served**

- 1.  as an individual defendant.
- 2.  as the person sued under the fictitious name of (specify):

3.  on behalf of (specify): **Toyota Motor Sales USA, Inc., a corporation**

- under:  CCP 418.10 (corporation)  CCP 418.60 (minor)
- CCP 418.20 (defunct corporation)  CCP 418.70 (conservatee)
- CCP 418.40 (association or partnership)  CCP 418.90 (authorized person)

- other (specify):
- 4.  by personal delivery on (date):

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LISA GILFORD (State Bar No. 171641)  
STEPHANIE A. JONES (State Bar No. 178453)  
JOHN D. ARYA (State Bar No. 156108)  
ROGER A. CERDA (State Bar No. 239027)  
**ALSTON + BIRD LLP**  
333 South Hope Street  
Sixteenth Floor  
Los Angeles, CA 90071  
Telephone: (213) 576-1000  
Facsimile: (213) 576-1100  
lisa.gilford@alston.com  
Stephanie.jones@alston.com

10 FEB 18 PM 4:02  
CLERK U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
LOS ANGELES  
BY: \_\_\_\_\_

VINCENT GALVIN, JR. (State Bar No. 104448)  
**BOWMAN AND BROOKE**  
1741 Technology Drive  
San Jose, CA 95110  
Telephone: (408) 279-5393  
Facsimile: (408) 279-5845  
E-mail: vgalvin@bowman-brooke.com

**Attorneys for Defendant**  
**TOYOTA MOTOR SALES, U.S.A., INC.**

**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**

STUART GRANT, an individual,

Plaintiff,

v.

TOYOTA MOTOR SALES, U.S.A., INC.; a  
corporation, and DOES ONE through  
TWENTY,

Defendants.

Case No. CV10-01234-MR7(CSA)

**CERTIFICATE OF SERVICE**

**CLASS ACTION**

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Stephanie A. Jones certifies and declares as follows:

1. I am over the age of 18 and not a party to this action.

2. My business address is Alston & Bird LLP, 333 S. Hope Street, 16th Floor, Los Angeles, California 90071, which is located in the city, county and state where the mailing described below took place.

3. On February 18, 2010, I deposited in the United States Mail at Los Angeles, California, a copy of the Notice to Adverse Party of Removal to Federal Court dated February 18, 2010, a copy of which is attached to this Certificate as Exhibit A, to the following:


Julianna R. Makler, Esq.  
Terry L. Baker, Esq.  
Makler & Baker LLP  
3 W. Carrillo Street, Suite 216  
Santa Barbara, CA 93101

Attorneys for Plaintiff  
STUART GRANT  
Telephone: (805) 965-4651  
Facsimile: (805) 965-4671

David R. Griffin, Esq.  
Griffin & Associates  
501 W. Broadway, Suite 800  
San Diego, CA 92101

Attorneys for Plaintiff  
STUART GRANT  
Telephone: (619) 222-0888  
Facsimile: (619) 923-3680

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on the 18<sup>th</sup> day of February 2010 at Los Angeles, California.

  
Stephanie A. Jones

**EXHIBIT A**

1 LISA GILFORD (State Bar No. 171641)  
 2 STEPHANIE A. JONES (State Bar No. 178453)  
 3 JOHN D. ARYA (State Bar No. 156108)  
 4 ROGER A. CERDA (State Bar No. 239027)  
**ALSTON + BIRD LLP**  
 333 South Hope Street  
 Sixteenth Floor  
 Los Angeles, CA 90071  
 Telephone: (213) 576-1000  
 Facsimile: (213) 576-1100  
 lisa.gilford@alston.com  
 Stephanie.jones@alston.com

8 VINCENT GALVIN, JR. (State Bar No. 104448)  
**BOWMAN AND BROOKE**  
 9 1741 Technology Drive  
 San Jose, CA 95110  
 Telephone: (408) 279-5393  
 Facsimile: (408) 279-5845  
 E-mail: vgalvin@bowman-brooke.com

12 **Attorneys for Defendant**  
**TOYOTA MOTOR SALES, U.S.A., INC.**

14 **SUPERIOR COURT IN THE STATE OF CALIFORNIA**  
 15 **FOR THE COUNTY OF LOS ANGELES**

17 STUART GRANT, an individual,

18 Plaintiff,

19 v.

20 TOYOTA MOTOR SALES, U.S.A., INC.; a  
 21 corporation, and DOES ONE through  
 TWENTY,

22 Defendants.

Case No.: BC 429345

**NOTICE TO ADVERSE PARTIES OF  
 REMOVAL OF ACTION TO FEDERAL  
 COURT**

**CLASS ACTION**



1 **TO PLAINTIFF STUART GRANT AND HIS ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that a Notice of Removal of this action was filed in the  
3 United States District Court for the Central District of California on February 18, 2010.

4 A copy of the Notice of Removal is attached to this Notice as Exhibit A.

5  
6 Dated: February 18, 2010

7 Respectfully submitted,  
8 **ALSTON + BIRD LLP**

9 

10 \_\_\_\_\_  
11 Stephanie A. Jones  
12 Attorney for Defendant  
13 TOYOTA MOTOR SALES, U.S.A., INC.

# **EXHIBIT A**

1 LISA GILFORD (State Bar No. 171641)  
 2 JOHN D. ARYA (State Bar No. 156108)  
 3 STEPHANIE A. JONES (State Bar No. 178453)  
 4 ROGER A. CERDA (State Bar No. 239027)  
 5 **ALSTON + BIRD LLP**  
 6 333 South Hope Street  
 7 Sixteenth Floor  
 8 Los Angeles, CA 90071  
 9 Telephone: (213) 576-1000  
 10 Facsimile: (213) 576-1100  
 11 lisa.gilford@alston.com  
 12 stephanie.jones@alston.com

13 VINCENT GALVIN, JR. (State Bar No. 104448)  
 14 **BOWMAN AND BROOKE**  
 15 1741 Technology Drive  
 16 San Jose, CA 95110  
 17 Telephone: (408) 279-5393  
 18 Facsimile: (408) 279-5845  
 19 E-mail: vgalvin@bowman-brooke.com

20 **Attorneys for Defendant**  
 21 **TOYOTA MOTOR SALES, U.S.A., INC.**

22 **UNITED STATES DISTRICT COURT**  
 23 **CENTRAL DISTRICT OF CALIFORNIA**

24 STUART GRANT, an individual,

25 Plaintiff,

26 v.

27 TOYOTA MOTOR SALES, U.S.A., INC.; a  
 28 corporation, and DOES ONE through  
 TWENTY,

Defendants.

Case No.:

**NOTICE OF REMOVAL OF  
 ACTION TO UNITED STATES  
 DISTRICT COURT UNDER 28  
 U.S.C. § 1441(b) [FEDERAL  
 QUESTION JURISDICTION]; AND  
 DECLARATION OF LISA GILFORD  
 IN SUPPORT THEREOF**

1 **TO THE CLERK OF THE UNITED STATES DISTRICT COURT, CENTRAL**  
2 **DISTRICT OF CALIFORNIA:**

3 **PLEASE TAKE NOTICE** that defendant Toyota Motor Sales USA  
4 (“Toyota”) hereby removes the above-titled action from the Superior Court of the  
5 State of California for the County of Los Angeles (“State Court”), where the above-  
6 titled action (“Action”) was filed, to the United States District Court for the Central  
7 District of California.

8 In support of this Notice, Toyota alleges as follows:  
9

10 **TIMELINESS OF REMOVAL**

11 1. On or about January 8, 2010 plaintiff Stuart Grant (“Plaintiff”)  
12 commenced the Action in the State Court by filing a complaint (“Complaint”) entitled  
13 “*Stuart Grant v. Toyota Motor Sales USA, Inc.*,” and bearing Los Angeles County  
14 Superior Court Case No. BC 429345. The Complaint alleges the following four  
15 purported causes of action: (1) breach of express warranty-Song Beverly Consumer  
16 Warranty Act; (2) breach of implied warranty-Song Beverly Consumer Warranty Act;  
17 (3) breach of written warranty-Magnuson-Moss Warranty Act (15 U.S.C. § 2301 *et*  
18 *seq.*); and (4) breach of implied warranty-Magnuson-Moss Warranty Act (15 U.S.C. §  
19 2301 *et seq.*) [A true and correct copy of the Summons and Complaint is attached to  
20 the Declaration of Lisa Gilford (“Gilford Decl.”) included herewith and in the  
21 Appendix of State Court Pleadings as Exhibit A.]

22 2. Plaintiff personally served Toyota’s agent for service of process, CT  
23 Corporation, with the Summons and Complaint on or about January 21, 2010.  
24 Therefore, this Notice of Removal, filed on February 19, 2010, is timely filed pursuant  
25 to 28 U.S.C. §1446(b).  
26  
27  
28

1 VENUE

2 3. Venue lies in the Central District pursuant to 28 U.S.C. §§ 1441(a),  
3 1446(a), and 84(c)(2). This action was originally brought in the Superior Court of the  
4 State of California, County of Los Angeles.

5  
6 FEDERAL QUESTION JURISDICTION

7 4. This Action is a civil action over which this Court has original  
8 jurisdiction under 28 U.S.C. § 1331, and is one which may be removed to this Court  
9 by Toyota pursuant to the provisions of 28 U.S.C. § 1441(b) in that it includes claims  
10 that arise under 15 U.S.C. § 2301 *et seq.*, the Magnuson-Moss Warranty Act  
11 (“Magnuson-Moss”). Accordingly, it is evident from the face of Plaintiff’s Complaint  
12 that his claims are subject to removal to this Court. See 28 U.S.C. §1331; 28 U.S.C. §  
13 1441(b).<sup>1</sup>

14 5. Pursuant to 28 U.S.C. § 1331, federal district courts have original  
15 jurisdiction of all “civil actions arising under the Constitution, laws, or treaties of the  
16 United States.” A claim “arises under” federal law where “the vindication of a right  
17 under state law necessarily turns on some construction of federal law.” *Merrell Dow*  
18 *Pharmaceuticals Inc. v. Thompson*, 478 U.S. 804, 808 (1986). Federal courts have  
19 jurisdiction to hear, originally or by removal, only those cases in which a well-pleaded  
20 complaint establishes either that federal law creates the cause of action or that the  
21 plaintiff’s right to relief necessarily depends on resolution of a substantial question of  
22 federal law. See *Franchise Tax Bd. of Cal. v. Constr. Laborers Vacation Trust*, 463  
23 U.S. 1, 27-28 (1983).

24 6. Moreover, pursuant to 28 U.S.C. § 1367(a), this Court retains  
25 supplemental jurisdiction over Plaintiffs’ state law claims for violations of the Song-  
26

27  
28 <sup>1</sup> Plaintiffs filed a First Amended Complaint on January 8, 2010, which purports to  
bring, in addition to plaintiff’s individual claims, state and federal class action claims.  
See Gilford Decl., Ex. C.

1 Beverly Consumer Warranty Act ("Song-Beverly"). Plaintiff's state law claims are  
2 predicated upon the same facts and circumstances, and arise from the same transaction  
3 that forms the basis of Plaintiff's federal claims. Specifically, in his Song-Beverly  
4 claims, Plaintiff alleges that Toyota breached its express and implied warranties to  
5 him by failing to properly repair his Toyota vehicle. [Comp., ¶¶ 13, 24.] The same  
6 alleged failures to properly repair Plaintiff's Toyota vehicle are also alleged as the  
7 basis for Plaintiff's Magnuson-Moss claims [15 U.S.C. 2301, et seq.] [Compl. ¶¶ 33-  
8 34; 39.] Accordingly, this Court should retain supplemental jurisdiction over  
9 Plaintiff's state law claims. *See Picard v. Bay Area Regional Transit District*, 823  
10 F.Supp. 1519, 1527 (N.D. Cal., 1993) (holding that where state law claims are based  
11 on the same set of facts as federal claims alleged, and would require plaintiffs to make  
12 virtually the same evidentiary showing at trial, state law claims did not predominate  
13 over federal claims, and court could retain supplemental jurisdiction over the same.)

14 **CONCLUSION**


15 7. Based on the foregoing, this Court has jurisdiction over the Action under  
16 the provisions of 28 U.S.C. § 1331 in that the Action is one which arises under federal  
17 law, namely, Magnuson-Moss, and the Court has supplemental jurisdiction over  
18 Plaintiff's state law claims. Accordingly, this Action is properly removed to this  
19 Court pursuant to the provisions of 28 U.S.C. §§ 1441 and 1446.

20 **NOTICE TO STATE COURT**

21 8. A true and correct copy of this Notice of Removal has been served on the  
22 Plaintiff and filed with the Clerk of the Superior Court of the State of California,  
23 County of Los Angeles, as required by law.

24  
25 Dated: February 18, 2010

Respectfully submitted,  
**ALSTON + BIRD LLP**

26  
27   
Stephanie A. Jones

28 Attorney for Defendant  
TOYOTA MOTOR SALES, U.S.A., INC.

**DECLARATION OF LISA GILFORD**

I, Lisa Gilford, declare:

1. I am a partner at Alston & Bird LLP, attorneys of record for defendant Toyota Motor Sales USA, Inc. ("Toyota") in this action. I make this Declaration in support of the Notice of Removal. I have personal knowledge of the following facts and if called as a witness would and could testify competently thereto.

2. Attached hereto collectively as **Exhibit A** are true and correct copies of plaintiff's Summons and Complaint entitled "*Stuart Grant v. Toyota Motor Sales USA, Inc.*", Los Angeles County Superior Court Case No. BC 429345, and the corresponding Notice of Case Assignment.

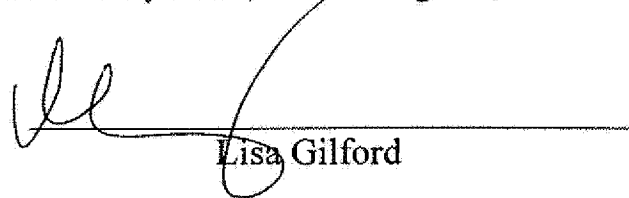
3. Toyota first received a copy of the Summons and Complaint on or about January 21, 2010, when Plaintiff personally served Toyota's agent for service of process, CT Corporation Services.

4. Attached hereto as **Exhibit B** is a true and correct copy of the Proof of Service (CT Corporation).

5. Attached hereto as **Exhibit C**, collectively, are true and correct copies of Plaintiffs' First Amended Complaint, personally served on Toyota's agent for service of process on February 12, 2010, and the corresponding proof of service.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Executed this 18<sup>th</sup> day of February 2010, at Los Angeles, California.

  
Lisa Gilford

# **EXHIBIT A**



2/12 @ 2:57P

JAN DU 2010 11:47AM MICKLER & MICKLER LLP

10059064071

PAGE 0

**SUMMONS  
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:  
(AVISO AL DEMANDADO):**

**TOYOTA MOTOR SALES USA, INC., a corporation; and DOBS ONE  
through TWENTY**

**YOU ARE BEING SUED BY PLAINTIFF:  
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

**STUART GRANT, AN INDIVIDUAL**

SUM-100

FOR COURT USE ONLY  
NOLO PARA USO DE LA CORTE

**CONFORMED COPY  
OF ORIGINAL FILED**  
Los Angeles Superior Court

JAN 08 2010

John A. Clarke, Executive Officer/Clerk  
By Dawn Alexander Deputy  
**DAWN ALEXANDER**

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. **NOTE:** The court has a statutory fee for waiver fees and costs on any judgment or arbitration award of \$10,000 or more in a civil case. The court fee must be paid before the court will dismiss the case. **(AVISO)** Lo han demandado. Si no responde dentro de 30 días, le corte puede decidir en su contra sin oírlo. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en este corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted puede usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.uscourts.ca.gov](http://www.uscourts.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le queda más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le de un formulario de solicitud de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos en línea en el sitio web de California Legal Services ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California ([www.uscourts.ca.gov](http://www.uscourts.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a recopilar sus cuotas y los costos asociados por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor realizable mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda dirimir el caso.

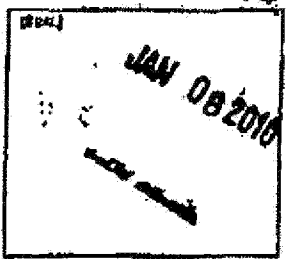
The name and address of the court is:  
(El nombre y dirección de la corte es): **Los Angeles County Superior Court**  
**111 North Hill Street**  
**Los Angeles, CA 90012**

CASE NUMBER:  
(Número del Caso): **BC 428845**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:  
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
**Julianne R. Makler, Esq., 3 W. Century Blvd., Suite 200, Los Angeles, CA 90045**  
**JOHN A. CLARKE** Barbara, CA 93101 (805) 965-4651

DATE: [redacted], by **DAWN ALEXANDER** Deputy  
(Fecha) [redacted] (Secretaria) (Adjunta)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)  
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010).)



- NOTICE TO THE PERSON SERVED: You are served**
- as an individual defendant.
  - as the person sued under the fictitious name of (specify):
  - on behalf of (specify): **Toyota Motor Sales USA, Inc., a corporation**  
 under:  CCP 415.10 (corporation)  CCP 415.60 (minor)  
 CCP 415.20 (defunct corporation)  CCP 415.70 (conservatee)  
 CCP 415.40 (association or partnership)  CCP 415.50 (authorized person)  
 other (specify):
  - by personal delivery on (date):

**FILED**  
LOS ANGELES SUPERIOR COURT

*Handwritten:* A-200  
9/25

1 **MAKLER & BAKER LLP**  
2 Julianna R. Makler (SBN 189138)  
3 Terry L. Baker (SBN 214365)  
4 3 W. Carrillo Street, Suite 216  
5 Santa Barbara, CA 93101  
6 Tel: (805) 965-4651  
7 Fax: (805) 965-4671

JAN 08 2010

JUDITH A. CLARKE, CLERK

BY DAWN ALEXANDER, DEPUTY

*Handwritten:* DEPT #52

*Handwritten:* JUDGE SUSAN BRYANT-DEASON

Attorneys for Plaintiff  
STUART GRANT

SUPERIOR COURT IN THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

11 STUART GRANT, an individual;

Case number:

**BC429845**

COMPLAINT FOR DAMAGES

12 Plaintiff,

Song-Beverly Warranty Act  
Magnuson-Moss Warranty Act

13 vs.

14 TOYOTA MOTOR SALES USA, INC.,  
15 a corporation; and DOES ONE through  
16 TWENTY

17 Defendants.

19 Plaintiff alleges that, at all times relevant:

FACTS COMMON TO ALL COUNTS

21 1. Defendant Toyota Motor Sales USA, Inc. (hereinafter "Toyota") is a duly authorized  
22 corporation doing business in Los Angeles County, California.

24 2. Plaintiff does not know the true names of the Defendants sued herein as Does One  
25 through Twenty and sues said Defendants pursuant to the provisions of Code of Civil Procedure  
26 § 474.

27 3. On or about June 27, 2008, Plaintiff purchased a 2008 Toyota Sequoia  
28 STDBY67A48S002958 ("vehicle"), which was manufactured and warranted by Toyota.

COMPLAINT FOR DAMAGES

RECEIVED IN  
CHECKS:  
CASH:  
CHARGE:  
CASH:  
355.00

017/CASE: BC429845 LEA/REF#:  
RECEIPT #: CCH481420894  
DATE PAID: 01/08/10 02:21:05 PM  
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4. In connection with the transaction, Toyota issued to Plaintiff an express warranty within the meaning of Cal. Civil Code § 1791.2, which is also a written warranty within the meaning of 15 U.S.C. § 2301(6). By the terms of the express written warranty, Toyota promised that the vehicle's material and workmanship was defect free, undertook to preserve and maintain the utility and performance of the vehicle and to provide compensation if there is a failure in utility or performance, and agreed to refund, repair, replace, or take other remedial action with respect to the vehicle.

5. Plaintiff purchased the vehicle primarily for personal, family or household purposes.

6. Subsequent to Plaintiff's transaction, the vehicle exhibited numerous defects and nonconformities covered by the warranty which substantially impair the use, value and safety of the motor vehicle to the Plaintiff.

7. Plaintiff delivered the nonconforming motor vehicle to Toyota's authorized repair facilities for repairs pursuant to the terms of the warranty. Toyota has failed to repair or replace the vehicle.

**FIRST CAUSE OF ACTION**  
**Breach of Express Warranty—Song-Beverly Consumer Warranty Act**

- 8. Plaintiff incorporates all preceding paragraphs.
- 9. Plaintiff is a "buyer" as defined by Cal. Civ. Code § 1791(b).
- 10. The vehicle is a "consumer good" as defined by Cal. Civ. Code § 1791(a).
- 11. Toyota is a "manufacturer" as defined by Cal. Civ. Code § 1791(j).
- 12. Plaintiff's purchase of the vehicle was a "sale" as defined by Cal. Civ. Code 1791(n).
- 13. Toyota breached the express written warranty by failing to conform the vehicle to the express written warranty within a reasonable number of repair attempts or within the warranty period.
- 14. The above-described defects, malfunctions, and nonconformities substantially impair the use, value, and safety of the vehicle.
- 15. Plaintiff has not made unreasonable or unintended use of the vehicle.

///

1 16. Pursuant to Civil Code § 1793.2(d), Toyota must refund the price of the vehicle to  
2 Plaintiff.

3 17. Pursuant to Civil Code § 1794(a), Plaintiff is entitled to restitution of all consideration  
4 given to Toyota.

5 18. As a direct and proximate result of said breach of express warranty, Plaintiff has sustained,  
6 and continues to sustain, incidental and consequential damages in the approximate amount of  
7 \$75,000.00 according to proof.

8 18. The failure of Toyota to comply with the express warranty was willful in that Toyota had  
9 actual knowledge of the vehicle's defects and malfunctions, knew of its legal duties under the  
10 warranty and the law, but repeatedly refused to make necessary repairs and/or provide a refund.

11 19. Pursuant to Civil Code § 1794(c), Plaintiff is entitled to a civil penalty of two times the  
12 amount of his actual damages.

13 20. Pursuant to Civil Code § 1794(d), Plaintiff is entitled to reasonable attorney fees according  
14 to proof.

15 **SECOND CAUSE OF ACTION**  
16 **Breach of Implied Warranty—Song-Beverly Consumer Warranty Act**

17 21. Plaintiff incorporates by reference all preceding paragraphs.

18 22. Pursuant to Cal. Civ. Code § 1792, the vehicle was accompanied by the manufacturer's  
19 implied warranty of merchantability.

20 23. Pursuant to Civil Code § 1793, and because of the existence of the express warranty,  
21 Toyota may not disclaim, limit, or modify the implied warranties provided by the Song-Beverly  
22 Act.

23 24. Toyota breached the implied warranty of merchantability of Civil Code §§ 1791.1 and  
24 1792 in that the above-described defects, malfunctions, and nonconformities render the vehicle  
25 unfit for the ordinary purposes for which it is used and it would not pass without objection in the  
26 trade.

27 25. Pursuant to Civil Code § 1794(a), Plaintiff is entitled to restitution of all consideration  
28 given to Toyota.

1 26. As a direct and proximate result of said breach of implied warranty, Plaintiff has  
2 sustained, and continues to sustain, incidental and consequential damages in the approximate  
3 amount of \$75,000.00.

4 27. Pursuant to Civil Code § 1794(d), Plaintiff is entitled to reasonable attorney fees according  
5 to proof.

6 **THIRD CAUSE OF ACTION**  
7 **Breach of Written Warranty--Magnuson-Moss Warranty Act**

8 28. Plaintiff incorporates by reference all preceding paragraphs.

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

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

11 31. Toyota is a "supplier" and a "warrantor" as defined respectively by 15 U.S.C. § 2301(4)  
12 and (5).

13 32. The express written warranty is a "written warranty" as defined by 15 U.S.C. § 2301(6).

14 33. Toyota breached the written warranty by failing to conform the vehicle to the express  
15 warranty within a reasonable number of attempts, a reasonable amount of time or within the  
16 warranty period itself.

17 34. Prior to commencing this action, Plaintiff afforded Toyota reasonable opportunities to cure  
18 the failures and to comply with the terms of the written warranty.

19 35. Pursuant to 15 U.S.C. § 2310(d)(1), Plaintiff is entitled to the equitable remedies of  
20 rescission and restitution and/or damages. Plaintiff revokes acceptance of the vehicle and  
21 rescinds the contract. Plaintiff is entitled to restitution of all consideration given.

22 36. As a proximate result of the breach of written warranty, Plaintiff has sustained, and  
23 continues to sustain damages, both economic and noneconomic, in the approximate amount of  
24 \$75,000.00.

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

27 ///  
28 ///

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

38. Plaintiff incorporates by reference all preceding paragraphs.

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

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

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

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

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for judgment against Toyota as follows:

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

DATED: November 9, 2009

MAKLER & BAKER LLP

By

  
JULIANNA R. MAKLER  
Attorneys for Plaintiff STUART GRANT

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <b>Jullanna R. Makler (SBN 189138)</b> <b>MAKLER &amp; BAKER LLP</b> <b>3 W. Camillo Street, Ste 216, Santa Barbara, CA 93101</b>  TELEPHONE NO.: (805) 965-4651 FAX NO.: (805) 965-4671		FOR COURT USE ONLY <b>FILED</b> <b>LOS ANGELES SUPERIOR COURT</b>  <b>JAN 08 2010</b>  JENNIFER A. CLARKE, CLERK  BY DAWN ALEXANDER
ATTORNEY FOR (Name): <b>Plaintiff Stuart Grant</b>		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES STREET ADDRESS: <b>111 North Hill Street</b> MAILING ADDRESS: CITY AND ZIP CODE: <b>Los Angeles</b> BRANCH NAME: <b>Stanley Mosk Courthouse/Central District</b>		
CASE NAME: <b>STUART GRANT v. TOYOTA MOTOR SALES USA, INC.</b>		
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> <b>Unlimited</b> (Amount demanded exceeds \$25,000) <input type="checkbox"/> <b>Limited</b> (Amount demanded is \$25,000 or less)		CASE NUMBER: <b>BC420845</b>
<input type="checkbox"/> <b>Complex Case Designation</b> <input type="checkbox"/> <b>Counter</b> <input type="checkbox"/> <b>Joinder</b> Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)		JUDGE: DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

<input type="checkbox"/> <b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (48)	<input type="checkbox"/> <b>Contract</b> <input type="checkbox"/> Breach of contract/warranty (08) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37)	<input type="checkbox"/> <b>Provisionally Complex Civil Litigation</b> (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (36) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)
<input type="checkbox"/> <b>Other PUPD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PUPD/WD (23)	<input type="checkbox"/> <b>Real Property</b> <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26)	<input type="checkbox"/> <b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20)
<input type="checkbox"/> <b>Non-PUPD/WD (Other) Tort</b> <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (18) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PUPD/WD tort (35)	<input type="checkbox"/> <b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38)	<input type="checkbox"/> <b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input checked="" type="checkbox"/> Other complaint (not specified above) (42)
<input type="checkbox"/> <b>Employment</b> <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	<input type="checkbox"/> <b>Judicial Review</b> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<input type="checkbox"/> <b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)

2. This case  is  is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- |  |  |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties   | d. <input type="checkbox"/> Large number of witnesses  |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence   | f. <input type="checkbox"/> Substantial postjudgment judicial supervision  |
3. Remedies sought (check all that apply): a.  monetary    b.  nonmonetary; declaratory or injunctive relief    c.  punitive
4. Number of causes of action (specify): 4
5. This case  is  is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-016.)

Date: January 8, 2009

Jullanna R. Makler  
(TYPE OR PRINT NAME)

*Jullanna Makler*  
(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**NOTICE**

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

**INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET**

**To Plaintiffs and Others Filing First Papers.** If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

**To Parties in Rule 3.740 Collections Cases.** A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

**To Parties in Complex Cases.** In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

**CASE TYPES AND EXAMPLES**

<p><b>Auto Tort</b>                  Auto (22)—Personal Injury/Property Damage/Wrongful Death                  Uninsured Motorist (48) (if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)  <b>Other P/VPD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b>                  Asbestos (04)                  Asbestos Property Damage                  Asbestos Personal Injury/Wrongful Death                  Product Liability (not asbestos or toxic environments) (24)                  Medical Malpractice (45)                  Medical Malpractice—Physicians &amp; Surgeons                  Other Professional Health Care Malpractice                  Other P/VPD/WD (23)                  Premises Liability (e.g., slip and fall)                  Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)                  Intentional Infliction of Emotional Distress                  Negligent Infliction of Emotional Distress                  Other P/VPD/WD  <b>Non-P/VPD/WD (Other) Tort</b>                  Business Tort/Unfair Business Practice (07)                  Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08)                  Defamation (e.g., slander, libel) (13)                  Fraud (16)                  Intellectual Property (19)                  Professional Negligence (26)                  Legal Malpractice                  Other Professional Malpractice (not medical or legal)                  Other Non-P/VPD/WD Tort (35)  <b>Employment</b>                  Wrongful Termination (36)                  Other Employment (15)</p>	<p><b>Contract</b>                  Breach of Contract/Warranty (06)                  Breach of Rental/Lease                  Contract (not unlawful detainer or wrongful eviction)                  Contract/Warranty Breach—Seller Plaintiff (not fraud or negligence)                  Negligent Breach of Contract/Warranty                  Other Breach of Contract/Warranty                  Collections (e.g., money owed, open book accounts) (09)                  Collection Case—Seller Plaintiff                  Other Promissory Note/Collections Case                  Insurance Coverage (not provisionally complex) (18)                  Auto Subrogation                  Other Coverage                  Other Contract (37)                  Contractual Fraud                  Other Contract Dispute  <b>Real Property</b>                  Eminent Domain/Inverse Condemnation (14)                  Wrongful Eviction (33)                  Other Real Property (e.g., quiet title) (26)                  Writ of Possession of Real Property                  Mortgage Foreclosure                  Quiet Title                  Other Real Property (not eminent domain, landlord/tenant, or foreclosure)  <b>Unlawful Detainer</b>                  Commercial (31)                  Residential (32)                  Drugs (38) (if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)  <b>Judicial Review</b>                  Asset Forfeiture (05)                  Petition Re: Arbitration Award (11)                  Writ of Mandate (02)                  Writ—Administrative Mandamus                  Writ—Mandamus on Limited Court Case Matter                  Writ—Other Limited Court Case                  Review                  Other Judicial Review (39)                  Review of Health Officer Order                  Notice of Appeal—Labor                  Commissioner Appeals</p>	<p><b>Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)</b>                  Antitrust/Trade Regulation (03)                  Construction Defect (10)                  Claims Involving Mass Tort (40)                  Securities Litigation (28)                  Environmental/Toxic Tort (35)                  Insurance Coverage Claims (arising from provisionally complex case type listed above) (18)  <b>Enforcement of Judgment</b>                  Enforcement of Judgment (20)                  Abstract of Judgment (State of County)                  Confession of Judgment (non-domestic relations)                  Sister State Judgment                  Administrative Agency Review (not unpaid taxes)                  Petition/Certification of Entry of Judgment on Unpaid Taxes                  Other Enforcement of Judgment Case  <b>Miscellaneous Civil Complaint</b>                  RICO (27)                  Other Complaint (not specified above) (42)                  Declaratory Relief Only                  Injunctive Relief Only (non-harassment)                  Mechanics Lien                  Other Commercial Complaint Case (non-tort/non-complex)                  Other Civil Complaint (non-tort/non-complex)  <b>Miscellaneous Civil Petition</b>                  Partnership and Corporate Governance (21)                  Other Petition (not specified above) (43)                  Civil Harassment                  Workplace Violence                  Elder/Dependent Adult Abuse                  Election Contest                  Petition for Name Change                  Petition for Relief From Lata Claim                  Other Civil Petition</p>
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SHORT TITLE: Grant v. Toyota Motor Sales USA, INC.	CASE NUMBER <b>BC420345</b>
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**CIVIL CASE COVER SHEET ADDENDUM AND STATEMENT OF LOCATION  
 (CERTIFICATE OF GROUNDS FOR ASSIGNMENT TO COURTHOUSE LOCATION)**

**This form is required pursuant to LASC Local Rule 2.0 in all new civil case filings in the Los Angeles Superior Court.**

Item I. Check the types of hearing and fill in the estimated length of hearing expected for this case:

JURY TRIAL?  YES CLASS ACTION?  YES LIMITED CASE?  YES TIME ESTIMATED FOR TRIAL 5  HOURS  DAYS

Item II. Select the correct district and courthouse location (4 steps – If you checked "Limited Case", skip to Item III, Page 4)  
**Step 1:** After first completing the Civil Case Cover Sheet Form, find the main civil case cover sheet heading for your case in the left margin below, and, to the right in Column A, the Civil Case Cover Sheet case type you selected.  
**Step 2:** Check one Superior Court type of action in Column B below which best describes the nature of this case  
**Step 3:** In Column C, circle the reason for the court location choice that applies to the type of action you have checked. For any exception to the court location, see Los Angeles Superior Court Local Rule 2.0.

**Applicable Reasons for Choosing Courthouse Location (see Column C below)**

- |   |   |
|---|---|
| 1. Class Actions must be filed in the County Courthouse, Central District.      | 6. Location of property or permanently garaged vehicle.   |
| 2. May be filed in Central (Other county, or no Bodily Injury/Property Damage). | 7. Location where petitioner resides.                     |
| 3. Location where cause of action arose.  | 8. Location wherein defendant/respondent functions/vends. |
| 4. Location where bodily injury, death or damage occurred.                      | 9. Location where one or more of the parties reside.      |
| 5. Location where performance required or defendant resides.                    | 10. Location of Labor Commissioner Office.                |

**Step 4:** Fill in the information requested on page 4 in Item III; complete Item IV. Sign the declaration.

	<b>A</b> Civil Case Cover Sheet Category No.	<b>B</b> Type of Action (Check only one)	<b>C</b> Applicable Reason(s) See Step 3 Above
<b>Auto Tort</b>	Auto (22)	<input type="checkbox"/> A7100 Motor Vehicle - Personal Injury/Property Damage/Wrongful Death	1., 2., 4.
	Uninsured Motorist (46)	<input type="checkbox"/> A7110 Personal Injury/Property Damage/Wrongful Death – Uninsured Motorist	1., 2., 4.
<b>Other Personal Injury/Property Damage/Wrongful Death Tort</b>	Asbestos (04)	<input type="checkbox"/> A6070 Asbestos Property Damage <input type="checkbox"/> A7221 Asbestos - Personal Injury/Wrongful Death	2. 2.
	Product Liability (24)	<input type="checkbox"/> A7260 Product Liability (not asbestos or toxic/environmental)	1., 2., 3., 4., 6.
	Medical Malpractice (45)	<input type="checkbox"/> A7210 Medical Malpractice - Physicians & Surgeons <input type="checkbox"/> A7240 Other Professional Health Care Malpractice	1., 2., 4. 1., 2., 4.
	Other Personal Injury Property Damage Wrongful Death (23)	<input type="checkbox"/> A7260 Premises Liability (e.g., slip and fall)	1., 2., 4.
		<input type="checkbox"/> A7230 Intentional Bodily Injury/Property Damage/Wrongful Death (e.g., assault, vandalism, etc.)	1., 2., 4.
<input type="checkbox"/> A7270 Intentional Infliction of Emotional Distress		1., 2., 3.	
<input type="checkbox"/> A7220 Other Personal Injury/Property Damage/Wrongful Death		1., 2., 4.	
<b>Non-Personal Injury/Property Damage/Wrongful Death Tort</b>	Business Tort (07)	<input type="checkbox"/> A6029 Other Commercial/Business Tort (not fraud/breach of contract)	1., 2., 3.
	Civil Rights (08)	<input type="checkbox"/> A6006 Civil Rights/Discrimination	1., 2., 3.
	Defamation (13)	<input type="checkbox"/> A6010 Defamation (slander/libel)	1., 2., 3.
	Fraud (16)	<input type="checkbox"/> A6013 Fraud (no contract)	1., 2., 3.

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**CIVIL CASE COVER SHEET ADDENDUM  
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Non-Personal Injury/Property Damage/  
 Wrongful Death Tort (Cont'd.)  
 Employment  
 Contract  
 Real Property  
 Unlawful Detainer

SHORT TITLE: Grant v. Toyota Motor Sales USA, INC.		CASE NUMBER
A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons -See Step 3 Above
Professional Negligence (25)	<input type="checkbox"/> A6017 Legal Malpractice	1., 2., 3.
	<input type="checkbox"/> A6050 Other Professional Malpractice (not medical or legal)	1., 2., 3.
Other (35)	<input type="checkbox"/> A6025 Other Non-Personal Injury/Property Damage tort	2., 3.
Wrongful Termination (36)	<input type="checkbox"/> A6037 Wrongful Termination	1., 2., 3.
Other Employment (15)	<input type="checkbox"/> A6024 Other Employment Complaint Case	1., 2., 3.
	<input type="checkbox"/> A6109 Labor Commissioner Appeals	10.
Breach of Contract/Warranty (06) (not insurance)	<input type="checkbox"/> A6004 Breach of Rental/Lease Contract (not Unlawful Detainer or wrongful eviction)	2., 5.
	<input type="checkbox"/> A6008 Contract/Warranty Breach - Seller Plaintiff (no fraud/negligence)	2., 6.
	<input type="checkbox"/> A6019 Negligent Breach of Contract/Warranty (no fraud)	1., 2., 5.
	<input type="checkbox"/> A6028 Other Breach of Contract/Warranty (not fraud or negligence)	1., 2., 5.
Collections (09)	<input type="checkbox"/> A6002 Collections Case-Seller Plaintiff	2., 5., 6.
	<input type="checkbox"/> A6012 Other Promissory Note/Collections Case	2., 5.
Insurance Coverage (18)	<input type="checkbox"/> A6015 Insurance Coverage (not complex)	1., 2., 5., 8.
Other Contract (37)	<input type="checkbox"/> A6009 Contractual Fraud	1., 2., 3., 5.
	<input type="checkbox"/> A6031 Tortious Interference	1., 2., 3., 5.
	<input type="checkbox"/> A6027 Other Contract Dispute(not breach/insurance/fraud/negligence)	1., 2., 3., 8.
Eminent Domain/Inverse Condemnation (14)	<input type="checkbox"/> A7300 Eminent Domain/Condemnation Number of parcels _____	2.
Wrongful Eviction (33)	<input type="checkbox"/> A6023 Wrongful Eviction Case	2., 6.
Other Real Property (26)	<input type="checkbox"/> A6018 Mortgage Foreclosure	2., 6.
	<input type="checkbox"/> A6032 Quiet Title	2., 6.
	<input type="checkbox"/> A6060 Other Real Property (not eminent domain, landlord/tenant, foreclosure)	2., 6.
Unlawful Detainer-Commercial (31)	<input type="checkbox"/> A6021 Unlawful Detainer-Commercial (not drugs or wrongful eviction)	2., 6.
Unlawful Detainer-Residential (32)	<input type="checkbox"/> A6020 Unlawful Detainer-Residential (not drugs or wrongful eviction)	2., 6.
Unlawful Detainer-Drugs (38)	<input type="checkbox"/> A6022 Unlawful Detainer-Drugs	2., 6.
Asset Forfeiture (05)	<input type="checkbox"/> A6108 Asset Forfeiture Case	2., 6.
Petition to Arbitrate (11)	<input type="checkbox"/> A6116 Petition to Compel/Confirm/Vacate Arbitration	2., 5.

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**CIVIL CASE COVER SHEET ADDENDUM  
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SHORT TITLE: Grant v. Toyota Motor Sales USA, INC.	CASE NUMBER
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Judicial Review (Cont'd.)  
  
 Provisionally Complex Litigation  
  
 Enforcement of Judgment  
  
 Miscellaneous Civil Complaints  
  
 Miscellaneous Civil Petitions

A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Writ of Mandate (02)	<input type="checkbox"/> A6151 Writ - Administrative Mandamus <input type="checkbox"/> A6152 Writ - Mandamus on Limited Court Case Matter <input type="checkbox"/> A6153 Writ - Other Limited Court Case Review	2., 8. 2. 2.
Other Judicial Review (39)	<input type="checkbox"/> A6160 Other Writ/Judicial Review	2., 8.
Antitrust/Trade Regulation (03)	<input type="checkbox"/> A6003 Antitrust/Trade Regulation	1., 2., 8.
Construction Defect (10)	<input type="checkbox"/> A6007 Construction defect	1., 2., 3.
Claims Involving Mass Tort (40)	<input type="checkbox"/> A6008 Claims Involving Mass Tort	1., 2., 8.
Securities Litigation (28)	<input type="checkbox"/> A6035 Securities Litigation Case	1., 2., 8.
Toxic Tort Environmental (30)	<input type="checkbox"/> A6036 Toxic Tort/Environmental	1., 2., 3., 8.
Insurance Coverage Claims from Complex Case (41)	<input type="checkbox"/> A6014 Insurance Coverage/Subrogation (complex case only)	1., 2., 5., 8.
Enforcement of Judgment (20)	<input type="checkbox"/> A6141 Sister State Judgment <input type="checkbox"/> A6180 Abstract of Judgment <input type="checkbox"/> A6107 Confession of Judgment (non-domestic relations) <input type="checkbox"/> A6140 Administrative Agency Award (not unpaid taxes) <input type="checkbox"/> A6114 Petition/Certificate for Entry of Judgment on Unpaid Tax <input type="checkbox"/> A6112 Other Enforcement of Judgment Case	2., 8. 2., 8. 2., 8. 2., 8. 2., 8. 2., 8., 9.
RICO (27)	<input type="checkbox"/> A6000 RICO (RICO) Case	1., 2., 8.
Other Complaints (Not Specified Above) (42)	<input type="checkbox"/> A6030 Declaratory Relief Only <input type="checkbox"/> A6040 Injunctive Relief Only (not domestic/harassment) <input type="checkbox"/> A6011 Other Commercial Complaint Case (non-tort/non-complex) <input checked="" type="checkbox"/> A6000 Other Civil Complaint (non-tort/non-complex)	1., 2., 8. 2., 8. 1., 2., 8. 1., 2., 8.
Partnership Corporation Governance(21)	<input type="checkbox"/> A6113 Partnership and Corporate Governance Case	2., 8.
Other Petitions (Not Specified Above) (43)	<input type="checkbox"/> A6121 Civil Harassment <input type="checkbox"/> A6123 Workplace Harassment <input type="checkbox"/> A6124 Elder/Dependent Adult Abuse Case <input type="checkbox"/> A6190 Election Contest <input type="checkbox"/> A6110 Petition for Change of Name <input type="checkbox"/> A6170 Petition for Relief from Late Claim Law <input type="checkbox"/> A6100 Other Civil Petition	2., 3., 9. 2., 3., 9. 2., 3., 9. 2. 2., 7. 2., 3., 4., 8. 2., 9.

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**CIVIL CASE COVER SHEET ADDENDUM  
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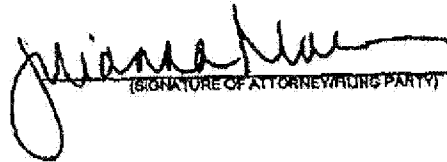
SHORT TITLE: Grant v. Toyota Motor Sales USA, INC.	CASE NUMBER
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Item III. Statement of Location: Enter the address of the accident, party's residence or place of business, performance, or other circumstance indicated in Item II., Step 3 on Page 1, as the proper reason for filing in the court location you selected.

REASON: CHECK THE NUMBER UNDER COLUMN C WHICH APPLIES IN THIS CASE		ADDRESS: 17511 Rayen St., Northridge, CA 91325	
<input type="checkbox"/> 1. <input checked="" type="checkbox"/> 2. <input type="checkbox"/> 3. <input type="checkbox"/> 4. <input type="checkbox"/> 5. <input type="checkbox"/> 6. <input type="checkbox"/> 7. <input type="checkbox"/> 8. <input type="checkbox"/> 9. <input type="checkbox"/> 10.			
CITY: Northridge	STATE: CA	ZIP CODE: 91325	

Item IV. Declaration of Assignment: I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that the above-entitled matter is properly filed for assignment to the Stanley Mosk courthouse in the Central District of the Los Angeles Superior Court (Code Civ. Proc., § 392 et seq., and LASC Local Rule 2.0, subds. (b), (c) and (d)).

Dated: January 8, 2010

  
(SIGNATURE OF ATTORNEY/FILING PARTY)

**PLEASE HAVE THE FOLLOWING ITEMS COMPLETED AND READY TO BE FILED IN ORDER TO PROPERLY COMMENCE YOUR NEW COURT CASE:**

1. Original Complaint or Petition.
2. If filing a Complaint, a completed Summons form for issuance by the Clerk.
3. Civil Case Cover Sheet form CM-010.
4. Complete Addendum to Civil Case Cover Sheet form LACIV 109 (Rev. 01/07), LASC Approved 03-04.
5. Payment in full of the filing fee, unless fees have been waived.
6. Signed order appointing the Guardian ad Litem, JC form FL-935, if the plaintiff or petitioner is a minor under 18 years of age, or if required by Court.
7. Additional copies of documents to be conformed by the Clerk. Copies of the cover sheet and this addendum must be served along with the summons and complaint, or other initiating pleading in the case.

# **EXHIBIT B**



**Service of Process  
Transmittal**

02/12/2010

CT Log Number 516155963

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

**RE: Process Served In California**

**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:** Stuart Grant, etc., Pltf. vs. Toyota Motor Sales USA, Inc., etc., et al., Dfts.  
*Name discrepancy noted.*

**DOCUMENT(S) SERVED:** Summons, First Amended Complaint

**COURT/AGENCY:** Los Angeles County, Superior Court, Hill Street, CA  
Case # BC429345

**NATURE OF ACTION:** Product Liability Litigation - Breach of Warranty - Class Action - 2008 Toyota Sequoia, VIN 5TDBY67A48S002958 - Failing to confirm the vehicle to the express written warranty within a reasonable number of repair attempts

**ON WHICH PROCESS WAS SERVED:** C T Corporation System, Los Angeles, CA

**DATE AND HOUR OF SERVICE:** By Process Server on 02/12/2010 at 14:55

**APPEARANCE OR ANSWER DUE:** Within 30 days after service

**ATTORNEY(S) / SENDER(S):** Julianna R. Makler  
Makler & Baker LLP  
3 W. Carrillo Street  
Suite 216  
Santa Barbara, CA 93101  
805-965-4651

**ACTION ITEMS:** SOP Papers with Transmittal, via Fed Ex Standard Overnight, 792175522179  
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  
**PER:** Nancy Flores  
**ADDRESS:** 818 West Seventh Street  
Los Angeles, CA 90017  
**TELEPHONE:** 213-337-4615

Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of package only, not contents.

# **EXHIBIT C**

1 **MAKLER & BAKER LLP**  
Julianna R. Makler (SBN 189138)  
2 Terry L. Baker (SBN 214365)  
3 3 W. Carrillo Street, Suite 216  
Santa Barbara, CA 93101  
4 Tel: (805) 965-4651  
Fax: (805) 965-4671

5 **GRIFFIN & ASSOCIATES**  
David R. Griffin (SBN 76619)  
6 501 W. Broadway, Suite 800  
San Diego, CA 92101  
7 Tel: (619) 222-0888  
8 Fax: (619) 923-3680

9 Attorneys for Plaintiff  
STUART GRANT

10  
11  
12 **SUPERIOR COURT IN THE STATE OF CALIFORNIA**  
13 **FOR THE COUNTY OF LOS ANGELES**

14 **STUART GRANT, an individual;**

Case number: BC429345

15 Plaintiff,

**FIRST AMENDED COMPLAINT FOR  
DAMAGES AND INJUNCTIVE RELIEF**

16 vs.

17 **TOYOTA MOTOR SALES USA, INC., a**  
18 **corporation; and DOES ONE through**  
19 **TWENTY**

**Song-Beverly Warranty Act  
Magnuson-Moss Warranty Act  
Unfair Competition Law**

20 Defendants.

**CLASS ACTION**

21  
22  
23 **INTRODUCTION**

24 I. This lawsuit centers on the recall of more than 8.5 million vehicles manufactured by  
25 Toyota Motor Sales USA, Inc. These recalls have tarnished Toyota's reputation for making some  
26 of the most reliable vehicles on the road. It is the most prominent auto safety issue since reports  
27 surfaced in 2000 that many Firestone tires mounted on Ford Explorers failed.

28 ///



1 2. Prior to January 21, 2010, Toyota maintained one of the highest customer  
2 satisfaction records. Many consumers were willing to pay premium price for Toyota vehicles,  
3 spending thousands more than they would pay for comparable vehicles from other manufacturers.

4 3. Toyota vehicles have been recalled for numerous defects and nonconformities,  
5 including sudden acceleration caused by defective floor mats and/or faulty accelerator pedals and  
6 more recently braking system failures.

7 4. Defendant Toyota knew or should have known about the widespread safety issues in  
8 the vehicles it manufactured since at least 2007, and yet it has repeatedly failed to disclose such  
9 information to California consumers. Many consumers would never have purchased Toyota  
10 vehicles had they known about these defects and nonconformities which jeopardize safety and  
11 lives. Furthermore, the widespread recalls have seriously sliced Toyota vehicles' resale values  
12 by 3.5% to 5%.

13 5. Plaintiff STUART GRANT brings this action on behalf of himself and others similarly  
14 situated and on behalf of the general public as a private attorney general to stop this unlawful  
15 conduct and to provide restitution to victimized consumers.

16 **FACTS COMMON TO PLAINTIFF STUART GRANT**

17 6. Defendant Toyota Motor Sales USA, Inc. (hereinafter "Toyota") is a duly authorized  
18 corporation doing business in Los Angeles County, California.

19 7. Plaintiff does not know the true names of the Defendants sued herein as Does One  
20 through Twenty and sues said Defendants pursuant to the provisions of Code of Civil Procedure  
21 § 474.

22 8. On or about June 27, 2008, Plaintiff purchased a 2008 Toyota Sequoia, VIN  
23 5TDBY67A48S002958 ("vehicle"), which was manufactured and warranted by Toyota.

24 9. In connection with the transaction, Toyota issued to Plaintiff an express warranty within  
25 the meaning of Cal. Civil Code § 1791.2, which is also a written warranty within the meaning  
26 of 15 U.S.C. § 2301(6). By the terms of the express written warranty, Toyota promised that the  
27 vehicle's material and workmanship were defect free, undertook to preserve and maintain the  
28

1 utility and performance of the vehicle and to provide compensation if there is a failure in utility  
2 or performance, and agreed to refund, repair, replace, or take other remedial action with respect  
3 to the vehicle.

4 10. Plaintiff purchased the vehicle primarily for personal, family or household purposes.

5 11. Subsequent to Plaintiff's transaction, the vehicle exhibited numerous defects and  
6 nonconformities covered by the warranty which substantially impair the use, value and safety of  
7 the motor vehicle to the Plaintiff.

8 12. Plaintiff delivered the nonconforming motor vehicle to Toyota's authorized repair  
9 facilities for repairs pursuant to the terms of the warranty. Toyota has failed to repair or replace  
10 the vehicle.

11 **FACTS RELATING TO CLASS ACTION ALLEGATIONS**

12 13. Since September 2007 to the date of the filing of this complaint, Defendant Toyota  
13 has recalled 8.5 million vehicles due to possible sudden acceleration. Toyota claims the defect  
14 stems from an alleged faulty accelerator pedals and the possibility that floor mats could jam the  
15 accelerator pedal.

16 14. As of January 26, 2010, Toyota stopped selling eight models in the United States and  
17 Canada, including its popular Camry (2007-2010 model years) and Corolla (2009-2010 model  
18 years), because of possible unintended acceleration. Other recalled Toyota vehicles for this defect  
19 include the 2009-2010 Avalon, 2010 Highlander, 2009-2010 Matrix, 2009-2010 RAV4, 2008-  
20 2010 Sequoia, and the 2007-2010 Tundra.

21 15. Plaintiff is informed and believes at least 19 deaths and 341 injuries stemming from 815  
22 separate crashes involving Toyotas and sudden acceleration.

23 16. On February 9, 2010, Toyota recalled 437,000 hybrid cars, including its latest Prius  
24 model to repair a software glitch in its antilock braking system.

25 17. These recalls have, and continue to, tarnish Toyota's reputation for making some of the  
26 most reliable vehicles on the road. It is the most prominent auto safety issue since reports surfaced  
27 in 2000 that many Firestone tires mounted on Ford Explorers failed.

1 18. Since 2003, nine U.S. investigations by the National Highway Traffic Safety  
2 Administration (hereafter "NHTSA"), into sudden acceleration complaints show Toyota  
3 repeatedly ruled out many owner complaints, dismissed several concerns as posing no danger,  
4 and modified models in production without offering similar changes to vehicles already on the  
5 road. Instead, Toyota has blamed the sudden acceleration events on driver error, saying it was  
6 impossible for the electronics to malfunction. Not until the 2007 floor mat investigation did any  
7 of the complaints lead to a recall.

8 19. Since the 1990s, NHTSA had concluded that most sudden acceleration complaints  
9 were caused by drivers mistakenly hitting the gas pedal instead of the brake. When a  
10 Massachusetts man asked in April 2003 for an investigation of 1997-2000 model Lexus sedans,  
11 citing 271 complaints of unintended acceleration, NHTSA rejected his request without querying  
12 Toyota for data.

13 20. In February 2004, a nurse from Maryland asked the agency to review the 2002 and  
14 2003 Lexus ES350 sedans, saying her throttle had malfunctioned several times and led to one  
15 crash. A month later, NHTSA launched a wider investigation into the electronic throttles on  
16 nearly 1 million Lexus and Toyota sedans, citing more than 100 complaints.

17 21. From the start, Toyota pushed NHTSA to narrowly define the problem as short bursts  
18 where the engine surged to "something less than a wide-open throttle." It compared many of the  
19 complaints to the prior sudden acceleration cases that NHTSA had previously deemed driver  
20 error. Toyota also claimed the computer could not open the throttle without the accelerator pedal  
21 being pressed, and contended even if built-in safety checks failed, stepping on the brakes would  
22 stop the car.

23 22. The recalls since September 2007 have now created a stigma of unreliability and  
24 safety concern which will be retained in all Toyota vehicles, not just those vehicles recalled.  
25 Kelley Blue Book, a leading used-car value service, is lowering its estimated prices for the  
26 recalled models by 3.5% to 5%. That's enough to lower the value of each vehicle by between  
27 \$800-\$1,500.

28

**FIRST CAUSE OF ACTION**  
**Violations of the Song-Beverly Consumer Warranty Act**  
**On Behalf of Plaintiff Stuart Grant Only**

23. Plaintiff incorporates all preceding paragraphs.

24. Plaintiff is a "buyer" as defined by Cal. Civ. Code § 1791(b).

25. The vehicle is a "consumer good" as defined by Cal. Civ. Code § 1791(a).

26. Toyota is a "manufacturer" as defined by Cal. Civ. Code § 1791(j).

27. Plaintiff's purchase of the vehicle was a "sale" as defined by Cal. Civ. Code 1791(n).

28. Toyota violated the Song-Beverly Act by failing to conform the vehicle to the express written warranty within a reasonable number of repair attempts or within the warranty period and failing to promptly replace the vehicle or make restitution to the plaintiff.

29. The above-described defects, malfunctions, and nonconformities substantially impair the use, value, and safety of the vehicle.

30. Plaintiff has not made unreasonable or unintended use of the vehicle.

31. Pursuant to Civil Code § 1793.2(d), Toyota must refund the price of the vehicle to Plaintiff.

32. Pursuant to Civil Code § 1794(a), Plaintiff is entitled to restitution of all consideration given to Toyota.

33. As a direct and proximate result of said violations of the Song-Beverly Act, Plaintiff has sustained, and continues to sustain, incidental and consequential damages in the approximate amount of \$75,000.00 according to proof.

34. The failure of Toyota to comply with the express warranty was willful in that Toyota had actual knowledge of the vehicles' defects and malfunctions, knew of its legal duties under the warranty and the law, but repeatedly refused to make necessary repairs and/or provide a refund.

35. Pursuant to Civil Code § 1794(c), Plaintiff is entitled to a civil penalty of two times the amount of his actual damages.

36. Pursuant to Civil Code § 1794(d), Plaintiff is entitled to reasonable attorney fees according to proof.

**SECOND CAUSE OF ACTION  
Violations of the Magnuson-Moss Warranty Act  
On Behalf of Plaintiff Stuart Grant Only**

37. Plaintiff incorporates by reference all preceding paragraphs.

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

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

40. Toyota is a "supplier" and a "warrantor" as defined respectively by 15 U.S.C. § 2301(4) and (5).

41. The express written warranty is a "written warranty" as defined by 15 U.S.C. § 2301(6).

42. Toyota violated the Magnuson-Moss Warranty Act by failing to conform the vehicle to the express warranty within a reasonable number of attempts, a reasonable amount of time or within the warranty period itself. Defendant failed to cure its failure to comply with the Act.

43. Prior to commencing this action, Plaintiff afforded Toyota reasonable opportunities to cure the failures and to comply with the Act.

44. Pursuant to 15 U.S.C. § 2310(d)(1), Plaintiff is entitled to the equitable remedies of rescission and restitution and/or damages. Plaintiff revokes acceptance of the vehicle and rescinds the contract. Plaintiff is entitled to restitution of all consideration given.

45. As a proximate result of the breach of written warranty, Plaintiff has sustained, and continues to sustain damages, both economic and noneconomic, in the approximate amount of \$75,000.00.

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

**THIRD CAUSE OF ACTION  
Breach of Express Warranty  
On Behalf of Plaintiff Stuart Grant and Others Similarly Situated**

47. Plaintiff incorporates by reference all preceding paragraphs.

48. Plaintiff brings this action on behalf of himself and others similarly situated on behalf of a class of all California consumers who purchased the following Toyota vehicles: 2007-2010 Camry, 2009-2010 Corolla 2009-2010, 2009-2010 Avalon, 2010 Highlander, 2009-2010 Matrix, 2009-2010 RAV4, 2008-2010 Sequoia, 2007-2010 Tundra

1 and the 2010 Prius.

2 49. The proposed Class is so numerous that joinder is impracticable. The members of  
3 the class are ascertainable through Defendants' records.

4 50. At all times mentioned, on or about January 2007, Toyota utilized media,  
5 professional publications and salespersons to urge the use and purchase of Toyota vehicles,  
6 including but not limited to and expressly warranted to members of the general public herein,  
7 that the vehicle and its component parts were free from latent defects or inherent risk of failure  
8 and were effective, proper and safe for their intended use.

9 51. Plaintiff and others similarly situated relied upon said express warranty  
10 representations of Toyota in the purchase of Toyota vehicles.

11 52. Defendant breached its warranties by selling vehicles that did not conform to the  
12 promises in the warranties given to Plaintiff and others similarly situated with their purchases.

13 53. After Plaintiff sustained the damages complained herein as a result of the defective  
14 condition of his vehicle, notice was given by Plaintiff, who has satisfied all terms of the contract  
15 and requirements, except as may be excused by misconduct of the Defendant. This complaint  
16 shall serve as further notice of damage as result of the defective condition of Toyota vehicles on  
17 behalf of Plaintiff and others similarly situated.

18 54. Questions of law and fact of common and general interest to the class exist as to all  
19 members of the class and predominate over any questions affecting only individual members of  
20 the class. The common questions include, among others, the following:

21 a. Whether Defendant Toyota breached the express warranty given in the sale of  
22 2007-2010 Camry, 2009-2010 Corolla 2009-2010, 2009-2010 Avalon, 2010 Highlander, 2009-  
23 2010 Matrix, 2009-2010 RAV4, 2008-2010 Sequoia, 2007-2010 Tundra and 2010 Prius.

24 55. Plaintiff's claims are typical of the claims of the class, as all such claims arise out  
25 of purchase of vehicles manufactured by Defendant where members of the class have been  
26 damaged by its breach of the express warranty.

27 56. Plaintiff will fairly and adequately protect the interest of the members of the  
28 class. Plaintiff has no interests antagonistic to the class. Plaintiff has retained counsel

1 experienced in the prosecution of class actions, including and especially consumer class actions.

2 57. A class action is also superior to other available methods for the fair and efficient  
3 adjudication of this controversy because the damages suffered by each individual member are  
4 relatively small compared to the expense and burden of prosecuting individual cases.

5 58. If individual class members were required to bring separate actions, courts  
6 throughout California would be confronted by a multiplicity of lawsuits burdening the court  
7 system while also creating the risk of inconsistent rulings and contradictory judgments. In  
8 contrast to proceeding on a case-by-case basis, in which inconsistent results will magnify the  
9 delay and expense to all parties and the court system, this class action presents far fewer  
10 management difficulties while providing unitary adjudication, economies of scale and  
11 comprehensive supervision by a single court.

12 **FOURTH CAUSE OF ACTION**  
13 **Breach of Implied Warranty--Song-Beverly Consumer Warranty Act**  
**On Behalf of Plaintiff Stuart Grant and Others Similarly Situated**

14 59. Plaintiff incorporates by reference all preceding paragraphs.

15 60. Plaintiff brings this action on behalf of himself and others similarly  
16 situated on behalf of a class of all California consumers who purchased Toyota vehicles  
17 manufactured by Toyota Motor Sales in the three years preceding the filing of this lawsuit.

18 61. The proposed Class is so numerous that joinder is impracticable. The members of  
19 the class are ascertainable through Defendants' records.

20 62. Pursuant to Cal. Civ. Code § 1792, Toyota vehicles purchased by California consumers  
21 was accompanied by the manufacturer's implied warranty of merchantability.

22 63. Pursuant to Civil Code § 1793, and because of the existence of the express warranty,  
23 Toyota may not disclaim, limit, or modify the implied warranties provided by the Song-Beverly  
24 Act.

25 64. Questions of law and fact of common and general interest to the class exist as to all  
26 members of the class and predominate over any questions affecting only individual members of  
27 the class. The common questions include, among others, the following:

28 ///

1 a. Whether Defendant Toyota's breached the implied warranty of merchantability of  
2 Civil Code §§ 1791.1 and 1792 in that the above-described defects, malfunctions, and  
3 nonconformities render its vehicle unfit for the ordinary purposes for which it is used and it  
4 would not pass without objection in the trade.

5 65. Plaintiff's claims are typical of the claims of the class, as all such claims arise out  
6 of purchase of vehicles manufactured by Defendant where members of the class have been  
7 damaged by its breach of the implied warranty of merchantability..

8 66. Plaintiff will fairly and adequately protect the interest of the members of the  
9 class. Plaintiff has no interests antagonistic to the class. Plaintiff has retained counsel  
10 experienced in the prosecution of class actions, including and especially consumer class actions.

11 67. A class action is also superior to other available methods for the fair and efficient  
12 adjudication of this controversy because the damages suffered by each individual member are  
13 relatively small compared to the expense and burden of prosecuting individual cases.

14 68. If individual class members were required to bring separate actions, courts  
15 throughout California would be confronted by a multiplicity of lawsuits burdening the court  
16 system while also creating the risk of inconsistent rulings and contradictory judgments. In  
17 contrast to proceeding on a case-by-case basis, in which inconsistent results will magnify the  
18 delay and expense to all parties and the court system, this class action presents far fewer  
19 management difficulties while providing unitary adjudication, economies of scale and  
20 comprehensive supervision by a single court.

21 69. Pursuant to Civil Code § 1794(a), Plaintiff and others similarly situated are entitled to  
22 restitution of all consideration.

23 70. As a direct and proximate result of said breach of implied warranty, Plaintiff and others  
24 similarly situated have sustained, and continue to sustain, incidental and consequential damages.

25 71. Pursuant to Civil Code § 1794(d), Plaintiff is entitled to reasonable attorney fees according  
26 to proof.

27 ///

28 ///



**FIFTH CAUSE OF ACTION**  
**Breach of Implied Warranty—Magnuson-Moss Warranty Act**  
**On Behalf of Plaintiff Stuart Grant and Others Similarly Situated**

72. Plaintiff incorporates by reference all preceding paragraphs.

73. Plaintiff brings this action on behalf of himself and others similarly situated on behalf of a class of all California consumers who purchased Toyota vehicles manufactured by Toyota Motor Sales in the three years preceding the filing of this lawsuit.

74. The proposed Class is so numerous that joinder is impracticable. The members of the class are ascertainable through Defendants' records.

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

76. Pursuant to 15 U.S.C. § 2310(d)(1), and because of said breaches of implied warranties, Plaintiff and other similarly situated are entitled to the equitable remedies of rescission and restitution and/or damages.

77. Questions of law and fact of common and general interest to the class exist as to all members of the class and predominate over any questions affecting only individual members of the class. The common questions include, among others, the following:

a. Whether Defendant Toyota's breached the implied warranty of merchantability contained in 15 U.S.C. § 2310(d)(1) in that the above-described defects, malfunctions, and nonconformities render its vehicle unfit for the ordinary purposes for which it is used and it would not pass without objection in the trade.

78. Plaintiff's claims are typical of the claims of the class, as all such claims arise out of purchase of vehicles manufactured by Defendant where members of the class have been damaged by its breach of the implied warranty of merchantability.

79. Plaintiff will fairly and adequately protect the interest of the members of the class. Plaintiff has no interests antagonistic to the class. Plaintiff has retained counsel experienced in the prosecution of class actions, including and especially consumer class actions.

///

1 80. A class action is also superior to other available methods for the fair and efficient  
2 adjudication of this controversy because the damages suffered by each individual member are  
3 relatively small compared to the expense and burden of prosecuting individual cases.

4 81. If individual class members were required to bring separate actions, courts  
5 throughout California would be confronted by a multiplicity of lawsuits burdening the court  
6 system while also creating the risk of inconsistent rulings and contradictory judgments. In  
7 contrast to proceeding on a case-by-case basis, in which inconsistent results will magnify the  
8 delay and expense to all parties and the court system, this class action presents far fewer  
9 management difficulties while providing unitary adjudication, economies of scale and  
10 comprehensive supervision by a single court.

11 82. As a proximate result of the breaches of implied warranty, Plaintiff and others similarly  
12 situated have sustained, and continues to sustain, damages, both economic and noneconomic.

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

15 **SIXTH CAUSE OF ACTION**  
16 **Violation of the Unfair Competition Law (Business and Professions Code section 17200 et**  
17 **seq.)**

18 **On Behalf of Plaintiff Stuart Grant and Others Similarly Situated**

19 84. Plaintiff incorporates by reference all preceding paragraphs.

20 85. The business acts and practices of Defendant as herein above described  
21 constitute fraudulent, unfair and unlawful business practices in violation of Business and  
22 Professions Code § 17200 et seq. without limitation:

23 1. Defendant's practice of failing to disclose to consumers known safety defects and  
24 nonconformities in the vehicles it manufactures to induce consumers to purchase its vehicles.

25 2. Defendants' practice of knowingly making false representations and  
26 concealing material facts about the vehicles it manufactures to induce consumers to purchase its  
27 vehicles.

28 3. Defendant's practice breached its warranties by selling vehicles that did not  
conform to the promises in the express warranties given to Plaintiff and others similarly situated

1 with their purchases, as set forth and described in the Third Cause of Action

2 4: Defendant's violations of the Song-Beverly Consumer Warranty Act, Civil Code  
3 §§ 1791.1 and 1792, as set forth and described in the Fourth Cause of Action, above.

4 5. Defendants' violations of the Magnuson-Moss Warranty Act, Civil Code §15  
5 U.S.C. § 2310(d)(1), and because of said breaches of implied warranties, as set forth and  
6 described in the Fifth Cause of Action, above.

7 86. The business acts and practices of Defendant as herein above described constitute  
8 unfair business practices in violation of the Unfair Competition Law in that such acts and  
9 practices are patently unfair and substantially injurious to consumers and offensive to established  
10 California public policy.

11 87. Pursuant to Business and Professions Code §17203, Plaintiff, individually, and  
12 on behalf of all members of the general public who are, has been or may be subjected to these  
13 business acts and practices of defendants hereby request injunctive relief prohibiting such  
14 practices in the future, and such other orders as may be necessary to restore to any identifiable  
15 person in interest, any money or property, real or personal, which may have been acquired by  
16 Defendant by means of such business practices. In addition, pursuant to Code of Civil Procedure  
17 §1021.5, Plaintiff is entitled to recover his reasonable attorney's fees, costs and expenses incurred  
18 in bringing this action.

19 **PRAYER FOR RELIEF**

20 **WHEREFORE**, Plaintiff respectfully prays for judgment against Toyota as follows:

21 On Behalf of Plaintiffs Individually:

- 22 1. That the contract be adjudged rescinded.
- 23 2. For restitution of all consideration paid.
- 24 3. For incidental and consequential damages.
- 25 4. For actual and statutory damages.
- 26 5. For reasonable attorney fees according to proof.
- 27 6. For costs and expenses incurred herein.
- 28 7. For such other relief as the Court deems proper.

1 8. For a civil penalty of two times Plaintiff's damages.

2 On Behalf of the Class as Described in the Third, Fourth, Fifth and Sixth Causes of Action:

3 1. A grant of restitution to Plaintiff and all members of the general public who  
4 have been affected by the aforementioned business practices and issue such other orders as may  
5 be necessary to restore to any identifiable person in interest, any money or property, real or  
6 personal, which may have been acquired by defendants by means of such practices;

7 2. Injunctive relief prohibiting Defendant's unlawful, deceptive and fraudulent  
8 conduct;

9 3. An award reasonable attorney's fees and costs;

10 4. An award of pre-judgment interest;

11 5. An award of such other and further relief as the court deems appropriate.

12 DATED: February 10, 2010

MAKLER & BAKER LLP

13  
14  
15 By 

JULIANNA R. MAKLER  
Attorneys for Plaintiff STUART GRANT

POS-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Julianna R Makler, 189138 MAKLER & BAKER LLP 3 W. Carrillo Street Suite 216 SANTA BARBARA, CA 93101-2259 TELEPHONE NO.: (805) 965-4651 ATTORNEY FOR (Name): Plaintiff	FOR COURT USE ONLY <b>FILED</b> SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES JAN 25 2010 John A. Clerk Executive Officer/Clerk By <i>[Signature]</i> GLORIETTA ROBINSON Deputy
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Superior Court of California, Los Angeles County 111 N. Hill Street Los Angeles, CA 90012-3117	
PLAINTIFF/PETITIONER: Grant DEFENDANT/RESPONDENT: Toyota Motor Sales USA, INC., et al.	CASE NUMBER: BC429345 <i>Dept. 52</i>
<b>PROOF OF SERVICE OF SUMMONS</b>	

1. At the time of service I was a citizen of the United States, at least 18 years of age and not a party to this action.
2. I served copies of: Summons, Complaint For Damages

**BY FAX**

3. a. Party served: Toyota Motor Sales USA, INC., a corporation
  - b. Person Served: CT CORPORATION - Maria Sanchez - Person authorized to accept service of process
4. Address where the party was served: 818 West Seventh Street 2nd Floor  
Los Angeles, CA 90017
5. I served the party
  - a. by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) or (date): 1/21/2010 (2) at (time): 2:50 PM
6. The "Notice to the Person Served" (on the summons) was completed as follows:
  - c. on behalf of:

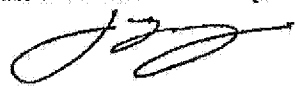
Toyota Motor Sales USA, INC., a corporation

under: CCP 416.10 (corporation)

7. Person who served papers
  - a. Name: Jimmy Lizama
  - b. Address: One Legal - 194-Marin  
504 Redwood Blvd #223  
Novato, CA 94947  
415-491-0606
  - c. Telephone number:
  - d. The fee for service was: \$ 29.00
  - e. I am:
    - (i) registered California process server.
    - (ii) Employee or independent contractor.
    - (iii) Registration No.: 4553
    - (iv) County LOS ANGELES

8. I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.  
Date: 1/22/2010

Jimmy Lizama



(NAME OF PERSON WHO SERVED PAPERS)

(SIGNATURE)

**PROOF OF SERVICE**

I, Nora Fernandez, declare:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is Alston & Bird LLP, 333 South Hope Street, Sixteenth Floor, Los Angeles, CA 90071. I am over the age of eighteen years and not a party to the action in which this service is made.

On February 18, 2010, I served the document(s) described as **NOTICE OF REMOVAL OF ACTION TO UNITED STATES DISTRICT COURT UNDER 28 U.S.C. § 1441(b) [FEDERAL QUESTION JURISDICTION]; AND DECLARATION OF LISA GILFORD IN SUPPORT THEREOF** on the interested parties in this action by enclosing the document(s) in a sealed envelope addressed to the parties as listed on the attached service list in the following manner:

Julianna R. Makler, Esq.  
Terry L. Baker, Esq.  
Makler & Baker LLP  
3 W. Carrillo Street, Suite 216  
Santa Barbara, CA 93101

Attorneys for Plaintiff  
STUART GRANT  
  
Telephone: (805) 965-4651  
Facsimile: (805) 965-4671

David R. Griffin, Esq.  
Griffin & Associates  
501 W. Broadway, Suite 800  
San Diego, CA 92101

Attorneys for Plaintiff  
STUART GRANT  
  
Telephone: (619) 222-0888  
Facsimile: (619) 923-3680

BY MAIL: I am "readily familiar" with this firm's practice for the collection and the processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, the correspondence would be deposited with the United States Postal Service at 333 South Hope Street, Los Angeles, California 90071 with postage thereon fully prepaid the same day on which the correspondence was placed for collection and mailing at the firm. Following ordinary business practices, I placed for collection and mailing with the United States Postal Service such envelope at Alston & Bird LLP, 333 South Hope Street, Los Angeles, California 90071.

UPS NEXT DAY AIR I deposited such envelope in a facility regularly maintained by UPS with delivery fees fully provided for or delivered the envelope to a courier or driver of UPS authorized to receive documents at Alston & Bird LLP, 333 South Hope Street, Los Angeles, California 90071 with delivery fees provided for.

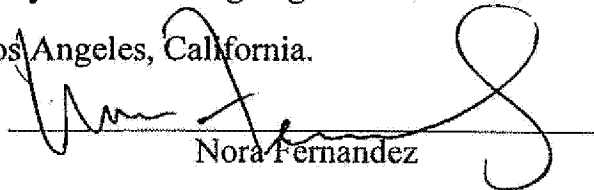
BY FACSIMILE: I telecopied a copy of said document(s) to the following addressee(s) at the following number(s) in accordance with the written confirmation of counsel in this action.

BY ELECTRONIC MAIL TRANSMISSION WITH ATTACHMENT: On this date, I transmitted the above-mentioned document by electronic mail transmission with attachment to the parties at the electronic mail transmission address set forth on the attached service list.

[State] I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[Federal] I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 18, 2010, at Los Angeles, California.

  
Nora Fernandez

**PROOF OF SERVICE**

I, Nora Fernandez, declare:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is Alston & Bird LLP, 333 South Hope Street, Sixteenth Floor, Los Angeles, CA 90071. I am over the age of eighteen years and not a party to the action in which this service is made.

On February 18, 2010, I served the document(s) described as NOTICE TO ADVERSE PARTIES OF REMOVAL OF ACTION TO FEDERAL COURT on the interested parties in this action by enclosing the document(s) in a sealed envelope addressed to the parties as listed on the attached service list in the following manner:

Julianna R. Makler, Esq.  
Terry L. Baker, Esq.  
Makler & Baker LLP  
3 W. Carrillo Street, Suite 216  
Santa Barbara, CA 93101

Attorneys for Plaintiff  
STUART GRANT

Telephone: (805) 965-4651  
Facsimile: (805) 965-4671

David R. Griffin, Esq.  
Griffin & Associates  
501 W. Broadway, Suite 800  
San Diego, CA 92101

Attorneys for Plaintiff  
STUART GRANT

Telephone: (619) 222-0888  
Facsimile: (619) 923-3680

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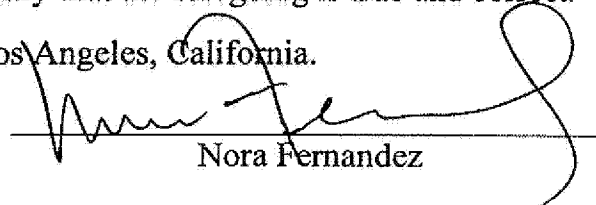
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BY ELECTRONIC MAIL TRANSMISSION WITH ATTACHMENT: On this date, I transmitted the above-mentioned document by electronic mail transmission with attachment to the parties at the electronic mail transmission address set forth on the attached service list.

[State] I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[Federal] I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 18, 2010, at Los Angeles, California.

  
\_\_\_\_\_  
Nora Fernandez

**PROOF OF SERVICE**

I, Nora Fernandez, declare:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is Alston & Bird LLP, 333 South Hope Street, Sixteenth Floor, Los Angeles, CA 90071. I am over the age of eighteen years and not a party to the action in which this service is made.

On February 18, 2010, I served the document(s) described as **CERTIFICATE OF SERVICE** on the interested parties in this action by enclosing the document(s) in a sealed envelope addressed to the parties as listed on the attached service list in the following manner:

Julianna R. Makler, Esq.  
Terry L. Baker, Esq.  
Makler & Baker LLP  
3 W. Carrillo Street, Suite 216  
Santa Barbara, CA 93101

Attorneys for Plaintiff  
STUART GRANT  
  
Telephone: (805) 965-4651  
Facsimile: (805) 965-4671

David R. Griffin, Esq.  
Griffin & Associates  
501 W. Broadway, Suite 800  
San Diego, CA 92101

Attorneys for Plaintiff  
STUART GRANT  
  
Telephone: (619) 222-0888  
Facsimile: (619) 923-3680

BY MAIL: I am "readily familiar" with this firm's practice for the collection and the processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, the correspondence would be deposited with the United States Postal Service at 333 South Hope Street, Los Angeles, California 90071 with postage thereon fully prepaid the same day on which the correspondence was placed for collection and mailing at the firm. Following ordinary business practices, I placed for collection and mailing with the United States Postal Service such envelope at Alston & Bird LLP, 333 South Hope Street, Los Angeles, California 90071.

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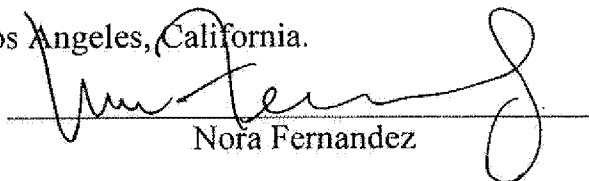
BY FACSIMILE: I telecopied a copy of said document(s) to the following addressee(s) at the following number(s) in accordance with the written confirmation of counsel in this action.

BY ELECTRONIC MAIL TRANSMISSION WITH ATTACHMENT: On this date, I transmitted the above-mentioned document by electronic mail transmission with attachment to the parties at the electronic mail transmission address set forth on the attached service list.

[State] I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[Federal] I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 18, 2010, at Los Angeles, California.

  
Nora Fernandez



<b>I (a) PLAINTIFFS</b> (Check box if you are representing yourself <input type="checkbox"/> ) STUART GRANT	<b>DEFENDANTS</b> TOYOTA MOTOR SALES USA, INC.
<b>(b) Attorneys</b> (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) Julianna R. Makler, Esq.      David R. Griffin, Esq. Makler & Baker                  Griffin & Associates 3 W. Carillo St., #216              501 W. Broadway, #800 Santa Barbara, CA 93101          San Diego, CA 92101 Tel. (805) 965-4651                  Tel. (619) 222-0888	Attorneys (If Known) Deborah Yoon Jones (SBN 178127); debbie.jones@alston.com Stephanie A. Jones (SBN 178453); stephanie.jones@alston.com Alston & Bird LLP 333 S. Hope Street, 16 <sup>th</sup> Floor Los Angeles, CA 90071 Telephone: (213) 576-1000; Facsimile: (213) 576-1100

<b>II. BASIS OF JURISDICTION</b> (Place an X in one box only.)  <input type="checkbox"/> 1 U.S. Government Plaintiff <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)  <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	<b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.)  <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:30%;"></td> <td style="width:10%; text-align: center;"><b>PTF</b></td> <td style="width:10%; text-align: center;"><b>DEF</b></td> <td style="width:40%;"></td> <td style="width:10%; text-align: center;"><b>PTF</b></td> <td style="width:10%; text-align: center;"><b>DEF</b></td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business in this State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		<b>PTF</b>	<b>DEF</b>		<b>PTF</b>	<b>DEF</b>	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
	<b>PTF</b>	<b>DEF</b>		<b>PTF</b>	<b>DEF</b>																				
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Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

**IV. ORIGIN** (Place an X in one box only.)

1 Original Proceeding     
  2 Removed from State Court     
  3 Remanded from Appellate Court     
  4 Reinstated or Reopened     
  5 Transferred from another district (specify):     
  6 Multi-District Litigation     
  7 Appeal to District Judge from Magistrate Judge

**V. REQUESTED IN COMPLAINT: JURY DEMAND:**  Yes  No (Check 'Yes' only if demanded in complaint.)

**CLASS ACTION under F.R.C.P. 23:**  Yes  No      **MONEY DEMANDED IN COMPLAINT: \$** In excess of \$75,000

**VI. CAUSE OF ACTION** (Cite the U. S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)  
 28 U.S.C. Sections 2301 et seq. Magnusan-Moss Warranty Act

**VII. NATURE OF SUIT** (Place an X in one box only.)

OTHER STATUTES	CONTRACT	TORTS PERSONAL INJURY	TORTS PERSONAL PROPERTY	PRISONER PETITIONS	LABOR
<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rcnt Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety /Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 61 HIA(1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW 405(g) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609

**FOR OFFICE USE ONLY:** Case Number: CV10-01234

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed?  No  Yes

If yes, list case number(s): See attached.

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case?  No  Yes

If yes, list case number(s): See attached.

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply)  A. Arise from the same or closely related transactions, happenings, or events; or  
 B. Call for determination of the same or substantially related or similar questions of law and fact; or  
 C. For other reasons would entail substantial duplication of labor if heard by different judges; or  
 D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named plaintiff resides.

Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles County	

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named defendant resides.

Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	Toyota Motor Sales USA, Inc.'s incorporated in California with its principal place of business in Torrance, California.

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH claim arose.

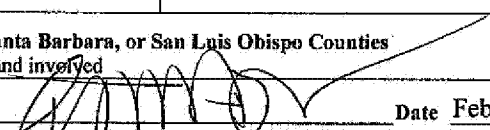
Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles County	

\* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER):

  
 Stephanie A. Jones (SBN 178453)

Date February 18, 2010

Attorneys for Defendant Toyota Motor Sales USA, Inc.)

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3 -1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))

Case Name	Jurisdiction	Case Number	Judge
1 Choi	U.S.D.C. - Central District (L.A.)	09-cv-08143	Matz
2 Kmetz	U.S.D.C. - Central District (L.A.)	09-cv-08478	Matz
3 Baldiceri	U.S.D.C. - Central District (L.A.)	09-cv-09386	Feess
4 Lane	U.S.D.C. - Central District (L.A.)	09-cv-09158	Feess
5 Hauter	U.S.D.C. - Central District (Santa Ana)	10-cv-00105	Matz

	Case Name	Jurisdiction	Case Number	Judge
6	Aviles	U.S.D.C. - Central District (L.A.)	10-cv-00706	Matz
7	Schwartz	U.S.D.C. - Central District (L.A.)	10-cv-00710	Lew
8	Marr	U.S.D.C. - Central District of California	10-cv-00799	Matz
9	Gazaryan	U.S.D.C. - Central District (L.A.)	10-cv-00849	Matz
10	Byrnes	U.S.D.C. - Central District of California (LA)	10-cv-00947	Matz
11	Wisner	U.S.D.C. - Central District of California (LA)	10-cv-00942	Otero

	Case Name	Jurisdiction	Case Number	Judge
12	Lacey	U.S.D.C. - Central District of California	10-cv-01030	Marshall
13	Beard	U.S.D.C. - Central District of California, Santa Ana	10-cv-00183	Selna
14	Lieberman	U.S.D.C. - Central District of California, Los Angeles	10-cv-01073	Klausner
15	Talbot	U.S.D.C. - Central District of California, Los Angeles	10-cv-01039	Matz

FILED

1 LISA GILFORD (State Bar No. 171641)  
 2 STEPHANIE A. JONES (State Bar No. 178453)  
 3 JOHN D. ARYA (State Bar No. 156108)  
 4 ROGER A. CERDA (State Bar No. 239027)  
**ALSTON + BIRD LLP**  
 333 South Hope Street  
 5 Sixteenth Floor  
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 Telephone: (213) 576-1000  
 Facsimile: (213) 576-1100  
 6 lisa.gilford@alston.com  
 Stephanie.jones@alston.com

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CLERK U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
LOS ANGELES

BY: \_\_\_\_\_

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 8 VINCENT GALVIN, JR. (State Bar No. 104448)  
**BOWMAN AND BROOKE**  
 9 1741 Technology Drive  
 San Jose, CA 95110  
 Telephone: (408) 279-5393  
 10 Facsimile: (408) 279-5845  
 E-mail: vgalvin@bowman-brooke.com

11  
 12 **Attorneys for Defendant**  
**TOYOTA MOTOR SALES, U.S.A., INC.**

13  
 14 **UNITED STATES DISTRICT COURT**  
 15 **CENTRAL DISTRICT OF CALIFORNIA**

16  
 17 STUART GRANT, an individual,  
 18 Plaintiff,

19 v.

20 TOYOTA MOTOR SALES, U.S.A., INC.; a  
 corporation, and DOES ONE through  
 21 TWENTY,  
 22 Defendants.

Case No.:

CV10-01234-MRP  
(SSA)

**NOTICE OF INTERESTED  
PARTIES**

**CLASS ACTION**

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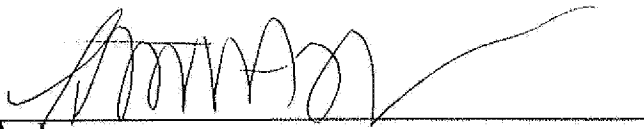
The undersigned, counsel of record for defendant Toyota Motor Sales USA, Inc. certifies that the following listed parties have a direct, pecuniary interest in the outcome of this case. These representations are made to enable the Court to evaluate possible disqualification or recusal.

**LIST OF PARTIES**

Stuart Grant	Plaintiff
Toyota Motor Sales USA, Inc.	Defendant

Dated: February 18, 2010

Respectfully submitted,  
**ALSTON + BIRD LLP**



---

Stephanie A. Jones  
Attorney for Defendant  
TOYOTA MOTOR SALES, U.S.A., INC.

**PROOF OF SERVICE**

I, Nora Fernandez, declare:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is Alston & Bird LLP, 333 South Hope Street, Sixteenth Floor, Los Angeles, CA 90071. I am over the age of eighteen years and not a party to the action in which this service is made.

On February 18, 2010, I served the document(s) described as **NOTICE OF INTERESTED PARTIES** on the interested parties in this action by enclosing the document(s) in a sealed envelope addressed to the parties as listed on the attached service list in the following manner:

Julianna R. Makler, Esq.  
Terry L. Baker, Esq.  
Makler & Baker LLP  
3 W. Carrillo Street, Suite 216  
Santa Barbara, CA 93101

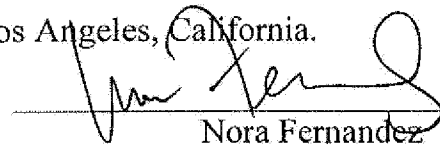
Attorneys for Plaintiff  
STUART GRANT  
  
Telephone: (805) 965-4651  
Facsimile: (805) 965-4671

David R. Griffin, Esq.  
Griffin & Associates  
501 W. Broadway, Suite 800  
San Diego, CA 92101

Attorneys for Plaintiff  
STUART GRANT  
  
Telephone: (619) 222-0888  
Facsimile: (619) 923-3680

- BY MAIL: I am "readily familiar" with this firm's practice for the collection and the processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, the correspondence would be deposited with the United States Postal Service at 333 South Hope Street, Los Angeles, California 90071 with postage thereon fully prepaid the same day on which the correspondence was placed for collection and mailing at the firm. Following ordinary business practices, I placed for collection and mailing with the United States Postal Service such envelope at Alston & Bird LLP, 333 South Hope Street, Los Angeles, California 90071.
- UPS NEXT DAY AIR I deposited such envelope in a facility regularly maintained by UPS with delivery fees fully provided for or delivered the envelope to a courier or driver of UPS authorized to receive documents at Alston & Bird LLP, 333 South Hope Street, Los Angeles, California 90071 with delivery fees provided for.
- BY FACSIMILE: I telecopied a copy of said document(s) to the following addressee(s) at the following number(s) in accordance with the written confirmation of counsel in this action.
- BY ELECTRONIC MAIL TRANSMISSION WITH ATTACHMENT: On this date, I transmitted the above-mentioned document by electronic mail transmission with attachment to the parties at the electronic mail transmission address set forth on the attached service list.
- [State] I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
- [Federal] I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 18, 2010, at Los Angeles, California.

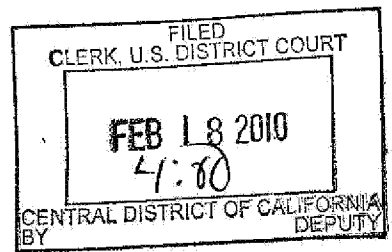
  
\_\_\_\_\_  
Nora Fernandez

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1 LISA GILFORD (State Bar No. 171641)  
2 JOHN D. ARYA (State Bar No. 156108)  
3 STEPHANIE A. JONES (State Bar No. 178453)  
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12 stephanie.jones@alston.com

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11 San Jose, CA 95110  
12 Telephone: (408) 279-5393  
13 Facsimile: (408) 279-5845  
14 E-mail: vgalvin@bowman-brooke.com



12 **Attorneys for Defendant**  
13 **TOYOTA MOTOR SALES, U.S.A., INC.**

14 **UNITED STATES DISTRICT COURT**  
15 **CENTRAL DISTRICT OF CALIFORNIA**

17 STUART GRANT, an individual,

18 Plaintiff,

19 v.

20 TOYOTA MOTOR SALES, U.S.A., INC.; a  
21 corporation, and DOES ONE through  
22 TWENTY,

23 Defendants.

Case No. **CV 10-01234-MRP**

**NOTICE OF REMOVAL OF (SSK)**  
**ACTION TO UNITED STATES**  
**DISTRICT COURT UNDER 28**  
**U.S.C. § 1441(b) [FEDERAL**  
**QUESTION JURISDICTION]; AND**  
**DECLARATION OF LISA GILFORD**  
**IN SUPPORT THEREOF**

24  
25  
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28  
NOTICE OF REMOVAL

1 **TO THE CLERK OF THE UNITED STATES DISTRICT COURT, CENTRAL**  
2 **DISTRICT OF CALIFORNIA:**

3 **PLEASE TAKE NOTICE** that defendant Toyota Motor Sales USA  
4 (“Toyota”) hereby removes the above-titled action from the Superior Court of the  
5 State of California for the County of Los Angeles (“State Court”), where the above-  
6 titled action (“Action”) was filed, to the United States District Court for the Central  
7 District of California.

8 In support of this Notice, Toyota alleges as follows:

9  
10 **TIMELINESS OF REMOVAL**

11 1. On or about January 8, 2010 plaintiff Stuart Grant (“Plaintiff”)  
12 commenced the Action in the State Court by filing a complaint (“Complaint”) entitled  
13 “*Stuart Grant v. Toyota Motor Sales USA, Inc.*,” and bearing Los Angeles County  
14 Superior Court Case No. BC 429345. The Complaint alleges the following four  
15 purported causes of action: (1) breach of express warranty-Song Beverly Consumer  
16 Warranty Act; (2) breach of implied warranty-Song Beverly Consumer Warranty Act;  
17 (3) breach of written warranty-Magnuson-Moss Warranty Act (15 U.S.C. § 2301 *et*  
18 *seq.*); and (4) breach of implied warranty-Magnuson-Moss Warranty Act (15 U.S.C. §  
19 2301 *et seq.*) [A true and correct copy of the Summons and Complaint is attached to  
20 the Declaration of Lisa Gilford (“Gilford Decl.”) included herewith and in the  
21 Appendix of State Court Pleadings as Exhibit A.]

22 2. Plaintiff personally served Toyota’s agent for service of process, CT  
23 Corporation, with the Summons and Complaint on or about January 21, 2010.  
24 Therefore, this Notice of Removal, filed on February 19, 2010, is timely filed pursuant  
25 to 28 U.S.C. §1446(b).  
26  
27  
28

1 VENUE

2 3. Venue lies in the Central District pursuant to 28 U.S.C. §§ 1441(a),  
3 1446(a), and 84(c)(2). This action was originally brought in the Superior Court of the  
4 State of California, County of Los Angeles.

5  
6 FEDERAL QUESTION JURISDICTION

7 4. This Action is a civil action over which this Court has original  
8 jurisdiction under 28 U.S.C. § 1331, and is one which may be removed to this Court  
9 by Toyota pursuant to the provisions of 28 U.S.C. § 1441(b) in that it includes claims  
10 that arise under 15 U.S.C. § 2301 *et seq.*, the Magnuson-Moss Warranty Act  
11 (“Magnuson-Moss”). Accordingly, it is evident from the face of Plaintiff’s Complaint  
12 that his claims are subject to removal to this Court. See 28 U.S.C. §1331; 28 U.S.C. §  
13 1441(b).<sup>1</sup>

14 5. Pursuant to 28 U.S.C. § 1331, federal district courts have original  
15 jurisdiction of all “civil actions arising under the Constitution, laws, or treaties of the  
16 United States.” A claim “arises under” federal law where “the vindication of a right  
17 under state law necessarily turns on some construction of federal law.” *Merrell Dow*  
18 *Pharmaceuticals Inc. v. Thompson*, 478 U.S. 804, 808 (1986). Federal courts have  
19 jurisdiction to hear, originally or by removal, only those cases in which a well-pleaded  
20 complaint establishes either that federal law creates the cause of action or that the  
21 plaintiff’s right to relief necessarily depends on resolution of a substantial question of  
22 federal law. See *Franchise Tax Bd. of Cal. v. Constr. Laborers Vacation Trust*, 463  
23 U.S. 1, 27-28 (1983).

24 6. Moreover, pursuant to 28 U.S.C. § 1367(a), this Court retains  
25 supplemental jurisdiction over Plaintiffs’ state law claims for violations of the Song-  
26

27  
28 <sup>1</sup> Plaintiffs filed a First Amended Complaint on January 8, 2010, which purports to  
bring, in addition to plaintiff’s individual claims, state and federal class action claims.  
See Gilford Decl., Ex. C.

1 Beverly Consumer Warranty Act ("Song-Beverly"). Plaintiff's state law claims are  
2 predicated upon the same facts and circumstances, and arise from the same transaction  
3 that forms the basis of Plaintiff's federal claims. Specifically, in his Song-Beverly  
4 claims, Plaintiff alleges that Toyota breached its express and implied warranties to  
5 him by failing to properly repair his Toyota vehicle. [Comp., ¶ ¶ 13, 24.] The same  
6 alleged failures to properly repair Plaintiff's Toyota vehicle are also alleged as the  
7 basis for Plaintiff's Magnuson-Moss claims [15 U.S.C. 2301, et seq.] [Compl. ¶ ¶ 33-  
8 34; 39.] Accordingly, this Court should retain supplemental jurisdiction over  
9 Plaintiff's state law claims. *See Picard v. Bay Area Regional Transit District*, 823  
10 F.Supp. 1519, 1527 (N.D. Cal., 1993) (holding that where state law claims are based  
11 on the same set of facts as federal claims alleged, and would require plaintiffs to make  
12 virtually the same evidentiary showing at trial, state law claims did not predominate  
13 over federal claims, and court could retain supplemental jurisdiction over the same.)

14 **CONCLUSION**

15 7. Based on the foregoing, this Court has jurisdiction over the Action under  
16 the provisions of 28 U.S.C. § 1331 in that the Action is one which arises under federal  
17 law, namely, Magnuson-Moss, and the Court has supplemental jurisdiction over  
18 Plaintiff's state law claims. Accordingly, this Action is properly removed to this  
19 Court pursuant to the provisions of 28 U.S.C. §§ 1441 and 1446.

20 **NOTICE TO STATE COURT**

21 8. A true and correct copy of this Notice of Removal has been served on the  
22 Plaintiff and filed with the Clerk of the Superior Court of the State of California,  
23 County of Los Angeles, as required by law.

24  
25 Dated: February 18, 2010

Respectfully submitted,  
**ALSTON + BIRD LLP**

  
\_\_\_\_\_  
Stephanie A. Jones

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

**DECLARATION OF LISA GILFORD**

I, Lisa Gilford, declare:

1. I am a partner at Alston & Bird LLP, attorneys of record for defendant Toyota Motor Sales USA, Inc. ("Toyota") in this action. I make this Declaration in support of the Notice of Removal. I have personal knowledge of the following facts and if called as a witness would and could testify competently thereto.

2. Attached hereto collectively as **Exhibit A** are true and correct copies of plaintiff's Summons and Complaint entitled "*Stuart Grant v. Toyota Motor Sales USA, Inc.*", Los Angeles County Superior Court Case No. BC 429345, and the corresponding Notice of Case Assignment.

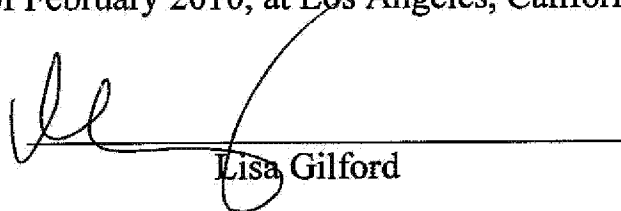
3. Toyota first received a copy of the Summons and Complaint on or about January 21, 2010, when Plaintiff personally served Toyota's agent for service of process, CT Corporation Services.

4. Attached hereto as **Exhibit B** is a true and correct copy of the Proof of Service (CT Corporation).

5. Attached hereto as **Exhibit C**, collectively, are true and correct copies of Plaintiffs' First Amended Complaint, personally served on Toyota's agent for service of process on February 12, 2010, and the corresponding proof of service.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Executed this 18<sup>th</sup> day of February 2010, at Los Angeles, California.

  
Lisa Gilford

**EXHIBIT A**

003/003

2/12 @ 2:50P

Jan 08 09 00:10 11:47AM HIKLER & HIKLER LLP 10025064071

0034-100

**SUMMONS  
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:  
(AVISO AL DEMANDADO):**

**TOYOTA MOTOR SALES USA, INC., a corporation; and DOBS ONE  
through TWENTY**

**YOU ARE BEING SUED BY PLAINTIFF:  
(LO ESTA DEMANDANDO EL DEMANDANTE):**

**STUART GRANT, AN INDIVIDUAL**

**FOR COURT USE ONLY  
NOLO PARA USO DE LA CORTE**

**CONFORMED COPY  
OF ORIGINAL FILED**  
Los Angeles Superior Court

**JAN 08 2010**

John A. Clarke, Executive Officer/Clerk  
By Dawn Alexander Deputy  
**DAWN ALEXANDER**

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after the summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.legalaidforall.org](http://www.legalaidforall.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for unpaid fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

**AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin oírlo en su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito debe que estar en formato legal correcto al tiempo que presente su caso en la corte. Es posible que haya un formulario que usted puede usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de los Comis de California ([www.courtinfo.ca.gov](http://www.courtinfo.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida el formulario de la corte que le da un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y le corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de revisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos en línea de la corte en el sitio web de California Legal Services ([www.legalaidforall.org](http://www.legalaidforall.org)), en el Centro de Ayuda de los Comis de California ([www.courtinfo.ca.gov](http://www.courtinfo.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a retener las cuotas y los costos judiciales por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor realizable mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda decidir el caso.

The name and address of the court is:  
(El nombre y dirección de la corte es): **Los Angeles County Superior Court**

**111 North Hill Street  
Los Angeles, CA 90012**

CASE NUMBER:  
Número del Caso: **BC420845**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:  
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
**Julianne R. Makler, Esq., 3 W. Century Blvd., Suite 200, Burbank, CA 93101 (805) 965-4651**

**JOHN A. CLARKE**

DATE: \_\_\_\_\_, by DAWN ALEXANDER Deputy  
(Fecha) \_\_\_\_\_ (Secretaria) (Actuando)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)  
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010).)



- NOTICE TO THE PERSON SERVED: You are served**
- as an individual defendant.
  - as the person sued under the fictitious name of (specify):
  - on behalf of (specify): **Toyota Motor Sales USA, Inc., a corporation**  
 under:  CCP 418.10 (corporation)  CCP 418.60 (minor)  
 CCP 418.20 (defunct corporation)  CCP 418.70 (conservatee)  
 CCP 418.40 (association or partnership)  CCP 418.90 (authorized person)  
 other (specify):
  - by personal delivery on (date):

6

**FILED**  
LOS ANGELES SUPERIOR COURT

*Handwritten:* A-200  
9/325

1 **MAKLER & BAKER LLP**  
2 Julianna R. Makler (SBN 189138)  
3 Terry L. Baker (SBN 214365)  
4 3 W. Carrillo Street, Suite 216  
5 Santa Barbara, CA 93101  
6 Tel: (805) 965-4651  
7 Fax: (805) 965-4671

JAN 08 2010

JUDITH A. CLARKE, CLERK

BY DAWN ALEXANDER, DEPUTY

8 Attorneys for Plaintiff  
9 **STUART GRANT**

*Handwritten:* DEPT #52  
JUDGE SUSAN BRYANT-DEASON

10 SUPERIOR COURT IN THE STATE OF CALIFORNIA

11 FOR THE COUNTY OF LOS ANGELES

12 **STUART GRANT, an individual;**

Case number:

**BC429845**

13 Plaintiff,

**COMPLAINT FOR DAMAGES**

14 vs.

Song-Beverly Warranty Act  
Magnuson-Moss Warranty Act

15 **TOYOTA MOTOR SALES USA, INC.,**  
16 a corporation; and **DOES ONE** through  
17 **TWENTY**

18 Defendants.

19 Plaintiff alleges that, at all times relevant:

20 **FACTS COMMON TO ALL COUNTS**

21 1. Defendant Toyota Motor Sales USA, Inc. (hereinafter "Toyota") is a duly authorized  
22 corporation doing business in Los Angeles County, California.

23 2. Plaintiff does not know the true names of the Defendants sued herein as Does One  
24 through Twenty and sues said Defendants pursuant to the provisions of Code of Civil Procedure  
25 § 474.

26 3. On or about June 27, 2008, Plaintiff purchased a 2008 Toyota Sequoia  
27 **5TDBY67A48S002958 ("vehicle")**, which was manufactured and warranted by Toyota.  
28

1

**COMPLAINT FOR DAMAGES**

RECEIVED  
CHECKS  
CASH  
CHANGE  
CASH  
355.00

CIT/CASE: BC429845 LEA/DEF#:  
RECEIPT #: CH491A20094  
DATE PAID: 01/08/10 02:21:05 PM  
PAYMENT: 355.00  
0310

*Handwritten:* 7



1 4. In connection with the transaction, Toyota issued to Plaintiff an express warranty within  
 2 the meaning of Cal. Civil Code § 1791.2, which is also a written warranty within the meaning  
 3 of 15 U.S.C. § 2301(6). By the terms of the express written warranty, Toyota promised that the  
 4 vehicle's material and workmanship was defect free, undertook to preserve and maintain the  
 5 utility and performance of the vehicle and to provide compensation if there is a failure in utility  
 6 or performance, and agreed to refund, repair, replace, or take other remedial action with respect  
 7 to the vehicle.

8 5. Plaintiff purchased the vehicle primarily for personal, family or household purposes.

9 6. Subsequent to Plaintiff's transaction, the vehicle exhibited numerous defects and  
 10 nonconformities covered by the warranty which substantially impair the use, value and safety of  
 11 the motor vehicle to the Plaintiff.

12 7. Plaintiff delivered the nonconforming motor vehicle to Toyota's authorized repair  
 13 facilities for repairs pursuant to the terms of the warranty. Toyota has failed to repair or replace  
 14 the vehicle.

15 **FIRST CAUSE OF ACTION**  
 16 **Breach of Express Warranty—Song-Beverly Consumer Warranty Act**

- 17 8. Plaintiff incorporates all preceding paragraphs.  
 18 9. Plaintiff is a "buyer" as defined by Cal. Civ. Code § 1791(b).  
 19 10. The vehicle is a "consumer good" as defined by Cal. Civ. Code § 1791(a).  
 20 11. Toyota is a "manufacturer" as defined by Cal. Civ. Code § 1791(j).  
 21 12. Plaintiff's purchase of the vehicle was a "sale" as defined by Cal. Civ. Code 1791(n).  
 22 13. Toyota breached the express written warranty by failing to conform the vehicle to the  
 23 express written warranty within a reasonable number of repair attempts or within the warranty  
 24 period.  
 25 14. The above-described defects, malfunctions, and nonconformities substantially impair the  
 26 use, value, and safety of the vehicle.  
 27 15. Plaintiff has not made unreasonable or unintended use of the vehicle.

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8

1 16. Pursuant to Civil Code § 1793.2(d), Toyota must refund the price of the vehicle to  
2 Plaintiff.

3 17. Pursuant to Civil Code § 1794(a), Plaintiff is entitled to restitution of all consideration  
4 given to Toyota.

5 18. As a direct and proximate result of said breach of express warranty, Plaintiff has sustained,  
6 and continues to sustain, incidental and consequential damages in the approximate amount of  
7 \$75,000.00 according to proof.

8 18. The failure of Toyota to comply with the express warranty was willful in that Toyota had  
9 actual knowledge of the vehicle's defects and malfunctions, knew of its legal duties under the  
10 warranty and the law, but repeatedly refused to make necessary repairs and/or provide a refund.

11 19. Pursuant to Civil Code § 1794(c), Plaintiff is entitled to a civil penalty of two times the  
12 amount of his actual damages.

13 20. Pursuant to Civil Code § 1794(d), Plaintiff is entitled to reasonable attorney fees according  
14 to proof.

15 **SECOND CAUSE OF ACTION**  
16 **Breach of Implied Warranty--Song-Beverly Consumer Warranty Act**

17 21. Plaintiff incorporates by reference all preceding paragraphs.

18 22. Pursuant to Cal. Civ. Code § 1792, the vehicle was accompanied by the manufacturer's  
19 implied warranty of merchantability.

20 23. Pursuant to Civil Code § 1793, and because of the existence of the express warranty,  
21 Toyota may not disclaim, limit, or modify the implied warranties provided by the Song-Beverly  
22 Act.

23 24. Toyota breached the implied warranty of merchantability of Civil Code §§ 1791.1 and  
24 1792 in that the above-described defects, malfunctions, and nonconformities render the vehicle  
25 unfit for the ordinary purposes for which it is used and it would not pass without objection in the  
26 trade.

27 25. Pursuant to Civil Code § 1794(a), Plaintiff is entitled to restitution of all consideration  
28 given to Toyota.

9

1 26. As a direct and proximate result of said breach of implied warranty, Plaintiff has  
2 sustained, and continues to sustain, incidental and consequential damages in the approximate  
3 amount of \$75,000.00.

4 27. Pursuant to Civil Code § 1794(d), Plaintiff is entitled to reasonable attorney fees according  
5 to proof.

6 **THIRD CAUSE OF ACTION**  
7 **Breach of Written Warranty--Magnuson-Moss Warranty Act**

8 28. Plaintiff incorporates by reference all preceding paragraphs.

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

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

11 31. Toyota is a "supplier" and a "warrantor" as defined respectively by 15 U.S.C. § 2301(4)  
12 and (5).

13 32. The express written warranty is a "written warranty" as defined by 15 U.S.C. § 2301(6).

14 33. Toyota breached the written warranty by failing to conform the vehicle to the express  
15 warranty within a reasonable number of attempts, a reasonable amount of time or within the  
16 warranty period itself.

17 34. Prior to commencing this action, Plaintiff afforded Toyota reasonable opportunities to cure  
18 the failures and to comply with the terms of the written warranty.

19 35. Pursuant to 15 U.S.C. § 2310(d)(1), Plaintiff is entitled to the equitable remedies of  
20 rescission and restitution and/or damages. Plaintiff revokes acceptance of the vehicle and  
21 rescinds the contract. Plaintiff is entitled to restitution of all consideration given.

22 36. As a proximate result of the breach of written warranty, Plaintiff has sustained, and  
23 continues to sustain damages, both economic and noneconomic, in the approximate amount of  
24 \$75,000.00.

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

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

38. Plaintiff incorporates by reference all preceding paragraphs.

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

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

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

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

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for judgment against Toyota as follows:

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

DATED: November 9, 2009

MAKLER & BAKER LLP

By   
JULIANNA R. MAKLER  
Attorneys for Plaintiff STUART GRANT

11

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <b>Julianna R. Makler (SBN 189138)</b> <b>MAKLER &amp; BAKER LLP</b> <b>3 W. Carrillo Street, Ste 216, Santa Barbara, CA 93101</b> TELEPHONE NO.: (805) 965-4651 FAX NO.: (805) 965-4671 ATTORNEY FOR (Name): <b>Plaintiff Stuart Grant</b>		FOR COURT USE ONLY <b>FILED</b> <b>LOS ANGELES SUPERIOR COURT</b>  <b>JAN 08 2010</b>  JUDITH A. CLARKE, CLERK <i>[Signature]</i> BY DAWN ALEXANDER, DEPUTY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES STREET ADDRESS: <b>111 North Hill Street</b> MAILING ADDRESS: CITY AND ZIP CODE: <b>Los Angeles</b> BRANCH NAME: <b>Stanley Mosk Courthouse/Central District</b>		
CASE NAME: <b>STUART GRANT v. TOYOTA MOTOR SALES USA, INC.</b>		
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> <b>Unlimited</b> (Amount demanded exceeds \$25,000) <input type="checkbox"/> <b>Limited</b> (Amount demanded is \$25,000 or less) <b>Complex Case Designation</b> <input type="checkbox"/> <b>Counter</b> <input type="checkbox"/> <b>Joinder</b> Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)		CASE NUMBER: <b>BC429345</b> JUDGE: DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

<input type="checkbox"/> <b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <input type="checkbox"/> <b>Other P/IPD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other P/IPD/WD (23) <input type="checkbox"/> <b>Non-P/IPD/WD (Other) Tort</b> <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (18) <input type="checkbox"/> Professional negligence (26) <input type="checkbox"/> Other non-P/IPD/WD tort (35) <input type="checkbox"/> <b>Employment</b> <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	<input type="checkbox"/> <b>Contract</b> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <input type="checkbox"/> <b>Real Property</b> <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (28) <input type="checkbox"/> <b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <input type="checkbox"/> <b>Judicial Review</b> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<input type="checkbox"/> <b>Provisionally Complex Civil Litigation</b> (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <input type="checkbox"/> <b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20) <input type="checkbox"/> <b>Miscellaneous Civil Complaints</b> <input type="checkbox"/> RICO (27) <input checked="" type="checkbox"/> Other complaint (not specified above) (42) <input type="checkbox"/> <b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case  is  is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. <input type="checkbox"/> Large number of separately represented parties	d. <input type="checkbox"/> Large number of witnesses
b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve	e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. <input type="checkbox"/> Substantial amount of documentary evidence	f. <input type="checkbox"/> Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a.  monetary    b.  nonmonetary; declaratory or injunctive relief    c.  punitive

4. Number of causes of action (specify): 4

5. This case  is  is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: January 8, 2009

Julianna R. Makler  
(TYPE OR PRINT NAME)

*[Signature]*  
(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**NOTICE**

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

12

CM-010

**INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET**

**To Plaintiffs and Others Filing First Papers.** If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

**To Parties in Rule 3.740 Collections Cases.** A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

**To Parties in Complex Cases.** In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

**CASE TYPES AND EXAMPLES**

<p><b>Auto Tort</b>                  Auto (22)—Personal Injury/Property Damage/Wrongful Death                  Uninsured Motorist (48) (if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)  <b>Other P/IPD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b>                  Asbestos (04)                  Asbestos Property Damage                  Asbestos Personal Injury/Wrongful Death                  Product Liability (not asbestos or toxic/environmental) (24)                  Medical Malpractice (45)                  Medical Malpractice—Physicians &amp; Surgeons                  Other Professional Health Care Malpractice                  Other P/IPD/WD (23)                  Premises Liability (e.g., slip and fall)                  Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)                  Intentional Infliction of Emotional Distress                  Negligent Infliction of Emotional Distress                  Other P/IPD/WD  <b>Non-P/IPD/WD (Other) Tort</b>                  Business Tort/Unfair Business Practice (07)                  Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08)                  Defamation (e.g., slander, libel) (13)                  Fraud (16)                  Intellectual Property (19)                  Professional Negligence (26)                  Legal Malpractice                  Other Professional Malpractice (not medical or legal)                  Other Non-P/IPD/WD Tort (35)  <b>Employment</b>                  Wrongful Termination (36)                  Other Employment (15)</p>	<p><b>Contract</b>                  Breach of Contract/Warranty (06)                  Breach of Rental/Lease                  Contract (not unlawful detainer or wrongful eviction)                  Contract/Warranty Breach—Seller Plaintiff (not fraud or negligence)                  Negligent Breach of Contract/Warranty                  Other Breach of Contract/Warranty                  Collections (e.g., money owed, open book accounts) (09)                  Collection Case—Seller Plaintiff                  Other Promissory Note/Collections Case                  Insurance Coverage (not provisionally complex) (18)                  Auto Subrogation                  Other Coverage                  Other Contract (37)                  Contractual Fraud                  Other Contract Dispute  <b>Real Property</b>                  Eminent Domain/Inverse Condemnation (14)                  Wrongful Eviction (33)                  Other Real Property (e.g., quiet title) (28)                  Writ of Possession of Real Property                  Mortgage Foreclosure                  Quiet Title                  Other Real Property (not eminent domain, landlord/tenant, or foreclosure)  <b>Unlawful Detainer</b>                  Commercial (31)                  Residential (32)                  Drugs (35) (if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)  <b>Judicial Review</b>                  Asset Forfeiture (05)                  Petition Re: Arbitration Award (11)                  Writ of Mandate (02)                  Writ—Administrative Mandamus                  Writ—Mandamus on Limited Court Case Matter                  Writ—Other Limited Court Case                  Review                  Other Judicial Review (39)                  Review of Health Officer Order                  Notice of Appeal—Labor                  Commissioner Appeals</p>	<p><b>Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.405)</b>                  Antitrust/Trade Regulation (03)                  Construction Defect (10)                  Claims Involving Mass Tort (40)                  Securities Litigation (28)                  Environmental/Toxic Tort (30)                  Insurance Coverage Claims (arising from provisionally complex case type listed above) (41)  <b>Enforcement of Judgment</b>                  Enforcement of Judgment (Out of County)                  Abstract of Judgment (Out of County)                  Confession of Judgment (non-domestic relations)                  Sister State Judgment                  Administrative Agency Award (not unpaid taxes)                  Petition/Certification of Entry of Judgment on Unpaid Taxes                  Other Enforcement of Judgment Case  <b>Miscellaneous Civil Complaint</b>                  RICO (27)                  Other Complaint (not specified above) (42)                  Declaratory Relief Only                  Injunctive Relief Only (non-harassment)                  Mechanics Lien                  Other Commercial Complaint Case (non-tort/non-complex)                  Other Civil Complaint (non-tort/non-complex)  <b>Miscellaneous Civil Petition</b>                  Partnership and Corporate Governance (21)                  Other Petition (not specified above) (43)                  Civil Harassment                  Workplace Violence                  Elder/Dependent Adult Abuse                  Election Contest                  Petition for Name Change                  Petition for Relief From Late Claim                  Other Civil Petition</p>
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13

SHORT TITLE: Grant v. Toyota Motor Sales USA, INC.	CASE NUMBER <b>BC420543</b>
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**CIVIL CASE COVER SHEET ADDENDUM AND STATEMENT OF LOCATION  
(CERTIFICATE OF GROUNDS FOR ASSIGNMENT TO COURTHOUSE LOCATION)**

This form is required pursuant to LASC Local Rule 2.0 in all new civil case filings in the Los Angeles Superior Court.

Item I. Check the types of hearing and fill in the estimated length of hearing expected for this case:

JURY TRIAL?  YES CLASS ACTION?  YES LIMITED CASE?  YES TIME ESTIMATED FOR TRIAL 5 \_\_\_\_\_

Item II. Select the correct district and courthouse location (4 steps – If you checked "Limited Case", skip to Item III, Step 3.)

**Step 1:** After first completing the Civil Case Cover Sheet Form, find the main civil case cover sheet heading for your case in the left margin below, and, to the right in Column A, the Civil Case Cover Sheet case type you selected.

**Step 2:** Check one Superior Court type of action in Column B below which best describes the nature of this case.

**Step 3:** In Column C, circle the reason for the court location choice that applies to the type of action you have checked. For any exception to the court location, see Los Angeles Superior Court Local Rule 2.0.

**Applicable Reasons for Choosing Courthouse Location (see Column C below)**

- |   |   |
|---|---|
| 1. Class Actions must be filed in the County Courthouse, Central District.      | 6. Location of property or permanent residence of defendant.              |
| 2. May be filed in Central (Other county, or no Bodily Injury/Property Damage). | 7. Location where petitioner resides.                                     |
| 3. Location where cause of action arose.  | 8. Location wherein defendant/respondent has principal place of business. |
| 4. Location where bodily injury, death or damage occurred.                      | 9. Location where one or more of the parties reside.                      |
| 5. Location where performance required or defendant resides.                    | 10. Location of Labor Commissioner Office.                                |

**Step 4:** Fill in the information requested on page 4 in Item III; complete Item IV. Sign the declaration.

	A	B	C
	Civil Case Cover Sheet Category No.	Type of Action (Check only one)	Applicable Reason(s) (See Step 3 above)
Auto Tort	Auto (22)	<input type="checkbox"/> A7100 Motor Vehicle - Personal Injury/Property Damage/Wrongful Death	1, 2, 3, 4, 5, 6, 7, 8, 9, 10
	Uninsured Motorist (46)	<input type="checkbox"/> A7110 Personal Injury/Property Damage/Wrongful Death - Uninsured Motorist	1, 2, 3, 4, 5, 6, 7, 8, 9, 10
Other Personal Injury/Property Damage/Wrongful Death Tort	Asbestos (04)	<input type="checkbox"/> A6070 Asbestos Property Damage	2
		<input type="checkbox"/> A7221 Asbestos - Personal Injury/Wrongful Death	2
	Product Liability (24)	<input type="checkbox"/> A7280 Product Liability (not asbestos or toxic/environmental)	1, 2, 3, 4, 5, 6, 7, 8, 9, 10
	Medical Malpractice (45)	<input type="checkbox"/> A7210 Medical Malpractice - Physicians & Surgeons	1, 2, 3, 4, 5, 6, 7, 8, 9, 10
<input type="checkbox"/> A7240 Other Professional Health Care Malpractice		1, 2, 3, 4, 5, 6, 7, 8, 9, 10	
Non-Personal Injury/Property Damage/Wrongful Death Tort	Other Personal Injury Property Damage Wrongful Death (23)	<input type="checkbox"/> A7260 Premises Liability (e.g., slip and fall)	1, 2, 3, 4, 5, 6, 7, 8, 9, 10
		<input type="checkbox"/> A7230 Intentional Bodily Injury/Property Damage/Wrongful Death (e.g., assault, vandalism, etc.)	1, 2, 3, 4, 5, 6, 7, 8, 9, 10
		<input type="checkbox"/> A7270 Intentional Infliction of Emotional Distress	1, 2, 3, 4, 5, 6, 7, 8, 9, 10
		<input type="checkbox"/> A7220 Other Personal Injury/Property Damage/Wrongful Death	1, 2, 3, 4, 5, 6, 7, 8, 9, 10
Non-Personal Injury/Property Damage/Wrongful Death Tort	Business Tort (07)	<input type="checkbox"/> A8029 Other Commercial/Business Tort (not fraud/breach of contract)	1, 2, 3, 4, 5, 6, 7, 8, 9, 10
	Civil Rights (08)	<input type="checkbox"/> A8005 Civil Rights/Discrimination	1, 2, 3, 4, 5, 6, 7, 8, 9, 10
	Defamation (13)	<input type="checkbox"/> A8010 Defamation (slander/libel)	1, 2, 3, 4, 5, 6, 7, 8, 9, 10
	Fraud (16)	<input type="checkbox"/> A8013 Fraud (no contract)	1, 2, 3, 4, 5, 6, 7, 8, 9, 10

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**CIVIL CASE COVER SHEET ADDENDUM  
AND STATEMENT OF LOCATION**

LASC Form 109  
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Non-Personal Injury/Property Damage/  
Wrongful Death Tort (Cont'd.)

Employment

Contract

Real Property

Judicial Review: Unlawful Detainer

SHORT TITLE: Grant v. Toyota Motor Sales USA, INC.	CASE NUMBER:
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A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons -See Step 3 Above
Professional Negligence (25)	<input type="checkbox"/> A6017 Legal Malpractice <input type="checkbox"/> A6050 Other Professional Malpractice (not medical or legal)	1., 2., 3. 1., 2., 3.
Other (35)	<input type="checkbox"/> A6025 Other Non-Personal Injury/Property Damage tort	2, 3.
Wrongful Termination (36)	<input type="checkbox"/> A6037 Wrongful Termination	1., 2., 3.
Other Employment (15)	<input type="checkbox"/> A6024 Other Employment Complaint Case <input type="checkbox"/> A6109 Labor Commissioner Appeals	1., 2., 3. 10.
Breach of Contract/ Warranty (06) (not insurance)	<input type="checkbox"/> A6004 Breach of Rental/Lease Contract (not Unlawful Detainer or wrongful eviction) <input type="checkbox"/> A6008 Contract/Warranty Breach -Seller Plaintiff (no fraud/negligence) <input type="checkbox"/> A6019 Negligent Breach of Contract/Warranty (no fraud) <input type="checkbox"/> A6028 Other Breach of Contract/Warranty (not fraud or negligence)	2., 3. 2., 3. 1., 2., 5. 1., 2., 5.
Collections (09)	<input type="checkbox"/> A6002 Collections Case-Seller Plaintiff <input type="checkbox"/> A6012 Other Promissory Note/Collections Case	2., 3., 5. 2., 5.
Insurance Coverage (18)	<input type="checkbox"/> A6015 Insurance Coverage (not complex)	1., 2., 5., 6.
Other Contract (37)	<input type="checkbox"/> A6009 Contractual Fraud <input type="checkbox"/> A6031 Tortious Interference <input type="checkbox"/> A6027 Other Contract Dispute(not breach/insurance/fraud/negligence)	1., 2., 3., 5. 1., 2., 3., 5. 1., 2., 3., 5.
Eminent Domain/Inverse Condemnation (14)	<input type="checkbox"/> A7300 Eminent Domain/Condemnation Number of parcels _____	2.
Wrongful Eviction (33)	<input type="checkbox"/> A6023 Wrongful Eviction Case	2., 3.
Other Real Property (20)	<input type="checkbox"/> A6016 Mortgage Foreclosure <input type="checkbox"/> A6032 Quiet Title <input type="checkbox"/> A6060 Other Real Property (not eminent domain, landlord/tenant, foreclosure)	2., 3. 2., 3. 2., 3.
Unlawful Detainer- Commercial (31)	<input type="checkbox"/> A6021 Unlawful Detainer-Commercial (not drugs or wrongful eviction)	2., 3.
Unlawful Detainer- Residential (32)	<input type="checkbox"/> A6020 Unlawful Detainer-Residential (not drugs or wrongful eviction)	2., 3.
Unlawful Detainer- Drugs (38)	<input type="checkbox"/> A6022 Unlawful Detainer-Drugs	2., 3.
Asset Forfeiture (05)	<input type="checkbox"/> A6108 Asset Forfeiture Case	2., 3.
Petition re Arbitration (11)	<input type="checkbox"/> A6115 Petition to Compel/Confirm/Vacate Arbitration	2., 3.

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**CIVIL CASE COVER SHEET ADDENDUM  
AND STATEMENT OF LOCATION**

LASC, rule 2.0

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SHORT TITLE: Grant v. Toyota Motor Sales USA, INC.	CASE NUMBER
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Judicial Review (Cont'd.)

Provisionally Complex Litigation

Enforcement of Judgment

Miscellaneous Civil Complaints

Miscellaneous Civil Petitions

A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Writ of Mandate (02)	<input type="checkbox"/> A6151 Writ - Administrative Mandamus	2., 8.
	<input type="checkbox"/> A6152 Writ - Mandamus on Limited Court Case Matter	2.
Other Judicial Review (39)	<input type="checkbox"/> A6153 Writ - Other Limited Court Case Review	2.
	<input type="checkbox"/> A6150 Other Writ/Judicial Review	2., 8.
Antitrust/Trade Regulation (03)	<input type="checkbox"/> A6003 Antitrust/Trade Regulation	1., 2., 8.
Construction Defect (10)	<input type="checkbox"/> A6007 Construction defect	1., 2., 3.
Claims Involving Mass Tort (40)	<input type="checkbox"/> A6008 Claims Involving Mass Tort	1., 2., 8.
Securities Litigation (28)	<input type="checkbox"/> A6035 Securities Litigation Case	1., 2., 8.
Toxic Tort Environmental (30)	<input type="checkbox"/> A6036 Toxic Tort/Environmental	1., 2., 3., 8.
Insurance Coverage Claims from Complex Case (41)	<input type="checkbox"/> A6014 Insurance Coverage/Subrogation (complex case only)	1., 2., 5., 8.
Enforcement of Judgment (20)	<input type="checkbox"/> A6141 Sister State Judgment	2., 8.
	<input type="checkbox"/> A6180 Abstract of Judgment	2., 6.
	<input type="checkbox"/> A6107 Confession of Judgment (non-domestic relations)	2., 8.
	<input type="checkbox"/> A6140 Administrative Agency Award (not unpaid taxes)	2., 8.
	<input type="checkbox"/> A6114 Petition/Certificate for Entry of Judgment on Unpaid Tax	2., 8.
	<input type="checkbox"/> A6112 Other Enforcement of Judgment Case	2., 8., 9.
RICO (27)	<input type="checkbox"/> A6032 RICO (RICO) Case	1., 2., 8.
Other Complaints (Not Specified Above) (42)	<input type="checkbox"/> A6030 Declaratory Relief Only	1., 2., 8.
	<input type="checkbox"/> A6040 Injunctive Relief Only (not domestic/harassment)	2., 8.
	<input type="checkbox"/> A6011 Other Commercial Complaint Case (non-tort/non-complex)	1., 2., 8.
	<input checked="" type="checkbox"/> A6000 Other Civil Complaint (non-tort/non-complex)	1., 2., 8.
Partnership Corporation Governance(21)	<input type="checkbox"/> A6113 Partnership and Corporate Governance Case	2., 8.
Other Petitions (Not Specified Above) (43)	<input type="checkbox"/> A6121 Civil Harassment	2., 3., 9.
	<input type="checkbox"/> A6123 Workplace Harassment	2., 3., 9.
	<input type="checkbox"/> A6124 Elder/Dependent Adult Abuse Case	2., 3., 9.
	<input type="checkbox"/> A6190 Election Contest	2.
	<input type="checkbox"/> A6110 Petition for Change of Name	2., 7.
	<input type="checkbox"/> A6170 Petition for Relief from Late Claim Law	2., 3., 4., 8.
	<input type="checkbox"/> A6100 Other Civil Petition	2., 9.

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**CIVIL CASE COVER SHEET ADDENDUM  
AND STATEMENT OF LOCATION**

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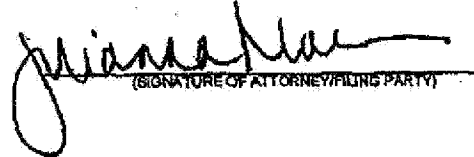
SHORT TITLE: Grant v. Toyota Motor Sales USA, INC.	CASE NUMBER
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Item III. Statement of Location: Enter the address of the accident, party's residence or place of business, performance, or other circumstance indicated in Item II., Step 3 on Page 1, as the proper reason for filing in the court location you selected.

REASON: CHECK THE NUMBER UNDER COLUMN C WHICH APPLIES IN THIS CASE <input type="checkbox"/> 1. <input checked="" type="checkbox"/> 2. <input type="checkbox"/> 3. <input type="checkbox"/> 4. <input type="checkbox"/> 5. <input type="checkbox"/> 6. <input type="checkbox"/> 7. <input type="checkbox"/> 8. <input type="checkbox"/> 9. <input type="checkbox"/> 10.		ADDRESS: 17511 Rayen St., Northridge, CA 91325
CITY: Northridge	STATE: CA	ZIP CODE: 91325

Item IV. Declaration of Assignment: I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that the above-entitled matter is properly filed for assignment to the Stanley Mosk courthouse in the Central District of the Los Angeles Superior Court (Code Civ. Proc., § 392 et seq., and LASC Local Rule 2.0, subds. (b), (c) and (d)).

Dated: January 8, 2010

  
(SIGNATURE OF ATTORNEY/FILING PARTY)

**PLEASE HAVE THE FOLLOWING ITEMS COMPLETED AND READY TO BE FILED IN ORDER TO PROPERLY COMMENCE YOUR NEW COURT CASE:**

1. Original Complaint or Petition.
2. If filing a Complaint, a completed Summons form for issuance by the Clerk.
3. Civil Case Cover Sheet form CM-010.
4. Complete Addendum to Civil Case Cover Sheet form LACIV 109 (Rev. 01/07), LASC Approved 03-04.
5. Payment in full of the filing fee, unless fees have been waived.
6. Signed order appointing the Guardian ad Litem, JC form FL-935, if the plaintiff or petitioner is a minor under 18 years of age, or if required by Court.
7. Additional copies of documents to be conformed by the Clerk. Copies of the cover sheet and this addendum must be served along with the summons and complaint, or other initiating pleading in the case.

**EXHIBIT B**

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Julianna R Makler, 189138 MAKLER & BAKER LLP 3 W. Carrillo Street Suite 216 SANTA BARBARA, CA 93101-2259 TELEPHONE NO.: (805) 965-4651 ATTORNEY FOR (Name): Plaintiff	FOR COURT USE ONLY <b>FILED</b> SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES JAN 25 2010 John A. Glazker Executive Officer By <i>[Signature]</i> GLORIETTA ROBINSON
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Superior Court of California, Los Angeles County 111 N. Hill Street Los Angeles, CA 90012-3117	
PLAINTIFF/PETITIONER: Grant DEFENDANT/RESPONDENT: Toyota Motor Sales USA, INC., et al.	CASE NUMBER: BC429345 <i>DEPT 43</i>
<b>PROOF OF SERVICE OF SUMMONS</b>	Ref. No. or File No.: NONE

1. At the time of service I was a citizen of the United States, at least 18 years of age and not a party to this action.
2. I served copies of: Summons, Complaint For Damages

**BY FAX**

3. a. Party served: Toyota Motor Sales USA, INC., a corporation
  - b. Person Served: CT CORPORATION - Maria Sanchez - Person authorized to accept service of process
4. Address where the party was served: 818 West Seventh Street 2nd Floor  
Los Angeles, CA 90017
5. I served the party
  - a. by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) or (date): 1/21/2010 (2) at (time): 2:50 PM
6. The "Notice to the Person Served" (on the summons) was completed as follows:
  - c. on behalf of:

Toyota Motor Sales USA, INC., a corporation  
 under: CCP 416.10 (corporation)

7. Person who served papers
  - a. Name: Jimmy Lizama
  - b. Address: One Legal - 194-Marin  
504 Redwood Blvd #223  
Novato, CA 94947  
415-491-0606
  - c. Telephone number:
  - d. The fee for service was: \$ 29.00
  - e. I am:
    - (i) registered California process server.
    - (ii) Employee or independent contractor.
    - (iii) Registration No.: 4553
    - (iv) County LOS ANGELES

8. I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct  
 Date: 1/22/2010

Jimmy Lizama

*[Signature]*

(NAME OF PERSON WHO SERVED PAPERS)

(SIGNATURE)

Form Adopted for Mandatory Use  
 Judicial Council of California POS-010  
 (Rev. Jan 1, 2007)

**PROOF OF SERVICE OF SUMMONS**

City of (Print Name)

OL# 6708216

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**EXHIBIT C**

1 **MAKLER & BAKER LLP**  
Julianna R. Makler (SBN 189138)  
2 Terry L. Baker (SBN 214365)  
3 3 W. Carrillo Street, Suite 216  
Santa Barbara, CA 93101  
4 Tel: (805) 965-4651  
Fax: (805) 965-4671

5 **GRIFFIN & ASSOCIATES**  
David R. Griffin (SBN 76619)  
6 501 W. Broadway, Suite 800  
San Diego, CA 92101  
7 Tel: (619) 222-0888  
8 Fax: (619) 923-3680

9 Attorneys for Plaintiff  
**STUART GRANT**

10  
11  
12 **SUPERIOR COURT IN THE STATE OF CALIFORNIA**  
13 **FOR THE COUNTY OF LOS ANGELES**

14 **STUART GRANT, an individual;**

Case number: BC429345

15 Plaintiff,

**FIRST AMENDED COMPLAINT FOR  
DAMAGES AND INJUNCTIVE RELIEF**

16 vs.

17 **TOYOTA MOTOR SALES USA, INC., a**  
18 **corporation; and DOES ONE through**  
19 **TWENTY**

Song-Beverly Warranty Act  
Magnuson-Moss Warranty Act  
Unfair Competition Law

20 Defendants.

**CLASS ACTION**

21  
22  
23 **INTRODUCTION**

24 1. This lawsuit centers on the recall of more than 8.5 million vehicles manufactured by  
25 Toyota Motor Sales USA, Inc. These recalls have tarnished Toyota's reputation for making some  
26 of the most reliable vehicles on the road. It is the most prominent auto safety issue since reports  
27 surfaced in 2000 that many Firestone tires mounted on Ford Explorers failed.

28 ///

1 2. Prior to January 21, 2010, Toyota maintained one of the highest customer  
2 satisfaction records. Many consumers were willing to pay premium price for Toyota vehicles,  
3 spending thousands more than they would pay for comparable vehicles from other manufacturers.

4 3. Toyota vehicles have been recalled for numerous defects and nonconformities,  
5 including sudden acceleration caused by defective floor mats and/or faulty accelerator pedals and  
6 more recently braking system failures.

7 4. Defendant Toyota knew or should have known about the widespread safety issues in  
8 the vehicles it manufactured since at least 2007, and yet it has repeatedly failed to disclose such  
9 information to California consumers. Many consumers would never have purchased Toyota  
10 vehicles had they known about these defects and nonconformities which jeopardize safety and  
11 lives. Furthermore, the widespread recalls have seriously sliced Toyota vehicles' resale values  
12 by 3.5% to 5%.

13 5. Plaintiff STUART GRANT brings this action on behalf of himself and others similarly  
14 situated and on behalf of the general public as a private attorney general to stop this unlawful  
15 conduct and to provide restitution to victimized consumers.

16 **FACTS COMMON TO PLAINTIFF STUART GRANT**

17 6. Defendant Toyota Motor Sales USA, Inc. (hereinafter "Toyota") is a duly authorized  
18 corporation doing business in Los Angeles County, California.

19 7. Plaintiff does not know the true names of the Defendants sued herein as Does One  
20 through Twenty and sues said Defendants pursuant to the provisions of Code of Civil Procedure  
21 § 474.

22 8. On or about June 27, 2008, Plaintiff purchased a 2008 Toyota Sequoia, VIN  
23 5TDBY67A48S002958 ("vehicle"), which was manufactured and warranted by Toyota.

24 9. In connection with the transaction, Toyota issued to Plaintiff an express warranty within  
25 the meaning of Cal. Civil Code § 1791.2, which is also a written warranty within the meaning  
26 of 15 U.S.C. § 2301(6). By the terms of the express written warranty, Toyota promised that the  
27 vehicle's material and workmanship were defect free, undertook to preserve and maintain the  
28

20

1 utility and performance of the vehicle and to provide compensation if there is a failure in utility  
2 or performance, and agreed to refund, repair, replace, or take other remedial action with respect  
3 to the vehicle.

4 10. Plaintiff purchased the vehicle primarily for personal, family or household purposes.

5 11. Subsequent to Plaintiff's transaction, the vehicle exhibited numerous defects and  
6 nonconformities covered by the warranty which substantially impair the use, value and safety of  
7 the motor vehicle to the Plaintiff.

8 12. Plaintiff delivered the nonconforming motor vehicle to Toyota's authorized repair  
9 facilities for repairs pursuant to the terms of the warranty. Toyota has failed to repair or replace  
10 the vehicle.

11 **FACTS RELATING TO CLASS ACTION ALLEGATIONS**

12 13. Since September 2007 to the date of the filing of this complaint, Defendant Toyota  
13 has recalled 8.5 million vehicles due to possible sudden acceleration. Toyota claims the defect  
14 stems from an alleged faulty accelerator pedals and the possibility that floor mats could jam the  
15 accelerator pedal.

16 14. As of January 26, 2010, Toyota stopped selling eight models in the United States and  
17 Canada, including its popular Camry (2007-2010 model years) and Corolla (2009-2010 model  
18 years), because of possible unintended acceleration. Other recalled Toyota vehicles for this defect  
19 include the 2009-2010 Avalon, 2010 Highlander, 2009-2010 Matrix, 2009-2010 RAV4, 2008-  
20 2010 Sequoia, and the 2007-2010 Tundra.

21 15. Plaintiff is informed and believes at least 19 deaths and 341 injuries stemming from 815  
22 separate crashes involving Toyotas and sudden acceleration.

23 16. On February 9, 2010, Toyota recalled 437,000 hybrid cars, including its latest Prius  
24 model to repair a software glitch in its antilock braking system.

25 17. These recalls have, and continue to, tarnish Toyota's reputation for making some of the  
26 most reliable vehicles on the road. It is the most prominent auto safety issue since reports surfaced  
27 in 2000 that many Firestone tires mounted on Ford Explorers failed.

21



1 18. Since 2003, nine U.S. investigations by the National Highway Traffic Safety  
2 Administration (hereafter "NHTSA"), into sudden acceleration complaints show Toyota  
3 repeatedly ruled out many owner complaints, dismissed several concerns as posing no danger,  
4 and modified models in production without offering similar changes to vehicles already on the  
5 road. Instead, Toyota has blamed the sudden acceleration events on driver error, saying it was  
6 impossible for the electronics to malfunction. Not until the 2007 floor mat investigation did any  
7 of the complaints lead to a recall.

8 19. Since the 1990s, NHTSA had concluded that most sudden acceleration complaints  
9 were caused by drivers mistakenly hitting the gas pedal instead of the brake. When a  
10 Massachusetts man asked in April-2003 for an investigation of 1997-2000 model Lexus sedans,  
11 citing 271 complaints of unintended acceleration, NHTSA rejected his request without querying  
12 Toyota for data.

13 20. In February 2004, a nurse from Maryland asked the agency to review the 2002 and  
14 2003 Lexus ES350 sedans, saying her throttle had malfunctioned several times and led to one  
15 crash. A month later, NHTSA launched a wider investigation into the electronic throttles on  
16 nearly 1 million Lexus and Toyota sedans, citing more than 100 complaints.

17 21. From the start, Toyota pushed NHTSA to narrowly define the problem as short bursts  
18 where the engine surged to "something less than a wide-open throttle." It compared many of the  
19 complaints to the prior sudden acceleration cases that NHTSA had previously deemed driver  
20 error. Toyota also claimed the computer could not open the throttle without the accelerator pedal  
21 being pressed, and contended even if built-in safety checks failed, stepping on the brakes would  
22 stop the car.

23 22. The recalls since September 2007 have now created a stigma of unreliability and  
24 safety concern which will be retained in all Toyota vehicles, not just those vehicles recalled.  
25 Kelley Blue Book, a leading used-car value service, is lowering its estimated prices for the  
26 recalled models by 3.5% to 5%. That's enough to lower the value of each vehicle by between  
27 \$800-\$1,500.

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**FIRST CAUSE OF ACTION  
Violations of the Song-Beverly Consumer Warranty Act  
On Behalf of Plaintiff Stuart Grant Only**

- 23. Plaintiff incorporates all preceding paragraphs.
- 24. Plaintiff is a "buyer" as defined by Cal. Civ. Code § 1791(b).
- 25. The vehicle is a "consumer good" as defined by Cal. Civ. Code § 1791(a).
- 26. Toyota is a "manufacturer" as defined by Cal. Civ. Code § 1791(j).
- 27. Plaintiff's purchase of the vehicle was a "sale" as defined by Cal. Civ. Code 1791(n).
- 28. Toyota violated the Song-Beverly Act by failing to conform the vehicle to the express written warranty within a reasonable number of repair attempts or within the warranty period and failing to promptly replace the vehicle or make restitution to the plaintiff.
- 29. The above-described defects, malfunctions, and nonconformities substantially impair the use, value, and safety of the vehicle.
- 30. Plaintiff has not made unreasonable or unintended use of the vehicle.
- 31. Pursuant to Civil Code § 1793.2(d), Toyota must refund the price of the vehicle to Plaintiff.
- 32. Pursuant to Civil Code § 1794(a), Plaintiff is entitled to restitution of all consideration given to Toyota.
- 33. As a direct and proximate result of said violations of the Song-Beverly Act, Plaintiff has sustained, and continues to sustain, incidental and consequential damages in the approximate amount of \$75,000.00 according to proof.
- 34. The failure of Toyota to comply with the express warranty was willful in that Toyota had actual knowledge of the vehicles' defects and malfunctions, knew of its legal duties under the warranty and the law, but repeatedly refused to make necessary repairs and/or provide a refund.
- 35. Pursuant to Civil Code § 1794(c), Plaintiff is entitled to a civil penalty of two times the amount of his actual damages.
- 36. Pursuant to Civil Code § 1794(d), Plaintiff is entitled to reasonable attorney fees according to proof.

23

**SECOND CAUSE OF ACTION  
Violations of the Magnuson-Moss Warranty Act  
On Behalf of Plaintiff Stuart Grant Only**

- 37. Plaintiff incorporates by reference all preceding paragraphs.
- 38. The vehicle is a "consumer product" as defined by 15 U.S.C. § 2301(1).
- 39. Plaintiff is a "consumer" as defined by 15 U.S.C. § 2301(3).
- 40. Toyota is a "supplier" and a "warrantor" as defined respectively by 15 U.S.C. § 2301(4) and (5).
- 41. The express written warranty is a "written warranty" as defined by 15 U.S.C. § 2301(6).
- 42. Toyota violated the Magnuson-Moss Warranty Act by failing to conform the vehicle to the express warranty within a reasonable number of attempts, a reasonable amount of time or within the warranty period itself. Defendant failed to cure its failure to comply with the Act.
- 43. Prior to commencing this action, Plaintiff afforded Toyota reasonable opportunities to cure the failures and to comply with the Act.
- 44. Pursuant to 15 U.S.C. § 2310(d)(1), Plaintiff is entitled to the equitable remedies of rescission and restitution and/or damages. Plaintiff revokes acceptance of the vehicle and rescinds the contract. Plaintiff is entitled to restitution of all consideration given.
- 45. As a proximate result of the breach of written warranty, Plaintiff has sustained, and continues to sustain damages, both economic and noneconomic, in the approximate amount of \$75,000.00.
- 46. Pursuant to 15 U.S.C. § 2310(d)(2), Plaintiff is entitled to attorney fees and expenses reasonably incurred in connection with this action.

**THIRD CAUSE OF ACTION  
Breach of Express Warranty  
On Behalf of Plaintiff Stuart Grant and Others Similarly Situated**

- 47. Plaintiff incorporates by reference all preceding paragraphs.
- 48. Plaintiff brings this action on behalf of himself and others similarly situated on behalf of a class of all California consumers who purchased the following Toyota vehicles: 2007-2010 Camry, 2009-2010 Corolla 2009-2010, 2009-2010 Avalon, 2010 Highlander, 2009-2010 Matrix, 2009-2010 RAV4, 2008-2010 Sequoia, 2007-2010 Tundra

24

1 and the 2010 Prius.

2 49. The proposed Class is so numerous that joinder is impracticable. The members of  
3 the class are ascertainable through Defendants' records.

4 50. At all times mentioned, on or about January 2007, Toyota utilized media,  
5 professional publications and salespersons to urge the use and purchase of Toyota vehicles,  
6 including but not limited to and expressly warranted to members of the general public herein,  
7 that the vehicle and its component parts were free from latent defects or inherent risk of failure  
8 and were effective, proper and safe for their intended use.

9 51. Plaintiff and others similarly situated relied upon said express warranty  
10 representations of Toyota in the purchase of Toyota vehicles.

11 52. Defendant breached its warranties by selling vehicles that did not conform to the  
12 promises in the warranties given to Plaintiff and others similarly situated with their purchases.

13 53. After Plaintiff sustained the damages complained herein as a result of the defective  
14 condition of his vehicle, notice was given by Plaintiff, who has satisfied all terms of the contract  
15 and requirements, except as may be excused by misconduct of the Defendant. This complaint  
16 shall serve as further notice of damage as result of the defective condition of Toyota vehicles on  
17 behalf of Plaintiff and others similarly situated.

18 54. Questions of law and fact of common and general interest to the class exist as to all  
19 members of the class and predominate over any questions affecting only individual members of  
20 the class. The common questions include, among others, the following:

21 a. Whether Defendant Toyota breached the express warranty given in the sale of  
22 2007-2010 Camry, 2009-2010 Corolla 2009-2010, 2009-2010 Avalon, 2010 Highlander, 2009-  
23 2010 Matrix, 2009-2010 RAV4, 2008-2010 Sequoia, 2007-2010 Tundra and 2010 Prius.

24 55. Plaintiff's claims are typical of the claims of the class, as all such claims arise out  
25 of purchase of vehicles manufactured by Defendant where members of the class have been  
26 damaged by its breach of the express warranty.

27 56. Plaintiff will fairly and adequately protect the interest of the members of the  
28 class. Plaintiff has no interests antagonistic to the class. Plaintiff has retained counsel

1 experienced in the prosecution of class actions, including and especially consumer class actions.

2 57. A class action is also superior to other available methods for the fair and efficient  
3 adjudication of this controversy because the damages suffered by each individual member are  
4 relatively small compared to the expense and burden of prosecuting individual cases.

5 58. If individual class members were required to bring separate actions, courts  
6 throughout California would be confronted by a multiplicity of lawsuits burdening the court  
7 system while also creating the risk of inconsistent rulings and contradictory judgments. In  
8 contrast to proceeding on a case-by-case basis, in which inconsistent results will magnify the  
9 delay and expense to all parties and the court system, this class action presents far fewer  
10 management difficulties while providing unitary adjudication, economies of scale and  
11 comprehensive supervision by a single court.

12 **FOURTH CAUSE OF ACTION**  
13 **Breach of Implied Warranty--Song-Beverly Consumer Warranty Act**  
**On Behalf of Plaintiff Stuart Grant and Others Similarly Situated**

14 59. Plaintiff incorporates by reference all preceding paragraphs.

15 60. Plaintiff brings this action on behalf of himself and others similarly  
16 situated on behalf of a class of all California consumers who purchased Toyota vehicles  
17 manufactured by Toyota Motor Sales in the three years preceding the filing of this lawsuit.

18 61. The proposed Class is so numerous that joinder is impracticable. The members of  
19 the class are ascertainable through Defendants' records.

20 62. Pursuant to Cal. Civ. Code § 1792, Toyota vehicles purchased by California consumers  
21 was accompanied by the manufacturer's implied warranty of merchantability.

22 63. Pursuant to Civil Code § 1793, and because of the existence of the express warranty,  
23 Toyota may not disclaim, limit, or modify the implied warranties provided by the Song-Beverly  
24 Act.

25 64. Questions of law and fact of common and general interest to the class exist as to all  
26 members of the class and predominate over any questions affecting only individual members of  
27 the class. The common questions include, among others, the following:

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26

1 a. Whether Defendant Toyota's breached the implied warranty of merchantability of  
2 Civil Code §§ 1791.1 and 1792 in that the above-described defects, malfunctions, and  
3 nonconformities render its vehicle unfit for the ordinary purposes for which it is used and it  
4 would not pass without objection in the trade.

5 65. Plaintiff's claims are typical of the claims of the class, as all such claims arise out  
6 of purchase of vehicles manufactured by Defendant where members of the class have been  
7 damaged by its breach of the implied warranty of merchantability..

8 66. Plaintiff will fairly and adequately protect the interest of the members of the  
9 class. Plaintiff has no interests antagonistic to the class. Plaintiff has retained counsel  
10 experienced in the prosecution of class actions, including and especially consumer class actions.

11 67. A class action is also superior to other available methods for the fair and efficient  
12 adjudication of this controversy because the damages suffered by each individual member are  
13 relatively small compared to the expense and burden of prosecuting individual cases.

14 68. If individual class members were required to bring separate actions, courts  
15 throughout California would be confronted by a multiplicity of lawsuits burdening the court  
16 system while also creating the risk of inconsistent rulings and contradictory judgments. In  
17 contrast to proceeding on a case-by-case basis, in which inconsistent results will magnify the  
18 delay and expense to all parties and the court system, this class action presents far fewer  
19 management difficulties while providing unitary adjudication, economies of scale and  
20 comprehensive supervision by a single court.

21 69. Pursuant to Civil Code § 1794(a), Plaintiff and others similarly situated are entitled to  
22 restitution of all consideration.

23 70. As a direct and proximate result of said breach of implied warranty, Plaintiff and others  
24 similarly situated have sustained, and continue to sustain, incidental and consequential damages.

25 71. Pursuant to Civil Code § 1794(d), Plaintiff is entitled to reasonable attorney fees according  
26 to proof.

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**FIFTH CAUSE OF ACTION**  
**Breach of Implied Warranty--Magnuson-Moss Warranty Act**  
**On Behalf of Plaintiff Stuart Grant and Others Similarly Situated**

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2  
3 72. Plaintiff incorporates by reference all preceding paragraphs.

4 73. Plaintiff brings this action on behalf of himself and others similarly  
5 situated on behalf of a class of all California consumers who purchased Toyota vehicles  
6 manufactured by Toyota Motor Sales in the three years preceding the filing of this lawsuit.

7 74. The proposed Class is so numerous that joinder is impracticable. The members of  
8 the class are ascertainable through Defendants' records.

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

12 76. Pursuant to 15 U.S.C. § 2310(d)(1), and because of said breaches of implied warranties,  
13 Plaintiff and other similarly situated are entitled to the equitable remedies of rescission and  
14 restitution and/or damages.

15 77. Questions of law and fact of common and general interest to the class exist as to all  
16 members of the class and predominate over any questions affecting only individual members of  
17 the class. The common questions include, among others, the following:

18 a. Whether Defendant Toyota's breached the implied warranty of merchantability  
19 contained in 15 U.S.C. § 2310(d)(1) in that the above-described defects, malfunctions, and  
20 nonconformities render its vehicle unfit for the ordinary purposes for which it is used and it  
21 would not pass without objection in the trade.

22 78. Plaintiff's claims are typical of the claims of the class, as all such claims arise out  
23 of purchase of vehicles manufactured by Defendant where members of the class have been  
24 damaged by its breach of the implied warranty of merchantability.

25 79. Plaintiff will fairly and adequately protect the interest of the members of the  
26 class. Plaintiff has no interests antagonistic to the class. Plaintiff has retained counsel  
27 experienced in the prosecution of class actions, including and especially consumer class actions.

28 ///

1 80. A class action is also superior to other available methods for the fair and efficient  
2 adjudication of this controversy because the damages suffered by each individual member are  
3 relatively small compared to the expense and burden of prosecuting individual cases.

4 81. If individual class members were required to bring separate actions, courts  
5 throughout California would be confronted by a multiplicity of lawsuits burdening the court  
6 system while also creating the risk of inconsistent rulings and contradictory judgments. In  
7 contrast to proceeding on a case-by-case basis, in which inconsistent results will magnify the  
8 delay and expense to all parties and the court system, this class action presents far fewer  
9 management difficulties while providing unitary adjudication, economies of scale and  
10 comprehensive supervision by a single court.

11 82. As a proximate result of the breaches of implied warranty, Plaintiff and others similarly  
12 situated have sustained, and continues to sustain, damages, both economic and noneconomic.

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

15 **SIXTH CAUSE OF ACTION**

16 **Violation of the Unfair Competition Law (Business and Professions Code section 17200 et seq.)**

17 **On Behalf of Plaintiff Stuart Grant and Others Similarly Situated**

18 84. Plaintiff incorporates by reference all preceding paragraphs.

19 85. The business acts and practices of Defendant as herein above described  
20 constitute fraudulent, unfair and unlawful business practices in violation of Business and  
21 Professions Code § 17200 et seq. without limitation:

22 1. Defendant's practice of failing to disclose to consumers known safety defects and  
23 nonconformities in the vehicles it manufactures to induce consumers to purchase its vehicles.

24 2. Defendants' practice of knowingly making false representations and  
25 concealing material facts about the vehicles it manufactures to induce consumers to purchase its  
26 vehicles.

27 3. Defendant's practice breached its warranties by selling vehicles that did not  
28 conform to the promises in the express warranties given to Plaintiff and others similarly situated



1 with their purchases, as set forth and described in the Third Cause of Action

2 4. Defendant's violations of the Song-Beverly Consumer Warranty Act, Civil Code  
3 §§ 1791.1 and 1792, as set forth and described in the Fourth Cause of Action, above.

4 5. Defendants' violations of the Magnuson-Moss Warranty Act, Civil Code §15  
5 U.S.C. § 2310(d)(1), and because of said breaches of implied warranties, as set forth and  
6 described in the Fifth Cause of Action, above.

7 86. The business acts and practices of Defendant as herein above described constitute  
8 unfair business practices in violation of the Unfair Competition Law in that such acts and  
9 practices are patently unfair and substantially injurious to consumers and offensive to established  
10 California public policy.

11 87. Pursuant to Business and Professions Code §17203, Plaintiff, individually, and  
12 on behalf of all members of the general public who are, has been or may be subjected to these  
13 business acts and practices of defendants hereby request injunctive relief prohibiting such  
14 practices in the future, and such other orders as may be necessary to restore to any identifiable  
15 person in interest, any money or property, real or personal, which may have been acquired by  
16 Defendant by means of such business practices. In addition, pursuant to Code of Civil Procedure  
17 §1021.5, Plaintiff is entitled to recover his reasonable attorney's fees, costs and expenses incurred  
18 in bringing this action.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff respectfully prays for judgment against Toyota as follows:

21 On Behalf of Plaintiffs Individually:

- 22 1. That the contract be adjudged rescinded.
- 23 2. For restitution of all consideration paid.
- 24 3. For incidental and consequential damages.
- 25 4. For actual and statutory damages.
- 26 5. For reasonable attorney fees according to proof.
- 27 6. For costs and expenses incurred herein.
- 28 7. For such other relief as the Court deems proper.

1 8. For a civil penalty of two times Plaintiff's damages.

2 On Behalf of the Class as Described in the Third, Fourth, Fifth and Sixth Causes of Action:

3 1. A grant of restitution to Plaintiff and all members of the general public who  
4 have been affected by the aforementioned business practices and issue such other orders as may  
5 be necessary to restore to any identifiable person in interest, any money or property, real or  
6 personal, which may have been acquired by defendants by means of such practices;

7 2. Injunctive relief prohibiting Defendant's unlawful, deceptive and fraudulent  
8 conduct;


9 3. An award reasonable attorney's fees and costs;

10 4. An award of pre-judgment interest;

11 5. An award of such other and further relief as the court deems appropriate.

12 DATED: February 10, 2010

MAKLER & BAKER LLP

13  
14  
15 By   
16 JULIANNA R. MAKLER  
17 Attorneys for Plaintiff STUART GRANT  
18  
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20  
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28





**Service of Process  
Transmittal**

02/12/2010  
CT Log Number 516155963

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

**RE:** Process Served in California

**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:** Stuart Grant, etc., Ptf. vs. Toyota Motor Sales USA, Inc., etc., et al., Dfts.  
*Name discrepancy noted.*

**DOCUMENT(S) SERVED:** Summons, First Amended Complaint

**COURT/AGENCY:** Los Angeles County, Superior Court, Hill Street, CA  
Case # BC429345

**NATURE OF ACTION:** Product Liability Litigation - Breach of Warranty - Class Action - 2008 Toyota Sequoia, VIN 5TDBY67A48S002958 - Failing to confirm the vehicle to the express written warranty within a reasonable number of repair attempts

**ON WHOM PROCESS WAS SERVED:** C T Corporation System, Los Angeles, CA

**DATE AND HOUR OF SERVICE:** By Process Server on 02/12/2010 at 14:55

**APPEARANCE OR ANSWER DUE:** Within 30 days after service

**ATTORNEY(S) / SENDER(S):** Julianna R. Makler  
Makler & Baker LLP  
3 W. Carrillo Street  
Suite 216  
Santa Barbara, CA 93101  
805-965-4651

**ACTION ITEMS:** SOP Papers with Transmittal, via Fed Ex Standard Overnight , 792175522179  
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  
**PER:** Nancy Flores  
**ADDRESS:** 818 West Seventh Street  
Los Angeles, CA 90017  
**TELEPHONE:** 213-337-4615

Page 1 of 1 / MV

Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of package only, not contents.

32

**PROOF OF SERVICE**

I, Nora Fernandez, declare:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is Alston & Bird LLP, 333 South Hope Street, Sixteenth Floor, Los Angeles, CA 90071. I am over the age of eighteen years and not a party to the action in which this service is made.

On February 18, 2010, I served the document(s) described as **NOTICE OF REMOVAL OF ACTION TO UNITED STATES DISTRICT COURT UNDER 28 U.S.C. § 1441(b) [FEDERAL QUESTION JURISDICTION]; AND DECLARATION OF LISA GILFORD IN SUPPORT THEREOF** on the interested parties in this action by enclosing the document(s) in a sealed envelope addressed to the parties as listed on the attached service list in the following manner:

Julianna R. Makler, Esq.  
Terry L. Baker, Esq.  
Makler & Baker LLP  
3 W. Carrillo Street, Suite 216  
Santa Barbara, CA 93101

Attorneys for Plaintiff  
STUART GRANT  
  
Telephone: (805) 965-4651  
Facsimile: (805) 965-4671

David R. Griffin, Esq.  
Griffin & Associates  
501 W. Broadway, Suite 800  
San Diego, CA 92101

Attorneys for Plaintiff  
STUART GRANT  
  
Telephone: (619) 222-0888  
Facsimile: (619) 923-3680

BY MAIL: I am "readily familiar" with this firm's practice for the collection and the processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, the correspondence would be deposited with the United States Postal Service at 333 South Hope Street, Los Angeles, California 90071 with postage thereon fully prepaid the same day on which the correspondence was placed for collection and mailing at the firm. Following ordinary business practices, I placed for collection and mailing with the United States Postal Service such envelope at Alston & Bird LLP, 333 South Hope Street, Los Angeles, California 90071.

UPS NEXT DAY AIR I deposited such envelope in a facility regularly maintained by UPS with delivery fees fully provided for or delivered the envelope to a courier or driver of UPS authorized to receive documents at Alston & Bird LLP, 333 South Hope Street, Los Angeles, California 90071 with delivery fees provided for.

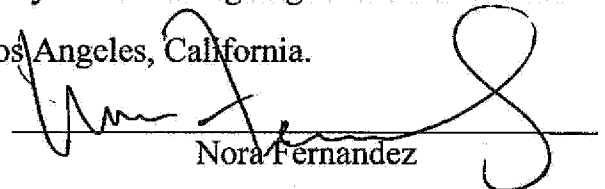
BY FACSIMILE: I telecopied a copy of said document(s) to the following addressee(s) at the following number(s) in accordance with the written confirmation of counsel in this action.

BY ELECTRONIC MAIL TRANSMISSION WITH ATTACHMENT: On this date, I transmitted the above-mentioned document by electronic mail transmission with attachment to the parties at the electronic mail transmission address set forth on the attached service list.

[State] I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[Federal] I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 18, 2010, at Los Angeles, California.

  
Nora Fernandez

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

**NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY**

This case has been assigned to District Judge Mariana P. Pfaelzer and the assigned discovery Magistrate Judge is Suzanne H. Segal.

The case number on all documents filed with the Court should read as follows:

**CV10- 1234 MRP (SSx)**

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

The United States District Judge assigned to this case will review all filed discovery motions and thereafter, on a case-by-case or motion-by-motion basis, may refer discovery related motions to the Magistrate Judge for hearing and determination

-----  
**NOTICE TO COUNSEL**

*A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).*

Subsequent documents must be filed at the following location:

**Western Division**  
312 N. Spring St., Rm. G-8  
Los Angeles, CA 90012

**Southern Division**  
411 West Fourth St., Rm. 1-053  
Santa Ana, CA 92701-4516

**Eastern Division**  
3470 Twelfth St., Rm. 134  
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

1 LISA GILFORD (State Bar No. 171641)  
 2 STEPHANIE A. JONES (State Bar No. 178453)  
 3 JOHN D. ARYA (State Bar No. 156108)  
 4 ROGER A. CERDA (State Bar No. 239027)  
**ALSTON + BIRD LLP**  
 333 South Hope Street  
 Sixteenth Floor  
 Los Angeles, CA 90071  
 Telephone: (213) 576-1000  
 Facsimile: (213) 576-1100  
 lisa.gilford@alston.com  
 Stephanie.jones@alston.com

8 VINCENT GALVIN, JR. (State Bar No. 104448)  
**BOWMAN AND BROOKE**  
 1741 Technology Drive  
 San Jose, CA 95110  
 Telephone: (408) 279-5393  
 Facsimile: (408) 279-5845  
 E-mail: vgalvin@bowman-brooke.com

**Attorneys for Defendant**  
**TOYOTA MOTOR SALES, U.S.A., INC.**

**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**

17 STUART GRANT, an individual,  
 18 Plaintiff,  
 19 v.

20 TOYOTA MOTOR SALES, U.S.A., INC.; a  
 corporation, and DOES ONE through  
 21 TWENTY,  
 22 Defendants.

Case No.: CV10-01234 MRP(SSx)

**PROOF OF SERVICE RE:**

- 1) NOTICE TO COUNSEL;
- 2) NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY;
- 3) CLERK'S OFFICE SERVICES FOR ATTORNEYS AND THE GENERAL PUBLIC;
- 4) USDC CENTRAL DISTRICT OF CALIFORNIA CIVILITY AND PROFESSIONALISM GUIDELINES

**CLASS ACTION**

1 Nora Fernandez certifies and declares as follows:

2 1. I am over the age of 18 and not a party to this action.

3 2. My business address is Alston & Bird LLP, 333 S. Hope Street, 16th  
4 Floor, Los Angeles, California 90071, which is located in the city, county and state  
5 where the mailing described below took place.

6 3. On February 19, 2010, I served the document(s) described as  
7 **PROOF OF SERVICE RE: 1) NOTICE TO COUNSEL; 2) NOTICE OF**  
8 **ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR**  
9 **DISCOVERY; (3) CLERK'S OFFICE SERVICES FOR ATTORNEYS AND**  
10 **THE GENERAL PUBLIC; AND 4) USDC CENTRAL DISTRICT OF**  
11 **CALIFORNIA CIVILITY AND PROFESSIONALISM GUIDELINES** on the  
12 interested parties in this action by enclosing the document(s) in a sealed envelope  
13 addressed as follows:

14 Julianna R. Makler, Esq.  
15 Terry L. Baker, Esq.  
16 Makler & Baker LLP  
17 3 W. Carrillo Street, Suite 216  
18 Santa Barbara, CA 93101

Attorneys for Plaintiff  
STUART GRANT  
Telephone: (805) 965-4651  
Facsimile: (805) 965-4671

19 David R. Griffin, Esq.  
20 Griffin & Associates  
21 501 W. Broadway, Suite 800  
22 San Diego, CA 92101

Attorneys for Plaintiff  
STUART GRANT  
Telephone: (619) 222-0888  
Facsimile: (619) 923-3680

23 4. I am "readily familiar" with this firm's practice for the collection and the  
24 processing of correspondence for mailing with the United States Postal Service. In the  
25 ordinary course of business, the correspondence would be deposited with the United  
26 States Postal Service at 333 South Hope Street, Los Angeles, California 90071 with  
27 postage thereon fully prepaid the same day on which the correspondence was placed  
28 for collection and mailing at the firm. Following ordinary business practices, I placed  
for collection and mailing with the United States Postal Service such envelope at  
Alston & Bird LLP, 333 South Hope Street, Los Angeles, California 90071.



## Court Reporters Office

### Ordering Transcripts

District court civil and criminal transcripts may be ordered by making financial arrangements with the individual court reporters. To identify which reporter to contact for a specific in-court matter before April 2002, please refer to the appropriate docket entry on the civil or criminal docket sheet which is now electronically available on PACER. For specific in-court matters after April 2002, the court reporter assignment schedule is on the website. Go to Court Reporter Schedule, then view all and select the date you need to check. Transcript orders from magistrate judge courts should be placed with the Court Recording Section of the Courts Department. Please refer to the website for the necessary telephone numbers, applicable fees, and identification of court reporter assignments. For more information, you can call the court reporter scheduler's office at 213-894-0658.

### Ordering Realtime Connection

Realtime reporting connection should be requested in advance of the trial. Please contact the court reporter scheduler's office to request the realtime connection. There is a separate charge for the realtime connection. Please refer to the transcript rates to determine the cost. The only court reporters who may connect to realtime and charge for it are Federally certified realtime court reporters. Many reporters will provide the realtime connection if a daily transcript is being ordered. The attorney must bring his or her own laptop computer.

### Ordering Dailies

A request for a daily transcript should be made as soon as possible before the trial begins. Please notify the court reporter scheduler's office at least a week in advance of the trial start date in order to request a daily. The daily will not commence until financial arrangements have been made. Please do not walk into court on the first day of trial and request a daily transcript as reporters need time to prepare.

### Touch Screens

A touch screen is available in the lobby of each division. This device provides court addresses, hours, telephone numbers, a daily master calendar, and the weekly Post Indictment Arrangement calendar.

UNITED STATES  
DISTRICT COURT  
CENTRAL DISTRICT OF  
CALIFORNIA

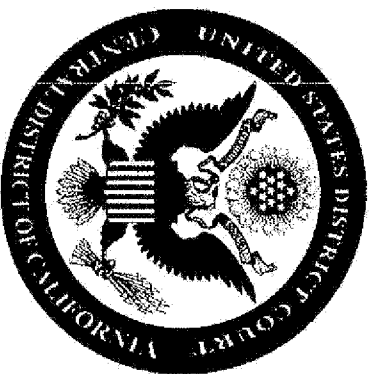
WESTERN DIVISION  
U.S. Courthouse  
Clerk's Office, Room G-8  
312 North Spring Street  
Los Angeles, California 90012  
213-894-1565

SOUTHERN DIVISION  
Ronald Reagan Federal Building and  
Courthouse  
Clerk's Office, Room 1-053  
411 West 4th Street  
Santa Ana, California 92701-4516  
714-338-4750

EASTERN DIVISION  
U.S. Courthouse  
Clerk's Office, Room 134  
3470 Twelfth Street  
Riverside, California 92501  
951-328-4450

[www.caed.uscourts.gov](http://www.caed.uscourts.gov)

UNITED STATES  
DISTRICT COURT  
CENTRAL DISTRICT OF  
CALIFORNIA



Clerk's Office  
Services for Attorneys  
and the  
General Public

March 2009

The United States District Court, Central District of California is one of the largest federal courts in the nation. The clerk's office has put this brochure together to provide a quick reference for attorneys and the general public regarding the services that are currently available. Feedback and suggestions as to how we might improve our service are always appreciated.

#### Website

Information about the district court may be obtained on-line. Users can gather information about attorney admissions and filing procedures; review master and daily calendars, requirements for court appearances, Local Rules, General Orders, and recently issued and published opinions; obtain extensive attorney assistance information and available court services; download court forms, and keep apprised of recent innovations in the clerk's office. Visit the court's website at [www.cacd.uscourts.gov](http://www.cacd.uscourts.gov).

#### Office Hours

The clerk's office hours are 10:00 a.m. - 4:00 p.m., Monday - Friday, excluding court observed holidays. The drop-off box service has been discontinued. For emergency filings between 4:00 p.m. - 5:00 p.m., call Western Division: 213-894-2127; Southern Division: 714-338-4764/4760; Eastern Division: 951-328-4470. After 5:00 p.m., call 213-894-2485.

#### WebPACER

The "Public Access to Court Electronic Records" (PACER) is a browser based electronic retrieval system that provides criminal and civil summaries and docket information using a computer terminal. PACER also provides access to images of electronically filed court documents. The PACER service is available 24 hours a day, including weekends. To establish a PACER account, contact the PACER Service Center: 800-676-6856.

#### Records

All pending criminal, civil, magistrate, and multi-district litigation (MDL) cases may be reviewed, at no charge, at the clerk's office. Case files and dockets may be viewed on the same day as requested unless the requested material is unavailable. Certain closed cases are located at the court's storage facility and may be ordered, viewed and copies obtained directly from National Archives and Records Administration (NARA) at 951-956-2000. You will need to provide the accession, location and box numbers to NARA for file retrieval. This information may be obtained from the court's website at [www.cacd.uscourts.gov/nara](http://www.cacd.uscourts.gov/nara). If there are no search results, call Western Division: 213-894-3863, email

to records\_cacd@acd.uscourts.gov; Southern Division: 714-338-4785; Eastern Division: 951-328-4450. To identify which clerk's office maintains the case file you wish to view, please refer to the prefix of the case number (two digits after the letters represent the filing year; for example, 09 is year 2009) as follows:

#### Western Division (Los Angeles)

CV 09-0000 - civil CR 09-0000 - criminal

#### Southern Division (Santa Ana)

SACV 09-0000 - civil SACR 09-0000 - criminal

#### Eastern Division (Riverside)

EDCV 09-0000 - civil EDCR 09-0000 - criminal

There is a charge for copies, certifications, and exemplifications. For more information on closed or archived court records, visit the court's website at [www.cacd.uscourts.gov/records](http://www.cacd.uscourts.gov/records).

#### Photocopy Service

Photocopy services are available from outside copy services. Please note that exemplifications and certifications must still be obtained from the clerk's office. For payment options, contact the appropriate vendors: Western Division: 213-253-9413; Southern Division: 714-543-8123; Eastern Division: 951-328-4470.

#### Interpreter Services

The interpreter services section of the clerk's office provides interpreters for all court proceedings instituted by the United States that require the use of a language other than English. The section also makes interpreter referrals in response to inquiries from law firms and the general public in cases where court-appointed interpreters are not indicated. For further information, please call 213-894-4370 or visit the court's website at [www.cacd.uscourts.gov/interpreters](http://www.cacd.uscourts.gov/interpreters).

#### Jury Section

The court's website offers valuable information to prospective jurors. You may see responses to frequently asked questions, read the General Order 07-10 regarding the selection of Grand and Petit jurors; download the jury handbook; review jury information for all three divisions; and verify your status/instructions utilizing the Automated Juror Information System (AJIS). Submit questions or comments to the jury section at [jury@acd.uscourts.gov](mailto:jury@acd.uscourts.gov). Wired and wireless Internet access is available in jury assembly rooms.

#### Attorney Work Room

For attorneys, a work room is located on the second floor of the Spring Street Courthouse, on the first floor of the

Royal Federal Building, on the tenth floor of the Ronald Reagan Federal Building and U.S. Courthouse, and on the third floor of the Riverside Courthouse. The workrooms have Pentium personal computers with access to Westlaw, WordPerfect, and PACER; laser printers; wired and wireless Internet access; storage lockers; copy machines; and individual conference rooms.

#### Evidence Presenters

The clerk's office has evidence presenters available for attorneys to use in court proceedings. This technology connects an overhead projector to monitors which display pictures for the judge, attorneys and the jury. There is no charge for using the equipment; however, due to the high demand for its use, the equipment is reserved on a first-come, first-served basis. For more information or to reserve equipment, visit the court's website or contact the appropriate divisions: Western Division at 213-894-1406; Southern Division at 714-338-4785; and Eastern Division at 951-328-4450.

#### Videoconferencing

Videoconferencing allows parties at off-site locations to appear at court hearings by way of two-way audio and visual monitors. The appropriate courtroom deputy clerk should be contacted as to whether use of this equipment in the courtroom is permitted for the specific hearing or trial. There are minimal telephone charges but no equipment charges for use of the unit. For more information or to reserve the equipment, visit the court's website or contact the court's Space and Facilities Help Desk at 213-894-1400.

#### E-Filing

With limited exceptions, all cases are subject to e-filing governed by General Order 08-02, as amended by General Order 08-11. Please visit the CM/ECF web page at [www.cacd.uscourts.gov/cmecf](http://www.cacd.uscourts.gov/cmecf) or call the CM/ECF Help Desk at 213-894-0242.

#### Pro Se

The Federal Pro Se (Self-Represented Litigant) Clinic is located on the fifth floor, Room 525 in the Federal Courthouse at 312 North Spring Street, Los Angeles, California. The Pro Se Clinic, which is staffed by a lawyer, offers on-site information and guidance to individuals who are representing themselves (without an attorney) in civil actions in the United States District Court. For more information, call 213-385-2977, Ext. 270 or visit the court's website at [www.cacd.uscourts.gov/prose](http://www.cacd.uscourts.gov/prose).

# UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA CIVILITY AND PROFESSIONALISM GUIDELINES

## Preamble

In its purest form, law is simply a societal mechanism for achieving justice. As officers of the court, judges and lawyers have a duty to use the law for this purpose, for the good of the people. Even though "justice" is a lofty goal, one which is not always reached, when an individual becomes a member of the legal profession, he or she is bound to strive towards this end.

*...there is a growing sense that lawyers regard their livelihood as a business, rather than a profession.*

Unfortunately, many do not perceive that achieving justice is the function of law in society today. Among members of the public and lawyers themselves, there is a growing sense that lawyers regard their livelihood as a business, rather than a profession. Viewed in this manner, the lawyer may define his or her ultimate goal as "winning" any given case, by whatever means possible, at any cost, with little sense of whether justice is being served. This attitude manifests itself in an array of obstinate discovery tactics, refusals to accommodate the reasonable requests of opposing counsel re: dates, times, and places; and other needless, time-consuming conflicts between and among adversaries. This type of behavior tends to increase costs of litigation and often leads to the denial of justice.

The Central District recognizes that, while the majority of lawyers do not behave in the above-described manner, in recent years there has been a discernible erosion of civility and professionalism in our courts. This disturbing trend may have severe consequences if we do not act to reverse its course. Incivil behavior does not constitute effective advocacy; rather, it serves to increase liti-

gation costs and fails to advance the client's lawful interests. Perhaps just as importantly, this type of behavior causes the public to lose faith in the legal profession and its ability to benefit society. For these reasons, we find that civility and professionalism among advocates, between lawyer and client, and between bench and bar are essential to the administration of justice.

The following guidelines are de-

signed to encourage us, the members of the bench and bar, to act towards each other, our clients, and the public with the dignity and civility that our profession demands. In formulating these guidelines, we have borrowed heavily from the efforts of others who have written similar codes for this same purpose. *The Los Angeles County Bar Association Litigation Guidelines*, guidelines issued by other county bar associations within the Central District, the *Standards for Professional Conduct within the Seventh Federal Judicial Circuit*, and the *Texas Lawyer's Creed* all provide excellent models for professional behavior in the law.

We expect that judges and lawyers will voluntarily adhere to these standards as part of a mutual commitment to the elevation of the level of practice in our courts. These guidelines shall not be used as a basis for litigation or for sanctions or penalties.

Nothing in these guidelines supersedes or modifies the existing Local Rules of the Central District, nor do they alter existing standards of conduct wherein lawyer negligence may be determined and/or examined.

## I. Guidelines

### A. Lawyers' Duties to Their Clients

1. We will practice our profession with a continuing awareness that our role is to advance the legitimate interests of our clients. We will endeavor to achieve our clients' lawful objectives in legal transactions and in litigation as quickly and economically as possible.
2. We will be loyal and committed to our clients' lawful objectives, but we will not permit that loyalty and commitment to interfere with our duty to provide objective and independent advice.
3. We will advise our clients that civility and courtesy are expected and are not a sign of weakness.
4. We will treat adverse parties and witnesses with fairness and due consideration. A client has no right to demand that we act in an abusive manner or indulge in any offensive conduct.
5. We will advise our clients that we will not pursue conduct that is intended primarily to harass or drain the financial resources of the opposing party.
6. We will advise our clients that we reserve the right to determine whether to grant accommodations to opposing counsel in all matters that do not adversely affect our clients' lawful objectives. Clients have no right to instruct us to refuse reasonable requests made by other counsel.
7. We will advise our clients regarding availability of mediation, arbitration, and other alternative meth-

ods of resolving and settling disputes.

8. We will advise our clients of the contents of this creed when undertaking representation.

## **B. Lawyers' Duties to Other Counsel**

### **1. Communications with Adversaries**

- a. We will adhere to all express promises and to agreements with other counsel, whether oral or in writing, and will adhere in good faith to all agreements implied by the circumstances or local customs.
- b. When we reach an oral understanding on a proposed agreement or a stipulation and decide to commit it to writing, the drafter will endeavor in good faith to state the oral understanding accurately and completely. The drafter will provide the other counsel with the opportunity to review the writing. As drafts are exchanged between or among counsel, changes from prior drafts will be identified in the draft or otherwise explicitly brought to the attention of other counsel. We will not include in a draft matters to which there has been no agreement without explicitly advising other counsel in writing of the addition.
- c. We will not write letters for the purpose of ascribing to opposing counsel a position he or she has not taken, or to create "a record" of events that have not occurred. Letters intended only to make a record should be used sparingly and only when thought to be necessary under all of the circumstances. Unless specifically permitted or invited by the court, letters between counsel should not be sent to judges.

### **2. Scheduling Issues**

- a. We will not use any form of discovery or discovery scheduling as a means of harassment.
- b. We will consult other counsel regarding scheduling matters in a good faith effort to avoid scheduling conflicts.
- c. We will endeavor to accommodate previously scheduled dates for hearings, depositions, meetings, conferences, vacations, seminars, or other functions that produce good faith calendar conflicts on the part of other counsel, where it is possible to do so without prejudicing the client's rights. If we have been given an accommodation because of a calendar conflict, we will notify those who have accommodated us as soon as the conflict has been removed.
- d. We will notify other counsel and, if appropriate, the court or other persons, at the earliest possible time when hearings, depositions, meetings, or conferences are to be canceled or postponed. Early notice avoids unnecessary travel and expense of counsel and may enable the court to use the previously reserved time for other matters.
- e. Unless time is of the essence, as a matter of courtesy we will grant first requests for reasonable extensions of time to respond to litigation deadlines. After a first extension, any additional requests for time will be considered by balancing the need for expedition against the deference one should ordinarily give to an opponent's schedule of personal and professional engagements, the reasonableness of the length of extension requested, the opponent's willingness to grant reciprocal extensions, the time actually needed for the task, and whether it is likely a court would grant the extension if asked to do so.

- f. We will not request an extension of time solely for the purpose of unjustified delay or to obtain a tactical advantage.
- g. We will not attach to extensions unfair and extraneous conditions. We may impose conditions for the purpose of preserving rights that an extension might jeopardize, or for seeking reciprocal scheduling concessions. We will not, by granting extensions, seek to preclude an opponent's substantive rights, such as his or her right to move against a complaint.

### **3. Service of Papers**

- a. We will not time the filing or service of motions or pleadings in any way that unfairly limits another party's opportunity to respond.
- b. We will not serve papers sufficiently close to a court appearance so as to inhibit the ability of opposing counsel to prepare for that appearance or, where permitted by law, to respond to the papers.
- c. We will not serve papers in order to take advantage of an opponent's known absence from the office or at a time or in a manner designed to inconvenience an adversary, such as late on a Friday afternoon or the day preceding a secular or religious holiday.
- d. When it is likely that service by mail, even when allowed, will prejudice the opposing party, we will effect service personally or by facsimile transmission.

### **4. Depositions**

- a. We will take depositions only when actually needed to ascertain facts or information or to perpetuate testimony. We will not take depositions

for the purpose of harassment or to increase litigation expense.

- b. We will not engage in any conduct during a deposition that would be inappropriate in the presence of a judge.
- c. During depositions we will ask only those questions we reasonably believe are necessary for the prosecution or defense of an action. We will not inquire into a deponent's personal affairs or question a deponent's integrity where such inquiry is irrelevant to the subject matter of the deposition. We will refrain from repetitive or argumentative questions or those asked solely for purposes of harassment.
- d. When defending a deposition, we will limit objections to those that are well founded and necessary to protect our client's interests. We recognize that most objections are preserved and need be interposed only when the form of a question is defective or privileged information is sought.
- e. When a question is pending, we will not, through objections or otherwise, coach the deponent or suggest answers.
- f. We will not direct a deponent to refuse to answer questions unless they seek privileged information or are manifestly irrelevant or calculated to harass.
- g. When we obtain documents pursuant to a deposition subpoena, we will make copies of the documents available to opposing counsel at his or her expense, even if the deposition is canceled or adjourned.

#### 5. Document Demands

- a. We will carefully craft document production requests so they are limited to those documents we reason-

ably believe are necessary for the prosecution or defense of an action. We will not design production requests to harass or embarrass a party or witness or to impose an undue burden or expense in responding.

- b. We will respond to document requests in a timely and reasonable manner and not strain to interpret the request in an artificially restrictive manner to avoid disclosure of relevant and non-privileged documents.
- c. We will withhold documents on the grounds of privilege only where it is appropriate to do so.
- d. We will not produce documents in a disorganized or unintelligible manner, or in a way designed to hide or obscure the existence of particular documents.
- e. We will not delay document production to prevent opposing counsel from inspecting documents prior to scheduled depositions or for any other tactical reason.

#### 6. Interrogatories

- a. We will carefully craft interrogatories so that they are limited to those matters we reasonably believe are necessary for the prosecution or defense of an action, and we will not design them to harass or place an undue burden or expense on a party.
- b. We will respond to interrogatories in a timely and reasonable manner and will not strain to interpret them in an artificially restrictive manner to avoid disclosure of relevant and non-privileged information.
- c. We will base our interrogatory objections on a good faith belief in their merit and not for the purpose of withholding or delaying the disclosure of relevant information. If

an interrogatory is objectionable in part, we will answer the unobjectionable part.

#### 7. Settlement and Alternative Dispute Resolution

- a. Except where there are strong and overriding issues of principle, we will raise and explore the issue of settlement in every case as soon as enough is known about the case to make settlement discussion meaningful.
- b. We will not falsely hold out the possibility of settlement as a means for adjourning discovery or delaying trial.
- c. In every case, we will consider whether the client's interest could be adequately served and the controversy more expeditiously and economically disposed of by arbitration, mediation, or other forms of alternative dispute resolution.

#### 8. Written Submissions to a Court, Including Briefs, Memoranda, Affidavits, Declarations, and Proposed Orders.

- a. Before filing a motion with the court, we will engage in more than a mere *pro forma* discussion of its purpose in an effort to resolve the issue with opposing counsel.
- b. We will not force our adversary to make a motion and then not oppose it.
- c. In submitting briefs or memoranda of points and authorities to the court, we will not rely on facts that are not properly part of the record. We may present historical, economic, or sociological data, if such data appears in or is derived from generally available sources.

**PROOF OF SERVICE**

I, Nora Fernandez, declare:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is Alston & Bird LLP, 333 South Hope Street, Sixteenth Floor, Los Angeles, CA 90071. I am over the age of eighteen years and not a party to the action in which this service is made.

On February 19, 2010, I served the document(s) described as **PROOF OF SERVICE RE: 1) NOTICE TO COUNSEL; 2) NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY; (3) CLERK'S OFFICE SERVICES FOR ATTORNEYS AND THE GENERAL PUBLIC; AND 4) USDC CENTRAL DISTRICT OF CALIFORNIA CIVILITY AND PROFESSIONALISM GUIDELINES** on the interested parties in this action by enclosing the document(s) in a sealed envelope addressed to the parties as listed on the attached service list in the following manner:

Julianna R. Makler, Esq.  
Terry L. Baker, Esq.  
Makler & Baker LLP  
3 W. Carrillo Street, Suite 216  
Santa Barbara, CA 93101

Attorneys for Plaintiff  
STUART GRANT  
  
Telephone: (805) 965-4651  
Facsimile: (805) 965-4671

David R. Griffin, Esq.  
Griffin & Associates  
501 W. Broadway, Suite 800  
San Diego, CA 92101

Attorneys for Plaintiff  
STUART GRANT  
  
Telephone: (619) 222-0888  
Facsimile: (619) 923-3680

BY MAIL: I am "readily familiar" with this firm's practice for the collection and the processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, the correspondence would be deposited with the United States Postal Service at 333 South Hope Street, Los Angeles, California 90071 with postage thereon fully prepaid the same day on which the correspondence was placed for collection and mailing at the firm. Following ordinary business practices, I placed for collection and mailing with the United States Postal Service such envelope at Alston & Bird LLP, 333 South Hope Street, Los Angeles, California 90071.

UPS NEXT DAY AIR I deposited such envelope in a facility regularly maintained by UPS with delivery fees fully provided for or delivered the envelope to a courier or driver of UPS authorized to receive documents at Alston & Bird LLP, 333 South Hope Street, Los Angeles, California 90071 with delivery fees provided for.

BY FACSIMILE: I telecopied a copy of said document(s) to the following addressee(s) at the following number(s) in accordance with the written confirmation of counsel in this action.

BY ELECTRONIC MAIL TRANSMISSION WITH ATTACHMENT: On this date, I transmitted the above-mentioned document by electronic mail transmission with attachment to the parties at the electronic mail transmission address set forth on the attached service list.

[State] I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[Federal] I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 19, 2010, at Los Angeles, California.

  
Nora Fernandez

1 LISA GILFORD (State Bar No. 171641)  
 2 JOHN D. ARYA (State Bar No. 156108)  
 3 STEPHANIE A. JONES (State Bar No. 178453)  
 4 ROGER A. CERDA (State Bar No. 239027)  
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20 **Attorneys for Defendant**  
 21 **TOYOTA MOTOR SALES, U.S.A., INC.**

22 **UNITED STATES DISTRICT COURT**  
 23 **CENTRAL DISTRICT OF CALIFORNIA**

24 STUART GRANT, an individual,  
 25 Plaintiff,

26 v.

27 TOYOTA MOTOR SALES, U.S.A., INC.; a  
 28 corporation, and DOES ONE through  
 TWENTY,  
 Defendants.

Case No.: CV10-01234 MRP(SSx)

[Hon. Mariana R. Pfaelzer]

**DECLARATION OF LISA GILFORD  
 IN SUPPORT OF EX PARTE  
 APPLICATION TO STAY ALL  
 PROCEEDINGS PENDING ACTION  
 BY THE JUDICIAL PANEL ON  
 MULTIDISTRICT LITIGATION**

**[Filed concurrently with Notice of and  
 Ex Parte Application, Certificate of  
 Service, and (Proposed) Order]**

**DECLARATION OF LISA GILFORD**

I, Lisa Gilford, declare:

1. I am a partner at Alston & Bird LLP, attorneys of record for defendant Toyota Motor Sales USA, Inc. ("Toyota") in this action. I make this Declaration in support of Toyota's Ex Parte Application to Stay All Proceedings Pending Action by the Judicial Panel on Multidistrict Litigation. I have personal knowledge of the following facts and if called as a witness would and could testify competently thereto.

2. This action, *Stuart Grant v. Toyota Motor Sales USA, Inc.*, is a representative class-action purporting to arise out of Toyota's safety recalls of Toyota and Lexus vehicles and the alleged unintended acceleration of those vehicles. A true and correct copy of Plaintiff's First Amended Complaint is attached hereto as Exhibit A.

3. On February 18, 2010 Toyota removed this action to the United States District Court for the Central District of California, based on Federal Claim Jurisdiction, given that the complaint alleges violations of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(1) *et seq.* Because Toyota removed this action on February 18, 2010, its responsive pleading is now due on or before February 25, 2010. Toyota anticipates filing a motion to dismiss certain or all of the claims in plaintiff's First Amended Complaint.

4. As of February 16, 2010, there have been 67 other class-action complaints filed in various United States District Courts around the country, by alleged owners or lessees of Toyota/Lexus vehicles, all asserting claims against Toyota entities, related to Toyota's voluntary safety recalls of Toyota and Lexus vehicles and/or alleged unintended acceleration of those vehicles. Charts listing those actions in the Central District and other District Courts, respectively, are attached hereto collectively as Exhibit B.



1           5.     At least four motions for coordinated treatment of these cases have  
2 been filed with the Judicial Panel on Multidistrict Litigation (“JPML”) concerning the  
3 transfer of these actions for coordinated or consolidated pretrial proceedings, pursuant  
4 to 28 U.S.C. § 1407.

5           6.     Toyota will be joining in the requests for consolidated treatment  
6 and filing its response with the JPML on February 26, 2010. Toyota’s U.S.  
7 headquarters are in the Central District, and the vast majority of the cases, including  
8 the first-filed class action, have been filed here. Many of the Central District actions  
9 are already pending before the Honorable A. Howard Matz. Toyota therefore  
10 anticipates requesting consolidated treatment here in the Central District, with Judge  
11 Matz presiding over the consolidated cases.

12           7.     The JPML’s next hearing is on March 25, 2010. The schedule for  
13 the March 25, 2010 hearing has not yet been released. However, given the number of  
14 consolidation requests, Toyota anticipates that the panel will consider consolidation at  
15 that hearing. Toyota therefore moves the Court for an Order staying all proceedings  
16 in this case pending a ruling by the JPML. The JPML’s ruling will, in all likelihood,  
17 result in the transfer of this action to a consolidated Multidistrict Litigation (“MDL”)  
18 proceeding.

19           8.     Given the strong likelihood that these cases will be transferred into  
20 a MDL, the need for a stay of this action to promote the purposes of coordinated MDL  
21 treatment is compelling. Any action by this Court prior to such transfer would be  
22 wasteful of the Court’s valuable judicial resources and would create the possibility of  
23 inconsistencies in the adjudication of dozens of overlapping class actions. Toyota,  
24 therefore, requests that this Court stay all proceedings in the present case until the  
25 JPML has ruled on consolidation.

26           9.     The need here is particularly compelling because, absent a stay,  
27 Toyota’s motion to dismiss will be due on February 25, 2010. As a result, Toyota  
28

1 respectfully requests that the Court rule on the instant *ex parte* application at its first  
2 opportunity.

3 10. On February 18-19, 2010, my office engaged in significant  
4 telephonic meet and confer efforts with plaintiff's counsel, Terry L. Baker of Makler  
5 & Baker (3 West Carrillo Street, Suite 216, Santa Barbara, California, telephone:  
6 (805) 965-4651) regarding Toyota's intent to move for an immediate stay of these  
7 proceedings pending a JPML hearing. We were not able to secure a stipulation from  
8 Mr. Baker agreeing to a stay of these proceedings, so we advised him by telephone on  
9 Friday, February 19, 2010, that we would be bringing the instant *ex parte* Application  
10 on Monday, February 22, 2010. Mr. Baker indicated that plaintiffs will oppose  
11 Toyota's *ex parte* Application.

12 I declare under penalty of perjury of the laws of the United States that the  
13 foregoing is true and correct.

14 Executed this 22<sup>nd</sup> day of February 2010, at Los Angeles, California.

15  
16   
17 \_\_\_\_\_  
18 Lisa Gilford

**EXHIBIT A**

1 **MAKLER & BAKER LLP**  
Julianna R. Makler (SBN 189138)  
2 Terry L. Baker (SBN 214365)  
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9 Attorneys for Plaintiff  
STUART GRANT

10  
11  
12 **SUPERIOR COURT IN THE STATE OF CALIFORNIA**  
13 **FOR THE COUNTY OF LOS ANGELES**

14 **STUART GRANT, an individual;**

Case number: BG429345

15 Plaintiff,

**FIRST AMENDED COMPLAINT FOR  
DAMAGES AND INJUNCTIVE RELIEF**

16 vs.

17 **TOYOTA MOTOR SALES USA, INC., a**  
18 **corporation; and DOES ONE through**  
19 **TWENTY**

**Song-Beverly Warranty Act  
Magnuson-Moss Warranty Act  
Unfair Competition Law**

20 Defendants.

**CLASS ACTION**

21  
22  
23 **INTRODUCTION**

24 1. This lawsuit centers on the recall of more than 8.5 million vehicles manufactured by  
25 Toyota Motor Sales USA, Inc. These recalls have tarnished Toyota's reputation for making some  
26 of the most reliable vehicles on the road. It is the most prominent auto safety issue since reports  
27 surfaced in 2000 that many Firestone tires mounted on Ford Explorers failed.

28 ///

1 2. Prior to January 21, 2010, Toyota maintained one of the highest customer  
2 satisfaction records. Many consumers were willing to pay premium price for Toyota vehicles,  
3 spending thousands more than they would pay for comparable vehicles from other manufacturers.

4 3. Toyota vehicles have been recalled for numerous defects and nonconformities,  
5 including sudden acceleration caused by defective floor mats and/or faulty accelerator pedals and  
6 more recently braking system failures.

7 4. Defendant Toyota knew or should have known about the widespread safety issues in  
8 the vehicles it manufactured since at least 2007, and yet it has repeatedly failed to disclose such  
9 information to California consumers. Many consumers would never have purchased Toyota  
10 vehicles had they known about these defects and nonconformities which jeopardize safety and  
11 lives. Furthermore, the widespread recalls have seriously sliced Toyota vehicles' resale values  
12 by 3.5% to 5%.

13 5. Plaintiff STUART GRANT brings this action on behalf of himself and others similarly  
14 situated and on behalf of the general public as a private attorney general to stop this unlawful  
15 conduct and to provide restitution to victimized consumers.

16 **FACTS COMMON TO PLAINTIFF STUART GRANT**

17 6. Defendant Toyota Motor Sales USA, Inc. (hereinafter "Toyota") is a duly authorized  
18 corporation doing business in Los Angeles County, California.

19 7. Plaintiff does not know the true names of the Defendants sued herein as Does One  
20 through Twenty and sues said Defendants pursuant to the provisions of Code of Civil Procedure  
21 § 474.

22 8. On or about June 27, 2008, Plaintiff purchased a 2008 Toyota Sequoia, VIN  
23 5TDBY67A48S002958 ("vehicle"), which was manufactured and warranted by Toyota.

24 9. In connection with the transaction, Toyota issued to Plaintiff an express warranty within  
25 the meaning of Cal. Civil Code § 1791.2, which is also a written warranty within the meaning  
26 of 15 U.S.C. § 2301(6). By the terms of the express written warranty, Toyota promised that the  
27 vehicle's material and workmanship were defect free, undertook to preserve and maintain the  
28

1 utility and performance of the vehicle and to provide compensation if there is a failure in utility  
2 or performance, and agreed to refund, repair, replace, or take other remedial action with respect  
3 to the vehicle.

4 10. Plaintiff purchased the vehicle primarily for personal, family or household purposes.

5 11. Subsequent to Plaintiff's transaction, the vehicle exhibited numerous defects and  
6 nonconformities covered by the warranty which substantially impair the use, value and safety of  
7 the motor vehicle to the Plaintiff.

8 12. Plaintiff delivered the nonconforming motor vehicle to Toyota's authorized repair  
9 facilities for repairs pursuant to the terms of the warranty. Toyota has failed to repair or replace  
10 the vehicle.

11 **FACTS RELATING TO CLASS ACTION ALLEGATIONS**

12 13. Since September 2007 to the date of the filing of this complaint, Defendant Toyota  
13 has recalled 8.5 million vehicles due to possible sudden acceleration. Toyota claims the defect  
14 stems from an alleged faulty accelerator pedals and the possibility that floor mats could jam the  
15 accelerator pedal.

16 14. As of January 26, 2010, Toyota stopped selling eight models in the United States and  
17 Canada, including its popular Camry (2007-2010 model years) and Corolla (2009-2010 model  
18 years), because of possible unintended acceleration. Other recalled Toyota vehicles for this defect  
19 include the 2009-2010 Avalon, 2010 Highlander, 2009-2010 Matrix, 2009-2010 RAV4, 2008-  
20 2010 Sequoia, and the 2007-2010 Tundra.

21 15. Plaintiff is informed and believes at least 19 deaths and 341 injuries stemming from 815  
22 separate crashes involving Toyotas and sudden acceleration.

23 16. On February 9, 2010, Toyota recalled 437,000 hybrid cars, including its latest Prius  
24 model to repair a software glitch in its antilock braking system.

25 17. These recalls have, and continue to, tarnish Toyota's reputation for making some of the  
26 most reliable vehicles on the road. It is the most prominent auto safety issue since reports surfaced  
27 in 2000 that many Firestone tires mounted on Ford Explorers failed.

1 18. Since 2003, nine U.S. investigations by the National Highway Traffic Safety  
2 Administration (hereafter "NHTSA"), into sudden acceleration complaints show Toyota  
3 repeatedly ruled out many owner complaints, dismissed several concerns as posing no danger,  
4 and modified models in production without offering similar changes to vehicles already on the  
5 road. Instead, Toyota has blamed the sudden acceleration events on driver error, saying it was  
6 impossible for the electronics to malfunction. Not until the 2007 floor mat investigation did any  
7 of the complaints lead to a recall.

8 19. Since the 1990s, NHTSA had concluded that most sudden acceleration complaints  
9 were caused by drivers mistakenly hitting the gas pedal instead of the brake. When a  
10 Massachusetts man asked in April 2003 for an investigation of 1997-2000 model Lexus sedans,  
11 citing 271 complaints of unintended acceleration, NHTSA rejected his request without querying  
12 Toyota for data.

13 20. In February 2004, a nurse from Maryland asked the agency to review the 2002 and  
14 2003 Lexus ES350 sedans, saying her throttle had malfunctioned several times and led to one  
15 crash. A month later, NHTSA launched a wider investigation into the electronic throttles on  
16 nearly 1 million Lexus and Toyota sedans, citing more than 100 complaints.

17 21. From the start, Toyota pushed NHTSA to narrowly define the problem as short bursts  
18 where the engine surged to "something less than a wide-open throttle." It compared many of the  
19 complaints to the prior sudden acceleration cases that NHTSA had previously deemed driver  
20 error. Toyota also claimed the computer could not open the throttle without the accelerator pedal  
21 being pressed, and contended even if built-in safety checks failed, stepping on the brakes would  
22 stop the car.

23 22. The recalls since September 2007 have now created a stigma of unreliability and  
24 safety concern which will be retained in all Toyota vehicles, not just those vehicles recalled.  
25 Kelley Blue Book, a leading used-car value service, is lowering its estimated prices for the  
26 recalled models by 3.5% to 5%. That's enough to lower the value of each vehicle by between  
27 \$800-\$1,500.

**FIRST CAUSE OF ACTION**  
**Violations of the Song-Beverly Consumer Warranty Act**  
**On Behalf of Plaintiff Stuart Grant Only**

23. Plaintiff incorporates all preceding paragraphs.

24. Plaintiff is a "buyer" as defined by Cal. Civ. Code § 1791(b).

25. The vehicle is a "consumer good" as defined by Cal. Civ. Code § 1791(a).

26. Toyota is a "manufacturer" as defined by Cal. Civ. Code § 1791(j).

27. Plaintiff's purchase of the vehicle was a "sale" as defined by Cal. Civ. Code 1791(n).

28. Toyota violated the Song-Beverly Act by failing to conform the vehicle to the express written warranty within a reasonable number of repair attempts or within the warranty period and failing to promptly replace the vehicle or make restitution to the plaintiff.

29. The above-described defects, malfunctions, and nonconformities substantially impair the use, value, and safety of the vehicle.

30. Plaintiff has not made unreasonable or unintended use of the vehicle.

31. Pursuant to Civil Code § 1793.2(d), Toyota must refund the price of the vehicle to Plaintiff:

32. Pursuant to Civil Code § 1794(a), Plaintiff is entitled to restitution of all consideration given to Toyota.

33. As a direct and proximate result of said violations of the Song-Beverly Act, Plaintiff has sustained, and continues to sustain, incidental and consequential damages in the approximate amount of \$75,000.00 according to proof.

34. The failure of Toyota to comply with the express warranty was willful in that Toyota had actual knowledge of the vehicles' defects and malfunctions, knew of its legal duties under the warranty and the law, but repeatedly refused to make necessary repairs and/or provide a refund.

35. Pursuant to Civil Code § 1794(c), Plaintiff is entitled to a civil penalty of two times the amount of his actual damages.

36. Pursuant to Civil Code § 1794(d), Plaintiff is entitled to reasonable attorney fees according to proof.



**SECOND CAUSE OF ACTION  
Violations of the Magnuson-Moss Warranty Act  
On Behalf of Plaintiff Stuart Grant Only**

37. Plaintiff incorporates by reference all preceding paragraphs.

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

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

40. Toyota is a "supplier" and a "warrantor" as defined respectively by 15 U.S.C. § 2301(4) and (5).

41. The express written warranty is a "written warranty" as defined by 15 U.S.C. § 2301(6).

42. Toyota violated the Magnuson-Moss Warranty Act by failing to conform the vehicle to the express warranty within a reasonable number of attempts, a reasonable amount of time or within the warranty period itself. Defendant failed to cure its failure to comply with the Act.

43. Prior to commencing this action, Plaintiff afforded Toyota reasonable opportunities to cure the failures and to comply with the Act.

44. Pursuant to 15 U.S.C. § 2310(d)(1), Plaintiff is entitled to the equitable remedies of rescission and restitution and/or damages. Plaintiff revokes acceptance of the vehicle and rescinds the contract. Plaintiff is entitled to restitution of all consideration given.

45. As a proximate result of the breach of written warranty, Plaintiff has sustained, and continues to sustain damages, both economic and noneconomic, in the approximate amount of \$75,000.00.

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

**THIRD CAUSE OF ACTION  
Breach of Express Warranty  
On Behalf of Plaintiff Stuart Grant and Others Similarly Situated**

47. Plaintiff incorporates by reference all preceding paragraphs.

48. Plaintiff brings this action on behalf of himself and others similarly situated on behalf of a class of all California consumers who purchased the following Toyota vehicles: 2007-2010 Camry, 2009-2010 Corolla 2009-2010, 2009-2010 Avalon, 2010 Highlander, 2009-2010 Matrix, 2009-2010 RAV4, 2008-2010 Sequoia, 2007-2010 Tundra

9

1 and the 2010 Prius.

2 49. The proposed Class is so numerous that joinder is impracticable. The members of  
3 the class are ascertainable through Defendants' records.

4 50. At all times mentioned, on or about January 2007, Toyota utilized media,  
5 professional publications and salespersons to urge the use and purchase of Toyota vehicles,  
6 including but not limited to and expressly warranted to members of the general public herein,  
7 that the vehicle and its component parts were free from latent defects or inherent risk of failure  
8 and were effective, proper and safe for their intended use.

9 51. Plaintiff and others similarly situated relied upon said express warranty  
10 representations of Toyota in the purchase of Toyota vehicles.

11 52. Defendant breached its warranties by selling vehicles that did not conform to the  
12 promises in the warranties given to Plaintiff and others similarly situated with their purchases.

13 53. After Plaintiff sustained the damages complained herein as a result of the defective  
14 condition of his vehicle, notice was given by Plaintiff, who has satisfied all terms of the contract  
15 and requirements, except as may be excused by misconduct of the Defendant. This complaint  
16 shall serve as further notice of damage as result of the defective condition of Toyota vehicles on  
17 behalf of Plaintiff and others similarly situated.

18 54. Questions of law and fact of common and general interest to the class exist as to all  
19 members of the class and predominate over any questions affecting only individual members of  
20 the class. The common questions include, among others, the following:

21 a. Whether Defendant Toyota breached the express warranty given in the sale of  
22 2007-2010 Camry, 2009-2010 Corolla 2009-2010, 2009-2010 Avalon, 2010 Highlander, 2009-  
23 2010 Matrix, 2009-2010 RAV4, 2008-2010 Sequoia, 2007-2010 Tundra and 2010 Prius.

24 55. Plaintiff's claims are typical of the claims of the class, as all such claims arise out  
25 of purchase of vehicles manufactured by Defendant where members of the class have been  
26 damaged by its breach of the express warranty.

27 56. Plaintiff will fairly and adequately protect the interest of the members of the  
28 class. Plaintiff has no interests antagonistic to the class. Plaintiff has retained counsel

1 experienced in the prosecution of class actions, including and especially consumer class actions.

2 57. A class action is also superior to other available methods for the fair and efficient  
3 adjudication of this controversy because the damages suffered by each individual member are  
4 relatively small compared to the expense and burden of prosecuting individual cases.

5 58. If individual class members were required to bring separate actions, courts  
6 throughout California would be confronted by a multiplicity of lawsuits burdening the court  
7 system while also creating the risk of inconsistent rulings and contradictory judgments. In  
8 contrast to proceeding on a case-by-case basis, in which inconsistent results will magnify the  
9 delay and expense to all parties and the court system, this class action presents far fewer  
10 management difficulties while providing unitary adjudication, economies of scale and  
11 comprehensive supervision by a single court.

12 **FOURTH CAUSE OF ACTION**  
13 **Breach of Implied Warranty--Song-Beverly Consumer Warranty Act**  
**On Behalf of Plaintiff Stuart Grant and Others Similarly Situated**

14 59. Plaintiff incorporates by reference all preceding paragraphs.

15 60. Plaintiff brings this action on behalf of himself and others similarly  
16 situated on behalf of a class of all California consumers who purchased Toyota vehicles  
17 manufactured by Toyota Motor Sales in the three years preceding the filing of this lawsuit.

18 61. The proposed Class is so numerous that joinder is impracticable. The members of  
19 the class are ascertainable through Defendants' records.

20 62. Pursuant to Cal. Civ. Code § 1792, Toyota vehicles purchased by California consumers  
21 was accompanied by the manufacturer's implied warranty of merchantability.

22 63. Pursuant to Civil Code § 1793, and because of the existence of the express warranty,  
23 Toyota may not disclaim, limit, or modify the implied warranties provided by the Song-Beverly  
24 Act.

25 64. Questions of law and fact of common and general interest to the class exist as to all  
26 members of the class and predominate over any questions affecting only individual members of  
27 the class. The common questions include, among others, the following:

28 ///

1 a. Whether Defendant Toyota's breached the implied warranty of merchantability of  
2 Civil Code §§ 1791.1 and 1792 in that the above-described defects, malfunctions, and  
3 nonconformities render its vehicle unfit for the ordinary purposes for which it is used and it  
4 would not pass without objection in the trade.

5 65. Plaintiff's claims are typical of the claims of the class, as all such claims arise out  
6 of purchase of vehicles manufactured by Defendant where members of the class have been  
7 damaged by its breach of the implied warranty of merchantability..

8 66. Plaintiff will fairly and adequately protect the interest of the members of the  
9 class. Plaintiff has no interests antagonistic to the class. Plaintiff has retained counsel  
10 experienced in the prosecution of class actions, including and especially consumer class actions.

11 67. A class action is also superior to other available methods for the fair and efficient  
12 adjudication of this controversy because the damages suffered by each individual member are  
13 relatively small compared to the expense and burden of prosecuting individual cases.

14 68. If individual class members were required to bring separate actions, courts  
15 throughout California would be confronted by a multiplicity of lawsuits burdening the court  
16 system while also creating the risk of inconsistent rulings and contradictory judgments. In  
17 contrast to proceeding on a case-by-case basis, in which inconsistent results will magnify the  
18 delay and expense to all parties and the court system, this class action presents far fewer  
19 management difficulties while providing unitary adjudication, economies of scale, and  
20 comprehensive supervision by a single court.

21 69. Pursuant to Civil Code § 1794(a), Plaintiff and others similarly situated are entitled to  
22 restitution of all consideration.

23 70. As a direct and proximate result of said breach of implied warranty, Plaintiff and others  
24 similarly situated have sustained, and continue to sustain, incidental and consequential damages.

25 71. Pursuant to Civil Code § 1794(d), Plaintiff is entitled to reasonable attorney fees according  
26 to proof.

27 ///

28 ///

**FIFTH CAUSE OF ACTION  
Breach of Implied Warranty—Magnuson-Moss Warranty Act  
On Behalf of Plaintiff Stuart Grant and Others Similarly Situated**

72. Plaintiff incorporates by reference all preceding paragraphs.

73. Plaintiff brings this action on behalf of himself and others similarly situated on behalf of a class of all California consumers who purchased Toyota vehicles manufactured by Toyota Motor Sales in the three years preceding the filing of this lawsuit.

74. The proposed Class is so numerous that joinder is impracticable. The members of the class are ascertainable through Defendants' records.

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

76. Pursuant to 15 U.S.C. § 2310(d)(1), and because of said breaches of implied warranties, Plaintiff and other similarly situated are entitled to the equitable remedies of rescission and restitution and/or damages.

77. Questions of law and fact of common and general interest to the class exist as to all members of the class and predominate over any questions affecting only individual members of the class. The common questions include, among others, the following:

a. Whether Defendant Toyota's breached the implied warranty of merchantability contained in 15 U.S.C. § 2310(d)(1) in that the above-described defects, malfunctions, and nonconformities render its vehicle unfit for the ordinary purposes for which it is used and it would not pass without objection in the trade.

78. Plaintiff's claims are typical of the claims of the class, as all such claims arise out of purchase of vehicles manufactured by Defendant where members of the class have been damaged by its breach of the implied warranty of merchantability.

79. Plaintiff will fairly and adequately protect the interest of the members of the class. Plaintiff has no interests antagonistic to the class. Plaintiff has retained counsel experienced in the prosecution of class actions, including and especially consumer class actions.

///

1 80. A class action is also superior to other available methods for the fair and efficient  
2 adjudication of this controversy because the damages suffered by each individual member are  
3 relatively small compared to the expense and burden of prosecuting individual cases.

4 81. If individual class members were required to bring separate actions, courts  
5 throughout California would be confronted by a multiplicity of lawsuits burdening the court  
6 system while also creating the risk of inconsistent rulings and contradictory judgments. In  
7 contrast to proceeding on a case-by-case basis, in which inconsistent results will magnify the  
8 delay and expense to all parties and the court system, this class action presents far fewer  
9 management difficulties while providing unitary adjudication, economies of scale and  
10 comprehensive supervision by a single court.

11 82. As a proximate result of the breaches of implied warranty, Plaintiff and others similarly  
12 situated have sustained, and continues to sustain, damages, both economic and noneconomic.

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

15 **SIXTH CAUSE OF ACTION**  
16 **Violation of the Unfair Competition Law (Business and Professions Code section 17200 et**  
17 **seq.)**

18 **On Behalf of Plaintiff Stuart Grant and Others Similarly Situated**

19 84. Plaintiff incorporates by reference all preceding paragraphs.

20 85. The business acts and practices of Defendant as herein above described  
21 constitute fraudulent, unfair and unlawful business practices in violation of Business and  
22 Professions Code § 17200 et seq. without limitation:

23 1. Defendant's practice of failing to disclose to consumers known safety defects and  
24 nonconformities in the vehicles it manufactures to induce consumers to purchase its vehicles.

25 2. Defendants' practice of knowingly making false representations and  
26 concealing material facts about the vehicles it manufactures to induce consumers to purchase its  
27 vehicles.

28 3. Defendant's practice breached its warranties by selling vehicles that did not  
conform to the promises in the express warranties given to Plaintiff and others similarly situated

1 with their purchases, as set forth and described in the Third Cause of Action

2 4. Defendant's violations of the Song-Beverly Consumer Warranty Act, Civil Code  
3 §§ 1791.1 and 1792, as set forth and described in the Fourth Cause of Action, above.

4 5. Defendants' violations of the Magnuson-Moss Warranty Act, Civil Code §15  
5 U.S.C. § 2310(d)(1), and because of said breaches of implied warranties, as set forth and  
6 described in the Fifth Cause of Action, above.

7 86. The business acts and practices of Defendant as herein above described constitute  
8 unfair business practices in violation of the Unfair Competition Law in that such acts and  
9 practices are patently unfair and substantially injurious to consumers and offensive to established  
10 California public policy.

11 87. Pursuant to Business and Professions Code §17203, Plaintiff, individually, and  
12 on behalf of all members of the general public who are, has been or may be subjected to these  
13 business acts and practices of defendants hereby request injunctive relief prohibiting such  
14 practices in the future, and such other orders as may be necessary to restore to any identifiable  
15 person in interest, any money or property, real or personal, which may have been acquired by  
16 Defendant by means of such business practices. In addition, pursuant to Code of Civil Procedure  
17 §1021.5, Plaintiff is entitled to recover his reasonable attorney's fees, costs and expenses incurred  
18 in bringing this action.

19 **PRAYER FOR RELIEF**

20 **WHEREFORE**, Plaintiff respectfully prays for judgment against Toyota as follows:

21 On Behalf of Plaintiffs Individually:

- 22 1. That the contract be adjudged rescinded.
- 23 2. For restitution of all consideration paid..
- 24 3. For incidental and consequential damages.
- 25 4. For actual and statutory damages.
- 26 5. For reasonable attorney fees according to proof.
- 27 6. For costs and expenses incurred herein.
- 28 7. For such other relief as the Court deems proper.

15

8. For a civil penalty of two times Plaintiff's damages.

On Behalf of the Class as Described in the Third, Fourth, Fifth and Sixth Causes of Action:

1. A grant of restitution to Plaintiff and all members of the general public who have been affected by the aforementioned business practices and issue such other orders as may be necessary to restore to any identifiable person in interest, any money or property, real or personal, which may have been acquired by defendants by means of such practices;

2. Injunctive relief prohibiting Defendant's unlawful, deceptive and fraudulent conduct;

3. An award reasonable attorney's fees and costs;

4. An award of pre-judgment interest;

5. An award of such other and further relief as the court deems appropriate.

DATED: February 10, 2010

MAKLER & BAKER LLP

By   
JULIANNA R. MAKLER  
Attorneys for Plaintiff STUART GRANT



POS-010

<p>ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):  <b>Julianna R Makler, 189138</b>  <b>MAKLER &amp; BAKER LLP</b>  <b>3 W. Carrillo Street Suite 216</b>  <b>SANTA BARBARA, CA 93101-2259</b>          TELEPHONE NO.: (805) 965-4651          ATTORNEY FOR (Name): <b>Plaintiff</b></p>	<p>FOR COURT USE ONLY  <b>FILED</b>          SUPERIOR COURT OF CALIFORNIA          COUNTY OF LOS ANGELES  <b>JAN 25 2010</b>          John A. Glasper Executive Officer/Clerk          By <i>[Signature]</i>  <b>GLORIETTA ROBINSON</b> Deputy</p>
<p>SUPERIOR COURT OF CALIFORNIA, COUNTY OF          Superior Court of California, Los Angeles County          111 N. Hill Street          Los Angeles, CA 90012-3117</p>	<p>CASE NUMBER:  <b>BC429345</b> <i>Dept 52</i></p>
<p>PLAINTIFF/PETITIONER: <b>Grant</b>          DEFENDANT/RESPONDENT: <b>Toyota Motor Sales USA, INC., et al.</b></p>	<p>Ref. No. or File No.:  <b>NONE</b></p>
<p><b>PROOF OF SERVICE OF SUMMONS</b></p>	

1. At the time of service I was a citizen of the United States, at least 18 years of age and not a party to this action.
2. I served copies of: **Summons, Complaint For Damages**

**BY FAX**

3. a. Party served: **Toyota Motor Sales USA, INC., a corporation**  
 b. Person Served: **CT CORPORATION - Maria Sanchez - Person authorized to accept service of process**
4. Address where the party was served: **818 West Seventh Street 2nd Floor  
 Los Angeles, CA 90017**

5. I served the party  
 a. by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) or (date): **1/21/2010** (2) at (time): **2:50 PM**

6. The "Notice to the Person Served" (on the summons) was completed as follows:  
 c. on behalf of:

**Toyota Motor Sales USA, INC., a corporation**  
 under: **CCP 416.10 (corporation)**

7. Person who served papers  
 a. Name: **Jimmy Lizama**  
 b. Address: **One Legal - 194 Marin  
 504 Redwood Blvd #223  
 Novato, CA 94947  
 415-491-0606**  
 c. Telephone number:  
 d. The fee for service was: **\$ 29.00**  
 e. I am:  
 (3) registered California process server.  
 (i) Employee or independent contractor.  
 (ii) Registration No.: **4553**  
 (iii) County **LOS ANGELES**

8. I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.  
 Date: **1/22/2010**

**Jimmy Lizama**

(NAME OF PERSON WHO SERVED PAPERS)

(SIGNATURE)

*[Signature]*

17

**EXHIBIT B**

**SCHEDULE OF ACTIONS – CENTRAL DISTRICT OF CALIFORNIA**

	DATE FILED	CASE CAPTION	COURT	DOCKET NO.	JUDGE
		<b>CALIFORNIA, CENTRAL DISTRICT</b>			
1	11/5/09	Seong Bae Choi, Chris Chan Park, Sandra Reech, Donald Pritchett, Un Jin Choi, Mary Ann Parker v. Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Inc.	D. California, Central	2:09-cv-08143-AHM-FMO	A. Howard Matz
2	11/18/09	Eric Kmetz and Joe Morris v. Toyota Motor Sales, U.S.A., Inc., Toyota Motor Corporation	D. California, Central	2:09-cv-08478-AHM-FMO	A. Howard Matz
3	12/14/09	Heather A. Lane v. Toyota Motor Sales, USA, Inc.	D. California, Central	2:09-cv-09158-GAF-FMO	Gary A. Feess
4	12/22/09	Dale Baldisseri v. Toyota Motor Sales, USA, Inc., Toyota Motor North America, Inc., Toyota Motor Manufacturing North America, Inc., and Toyota Motor Engineering & Manufacturing North America, Inc.	D. California, Central	2:09-cv-09386-GAF-FMO	Gary A. Feess
5	1/22/10	Joseph Hauter v. Toyota Motor Sales, U.S.A., Inc., Toyota Motor Corporation	D. California, Central	8:10-cv-00105-AHM-FMO	A. Howard Matz

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DATE FILED	CASE CAPTION	COURT	DOCKET NO	JUDGE
6 2/1/10	Roz Schwartz v. Toyota Motor Sales, USA, Inc. And Toyota Motor Corp.	D. California, Central	2:10-cv-00710- AHM-FMO	A. Howard Matz
7 2/1/10	Adilia Aviles v. Toyota Motor Corporation and Toyota Motor Sales USA, Inc.	D. California, Central	2:10-cv-00706- AHM-FMO	A. Howard Matz
8 2/3/10	Mathew Marr, Luis Fernandez, and Sylvia Fernandez v. Toyota Motor Sales, USA, Inc. And Toyota Motor Corp.	D. California, Central	2:10-cv-00799- AHM-FMO	A. Howard Matz
9 2/4/10	Ani Gazaryan, Svetlana Abajyan, Elza Dzhivalegyan, Tamara Harutyunyan, Nerses Mazmanyan, Karine Mazmanyan, Hrayr Okkasian, Christine Aznavour, and Akop Galadzhyan v. Toyota Motor Sales U.S.A., Inc., Toyota Motor Engineering & America, Inc., Toyota Motor Corporation and Does 1-10	D. California, Central	2:10-cv-00849- AHM-FMO	A. Howard Matz
10 2/8/10	Peter Wisner v. Toyota Motor Corporation and Toyota Motor Sales USA Inc.	D. California, Central	2:10-cv-00942- SJO-FFM	S. James Otero
11 2/8/10	Lisa Creighton and Miriam Ramirez v. Toyota Motor Corporation and Toyota Motor Sales, USA, Inc.	D. California, Central	2:10-cv-00946- SJO-JEM	S. James Otero

19

	DATE FILED	CASE CAPTION	COURT	DOCKET NO.	JUDGE
12	2/8/10	Elaine Byrnes v. Toyota Motor North America Inc.; Toyota Motor Engineering & Manufacturing North America, Inc.; Toyota Motor Sales, U.S.A., Inc. and Toyota Motor Corporation	D. California, Central	2:10-cv-00947-AHM-FMO	A. Howard Matz
13	2/11/10	Rhonda Talbot v. Toyota Motor North America, Inc.; Toyota Motor Engineering & Manufacturing North America, Inc.; and Toyota Motor Sales, USA, Inc.	D. California, Central	2:10-cv-01039-AHM-SS	A. Howard Matz
14	2/11/10	Lacey Laudicina and Kevin Funez v. Toyota Motor Corporation and Toyota Motor Sales, USA, Inc.	D. California, Central	2:10-cv-01030-RGK-PLA	R. Gary Klausner
15	2/12/10	Max L. Lieberman and Phyllis C. Lieberman v. Toyota Motor Corporation and Toyota Motor Sales USA, Inc.	D. California, Central	2:10-cv-01073-RGK-MAN	R. Gary Klausner
16	2/12/10	Karen Bush Gertz v. Toyota Motor Corporation and Toyota Motor Sales, USA, Inc.	D. California, Central	2:10-cv-01089-DMG-E	Dolly M. Gee

20

	DATE FILED	CASE CAPTION	COURT	DOCKET NO.	JUDGE
17	2/16/10	Kerri Madden v. Toyota Motor Sales, USA, Inc.; Toyota Motor North America, Inc.; Toyota Motor Engineering & Manufacturing North America, Inc.; Toyota Motor Manufacturing, California, Inc.; Toyota Motor Corporation; and Docs 1 through 10	D. California, Central	2:10-cv-01094- GAF-VBK	Gary A. Fcess
18	2/16/10	T. Leigh Beard, Catherine Nguyen and Malina Salvador v. Toyota Motor Corporation and Toyota Motor Sales, USA, Inc.	D. California, Central	8:10-cv-00183- JVS-RNB	James V. Selna
19	2/16/10	Katy Boyask v. Toyota Motor Sales, USA, Inc. And Toyota Motor Corp.	D. California, Central	2:10-cv- 001153-GW- AJW	George H. Wu

21



SCHEDULE OF ACTIONS – DISTRICT COURTS NATIONWIDE

	<b>ALABAMA, MIDDLE DISTRICT</b>				
21	2/11/10	Johmy E. Griffin v. Toyota Motor Corporation and Toyota Motor Sales, USA, Inc.	D. Alabama, Middle	1:10-cv-00114- SRW	Susan Russ Walker
		<b>ARKANSAS, EASTERN DISTRICT</b>			
22	2/10/10	Robyn Horn v. Toyota Motor Sales USA Inc.; Toyota Motor Engineering & Manufacturing North America, Inc.; Toyota Motor Corporation and Does 1-10	D. Arkansas, Eastern	4:10-cv-00090- JLH	J. Leon Holmes
		<b>COLORADO</b>			
23	2/2/10	Ryan Scharrel v. Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Sales U.S.A., Inc.	D. Colorado	1:10-cv-0227- PAB	Philip A. Brimmer
		<b>CONNECTICUT</b>			

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24	2/9/10	Nimishababen Patel v. Toyota Motor North America Inc; Toyota Motor Sales U.S.A., Inc.; and General Motors LLC	D. Connecticut	3:10-cv-00210- SRU	Stefan R. Underhill
		<b>FLORIDA, MIDDLE DISTRICT</b>			
25	1/29/10	Michelle Lynch v. Toyota Motor Corp. and Toyota Motor Sales, USA, Inc	D. Florida, Middle	8:10-cv-00326- SDM-TGW	Steven D. Merryday
		<b>FLORIDA, NORTHERN DISTRICT</b>			
26	2/5/10	Justin K. Johnson v. Toyota Motor Corporation and Toyota Motor Sales USA Inc.	D. Florida, Northern	5:10-cv-00026- RS-MD	Richard Smoak
		<b>FLORIDA, SOUTHERN DISTRICT</b>			
27	1/4/10	Jonathan Gellman v. Toyota Motor Sales U.S.A., Inc.	D. Florida, Southern	1:10-cv-20006- MGC	Marcia G. Cooke
28	2/1/10	Jim Heidenreich and Mehta v. Toyota Motor North America, Inc., Toyota Motor Sales USA Inc.	D. Florida, Northern	4:10-cv-00035- RH-WCS	Robert L. Hinkle

29	2/3/10	Arlene S. Heilbrunn v. Toyota Motor Corp.		D. Florida, Southern	9:10-cv-80208- WJZ	William J. Zloch
30	2/5/10	Humberto Rivas-Vigil v. Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc. and Toyota Motor Sales U.S.A., Inc.		D. Florida, Southern	0:10-cv-60183- JIC	James L. Cohn
		<b>ILLINOIS, NORTHERN DISTRICT</b>				
31	2/10/10	Christina Ochs v. Toyota Motor Corporation and Toyota Motor Sales, U.S.A., Inc.		D. Illinois, Northern	1:10-cv-00918	David H. Coar
		<b>INDIANA, SOUTHERN DISTRICT</b>				
32	2/3/10	Judith M. Enderle v. Toyota Motor North America, Inc., Toyota Motor Corp., Toyota Motor Engineering & Manufacturing North America, Inc. and Toyota Motor Sales, USA, Inc.,		D. Indiana, Southern	1:10-cv-00142- SEB-TAB	Sarah E. Barker
		<b>KANSAS</b>				

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33	2/5/10	S. Firgon v. Toyota Motor Corporation, Toyota Motor Sales U.S.A., Inc., Toyota Motor Engineering & Manufacturing North America Inc. and Toyota Motor North America, Inc.	D. Kansas	2:10-cv-02075- CM-JPO	Carlos Murguía
		<b>KENTUCKY, EASTERN DISTRICT</b>			
34	2/3/10	Debra Poynter, Ron Poynter, Tina Preedom, Fran Preedom, Krystal Eggerding, Angela Boles, Laurie Chambers, Amy Smith Roth, Lucero Davidson, Mark Davidson v. Toyota Motor North America, Inc., Toyota Motor Sales, USA, Inc., Toyota Motor Corp., Toyota Motor Engineering & Manufacturing North America, Inc. And Toyota Motor Manufacturing Kentucky, Inc.	D. Kentucky, Eastern	2:10-cv-00021- WOB	William O. Bertelsman
35	2/8/10	Al Viviano, Jo Anna Viviano, Paul Turner, Kyle Briggs, Shalini Ignatenkov, Charles Gibbens, Karen Gibbens, Lori S. Trahan, Thomas A. Trahan, and Erica Thomas v. Toyota Motor Engineering and Manufacturing North America, Inc.; Toyota Motor Manufacturing Kentucky, Inc.; Toyota Motor Sales, U.S.A., Inc.; and Toyota Lease Trust	D. Kentucky, Eastern	2:10-cv-00024- WOB	William O. Bertelsman

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36	2/12/10	Christine Stadler v. Toyota Motor North America, Inc.; Toyota Motor Sales, U.S.A., Inc.; Toyota Motor Corporation; Toyota Motor Engineering & Manufacturing North America, Inc.; and Toyota Motor Manufacturing Kentucky, Inc.	D. Kentucky, Eastern	2:10-cv-00030- WOB	William O. Bertelsman
37	2/16/10	Christopher Leaverton v. Toyota Motor Engineering & Manufacturing North America, Inc.; and Toyota Motor Sales, USA, Inc.	D. Kentucky, Eastern	2:10-cv-00032- WOB	William O. Bertelsman
		<b>LOUISIANA, EASTERN DISTRICT</b>			
38	1/29/10	Daniel Weiner, Jr., Colby Wenck, and Ann Cavalier v. Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Sales, USA, Inc.	D. Louisiana, Eastern	2:10-cv-00219- ILRL-SS	Ivan L.R. Lemelle
39	1/29/10	Amanda R. Maillho v. Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Sales, USA, Inc.	D. Louisiana, Eastern	2:10-cv-00279- MVL-JCW	Mary A.V. Lemmon
40	1/29/10	Gary T. Brock v. Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Sales, USA, Inc.	D. Louisiana, Eastern	2:10-cv-00281- ILRL-SS	Ivan L.R. Lemelle
		<b>LOUISIANA, MIDDLE DISTRICT</b>			

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41	2/12/10	Roshawn Donahue v. Toyota Motors Manufacturing U.S.A. Inc.; Toyota Motor Sales, U.S.A., Inc.; and Toyota Motor Engineering & Manufacturing North America, Inc.	D. Louisiana, Middle	3:10-cv-00108-JVP-CN	John V. Parker
		<b>MASSACHUSETTS</b>			
42	2/16/10	Darshak Shah v. Toyota Motor North America, Inc.; Toyota Motor Sales, U.S.A., Inc. and General Motors, LLC	D. Massachusetts	1:10-cv-10263-JLT	Joseph L. Tauro
		<b>MISSISSIPPI, NORTHERN DISTRICT</b>			
43	2/10/10	Belva Simmons v. Toyota Motor Corporation; Toyota Motor Sales, USA, Inc.; and Toyota North America, Inc.	D. Mississippi, Northern	3:10-cv-00009-MPM-SAA	Michael P. Mills
		<b>MISSISSIPPI, SOUTHERN DISTRICT</b>			
44	2/16/10	Christine Mitchell v. Toyota Motor North America, Inc.; Toyota Motor Engineering & Manufacturing North America, Inc.; and Toyota Motor Sales, U.S.A., Inc.	D. Mississippi, Southern	3:10-cv-00104-HTW-LRA	Henry T. Wingate

	<b><i>MISSOURI, WESTERN DISTRICT</i></b>					
45	2/4/10	David Hulsen v. Toyota Motor Corp., Toyota Motor Sales, USA, Inc., Toyota Motor Engineering & Manufacturing North America, Inc.	D. Missouri, Western	4:10-cv-00103-HFS	Howard F. Sachs	
46	2/12/10	Jerry Baker Auto Sales, LLC v. Toyota Motor Sales, U.S.A., Inc.; Toyota Motor Engineering & Manufacturing North America, Inc. and Toyota Motor Corporation	D. Missouri, Western	2:10-cv-04025-NKL	Nanette K. Laughtrey	
		<b><i>NEW JERSEY</i></b>				
47	2/3/10	Margaret Gonzalez v. Toyota Motor Corp., Toyota Motor Sales, USA, Inc., Toyota Motor North America, Inc., and Toyota Motor Engineering & Manufacturing North America, Inc.	D. New Jersey	3:10-cv-00595-MLC-DEA	Mary L. Cooper	
48	2/7/10	Maureen Colaberdino v. Toyota Motor North America Inc.; Toyota Motor Sales U.S.A., Inc. and Toyota Motor Corporation	D. New Jersey	3:10-cv-00672-MLC-DEA	Mary L. Cooper	
49	2/16/10	Francine Guokas v. Toyota Motor Corporation; Toyota Motor Engineering & Manufacturing North America, Inc. and Toyota Motor Sales USA, Inc.	D. New Jersey	3:10-cv00778-MLC-DEA	Mary L. Cooper	
		<b><i>NEW YORK, EASTERN DISTRICT</i></b>				

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50	2/3/10	Peter Phaneuf v. Toyota Motor Sales, USA, Inc., Toyota Motor North America, Inc. and Toyota Motor Engineering & Manufacturing North America, Inc.	D. New York, Eastern	2:10-cv-00487- JFB-ETB	Joseph F. Bianco
51	2/5/10	Kevin P. Fogarty, Barbara Jackson and Alex Farrugia v. Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Sales, U.S.A., Inc. and Toyota Motor Corporation	D. New York, Eastern	1:10-cv00542- JG-MDG	John Gleeson
		<b>NEW YORK, NORTHERN DISTRICT</b>			
52	2/12/10	James Haustein v. Toyota Motor Corporation; Toyota Motor Sales, U.S.A., Inc.; and Toyota Motor Engineering & Manufacturing, North America, Inc.	D. New York, Northern	5:10-cv-00178- NPM-ATB	Neal P. McCurn
		<b>NEW YORK, SOUTHERN DISTRICT</b>			
53	2/4/10	Thomas Davis v. Toyota Motor Sales, U.S.A., Inc. and Toyota Motor Corporation	D. New York, Southern	1:10-cv-00900- NRB	Naomi Reice Buchwald

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54	2/8/10	Barbara Iglesias v. Toyota Motor Corporation; Toyota Motor Sales, USA, Inc.; Toyota Motor North America, Inc.; Toyota Motor Engineering & Manufacturing North America, Inc.; Lexus Toyota Motor Manufacturing, Indiana, Inc.; Toyota Motor Manufacturing, Texas, Inc.; Toyota Motor Manufacturing, Kentucky, Inc.; New United Motor Manufacturing, Inc.; Subaru of Indiana Automotive, Inc; CTS Corporation; and Doe Defendants 1 through 10	D. New York, Southern	1:10-cv-01014- PKC	P. Kevin Castel
		<b>OHIO, NORTHERN DISTRICT</b>			
55	2/4/10	Troy Menssen v. Toyota Motor Sales, USA, Inc., Toyota Motor Engineering & Manufacturing North America, Inc. Toyota Motor Corp.	D. Ohio, Northern	1:10-cv-00260- SO	Solomon Oliver, Jr.
56	2/8/10	Daniel D. Lee v. Toyota Motor North America, Inc.; Toyota Motor Engineering & Manufacturing North America, Inc.; Toyota Motor Manufacturing Kentucky, Inc.; Toyota Motor Sales U.S.A., Inc.; Toyota Motor Corporation; and New United Motor Manufacturing, Inc.	D. Ohio, Northern	3:10-cv-00280- JGC	James G. Carr
		<b>OHIO, SOUTHERN DISTRICT</b>			

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57	2/12/10	Rebecca S. Shumaker and Similarly Situated John and Jane Does v. Toyota Motor Engineering; Toyota Motor Sales USA Inc.; and Toyota Motor Corporation	D. Ohio, Southern	3:10-cv-00061-WHR	Walter H. Rice
		<b>OKLAHOMA, WESTERN DISTRICT</b>			
58	2/5/10	Carol D. Sill v. Toyota Motor Sales USA Inc., Toyota Motor North America Inc., Toyota Motor Manufacturing Inc. and Toyota Motor Engineering & Manufacturing North America Inc.	D. Oklahoma, Western	5:10-cv-00117-R	David L. Russell
		<b>PENNSYLVANIA, EASTERN DISTRICT</b>			
59	2/5/10	Diane Gumble v. Toyota Motor Corporation; Toyota Motor Engineering & Manufacturing North America, Inc.; and Toyota Motor Sales U.S.A., Inc.	D. Pennsylvania, Eastern	5:10-cv-00521-TMG	Thomas M. Golden
60	2/8/10	Frederick Greisiger and Keith Sealing v. Toyota Motor North America, Inc.; Toyota Motor Sales, U.S.A., Inc. and General Motors, LLC	D. Pennsylvania, Eastern	5:10-cv-00554-JHS	Joel H. Slomsky
		<b>PUERTO RICO</b>			

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61	2/4/10	Zahira Crespo Bithorn and Milagros Rodriguez Cruz v. Toyota North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Sales USA, Inc. and Toyota de Puerto Rico Corp.	D. Puerto Rico	3:10-cv-01083-FAB	Francisco A. Besosa
		<b>SOUTH CAROLINA</b>			
62	1/29/10	Linda Alford Wooten v. Toyota North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Manufacturing Kentucky, Inc., Toyota Motor Sales USA, Inc. And Toyota Motor Corp.	D. South Carolina	3:10-cv-00229-MJP	Matthew J. Perry
63	2/5/10	Dale Roberts v. Toyota Motor Corporation; Toyota Motor Sales USA Inc. and Does 1 through 10	D. South Carolina	7:10-cv-00281-RBH	R. Bryan Harwell
		<b>TEXAS, EASTERN DISTRICT</b>			
64	2/9/10	Frank Whiddon v. Toyota Motor Corporation and Toyota Motor Sales, USA, Inc.	D. Texas, Eastern	1:10-cv-00080-RC	Ron Clark
		<b>TEXAS, NORTHERN DISTRICT</b>			

65	2/12/10	Michael Scholten v. Toyota Motor Corporation and Toyota Motor Sales USA Inc.	D. Texas, Northern	3:10-cv-00295- D	Sidney A. Fitzwater
		<b>TEXAS, SOUTHERN DISTRICT</b>			
66	1/29/10	Sylvia Pena and Albert A. Pena, III v. Toyota Motor Corp., Toyota Motor Sales, USA, Inc.	D. Texas, Southern	2:10-cv-00037	John D. Rainey
		<b>WEST VIRGINIA, SOUTHERN DISTRICT</b>			
67	11/13/09	Michael Graves and Jeff Mullins v. Toyota Motor Manufacturing, West Virginia, Inc.; Toyota Motor North America Inc.; Toyota Motor Engineering & Manufacturing North America, Inc.; Toyota Motor Sales U.S.A., Inc.	D. West Virginia, Southern	2:09-cv-1247	Joseph R. Goodwin

33

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10 Attorneys for Plaintiff  
STUART GRANT  
11  
12

13 **UNITED STATES DISTRICT**  
14 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**  
15 **WESTERN DIVISION**  
16

17 STUART GRANT, an individual;

Case No. CV10-01234 MRP (SSx)

18 Plaintiff,

19 vs.

20 TOYOTA MOTOR SALES USA,  
21 INC., a corporation; and DOES ONE  
22 through TWENTY

DECLARATION OF TERRY L.  
BAKER IN SUPPORT OF STUART  
GRANT'S OPPOSITION TO EX  
PARTE APPLICATION TO STAY  
ALL PROCEEDINGS PENDING  
ACTION BY THE JUDICIAL  
PANEL ON MULTIDISTRICT  
LITIGATION

23 Defendants  
24

25 I, Terry L. Baker, declare:

26 1. I am a duly-licensed attorney with the offices of Makler & Baker,  
27 LLP, attorneys of record for plaintiff Stuart Grant. The following facts are within  
28

1 my personal knowledge and if called as a witness I could and would testify  
2 competently thereto.

3 2. Attached hereto as Exhibit A is a true and correct copy of  
4 correspondence I faxed, mailed, and emailed to Toyota's counsel earlier today  
5 outlining our position on this application.

6 3. This case should not be consolidated with the national sudden  
7 acceleration product liability cases. This case is NOT a product liability case.  
8 Plaintiff's claims and damages sought on behalf of himself and the proposed  
9 California class are inherently different than the product liability cases Toyota  
10 seeks to consolidate.

11 4. Further, this Court may not have jurisdiction at this time to decide any  
12 issue in this matter. On February 18, 2010, my law partner Julianna R. Makler  
13 prepared and filed a Request for Dismissal of the federal claims alleged in  
14 Plaintiff's First Amended Complaint with the Los Angeles County Superior Court  
15 via the court's fax filing number. She received confirmation that the documents  
16 faxed were successfully sent at 11:30 a.m. Attached hereto as Exhibit B is a true  
17 and correct copy of the Request for Dismissal and fax confirmation page.

18 5. Prior to receipt of a file endorsed copy of the Request for Dismissal  
19 dismissing the federal claims, Defendant removed this matter to this Court.

20 6. Plaintiff contends that any federal claims alleged in his First  
21 Amended Complaint were dismissed prior to the removal to this Court. Without  
22 the federal claims, there is no federal question jurisdiction as required 28 U.S.C. §  
23 1331. Further, there is no diversity jurisdiction pursuant to 28 U.S.C. § 1332 as  
24 both parties are California residents or entities. As such, there does not appear to  
25 be federal jurisdiction over this matter and it has been improperly removed.

26 7. Based upon the above facts and circumstances, Plaintiff intends to  
27 seek a remand to state court. A stay on this matter, as Defendant Toyota has  
28 requested via its ex parte application, will unduly preclude Plaintiff from seeking

1 remand to state court. Should the request for a remand be denied, Plaintiff will  
2 seek an order from the Court allowing plaintiff to dismiss his federal claims,  
3 thereby requiring a remand to state court.<sup>1</sup>

4 8. We do not object to the Court granting Toyota an extension of time to  
5 respond to the Complaint. Of course, no response will be due in this Court should  
6 our request for remand be granted. However, we ask the Court to deny Defendant  
7 Toyota's application requesting a stay at this time.

8 9. Attached hereto as Exhibit C is a true and correct copy of the  
9 information available from the Los Angeles County Superior Court's website  
10 relating to this matter. The last docket entry is from over two weeks ago.

11 I declare under penalty of perjury under the laws of the United States that  
12 the foregoing is true and correct. Executed February 22, 2010 at Capitola,  
13 California.

14  
15 /s/ Terry L. Baker  
16 TERRY L. BAKER  
17 Attorney for Plaintiff  
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27 \_\_\_\_\_  
28 <sup>1</sup> As outlined in Exhibits A and B, plaintiff filed a request for dismissal of the federal  
claims in the state court and the defendant immediately removed the case.

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 2 JOHN D. ARYA (State Bar No. 156108)  
 3 STEPHANIE A. JONES (State Bar No. 178453)  
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20 **Attorneys for Defendant**  
 21 **TOYOTA MOTOR SALES, U.S.A., INC.**

22 **UNITED STATES DISTRICT COURT**  
 23 **CENTRAL DISTRICT OF CALIFORNIA**

24 STUART GRANT, an individual,  
 25 Plaintiff,

26 v.

27 TOYOTA MOTOR SALES, U.S.A., INC.; a  
 28 corporation, and DOES ONE through  
 TWENTY,  
 Defendants.

Case No.: CV10-01234 MRP(SSx)

[Hon. Mariana R. Pfaelzer]

**NOTICE OF AND EX PARTE  
 APPLICATION TO STAY ALL  
 PROCEEDINGS PENDING ACTION  
 BY THE JUDICIAL PANEL ON  
 MULTIDISTRICT LITIGATION;  
 MEMORANDUM OF POINTS AND  
 AUTHORITIES IN SUPPORT  
 THEREOF**

**[Filed concurrently with Declaration  
 of Lisa Gilford, Certificate of Service  
 and (Proposed) Order]**

1           **PLEASE TAKE NOTICE** that defendant Toyota Motor Sales USA  
2 (“Toyota”) hereby applies *ex parte* to this Court for an Order staying all proceedings  
3 in this action until the Judicial Panel on Multi-District Litigation (“JPML”) rules on  
4 pending transfer and coordination requests made in connection with this and other  
5 actions involving alleged unintended acceleration of Toyota and Lexus vehicles.

6           This *Ex Parte* Application is made on the grounds that the JPML’s ruling will,  
7 in all likelihood, result in the transfer of this action to a consolidated Multidistrict  
8 Litigation (“MDL”) proceeding. Given the strong likelihood that these cases will be  
9 transferred into a MDL, the need for a stay of this action to promote the purposes of  
10 coordinated MDL treatment is compelling, and in the instant action the need is  
11 exceptionally compelling because Toyota’s motion to dismiss is due on Thursday,  
12 February 25, 2010. Any action by this Court prior to MDL transfer would be wasteful  
13 of the Court’s valuable judicial resources and would create the possibility of  
14 inconsistencies in the adjudication of dozens of overlapping class actions.

15           This *Ex Parte* Application is based upon the Removal Petition filed on February  
16 18, 2010, the Memorandum of Points and Authorities filed herewith, the Declaration  
17 of Lisa Gilford filed herewith, and upon such oral argument as may be made to the  
18 Court.

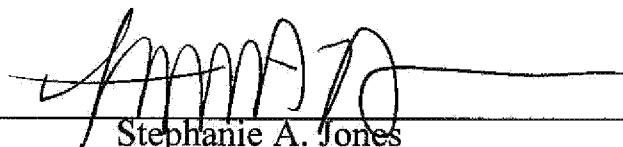
19           Counsel for Plaintiff Stuart Grant, Terry L. Baker of Makler & Baker (3 West  
20 Carrillo Street, Suite 216, Santa Barbara, California, telephone: (805) 965-4651 has  
21 been provided notice of this application. (See accompanying declaration of Lisa  
22 Gilford.) Toyota met and conferred with plaintiff’s counsel in an attempt to secure a  
23  
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1 stipulation staying the action, but was unsuccessful, necessitating the instant *ex parte*  
2 application. (Gilford Decl., ¶10.)  
3  
4

5 Dated: February 22, 2010

Respectfully submitted,  
**ALSTON + BIRD LLP**

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Stephanie A. Jones  
Attorney for Defendant  
TOYOTA MOTOR SALES, U.S.A., INC.

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

This action is one of at least 67 pending in United States District Courts around the country, all brought by alleged owners or lessees of Toyota and Lexus vehicles. Each of these actions asserts class-wide claims, against various Toyota entities, purporting to arise out of alleged unintended acceleration and voluntary safety recalls of Toyota and Lexus vehicles.<sup>1</sup> See Declaration of Lisa Gilford (“Gilford Decl.”), ¶ 4, Ex. B. To date, at least four motions for coordinated treatment of these cases have been filed with the Judicial Panel on Multidistrict Litigation (“JPML”) concerning the transfer of these actions, for coordinated or consolidated pretrial proceedings, pursuant to 28 U.S.C. § 1407. (*Id.* at ¶ 5.)

Toyota will be joining in the requests for consolidated treatment and filing its response with the JPML on February 26, 2010. Toyota’s U.S. headquarters are in the Central District, and the vast majority of the cases, including the first-filed class action, have been filed here. Many of the Central District actions are already pending before the Honorable A. Howard Matz. Toyota therefore anticipates requesting consolidated treatment here in the Central District, with Judge Matz presiding over the consolidated cases. (*Id.* at ¶ 6.)

The JPML’s next hearing is on March 25, 2010. The schedule for the March 25, 2010 hearing has not yet been released. However, given the number of consolidation requests, Toyota anticipates that the panel will consider consolidation at that hearing. (*Id.* at ¶ 7.) Toyota therefore moves the Court for an Order staying all proceedings in this case pending a ruling by the JPML. The JPML’s ruling will, in all

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<sup>1</sup> Toyota acknowledges that there are some differences in the theories of liability and claims regarding the alleged defect(s) in the various actions. Although the theories of these lawsuits may differ, all relate to the issue of unintended acceleration. Moreover, the MDL proceeding can accommodate the various complaints and will eliminate duplicative discovery, avoid inconsistent pretrial rulings, and conserve the resources of the parties, their counsel, and the judiciary.

1 likelihood, result in the transfer of this action to a consolidated Multidistrict Litigation  
 2 (“MDL”) proceeding. Given the strong likelihood that these cases will be transferred  
 3 into a MDL, the need for a stay of this action to promote the purposes of coordinated  
 4 MDL treatment is compelling. (*Id.* at ¶ 8.) Any action by this Court prior to such  
 5 transfer would be wasteful of the Court’s valuable judicial resources and would create  
 6 the possibility of inconsistencies in the adjudication of dozens of overlapping class  
 7 actions. Toyota therefore requests that this Court stay all proceedings in the present  
 8 case until the JPML has ruled on consolidation.

## 9 **II. ARGUMENT**

10 The principle purposes of multidistrict coordination are to further judicial  
 11 economy, minimize duplicative discovery activity, and eliminate the potential for  
 12 conflicting pretrial rulings. *See, e.g., In re N.Y. City Mun. Sec. Litig.*, 572 F.2d 49, 51-  
 13 52 (2d Cir. 1978). These objectives obviously would not be served if,  
 14 notwithstanding a motion for multidistrict coordination of these cases, courts allowed  
 15 the matters to proceed, inviting precisely the sorts of waste and inconsistencies that  
 16 the multidistrict litigation process is designed to prevent. Not surprisingly, “[a]  
 17 majority of courts have concluded that it is often appropriate to stay preliminary  
 18 pretrial proceedings while a motion to transfer and consolidate is pending with the  
 19 MDL Panel because of the judicial resources that are conserved.”<sup>2</sup> *Rivers v. Walt*  
 20 *Disney Co.*, 980 F. Supp. 1358, 1362 (C.D. Cal. 1997); *see also Gordillo v. Bank of*  
 21 *Am., N.A.*, No. 1:09-cv-01954, 2010 WL 148699, at \*2 (E.D. Cal. Jan. 14, 2010)  
 22 (staying litigation pending a JPML ruling); *Dittman v. DJO, LLC*, No. 08-cv-02791,  
 23 2010 WL 174555, at \*1 (D. Colo. Jan. 13, 2010) (same); *Lerch v. Davol Inc.*, No.  
 24 5:09-cv-130, 2009 WL 5217063, at \*1 (W.D.N.C. Dec. 30, 2009) (same); *Jackson v.*  
 25

26  
 27  
 28 <sup>2</sup> A district court’s authority to stay proceedings is well established. It is “incidental to  
 the power inherent in every court to control the disposition of the causes on its docket  
 with economy of time and effort for itself, for counsel, and for litigants.” *Landis v. N.*  
*Am. Co.*, 299 U.S. 248, 254 (1936).

1 *Merck & Co.*, No. 06-1004, 2006 WL 448695, at \*1 (W.D. Tenn. Feb. 19, 2006)  
 2 (same); *Bledsoe v. Pharm.*, No. 4:05CV02330, 2006 WL 335450, at \*1 (E.D. Mo.  
 3 Feb. 13, 2006) (same); *Hertz Corp. v. The Gator Corp.*, 250 F. Supp. 2d 421, 427-29  
 4 (D.N.J. 2003) (same); *Weinke v. Microsoft Corp.*, 84 F. Supp. 2d 989 (E.D. Wis.  
 5 2000) (same); *Falgoust v. Microsoft Corp.*, No. 00-0779, 2000 WL 462919 (E.D. La.  
 6 Apr. 19, 2000) (same); *Aetna U.S. Healthcare, Inc. v. Hoechst Akiengesellschaft*, 48  
 7 F. Supp. 2d 37, 43 (D.D.C. 1999) (same); *Tench v. Jackson Nat'l Life Ins. Co.*, No.  
 8 99-C-5182, 1999 WL 1044923 (N.D. Ill. Nov. 12, 1999) (same); *Good v. Prudential*  
 9 *Ins. Co. of Am.*, 5 F. Supp. 2d 804, 809 (N.D. Cal. 1998) (same); *Boudreaux v. Metro.*  
 10 *Life Ins. Co.*, No. 95-138, 1995 WL 83788 (E.D. La. Feb. 24, 1995) (same); *Arthur-*  
 11 *Magna, Inc. v. Del-Val Fin. Corp.*, No. 2:90cv04378, 1991 WL 13725, at \*1 (D.N.J.  
 12 Feb. 1, 1991) (granting stay because it fosters the purpose of the multidistrict litigation  
 13 statute to coordinate related litigation).

14           Where a motion for transfer or notice of tag-along actions has been filed  
 15 with the JPML, district courts have typically reviewed three factors to decide whether  
 16 to stay pending proceedings until the JPML can rule. These factors are: (1) potential  
 17 prejudice to the non-moving party if the stay is granted; (2) hardship to the moving  
 18 party if the stay is not granted; and (3) the economical use of judicial resources. *See*  
 19 *Jackson*, 2006 WL 448695, at \*1; *Bledsoe*, 2006 WL 335450, at \*1; *The Gator Corp.*,  
 20 250 F. Supp. 2d. at 426, 428; *Nekritz v. Canary Capital Partners, LLC*, No. 2:03-cv-  
 21 05081, 2004 WL 1462035, at \*1 (D.N.J. Oct. 27, 2003); *Bd. of Trustees of Teachers'*  
 22 *Ret. Sys. of State of Ill. v. WorldCom, Inc.*, 244 F. Supp. 2d 900 (N.D. Ill. 2002); *U.S.*  
 23 *Bank, N.A. v. Royal Indem. Co.*, No. 3:02-CV-0853-P, 2002 WL 31114069, at \*2  
 24 (N.D. Tex. Sept. 23, 2002); *Falgoust*, 2000 WL 462919, at \*2; *Rivers*, 980 F. Supp. at  
 25 1360; *Boudreaux*, 1995 WL 83788, at \*1. Even where a non-moving party claims that  
 26 a stay will cause delay and prejudice, "there are considerations of judicial economy  
 27 and hardship to defendants that are compelling enough to warrant such a delay."  
 28

1 *Arthur-Magna, Inc.*, 1991 WL 13725, at \*1. *See also Krieger v. Merck & Co.*, 2005  
2 WL 2921640, at \*2 (W.D.N.Y. Nov. 4, 2005) (noting that “the risk of hardship to [the  
3 defendant] of engaging in duplicative motion practice and discovery proceedings  
4 outweighs any prejudice that could potentially inure to [the plaintiff]”).

5 In the present case, all three considerations weigh heavily in favor of granting  
6 Toyota’s motion for a stay. First, a finite, temporary stay of action in this case is  
7 unlikely to result in harm to Plaintiff. This lawsuit is in its infancy, and any delay in  
8 the preliminary proceedings would be brief. For example, following its last hearing  
9 on January 27, 2010, the JPML decided all nine requests for consolidation within  
10 sixteen days of the hearing (and decided seven of them within nine days).  
11 Accordingly, a finite stay of this action pending the JPML’s decision will be brief.  
12 Indeed, if the stay is only in effect until the JPML issues a decision on transfer, courts  
13 have recognized that “there will be no extended delay in the commencement of  
14 discovery” and “[t]he plaintiffs will not be substantially prejudiced.” *Am. Seafood,*  
15 *Inc. v. Magnolia Processing, Inc.*, Nos. 2:92-cv-01086 and 2:92-cv-01030, 1992 WL  
16 102762, at \*1 (E.D. Pa. May 7, 1992). *See also Bledsoe*, 2006 WL 335450, at \*1  
17 (commenting that “any delay [pending JPML action] is likely to be relatively short”);  
18 *Falgoust*, 2000 WL 462919, at \*2 (noting that a plaintiff is not typically prejudiced by  
19 a “slight delay pending the JPML decision”).

20 With respect to the second factor, even if Plaintiff could somehow demonstrate  
21 prejudice to his case due to this minimal delay, the very real hardship on Toyota in the  
22 absence of a stay substantially outweighs any alleged prejudice to Plaintiff. If no  
23 stays issue, Toyota will be forced to continue litigating these suits in dozens of  
24 separate courts throughout the country, thereby imposing an enormous burden in  
25 terms of both time and resources on Toyota. Such effort would be particularly  
26 wasteful in a situation such as this one in which eventual consolidated treatment is  
27 almost certain.

1 Even if waste of resources were no issue, by simultaneously litigating these  
2 cases, Toyota is subject to possibly conflicting substantive rulings on multiple aspects  
3 of these cases, including Toyota's motions to dismiss. In addition, any discovery in  
4 which Plaintiff would engage pending transfer will be duplicative of the discovery  
5 engaged in by the plaintiffs in all other cases pending against Toyota. Accordingly,  
6 district courts have recognized that the risks and hardships now looming over Toyota  
7 are sufficient to warrant issuance of a stay. *See Jackson*, 2006 WL 448695, at \*1; *The*  
8 *Gator Corp.*, 250 F. Supp. 2d at 428; *Nekritz*, 2004 WL 1462035, at \*4; *U.S. Bank*,  
9 2002 WL 31114069, at \*2; *Falgoust*, 2000 WL 462919, at \*1.

10 Third, this Court's interest in judicial economy, not to mention that of the  
11 transferee court, militates in favor of a stay. If no stay issues before the JPML rules  
12 on coordination of these cases, this Court risks burdening its docket with a case that  
13 will require time, energy, and attention, but which ultimately may not remain with this  
14 Court's caseload. *See U.S. Bank*, 2002 WL 31114069, at \*2 ("If the MDL Motion is  
15 granted, all of the Court's time, energy, and acquired knowledge regarding this action  
16 and its pretrial procedures will be wasted."). With respect to the impact of this  
17 Court's actions on the transferee court, any efforts by this Court at case management  
18 will very likely have to be repeated by the judge to whom the multidistrict litigation is  
19 assigned. Not surprisingly, courts have often recognized that these concerns of  
20 judicial economy weigh in favor of a stay when a motion for transfer is pending  
21 before the JPML. *See Jackson*, 2006 WL 448695, at \*1; *Bledsoe*, 2006 WL 335450,  
22 at \*1; *The Gator Corp.*, 250 F. Supp. 2d at 428; *Arthur-Magna, Inc.*, 1991 WL 13725,  
23 at \*1.

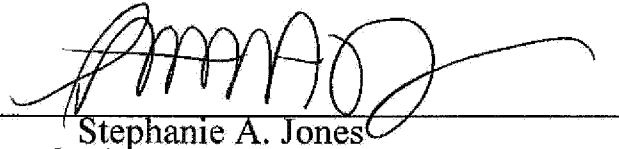
### 24 **III. CONCLUSION**

25 The issuance of a stay of proceedings in this Court pending the JPML's ruling  
26 on the petitions for coordinated treatment will operate to the benefit of all – the  
27 plaintiffs, the defendants, and the respective courts in all 67 federal actions. Given the  
28

1 likelihood of the transfer of these cases for multidistrict coordination, the lack of  
2 prejudice to Plaintiff, the great risk of harm to Toyota, and the demands of judicial  
3 economy, Toyota respectfully urges this Court to stay all proceedings in this matter  
4 until the JPML rules on whether to transfer this action into a coordinated MDL  
5 proceeding.

6  
7 Dated: February 22, 2010

Respectfully submitted,  
**ALSTON + BIRD LLP**

8  
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10 

Stephanie A. Jones  
11 Attorney for Defendant  
12 TOYOTA MOTOR SALES, U.S.A., INC.

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 2 JOHN D. ARYA (State Bar No. 156108)  
 3 STEPHANIE A. JONES (State Bar No. 178453)  
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20 **Attorneys for Defendant**  
 21 **TOYOTA MOTOR SALES, U.S.A., INC.**

22 **UNITED STATES DISTRICT COURT**  
 23 **CENTRAL DISTRICT OF CALIFORNIA**

24 STUART GRANT, an individual,  
 25 Plaintiff,  
 26 v.

27 TOYOTA MOTOR SALES, U.S.A., INC.; a  
 28 corporation, and DOES ONE through  
 TWENTY,  
 Defendants.

Case No.: CV10-01234 MRP(SSx)  
 [Hon. Mariana R. Pfaelzer]

**CERTIFICATE OF SERVICE**

**[Filed concurrently with Notice of and  
 Ex Parte Application, Declaration of  
 Lisa Gilford and (Proposed) Order]**



**CERTIFICATE OF SERVICE**

I, Nora Fernandez, certify and declare as follows:

1. I am over the age of 18 and not a party to this action.

2. My business address is Alston & Bird LLP, 333 S. Hope Street, 16th Floor, Los Angeles, California 90071, which is located in the city, county and state where the mailing described below took place.

3. On February 22, 2010, I deposited a copy of the following documents of:

**NOTICE OF AND EX PARTE APPLICATION TO STAY ALL PROCEEDINGS PENDING ACTION BY THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF; DECLARATION OF LISA GILFORD; AND (PROPOSED) ORDER** on the following:

Julianna R. Makler, Esq.  
Terry L. Baker, Esq.  
Makler & Baker LLP  
3 W. Carrillo Street, Suite 216  
Santa Barbara, CA 93101

Attorneys for Plaintiff  
STUART GRANT

Telephone: (805) 965-4651  
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David R. Griffin, Esq.  
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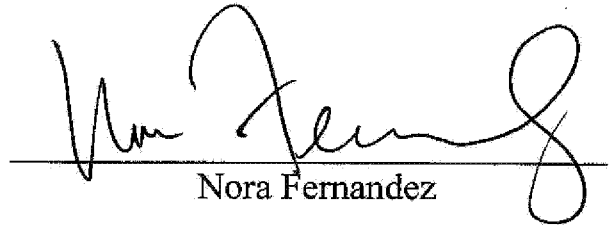
Attorneys for Plaintiff  
STUART GRANT

Telephone: (619) 222-0888  
Facsimile: (619) 923-3680

Vincent Galvin, Jr.  
Bowman & Brooke  
1741 Technololgy Drive  
San Jose, CA 95110

I am "readily familiar" with this firm's practice for the collection and the processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, the correspondence would be deposited with the United States Postal Service at 333 South Hope Street, Los Angeles, California 90071 with postage thereon fully prepaid the same day on which the correspondence was placed for collection and mailing at the firm. Following ordinary business practices, I placed for collection and mailing with the United States Postal Service such envelope at Alston & Bird LLP, 333 South Hope Street, Los Angeles, California 90071.

1 I declare under penalty of perjury of the laws of the United States that the  
2 foregoing is true and correct. Executed this 22<sup>nd</sup> day of February 2010, at Los  
3 Angeles, California.

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6 Nora Fernandez

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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

STUART GRANT, an individual,

Plaintiff,

v.

TOYOTA MOTOR SALES, U.S.A., INC.; a  
corporation, and DOES ONE through  
TWENTY,

Defendants.

Case No.: CV10-01234 MRP(SSx)

[Hon. Mariana R. Pfaelzer]

**(PROPOSED) ORDER RE  
DEFENDANT TOYOTOA MOTOR  
SALES, U.S.A., INC.'S EX PARTE  
APPLICATION TO STAY ALL  
PROCEEDINGS PENDING ACTION  
BY THE JUDICIAL PANEL ON  
MULTIDISTRICT LITIGATION**

1 On February 22, 2010 Defendant Toyota Motor Sales, U.S.A., Inc. ("Toyota")  
2 appeared before this Court, on an *ex parte* basis for an Application to Stay All  
3 Proceedings Pending Action by the Judicial Panel on Multidistrict Litigation.

4 The Court, having considered the application, points and authorities, evidence,  
5 and arguments offered by counsel, and any opposition thereto filed, and good cause  
6 appearing therefore,

7  
8 **HEREBY ORDERS AND ADJUDGES THAT:**

9 (1) Toyota's *ex parte* application for an immediate stay of all  
10 proceedings in the action is **GRANTED**; and

11 (2) No further proceedings in this matter shall take place until the  
12 Court issues a further Order lifting this stay or the matter is transferred by the Judicial  
13 Panel on Multi-District Litigation.

14 **IT IS SO ORDERED.**

15  
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17 DATED: \_\_\_\_\_  
18 Hon. Mariana P. Pfaelzer  
19 United States District Judge  
20  
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1 LISA GILFORD (State Bar No. 171641)  
 2 JOHN D. ARYA (State Bar No. 156108)  
 3 STEPHANIE A. JONES (State Bar No. 178453)  
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 19 E-mail: vgalvin@bowman-brooke.com

20 **Attorneys for Defendant**  
 21 **TOYOTA MOTOR SALES, U.S.A., INC.**

22 **UNITED STATES DISTRICT COURT**  
 23 **CENTRAL DISTRICT OF CALIFORNIA**

24 STUART GRANT, an individual,  
 25  
 26 Plaintiff,

27 v.

28 TOYOTA MOTOR SALES, U.S.A., INC.; a  
 corporation, and DOES ONE through  
 TWENTY,  
 Defendants.

Case No.: CV10-01234 MRP(SSx)

[Hon. Mariana R. Pfaelzer]

**DECLARATION OF LISA GILFORD  
 IN SUPPORT OF EX PARTE  
 APPLICATION FOR A 60 DAY  
 EXTENSION TO FILE A  
 RESPONSIVE PLEADING**

**[Filed concurrently with Notice of and  
 Ex Parte Application and (Proposed)  
 Order]**

1 **DECLARATION OF LISA GILFORD**

2 I, Lisa Gilford, declare:

3 1. I am a partner at Alston & Bird LLP, attorneys of record for  
4 defendant Toyota Motor Sales USA, Inc. ("Toyota") in this action. I make this  
5 Declaration in support of Toyota's Ex Parte Application for a 60 Day Extension,  
6 through and including April 20, 2010, or such shorter time as the Court deems  
7 appropriate, to file a pleading in response to Plaintiffs' First Amended Complaint. I  
8 have personal knowledge of the following facts and if called as a witness would and  
9 could testify competently thereto.

10 2. This action, *Stuart Grant v. Toyota Motor Sales USA, Inc.*, is a  
11 representative class-action, first filed in California state court, on January 8, 2010,  
12 purporting to arise out of Toyota's safety recalls of Toyota and Lexus vehicles and the  
13 alleged unintended acceleration of those vehicles. A true and correct copy of  
14 Plaintiff's First Amended Complaint is attached hereto as Exhibit A.

15 3. On February 18, 2010 Toyota removed this action to the United  
16 States District Court for the Central District of California, based on Federal Claim  
17 Jurisdiction, given that the complaint contains individual and class-wide claims for  
18 alleged violations of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(1) *et seq.*  
19 Because Toyota removed this action on February 18, 2010, its responsive pleading is  
20 now due on or before February 25, 2010. Toyota anticipates filing a motion to  
21 dismiss certain or all of the claims in plaintiffs' First Amended Complaint.

22 4. Prior to removing this case, Toyota contacted plaintiffs' counsel,  
23 advising them that Toyota would be removing this case, based on federal claim  
24 jurisdiction. In response, plaintiffs attempted to dismiss their federal claims,  
25 including the Magnuson-Moss class claim, without notice to the class, and without a  
26 prior court order, in an improper attempt to divest the Court of jurisdiction.

27 5. As of the date of removal, Toyota is informed and believes that no  
28 dismissal of plaintiffs' federal claims has been entered by the state court.

1           6.       There have been at least 72 other class-action complaints filed in  
2 various United States District Courts around the country, by alleged owners or lessees  
3 of Toyota/Lexus vehicles, all asserting claims against Toyota entities, related to  
4 Toyota's voluntary safety recalls of Toyota and Lexus vehicles and/or alleged  
5 unintended acceleration of those vehicles.

6           7.       At least four motions for coordinated treatment of these cases have  
7 been filed with the Judicial Panel on Multidistrict Litigation ("JPML"), seeking  
8 transfer and coordination into a MDL proceeding.

9           8.       Given the strong likelihood that these cases will be transferred into  
10 a MDL, on February 21, 2010 Toyota filed an *ex parte* application for an immediate  
11 stay of all proceedings in this action, until after the JPML rules on consolidation.  
12 Judge Matz has already Ordered complete stays in two other related actions pending  
13 on his docket. True and correct copies of Judge Matz's stay Orders in those cases are  
14 attached hereto collectively as Exhibit B. Toyota still believes that its stay  
15 application in this case should be granted in its entirety.

16           9.       On February 22, 2010, plaintiffs filed an opposition to Toyota's  
17 stay application. A true and correct copy of plaintiffs' opposition is attached hereto as  
18 Exhibit C. Plaintiffs opposed the stay request and expressed intent to file a remand  
19 motion, based on their improper and ineffective attempt to prevent removal by trying  
20 to dismiss the federal claims in state court before Toyota could remove the action.  
21 Plaintiffs' remand motion is due on March 19, 2010.

22           10.      Plaintiffs represented to the Court, in their opposition, that they  
23 have no objections to Toyota receiving an extension of time to file motions to dismiss,  
24 and conceded that judicial economy would best be served by the Court hearing and  
25 determining the remand issue before considering and hearing motions to dismiss.

26           11.      Given that the Court has not yet ruled on Toyota's stay application,  
27 and plaintiffs have represented that they do not oppose Toyota receiving an extension  
28 of time to file a responsive pleading, on February 23, 2010 my office contacted

1 plaintiffs' counsel by telephone, and later that same day emailed them a proposed  
2 stipulation extending the time for Toyota to file a responsive pleading, until April 20,  
3 2010. A true and correct copy of my partner Stephanie Jones's February 23, 2010  
4 email message transmitting the proposed stipulation is attached hereto as Exhibit D.  
5 Counsel refused to sign the stipulation, or even return Toyota's telephone messages,  
6 necessitating this *ex parte* application.

7 12. Toyota does not believe that this action should be remanded,  
8 because plaintiffs' sole reason for attempting to dismiss the Magnuson-Moss claims is  
9 to defeat federal jurisdiction, which is not for the benefit of the class. Nonetheless,  
10 good cause exists for granting Toyota the requested extension because the parties' and  
11 the Court's resources will best be conserved by addressing the remand issue first, and  
12 subsequently addressing motions to dismiss if the case remains in federal court. In  
13 addition, Toyota has not previously requested any extensions of time to file its  
14 responsive pleading, and the Scheduling Order has not yet issued in this case, so no  
15 party will be prejudiced by allowing Toyota the requested extension.

16 13. On February 23, 2010, my office engaged in telephonic and email  
17 meet and confer efforts with plaintiffs' counsel, Julianna Makler and Terry L. Baker  
18 of Makler & Baker (3 West Carrillo Street, Suite 216, Santa Barbara, California,  
19 telephone: (805) 965-4651) regarding Toyota's requested extension, and advised them  
20 that we would be filing the instant *ex parte* application in the event that they refused to  
21 stipulate to the extension. Plaintiffs' counsel has refused to even meet and confer with  
22 Toyota over this issue, or otherwise return any of Toyota's telephone messages.  
23 However, given counsel's prior representations to the Court, Toyota does not believe  
24 that plaintiffs will be opposing this *ex parte* application.

25  
26 I declare under penalty of perjury of the laws of the United States that the  
27 foregoing is true and correct.  
28



1 Executed this 24<sup>nd</sup> day of February 2010, at Los Angeles, California.

2 /s/ Lisa Gilford

3 \_\_\_\_\_  
4 Lisa Gilford

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**EXHIBIT A**

1 **MAKLER & BAKER LLP**  
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9 Attorneys for Plaintiff  
STUART GRANT

10  
11  
12 **SUPERIOR COURT IN THE STATE OF CALIFORNIA**  
13 **FOR THE COUNTY OF LOS ANGELES**

14 **STUART GRANT, an individual;** Case number: BG429345

15 Plaintiff,

**FIRST AMENDED COMPLAINT FOR  
DAMAGES AND INJUNCTIVE RELIEF**

16 vs.

17 **TOYOTA MOTOR SALES USA, INC., a**  
18 **corporation; and DOES ONE through**  
19 **TWENTY**

**Song-Beverly Warranty Act  
Magnuson-Moss Warranty Act  
Unfair Competition Law**

20 Defendants.

**CLASS ACTION**

21  
22  
23 **INTRODUCTION**

24 1. This lawsuit centers on the recall of more than 8.5 million vehicles manufactured by  
25 Toyota Motor Sales USA, Inc. These recalls have tarnished Toyota's reputation for making some  
26 of the most reliable vehicles on the road. It is the most prominent auto safety issue since reports  
27 surfaced in 2000 that many Firestone tires mounted on Ford Explorers failed.

28 ///

1 2. Prior to January 21, 2010, Toyota maintained one of the highest customer  
2 satisfaction records. Many consumers were willing to pay premium price for Toyota vehicles,  
3 spending thousands more than they would pay for comparable vehicles from other manufacturers.

4 3. Toyota vehicles have been recalled for numerous defects and nonconformities,  
5 including sudden acceleration caused by defective floor mats and/or faulty accelerator pedals and  
6 more recently braking system failures.

7 4. Defendant Toyota knew or should have known about the widespread safety issues in  
8 the vehicles it manufactured since at least 2007, and yet it has repeatedly failed to disclose such  
9 information to California consumers. Many consumers would never have purchased Toyota  
10 vehicles had they known about these defects and nonconformities which jeopardize safety and  
11 lives. Furthermore, the widespread recalls have seriously sliced Toyota vehicles' resale values  
12 by 3.5% to 5%.

13 5. Plaintiff STUART GRANT brings this action on behalf of himself and others similarly  
14 situated and on behalf of the general public as a private attorney general to stop this unlawful  
15 conduct and to provide restitution to victimized consumers.

16 **FACTS COMMON TO PLAINTIFF STUART GRANT**

17 6. Defendant Toyota Motor Sales USA, Inc. (hereinafter "Toyota") is a duly authorized  
18 corporation doing business in Los Angeles County, California.

19 7. Plaintiff does not know the true names of the Defendants sued herein as Does One  
20 through Twenty and sues said Defendants pursuant to the provisions of Code of Civil Procedure  
21 § 474.

22 8. On or about June 27, 2008, Plaintiff purchased a 2008 Toyota Sequoia, VIN  
23 5TDBY67A48S002958 ("vehicle"), which was manufactured and warranted by Toyota.

24 9. In connection with the transaction, Toyota issued to Plaintiff an express warranty within  
25 the meaning of Cal. Civil Code § 1791.2, which is also a written warranty within the meaning  
26 of 15 U.S.C. § 2301(6). By the terms of the express written warranty, Toyota promised that the  
27 vehicle's material and workmanship were defect free, undertook to preserve and maintain the  
28

6

1 utility and performance of the vehicle and to provide compensation if there is a failure in utility  
2 or performance, and agreed to refund, repair, replace, or take other remedial action with respect  
3 to the vehicle.

4 10. Plaintiff purchased the vehicle primarily for personal, family or household purposes.

5 11. Subsequent to Plaintiff's transaction, the vehicle exhibited numerous defects and  
6 nonconformities covered by the warranty which substantially impair the use, value and safety of  
7 the motor vehicle to the Plaintiff.

8 12. Plaintiff delivered the nonconforming motor vehicle to Toyota's authorized repair  
9 facilities for repairs pursuant to the terms of the warranty. Toyota has failed to repair or replace  
10 the vehicle.

11 **FACTS RELATING TO CLASS ACTION ALLEGATIONS**

12 13. Since September 2007 to the date of the filing of this complaint, Defendant Toyota  
13 has recalled 8.5 million vehicles due to possible sudden acceleration. Toyota claims the defect  
14 stems from an alleged faulty accelerator pedals and the possibility that floor mats could jam the  
15 accelerator pedal.

16 14. As of January 26, 2010, Toyota stopped selling eight models in the United States and  
17 Canada, including its popular Camry (2007-2010 model years) and Corolla (2009-2010 model  
18 years), because of possible unintended acceleration. Other recalled Toyota vehicles for this defect  
19 include the 2009-2010 Avalon, 2010 Highlander, 2009-2010 Matrix, 2009-2010 RAV4, 2008-  
20 2010 Sequoia, and the 2007-2010 Tundra.

21 15. Plaintiff is informed and believes at least 19 deaths and 341 injuries stemming from 815  
22 separate crashes involving Toyotas and sudden acceleration.

23 16. On February 9, 2010, Toyota recalled 437,000 hybrid cars, including its latest Prius  
24 model to repair a software glitch in its antilock braking system.

25 17. These recalls have, and continue to, tarnish Toyota's reputation for making some of the  
26 most reliable vehicles on the road. It is the most prominent auto safety issue since reports surfaced  
27 in 2000 that many Firestone tires mounted on Ford Explorers failed.

1 18. Since 2003, nine U.S. investigations by the National Highway Traffic Safety  
2 Administration (hereafter "NHTSA"), into sudden acceleration complaints show Toyota  
3 repeatedly ruled out many owner complaints, dismissed several concerns as posing no danger,  
4 and modified models in production without offering similar changes to vehicles already on the  
5 road. Instead, Toyota has blamed the sudden acceleration events on driver error, saying it was  
6 impossible for the electronics to malfunction. Not until the 2007 floor mat investigation did any  
7 of the complaints lead to a recall.

8 19. Since the 1990s, NHTSA had concluded that most sudden acceleration complaints  
9 were caused by drivers mistakenly hitting the gas pedal instead of the brake. When a  
10 Massachusetts man asked in April 2003 for an investigation of 1997-2000 model Lexus sedans,  
11 citing 271 complaints of unintended acceleration, NHTSA rejected his request without querying  
12 Toyota for data.

13 20. In February 2004, a nurse from Maryland asked the agency to review the 2002 and  
14 2003 Lexus ES350 sedans, saying her throttle had malfunctioned several times and led to one  
15 crash. A month later, NHTSA launched a wider investigation into the electronic throttles on  
16 nearly 1 million Lexus and Toyota sedans, citing more than 100 complaints.

17 21. From the start, Toyota pushed NHTSA to narrowly define the problem as short bursts  
18 where the engine surged to "something less than a wide-open throttle." It compared many of the  
19 complaints to the prior sudden acceleration cases that NHTSA had previously deemed driver  
20 error. Toyota also claimed the computer could not open the throttle without the accelerator pedal  
21 being pressed, and contended even if built-in safety checks failed, stepping on the brakes would  
22 stop the car.

23 22. The recalls since September 2007 have now created a stigma of unreliability and  
24 safety concern which will be retained in all Toyota vehicles, not just those vehicles recalled.  
25 Kelley Blue Book, a leading used-car value service, is lowering its estimated prices for the  
26 recalled models by 3.5% to 5%. That's enough to lower the value of each vehicle by between  
27 \$800-\$1,500.

8

**FIRST CAUSE OF ACTION**  
**Violations of the Song-Beverly Consumer Warranty Act**  
**On Behalf of Plaintiff Stuart Grant Only**

23. Plaintiff incorporates all preceding paragraphs.

24. Plaintiff is a "buyer" as defined by Cal. Civ. Code § 1791(b).

25. The vehicle is a "consumer good" as defined by Cal. Civ. Code § 1791(a).

26. Toyota is a "manufacturer" as defined by Cal. Civ. Code § 1791(j).

27. Plaintiff's purchase of the vehicle was a "sale" as defined by Cal. Civ. Code 1791(n).

28. Toyota violated the Song-Beverly Act by failing to conform the vehicle to the express written warranty within a reasonable number of repair attempts or within the warranty period and failing to promptly replace the vehicle or make restitution to the plaintiff.

29. The above-described defects, malfunctions, and nonconformities substantially impair the use, value, and safety of the vehicle.

30. Plaintiff has not made unreasonable or unintended use of the vehicle.

31. Pursuant to Civil Code § 1793.2(d), Toyota must refund the price of the vehicle to Plaintiff.

32. Pursuant to Civil Code § 1794(a), Plaintiff is entitled to restitution of all consideration given to Toyota.

33. As a direct and proximate result of said violations of the Song-Beverly Act, Plaintiff has sustained, and continues to sustain, incidental and consequential damages in the approximate amount of \$75,000.00 according to proof.

34. The failure of Toyota to comply with the express warranty was willful in that Toyota had actual knowledge of the vehicles' defects and malfunctions, knew of its legal duties under the warranty and the law, but repeatedly refused to make necessary repairs and/or provide a refund.

35. Pursuant to Civil Code § 1794(c), Plaintiff is entitled to a civil penalty of two times the amount of his actual damages.

36. Pursuant to Civil Code § 1794(d), Plaintiff is entitled to reasonable attorney fees according to proof.

9

**SECOND CAUSE OF ACTION  
Violations of the Magnuson-Moss Warranty Act  
On Behalf of Plaintiff Stuart Grant Only**

- 37. Plaintiff incorporates by reference all preceding paragraphs.
- 38. The vehicle is a "consumer product" as defined by 15 U.S.C. § 2301(1).
- 39. Plaintiff is a "consumer" as defined by 15 U.S.C. § 2301(3).
- 40. Toyota is a "supplier" and a "warrantor" as defined respectively by 15 U.S.C. § 2301(4) and (5).
- 41. The express written warranty is a "written warranty" as defined by 15 U.S.C. § 2301(6).
- 42. Toyota violated the Magnuson-Moss Warranty Act by failing to conform the vehicle to the express warranty within a reasonable number of attempts, a reasonable amount of time or within the warranty period itself. Defendant failed to cure its failure to comply with the Act.
- 43. Prior to commencing this action, Plaintiff afforded Toyota reasonable opportunities to cure the failures and to comply with the Act.
- 44. Pursuant to 15 U.S.C. § 2310(d)(1), Plaintiff is entitled to the equitable remedies of rescission and restitution and/or damages. Plaintiff revokes acceptance of the vehicle and rescinds the contract. Plaintiff is entitled to restitution of all consideration given.
- 45. As a proximate result of the breach of written warranty, Plaintiff has sustained, and continues to sustain damages, both economic and noneconomic, in the approximate amount of \$75,000.00.
- 46. Pursuant to 15 U.S.C. § 2310(d)(2), Plaintiff is entitled to attorney fees and expenses reasonably incurred in connection with this action.

**THIRD CAUSE OF ACTION  
Breach of Express Warranty  
On Behalf of Plaintiff Stuart Grant and Others Similarly Situated**

- 47. Plaintiff incorporates by reference all preceding paragraphs.
- 48. Plaintiff brings this action on behalf of himself and others similarly situated on behalf of a class of all California consumers who purchased the following Toyota vehicles: 2007-2010 Camry, 2009-2010 Corolla 2009-2010, 2009-2010 Avalon, 2010 Highlander, 2009-2010 Matrix, 2009-2010 RAV4, 2008-2010 Sequoia, 2007-2010 Tundra

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1 and the 2010 Prius.

2 49. The proposed Class is so numerous that joinder is impracticable. The members of  
3 the class are ascertainable through Defendants' records.

4 50. At all times mentioned, on or about January 2007, Toyota utilized media,  
5 professional publications and salespersons to urge the use and purchase of Toyota vehicles,  
6 including but not limited to and expressly warranted to members of the general public herein,  
7 that the vehicle and its component parts were free from latent defects or inherent risk of failure  
8 and were effective, proper and safe for their intended use.

9 51. Plaintiff and others similarly situated relied upon said express warranty  
10 representations of Toyota in the purchase of Toyota vehicles.

11 52. Defendant breached its warranties by selling vehicles that did not conform to the  
12 promises in the warranties given to Plaintiff and others similarly situated with their purchases.

13 53. After Plaintiff sustained the damages complained herein as a result of the defective  
14 condition of his vehicle, notice was given by Plaintiff, who has satisfied all terms of the contract  
15 and requirements, except as may be excused by misconduct of the Defendant. This complaint  
16 shall serve as further notice of damage as result of the defective condition of Toyota vehicles on  
17 behalf of Plaintiff and others similarly situated.

18 54. Questions of law and fact of common and general interest to the class exist as to all  
19 members of the class and predominate over any questions affecting only individual members of  
20 the class. The common questions include, among others, the following:

21 a. Whether Defendant Toyota breached the express warranty given in the sale of  
22 2007-2010 Camry, 2009-2010 Corolla 2009-2010, 2009-2010 Avalon, 2010 Highlander, 2009-  
23 2010 Matrix, 2009-2010 RAV4, 2008-2010 Sequoia, 2007-2010 Tundra and 2010 Prius.

24 55. Plaintiff's claims are typical of the claims of the class, as all such claims arise out  
25 of purchase of vehicles manufactured by Defendant where members of the class have been  
26 damaged by its breach of the express warranty.

27 56. Plaintiff will fairly and adequately protect the interest of the members of the  
28 class. Plaintiff has no interests antagonistic to the class. Plaintiff has retained counsel

1 experienced in the prosecution of class actions, including and especially consumer class actions.

2 57. A class action is also superior to other available methods for the fair and efficient  
3 adjudication of this controversy because the damages suffered by each individual member are  
4 relatively small compared to the expense and burden of prosecuting individual cases.

5 58. If individual class members were required to bring separate actions, courts  
6 throughout California would be confronted by a multiplicity of lawsuits burdening the court  
7 system while also creating the risk of inconsistent rulings and contradictory judgments. In  
8 contrast to proceeding on a case-by-case basis, in which inconsistent results will magnify the  
9 delay and expense to all parties and the court system, this class action presents far fewer  
10 management difficulties while providing unitary adjudication, economies of scale and  
11 comprehensive supervision by a single court.

12 **FOURTH CAUSE OF ACTION**  
13 **Breach of Implied Warranty—Song-Beverly Consumer Warranty Act**  
**On Behalf of Plaintiff Stuart Grant and Others Similarly Situated**

14 59. Plaintiff incorporates by reference all preceding paragraphs.

15 60. Plaintiff brings this action on behalf of himself and others similarly  
16 situated on behalf of a class of all California consumers who purchased Toyota vehicles  
17 manufactured by Toyota Motor Sales in the three years preceding the filing of this lawsuit.

18 61. The proposed Class is so numerous that joinder is impracticable. The members of  
19 the class are ascertainable through Defendants' records.

20 62. Pursuant to Cal. Civ. Code § 1792, Toyota vehicles purchased by California consumers  
21 was accompanied by the manufacturer's implied warranty of merchantability.

22 63. Pursuant to Civil Code § 1793, and because of the existence of the express warranty,  
23 Toyota may not disclaim, limit, or modify the implied warranties provided by the Song-Beverly  
24 Act.

25 64. Questions of law and fact of common and general interest to the class exist as to all  
26 members of the class and predominate over any questions affecting only individual members of  
27 the class. The common questions include, among others, the following:

28 ///

12

1 a. Whether Defendant Toyota's breached the implied warranty of merchantability of  
2 Civil Code §§ 1791.1 and 1792 in that the above-described defects, malfunctions, and  
3 nonconformities render its vehicle unfit for the ordinary purposes for which it is used and it  
4 would not pass without objection in the trade.

5 65. Plaintiff's claims are typical of the claims of the class, as all such claims arise out  
6 of purchase of vehicles manufactured by Defendant where members of the class have been  
7 damaged by its breach of the implied warranty of merchantability.

8 66. Plaintiff will fairly and adequately protect the interest of the members of the  
9 class. Plaintiff has no interests antagonistic to the class. Plaintiff has retained counsel  
10 experienced in the prosecution of class actions, including and especially consumer class actions.

11 67. A class action is also superior to other available methods for the fair and efficient  
12 adjudication of this controversy because the damages suffered by each individual member are  
13 relatively small compared to the expense and burden of prosecuting individual cases.

14 68. If individual class members were required to bring separate actions, courts  
15 throughout California would be confronted by a multiplicity of lawsuits burdening the court  
16 system while also creating the risk of inconsistent rulings and contradictory judgments. In  
17 contrast to proceeding on a case-by-case basis, in which inconsistent results will magnify the  
18 delay and expense to all parties and the court system, this class action presents far fewer  
19 management difficulties while providing unitary adjudication, economies of scale and  
20 comprehensive supervision by a single court.

21 69. Pursuant to Civil Code § 1794(a), Plaintiff and others similarly situated are entitled to  
22 restitution of all consideration.

23 70. As a direct and proximate result of said breach of implied warranty, Plaintiff and others  
24 similarly situated have sustained, and continue to sustain, incidental and consequential damages.

25 71. Pursuant to Civil Code § 1794(d), Plaintiff is entitled to reasonable attorney fees according  
26 to proof.

27 ///

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**FIFTH CAUSE OF ACTION  
Breach of Implied Warranty—Magnuson-Moss Warranty Act  
On Behalf of Plaintiff Stuart Grant and Others Similarly Situated**

72. Plaintiff incorporates by reference all preceding paragraphs.

73. Plaintiff brings this action on behalf of himself and others similarly situated on behalf of a class of all California consumers who purchased Toyota vehicles manufactured by Toyota Motor Sales in the three years preceding the filing of this lawsuit.

74. The proposed Class is so numerous that joinder is impracticable. The members of the class are ascertainable through Defendants' records.

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

76. Pursuant to 15 U.S.C. § 2310(d)(1), and because of said breaches of implied warranties, Plaintiff and other similarly situated are entitled to the equitable remedies of rescission and restitution and/or damages.

77. Questions of law and fact of common and general interest to the class exist as to all members of the class and predominate over any questions affecting only individual members of the class. The common questions include, among others, the following:

a. Whether Defendant Toyota's breached the implied warranty of merchantability contained in 15 U.S.C. § 2310(d)(1) in that the above-described defects, malfunctions, and nonconformities render its vehicle unfit for the ordinary purposes for which it is used and it would not pass without objection in the trade.

78. Plaintiff's claims are typical of the claims of the class, as all such claims arise out of purchase of vehicles manufactured by Defendant where members of the class have been damaged by its breach of the implied warranty of merchantability.

79. Plaintiff will fairly and adequately protect the interest of the members of the class. Plaintiff has no interests antagonistic to the class. Plaintiff has retained counsel experienced in the prosecution of class actions, including and especially consumer class actions.

///

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1 80. A class action is also superior to other available methods for the fair and efficient  
2 adjudication of this controversy because the damages suffered by each individual member are  
3 relatively small compared to the expense and burden of prosecuting individual cases.

4 81. If individual class members were required to bring separate actions, courts  
5 throughout California would be confronted by a multiplicity of lawsuits burdening the court  
6 system while also creating the risk of inconsistent rulings and contradictory judgments. In  
7 contrast to proceeding on a case-by-case basis, in which inconsistent results will magnify the  
8 delay and expense to all parties and the court system, this class action presents far fewer  
9 management difficulties while providing unitary adjudication, economies of scale and  
10 comprehensive supervision by a single court.

11 82. As a proximate result of the breaches of implied warranty, Plaintiff and others similarly  
12 situated have sustained, and continues to sustain, damages, both economic and noneconomic.

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

15 **SIXTH CAUSE OF ACTION**

16 **Violation of the Unfair Competition Law (Business and Professions Code section 17200 et seq.)**

17 **On Behalf of Plaintiff Stuart Grant and Others Similarly Situated**

18 84. Plaintiff incorporates by reference all preceding paragraphs.

19 85. The business acts and practices of Defendant as herein above described  
20 constitute fraudulent, unfair and unlawful business practices in violation of Business and  
21 Professions Code § 17200 et seq. without limitation:

22 1. Defendant's practice of failing to disclose to consumers known safety defects and  
23 nonconformities in the vehicles it manufactures to induce consumers to purchase its vehicles.

24 2. Defendants' practice of knowingly making false representations and  
25 concealing material facts about the vehicles it manufactures to induce consumers to purchase its  
26 vehicles.

27 3. Defendant's practice breached its warranties by selling vehicles that did not  
28 conform to the promises in the express warranties given to Plaintiff and others similarly situated

15

1 with their purchases, as set forth and described in the Third Cause of Action

2 4. Defendant's violations of the Song-Beverly Consumer Warranty Act, Civil Code  
3 §§ 1791.1 and 1792, as set forth and described in the Fourth Cause of Action, above.

4 5. Defendants' violations of the Magnuson-Moss Warranty Act, Civil Code §15  
5 U.S.C. § 2310(d)(1), and because of said breaches of implied warranties, as set forth and  
6 described in the Fifth Cause of Action, above.

7 86. The business acts and practices of Defendant as herein above described constitute  
8 unfair business practices in violation of the Unfair Competition Law in that such acts and  
9 practices are patently unfair and substantially injurious to consumers and offensive to established  
10 California public policy.

11 87. Pursuant to Business and Professions Code §17203, Plaintiff, individually, and  
12 on behalf of all members of the general public who are, has been or may be subjected to these  
13 business acts and practices of defendants hereby request injunctive relief prohibiting such  
14 practices in the future, and such other orders as may be necessary to restore to any identifiable  
15 person in interest, any money or property, real or personal, which may have been acquired by  
16 Defendant by means of such business practices. In addition, pursuant to Code of Civil Procedure  
17 §1021.5, Plaintiff is entitled to recover his reasonable attorney's fees, costs and expenses incurred  
18 in bringing this action.

19 **PRAYER FOR RELIEF**

20 **WHEREFORE**, Plaintiff respectfully prays for judgment against Toyota as follows:

21 On Behalf of Plaintiffs Individually:

- 22 1. That the contract be adjudged rescinded.
- 23 2. For restitution of all consideration paid..
- 24 3. For incidental and consequential damages.
- 25 4. For actual and statutory damages.
- 26 5. For reasonable attorney fees according to proof.
- 27 6. For costs and expenses incurred herein.
- 28 7. For such other relief as the Court deems proper.

16

8. For a civil penalty of two times Plaintiff's damages.

On Behalf of the Class as Described in the Third, Fourth, Fifth and Sixth Causes of Action:

1. A grant of restitution to Plaintiff and all members of the general public who have been affected by the aforementioned business practices and issue such other orders as may be necessary to restore to any identifiable person in interest, any money or property, real or personal, which may have been acquired by defendants by means of such practices;

2. Injunctive relief prohibiting Defendant's unlawful, deceptive and fraudulent conduct;


3. An award reasonable attorney's fees and costs;

4. An award of pre-judgment interest;

5. An award of such other and further relief as the court deems appropriate.

DATED: February 10, 2010

MAKLER & BAKER LLP

By   
JULIANNA R. MAKLER  
Attorneys for Plaintiff STUART GRANT

17







**Service of Process  
Transmittal**

02/12/2010

CT Log Number 516155963

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

**RE: Process Served in California**

**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:** Stuart Grant, etc., Pltf. vs. Toyota Motor Sales USA, Inc., etc., et al., Dfts.  
*Name discrepancy noted.*

**DOCUMENT(S) SERVED:** Summons, First Amended Complaint

**COURT/AGENCY:** Los Angeles County, Superior Court, Hill Street, CA  
Case # BC429345

**NATURE OF ACTION:** Product Liability Litigation - Breach of Warranty - Class Action - 2008 Toyota Sequoia, VIN 5TDBY67A48S002958 - Failing to confirm the vehicle to the express written warranty within a reasonable number of repair attempts

**ON WHOM PROCESS WAS SERVED:** C T Corporation System, Los Angeles, CA

**DATE AND HOUR OF SERVICE:** By Process Server on 02/12/2010 at 14:55

**APPEARANCE OR ANSWER DUE:** Within 30 days after service

**ATTORNEY(S) / SENDER(S):** Julianna R. Makler  
Makler & Baker LLP  
3 W. Carrillo Street  
Suite 216  
Santa Barbara, CA 93101  
805-965-4651

**ACTION ITEMS:** SOP Papers with Transmittal, via Fed Ex Standard Overnight , 792175522179  
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  
**PER:** Nancy Flores  
**ADDRESS:** 818 West Seventh Street  
Los Angeles, CA 90017  
**TELEPHONE:** 213-337-4615

Page 1 of 1 / MV

Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of package only, not contents.

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**EXHIBIT B**

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**UNITED STATES DISTRICT COURT**

**CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION**

ANI GAZARYAN, an individual;  
SVETLANA ABAJYAN, an individual;  
ELZA DZHIVALEGYAN, an individual;  
TAMARA HARUTYUNYAN, an  
individual; NERSES MAZMANYAN, an  
individual; KARINE MAZMANYAN, an  
individual; HRAYR OKKASIAN, an  
individual; CHRISTINE AZNAVOU, an  
individual; AKOP GALADZHYAN; an  
individual;

Plaintiffs, on Behalf of Themselves  
and All Others Similarly Situated as  
Well as on Behalf of the General  
Public and Acting in the Public  
Interest,

v.

TOYOTA MOTOR SALES U.S.A., INC, a  
California corporation; TOYOTA MOTOR  
ENGINEERING & MANUFACTURING  
NORTH AMERICA, INC. a foreign  
corporation; TOYOTA MOTOR  
CORPORATION, a foreign corporation;  
and DOES 1-10; Inclusive,

Defendants.

Case No.: CV10-00849 AHM (FMOx)

**CLASS ACTION**

[Honorable A. Howard Matz]

**ORDER GRANTING STAY**

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19

1 Having considered the Parties' Stipulation to Stay Proceedings pending a ruling  
2 by the Judicial Panel on Multidistrict Litigation ("JPML") concerning the transfer of  
3 this action for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C.  
4 § 1407, and for good cause shown, the Court hereby GRANTS the Parties' request to  
5 stay the proceedings.  
6

7 IT IS HEREBY ORDERED that the proceedings in this case are stayed in their  
8 entirety, including but not limited to (1) all scheduling deadlines pursuant to the  
9 Federal Rules of Civil Procedure, Local Rules of the USDC for the Central District of  
10 California, and this Honorable Court, (2) discovery, and (3) the deadline to answer or  
11 otherwise respond to Plaintiffs' Complaint pending a ruling by the Judicial Panel on  
12 Multidistrict Litigation ("JPML") concerning the transfer of this action for  
13 coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407.  
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15 SO ORDERED.  
16

17 DATED: February 22, 2010  
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Judge of the United States District Court  
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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION**

ADILIA AVILES on behalf of herself and  
all others similarly situated,

Plaintiff(s),

v.

TOYOTA MOTOR CORPORATION and  
TOYOTA MOTOR SALES U.S.A., Inc.,

Defendants.

Case No.: CV10-00706 AHM (FMOx)

**CLASS ACTION**

[Honorable A. Howard Matz]

**ORDER GRANTING STAY**

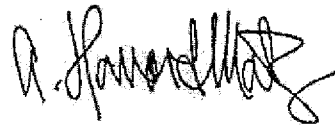
**[SUBMITTED CONCURRENTLY  
WITH STIPULATION TO STAY  
PROCEEDINGS]**

1           Having considered the Parties' Stipulation to Stay Proceedings pending a  
2 ruling by the Judicial Panel on Multidistrict Litigation ("JPML") concerning the  
3 transfer of this action for coordinated or consolidated pretrial proceedings pursuant to  
4 28 U.S.C. § 1407, and for good cause shown, the Court hereby GRANTS the Parties'  
5 request to stay the proceedings.

6           IT IS HEREBY ORDERED that the proceedings in this case are stayed  
7 in their entirety, including but not limited to (1) all scheduling deadlines pursuant to  
8 the Federal Rules of Civil Procedure, Local Rules of the USDC for the Central  
9 District of California, and this Honorable Court, (2) discovery, and (3) the deadline to  
10 answer or otherwise respond to Plaintiffs' Complaint pending a ruling by the Judicial  
11 Panel on Multidistrict Litigation ("JPML") concerning the transfer of this action for  
12 coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407.

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SO ORDERED.



DATED: February 22, 2010

\_\_\_\_\_  
Judge of the United States District Court

**EXHIBIT C**



1 **MAKLER & BAKER LLP**  
Julianna R. Makler (SBN 189138)  
2 jmakler@consumerlawgroup.net  
Terry L. Baker (SBN 214365)  
3 tbaker@consumerlawgroup.net  
3 W. Carrillo Street, Suite 216  
4 Santa Barbara, CA 93101  
Tel: (805) 965-4651  
5 Fax: (805) 965-4671

6 **GRIFFIN & ASSOCIATES**  
David R. Griffin (SBN 76619)  
7 drg@drGPC.com  
501 W. Broadway, Suite 800  
8 San Diego, CA 92101  
Tel: (619) 222-0888  
9 Fax: (619) 923-3680

10 Attorneys for Plaintiff  
STUART GRANT

11  
12  
13 **UNITED STATES DISTRICT**  
14 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**  
15 **WESTERN DIVISION**  
16

17 STUART GRANT, an individual;

Case No. CV10-01234 MRP (SSx)

18 Plaintiff,

19 vs.

20 TOYOTA MOTOR SALES USA,  
21 INC., a corporation; and DOES ONE  
22 through TWENTY

DECLARATION OF TERRY L.  
BAKER IN SUPPORT OF STUART  
GRANT'S OPPOSITION TO EX  
PARTE APPLICATION TO STAY  
ALL PROCEEDINGS PENDING  
ACTION BY THE JUDICIAL  
PANEL ON MULTIDISTRICT  
LITIGATION

23 Defendants.  
24

25 I, Terry L. Baker, declare:

26 1. I am a duly-licensed attorney with the offices of Makler & Baker,  
27 LLP, attorneys of record for plaintiff Stuart Grant. The following facts are within  
28

23

1 my personal knowledge and if called as a witness I could and would testify  
2 competently thereto.

3 2. Attached hereto as Exhibit A is a true and correct copy of  
4 correspondence I faxed, mailed, and emailed to Toyota's counsel earlier today  
5 outlining our position on this application.

6 3. This case should not be consolidated with the national sudden  
7 acceleration product liability cases. This case is NOT a product liability case.  
8 Plaintiff's claims and damages sought on behalf of himself and the proposed  
9 California class are inherently different than the product liability cases Toyota  
10 seeks to consolidate.

11 4. Further, this Court may not have jurisdiction at this time to decide any  
12 issue in this matter. On February 18, 2010, my law partner Julianna R. Makler  
13 prepared and filed a Request for Dismissal of the federal claims alleged in  
14 Plaintiff's First Amended Complaint with the Los Angeles County Superior Court  
15 via the court's fax filing number. She received confirmation that the documents  
16 faxed were successfully sent at 11:30 a.m. Attached hereto as Exhibit B is a true  
17 and correct copy of the Request for Dismissal and fax confirmation page.

18 5. Prior to receipt of a file endorsed copy of the Request for Dismissal  
19 dismissing the federal claims, Defendant removed this matter to this Court.

20 6. Plaintiff contends that any federal claims alleged in his First  
21 Amended Complaint were dismissed prior to the removal to this Court. Without  
22 the federal claims, there is no federal question jurisdiction as required 28 U.S.C. §  
23 1331. Further, there is no diversity jurisdiction pursuant to 28 U.S.C. § 1332 as  
24 both parties are California residents or entities. As such, there does not appear to  
25 be federal jurisdiction over this matter and it has been improperly removed.

26 7. Based upon the above facts and circumstances, Plaintiff intends to  
27 seek a remand to state court. A stay on this matter, as Defendant Toyota has  
28 requested via its ex parte application, will unduly preclude Plaintiff from seeking

1 remand to state court. Should the request for a remand be denied, Plaintiff will  
2 seek an order from the Court allowing plaintiff to dismiss his federal claims,  
3 thereby requiring a remand to state court.<sup>1</sup>

4 8. We do not object to the Court granting Toyota an extension of time to  
5 respond to the Complaint. Of course, no response will be due in this Court should  
6 our request for remand be granted. However, we ask the Court to deny Defendant  
7 Toyota's application requesting a stay at this time.

8 9. Attached hereto as Exhibit C is a true and correct copy of the  
9 information available from the Los Angeles County Superior Court's website  
10 relating to this matter. The last docket entry is from over two weeks ago.

11 I declare under penalty of perjury under the laws of the United States that  
12 the foregoing is true and correct. Executed February 22, 2010 at Capitola,  
13 California.

14  
15 /s/ Terry L. Baker  
16 TERRY L. BAKER  
17 Attorney for Plaintiff  
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28 <sup>1</sup> As outlined in Exhibits A and B, plaintiff filed a request for dismissal of the federal  
claims in the state court and the defendant immediately removed the case.

**EXHIBIT D**

**Jones, Stephanie**

---

**From:** Jones, Stephanie  
**Sent:** Tuesday, February 23, 2010 4:28 PM  
**To:** Terry Baker; 'jmakler@consumerlawgroup.net'  
**Cc:** Gilford, Lisa; Ostergard, Kyle  
**Subject:** Grant: Stipulation to 60 day extension to file responsive pleading

**Attachments:** Grant\_ Stipulation to 60 day extension to file responsive pleading\_1.DOC



Grant\_  
stipulation to 60 day

Dear Mr. Baker and Ms. Makler;

As I indicated in my earlier voicemail, we still don't have a ruling on our motion to stay in the Grant matter and Toyota's pleading in response to the First Amended Complaint is due on Thursday, February 25, 2010. While we don't agree that this case should be remanded, we do agree that plaintiffs' remand motion should be brought and determined before we occupy the Court's time with motions to dismiss. Since you indicated in your opposition to our stay request that you do not oppose Toyota receiving additional time to file a responsive pleading to your first amended complaint, we have prepared the attached stipulation for a 60 day extension. In the event the court declines to stay this action, this should allow sufficient time for the prior hearing and determination of your remand motion. Please let us know by 9:30 a.m. tomorrow whether the attached stipulation is acceptable. If we cannot secure your agreement, please be advised that we will be filing an ex parte application for the extension before Judge Pfaelzer tomorrow.

**Stephanie A. Jones, Esq.**  
Alston & Bird LLP  
333 S. Hope Street, 16th Floor  
Los Angeles, CA 90071  
Tel: (213) 576-1000  
Dir: (213) 576-1136  
Fax: (213) 576-1100  
Email: stephanie.jones@alston.com

1 LISA GILFORD (SBN 171641)  
2 JOHN D. ARYA (SBN 156108)  
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4 **ALSTON & BIRD LLP**  
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10 john.arya@alston.com

11 VINCENT GALVIN, JR. (SBN 104448)  
12 **BOWMAN & BROOKE LLP**  
13 1741 Technology Drive, Suite 200  
14 San Jose, California 95110-1355  
15 Telephone: (408) 279-5393  
16 Facsimile: (408) 279-5845  
17 Email: vincent.galvinjr@sjo.bowmanandbrooke.com

18 Attorneys for Defendant  
19 TOYOTA MOTOR SALES USA, INC.

20 **UNITED STATES DISTRICT COURT**  
21 **CENTRAL DISTRICT OF CALIFORNIA**

22 STUART GRANT, an individual,  
23  
24 Plaintiff,

25 v.

26 TOYOTA MOTOR SALES USA, INC., a  
27 corporation; and DOES ONE through  
28 TWENTY,

Defendants.

Case No. CV10-01234 MRP(SSx)

**CLASS ACTION**

[Honorable Mariana R. Pfaelzer]

**STIPULATION FOR 60 DAY  
EXTENSION OF TIME FOR  
DEFENDANT TOYOTA MOTOR  
SALES U.S.A. TO FILE  
RESPONSIVE PLEADING  
(Submitted with Proposed Order)**

1 Defendant Toyota Motor Sales, U.S.A., Inc. ("Toyota") and Plaintiff  
2 Stuart Grant, by and through their respective counsel of record, hereby stipulate with  
3 reference to the following facts:

4 Toyota has filed an *ex parte* application with the Court for an Order  
5 staying all proceedings in this action, pending a ruling by the Judicial Panel on Multi-  
6 District Litigation ("JPML"), regarding consolidation motions pertaining to the  
7 various consumer class-actions brought against Toyota entities over alleged  
8 unintended acceleration of Toyota and Lexus vehicles, and over voluntary safety  
9 recalls of Toyota and Lexus vehicles.

10 Plaintiffs opposed Toyota's application for a stay, on the grounds that  
11 they will be moving to remand this action to state court. Toyota anticipates opposing  
12 plaintiffs' remand motion, and further anticipates filing a motion to dismiss all or  
13 some of the claims in the first amended complaint. Because this action was removed  
14 from state court on February 18, 2010, under Federal Rule of Civil Procedure  
15 81(c)(2), Toyota's motion to dismiss is due February 25, 2010. This is Toyota's first  
16 request for an extension of time to file a pleading in this action.

17 The Court has not yet ruled on Toyota's stay application. However, if  
18 the Court denies Toyota's stay application, and/or the JPML declines to consolidate  
19 this matter with the other pending Toyota matters, the parties agree that plaintiff's  
20 remand motion should be heard and determined before motions to dismiss are heard  
21 and determined, because concurrently briefing both issues would be a waste of the  
22 Court and parties' resources.

23 THE PARTIES THEREFORE AGREE AND STIPULATE THAT:

24 Defendant Toyota shall have a 60 day extension, through and including  
25 April 26, 2010, to file a responsive pleading to Plaintiff's First Amended Complaint.  
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27

28 DATED: February \_\_, 2010 JULIANNA R. MAKLER  
TERRY L. BAKER

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**MAKLER & BANKER LLP**

DAVID R. GRIFFIN  
**GRIFFIN & ASSOCIATES**

---

Terry L. Baker  
Attorneys for Plaintiff  
STUART GRANT

DATED: February \_\_, 2010

LISA GILFORD  
JOHN D. ARYA  
**ALSTON & BIRD LLP**

VINCENT GALVIN, JR.  
**BOWMAN & BROOKE LLP**

---

Stephanie A. Jones  
Attorneys for Defendant TOYOTA MOTOR  
SALES USA, INC.



**CERTIFICATE OF SERVICE**

I hereby certify that on February 24, 2010, I caused a copy of the **DECLARATION OF LISA GILFORD IN SUPPORT OF EX PARTE APPLICATION FOR A 60 DAY EXTENSION TO FILE A RESPONSIVE PLEADING** to be served upon the following counsel in the manner described below:

*Via the Court's CM/ECF system and E-mail:*

Julianna R. Makler, Esq.  
Terry L. Baker, Esq.  
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By: /s/ Lisa Gilford  
**Attorney for Defendants**  
**TOYOTA MOTOR SALES, U.S.A., INC.**

*Via First Class U.S. Mail:*

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Griffin & Associates  
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San Diego, CA 92101

Attorneys for Plaintiff  
STUART GRANT

Telephone: (619) 222-0888  
Facsimile: (619) 923-3680

By: /s/ Lisa Gilford

**Attorney for Defendants**

**TOYOTA MOTOR CORPORATION and  
TOYOTA MOTOR SALES, U.S.A., INC.**

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1 LISA GILFORD (State Bar No. 171641)  
 2 JOHN D. ARYA (State Bar No. 156108)  
 3 STEPHANIE A. JONES (State Bar No. 178453)  
 4 ROGER A. CERDA (State Bar No. 239027)  
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 10 Facsimile: (213) 576-1100  
 11 lisa.gilford@alston.com  
 12 stephanie.jones@alston.com

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 14 **BOWMAN AND BROOKE**  
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 19 E-mail: vgalvin@bowman-brooke.com

20 **Attorneys for Defendant**  
 21 **TOYOTA MOTOR SALES, U.S.A., INC.**

22 **UNITED STATES DISTRICT COURT**  
 23 **CENTRAL DISTRICT OF CALIFORNIA**

24 STUART GRANT, an individual,  
 25 Plaintiff,

26 v.

27 TOYOTA MOTOR SALES, U.S.A., INC.; a  
 28 corporation, and DOES ONE through  
 TWENTY,  
 Defendants.

Case No.: CV10-01234 MRP(SSx)

[Hon. Mariana R. Pfaelzer]

**NOTICE OF AND EX PARTE  
 APPLICATION FOR A 60 DAY  
 EXTENSION OF TIME TO FILE A  
 RESPONSIVE PLEADING, OR  
 SUCH SHORTER EXTENSION AS  
 THE COURT DEEMS  
 APPROPRIATE; MEMORANDUM  
 OF POINTS AND AUTHORITIES IN  
 SUPPORT THEREOF**

**[Filed concurrently with Declaration  
 of Lisa Gilford and (Proposed) Order]**

NOTICE OF AND EX PARTE APPLICATION FOR 60 DAY EXTENSION TO FILE A RESPONSIVE PLEADING;  
 MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

1           **PLEASE TAKE NOTICE** that defendant Toyota Motor Sales USA  
2 (“Toyota”) hereby applies *ex parte* to this Court for an Order granting it a 60 day  
3 extension, through and including April 20, 2010, or such shorter extension of time that  
4 the Court deems appropriate, to file its responsive pleading to Plaintiff Stuart Grant’s  
5 First Amended Complaint.

6           This *Ex Parte* Application is brought in an abundance of caution, pending the  
7 Court’s ruling on Toyota’s Application for an immediate stay of all proceedings,  
8 because Toyota’s pleading in response to the First Amended Complaint is due on  
9 Thursday, February 25, 2010. Toyota intends to file a motion to dismiss, which,  
10 absent the requested extension, would likely be heard before plaintiffs’ anticipated  
11 remand motion, because plaintiffs’ remand motion is not due until March 19, 2010.  
12 If this matter is not stayed, good cause exists for the requested brief extension of time,  
13 in that it will best serve the interests of the Court and the parties because the Court can  
14 first hear and determine plaintiffs’ remand motion before wasting valuable resources  
15 on motions to dismiss that will become moot if the case is remanded to state court.

16           The Court has inherent power to grant such requests in complex cases such as  
17 the instant case. *See* Judicial Manual for Management of Complex Litigation, Second,  
18 section 21.13 (discussing the Court’s ability to sua sponte extend the time for filing  
19 responses to the complaint even until after the initial scheduling conference).  
20 Moreover, no party will be prejudiced by the requested extension, because the  
21 Scheduling Order in this action has not yet issued, and plaintiffs have previously  
22 represented to the Court that they do not oppose Toyota’s request.

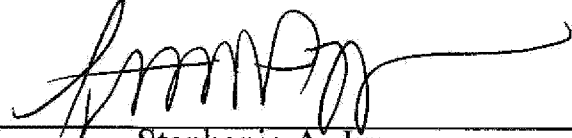
23           This *Ex Parte* Application is based upon the attached Memorandum of Points  
24 and Authorities, the Declaration of Lisa Gilford filed herewith, and upon such oral  
25 argument as may be made to the Court.

26           Counsel for Plaintiff Stuart Grant, Terry L. Baker of Makler & Baker (3 West  
27 Carrillo Street, Suite 216, Santa Barbara, California, telephone: (805) 965-4651 has  
28

1 been provided notice of this application. (See accompanying declaration of Lisa  
2 Gilford.) Toyota attempted to meet and confer with plaintiff's counsel, in an attempt  
3 to secure a stipulation for the requested extension, but plaintiffs' counsel refused to  
4 respond to Toyota's meet and confer efforts, necessitating the instant *ex parte*  
5 application. (Gilford Decl., ¶13.)  
6  
7

8 Dated: February 24, 2010

Respectfully submitted,  
**ALSTON + BIRD LLP**

9  
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11 \_\_\_\_\_  
Stephanie A. Jones  
12 Attorney for Defendant  
TOYOTA MOTOR SALES, U.S.A., INC.  
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This action is one of at least 72 consumer class-actions pending in United States  
4 District Courts around the country, all brought by alleged owners or lessees of Toyota  
5 and Lexus vehicles. Each of these actions asserts class-wide claims, against various  
6 Toyota entities, purporting to arise out of alleged unintended acceleration and  
7 voluntary safety recalls of Toyota and Lexus vehicles. (See Declaration of Lisa  
8 Gilford ("Gilford Decl."), ¶ 6.) The case is very recent, only having been filed in Los  
9 Angeles County Superior Court on January 8, 2010, and removed to this Court, under  
10 federal claim jurisdiction, on February 18, 2010. (*Id.* at ¶¶ 2-3.)

11 There are several motions for consolidation pending before the Judicial Panel  
12 on Multi-District Litigation ("JPML") regarding these cases. Given the pending  
13 JPML consolidation motions, on February 21, 2010 Toyota filed an *ex parte*  
14 application for an immediate stay of all proceedings in this matter, until the JPML  
15 rules on the consolidation motions. (*Id.* at ¶ 8.) Plaintiffs opposed Toyota's stay  
16 application, because they intend to file a motion to remand the case to state court.  
17 However, in plaintiffs' opposition they confirmed that that they do not oppose a grant  
18 of additional time to Toyota to file a response to the First Amended Complaint,  
19 because hearing and determining the remand issue first could render any motions to  
20 dismiss moot. (*Id.* at ¶ 9, Ex. C.) Notwithstanding this concession, plaintiffs refused  
21 to enter into a stipulation granting Toyota additional time to file a responsive pleading,  
22 necessitating this *ex parte* application. (*Id.* at ¶ 13.)

23 Toyota still believes that a stay of all proceedings is appropriate and warranted,  
24 given the pending JPML consolidation proceedings. In fact, Judge Matz has entered  
25 complete stays in two of these cases, *Aviles v. Toyota Motor Corporation, et al.*,  
26 CV10-00706 AHM(FMOx) and *Gazaryan v. Toyota Motor Sales U.S.A., Inc. et al.*,  
27 CV10-00849 AHM(FMOx) (*Id.* at ¶ 8, Ex. B.) Because the Court has not yet ruled  
28

1 on Toyota's pending stay application, Toyota brings this second *ex parte*, in an  
2 abundance of caution, to preserve its rights to move to dismiss certain claims in the  
3 First Amended Complaint. Because Toyota's responsive pleading is due tomorrow,  
4 Toyota respectfully requests that the Court rule on either its stay application or the  
5 instant request for extension as soon as possible. In the event that the Court declines  
6 to completely stay these proceedings, a 60 day extension, or such shorter time as the  
7 Court deems appropriate, will allow the Court to hear and determine the remand issue  
8 before the parties expend significant resources bringing and opposing motions to  
9 dismiss that could become moot.

## 10 **II. ARGUMENT**

11 It is "incidental to the power inherent in every court to control the disposition of  
12 the causes on its docket with economy of time and effort for itself, for counsel, and for  
13 litigants." *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). The Judicial Manual for  
14 Complex Litigation, Second Edition, further confirms the Court's power to sua sponte  
15 extend the time to file responsive pleadings in complex matters such as this case, even  
16 beyond the initial scheduling conference. *See* Section 21.13. The requested stay will  
17 best serve these policies because it will allow the parties and the Court to focus on the  
18 remand issue before motions to dismiss are addressed, in the event that the Court  
19 declines to stay this matter altogether. Addressing the remand issue first is the best  
20 use of the Court and the parties' resources because it will prevent the expenditure of  
21 resources on motions to dismiss that will become moot if the case is remanded to state  
22 court.

23 Moreover, plaintiffs have stated they do not oppose the requested extension and  
24 no prejudice will result from granting Toyota's request. (Gilford Decl., ¶ 12.) This  
25 case was just filed a little over one month ago, so it is still in its infancy, and no  
26 scheduling order has yet issued. (*Id.*) Finally, Toyota has not previously requested  
27 any extensions of time to file its responsive pleading. (*Id.*) As a result, good cause  
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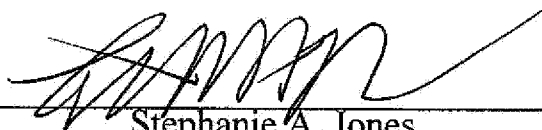
1 exists to grant Toyota a 60 day extension, through and including April 20, 2020, or  
2 such shorter time as the Court deems appropriate.

3  
4 **III. CONCLUSION**

5 Good cause exists for the requested extension. Toyota therefore respectfully  
6 requests that the Court grant the instant *ex parte* Application.

7  
8 Dated: February 24, 2010

Respectfully submitted,  
**ALSTON + BIRD LLP**

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11 \_\_\_\_\_  
Stephanie A. Jones  
12 Attorney for Defendant  
TOYOTA MOTOR SALES, U.S.A., INC.



**CERTIFICATE OF SERVICE**

I hereby certify that on February 24, 2010, I caused a copy of the **NOTICE OF AND EX PARTE APPLICATION FOR A60 DAY EXTENSION OF TIME TO FILE A RESPONSIVE PLEADING, OR SUCH SHORTER EXTENSION AS THE COURT DEEMS APPROPRIATE; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** to be served upon the following counsel in the manner described below:

*Via the Court's CM/ECF system and E-mail:*

Julianna R. Makler, Esq.  
Terry L. Baker, Esq.  
Makler & Baker LLP  
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Attorneys for Plaintiff  
STUART GRANT  
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Facsimile: (805) 965-4671

By: /s/ Lisa Gilford  
**Attorney for Defendants**  
**TOYOTA MOTOR SALES, U.S.A., INC.**

*Via First Class U.S. Mail:*

1  
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3 David R. Griffin, Esq.  
Griffin & Associates  
4 501 W. Broadway, Suite 800  
San Diego, CA 92101

Attorneys for Plaintiff  
STUART GRANT

Telephone: (619) 222-0888  
Facsimile: (619) 923-3680

6  
7 By: /s/ Lisa Gilford

Attorney for Defendants

8 **TOYOTA MOTOR CORPORATION and**  
9 **TOYOTA MOTOR SALES, U.S.A., INC.**

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

Joseph Grant

Plaintiff(s),

CASE NUMBER:

CV 10-01234 MRP(SSx)

v.

Toyota Motor Sales,USA, Inc.,et al

Defendant(s).

ORDER RE TRANSFER PURSUANT  
TO GENERAL ORDER 08-05  
( Related Cases)

CONSENT

I hereby consent to the transfer of the above-entitled case to my calendar, pursuant to General Order 08-05.

2/24/2010  
Date

A. Howard Matz  
United States District Judge

DECLINATION

I hereby decline to transfer the above-entitled case to my calendar for the reasons set forth:

\_\_\_\_\_  
Date

\_\_\_\_\_  
United States District Judge

REASON FOR TRANSFER AS INDICATED BY COUNSEL

Case CV 09-08143 AHM(FMOx) and the present case:

- A. Arise from the same or closely related transactions, happenings or events; or
- B. Call for determination of the same or substantially related or similar questions of law and fact; or
- C. For other reasons would entail substantial duplication of labor if heard by different judges; or
- D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.
- E. Involve one or more defendants from the criminal case in common, and would entail substantial duplication of labor if heard by different judges (applicable only on civil forfeiture action).

NOTICE TO COUNSEL FROM CLERK

Pursuant to the above transfer, any discovery matters that are or may be referred to a Magistrate Judge are hereby transferred from Magistrate Judge Segal to Magistrate Judge Olguin.

On all documents subsequently filed in this case, please substitute the initials AHM(FMOx) after the case number in place of the initials of the prior judge, so that the case number will read CV 10-01234 AHM(FMOx). This is very important because documents are routed to the assigned judges by means of these initials. The case file, under seal documents, exhibits, docket, transcripts or depositions may be viewed at the  Western  Southern  Eastern Division.

Traditionally filed subsequent documents must be filed at the  Western  Southern  Eastern Division.  
Failure to file at the proper location will result in your documents being returned to you.

cc:  Previous Judge  Statistics Clerk

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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

STUART GRANT, an individual,

Plaintiff,

v.

TOYOTA MOTOR SALES, U.S.A., INC.; a  
corporation, and DOES ONE through  
TWENTY,

Defendants.

Case No.: CV10-01234 MRP(SSx)

[Hon. Mariana R. Pfaelzer]

**(PROPOSED) ORDER GRANTING  
DEFENDANT TOYOTA MOTOR  
SALES, U.S.A., INC. A FURTHER  
EXTENSION OF TIME TO FILE A  
RESPONSIVE PLEADING**

1 On February 24, 2010 Defendant Toyota Motor Sales, U.S.A., Inc. ("Toyota")  
2 appeared before this Court, on an *ex parte* basis, for An Order granting it an extension  
3 of time to file a pleading in response to the First Amended Complaint.

4 The Court, having considered the application, points and authorities, evidence,  
5 and arguments offered by counsel, and any opposition thereto filed, and good cause  
6 appearing therefore,

7  
8 **HEREBY ORDERS AND ADJUDGES THAT:**

9 Therefore, IT IS SO ORDERED that Toyota's request is granted and the  
10 deadline for Toyota to file a responsive pleading to the First Amended Complaint in  
11 this matter is extended to \_\_\_\_\_.

12  
13 **IT IS SO ORDERED.**

14  
15 DATED: \_\_\_\_\_  
16 Hon. Mariana P. Pfaelzer  
17 United States District Judge  
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**CERTIFICATE OF SERVICE**

I hereby certify that on February 24, 2010, I caused a copy of the **(PROPOSED) ORDER RE 60 DAY EXTENSION OF TIME TO FILE A RESPONSIVE PLEADING** to be served upon the following counsel in the manner described below:

*Via the Court's CM/ECF system and E-mail:*

Julianna R. Makler, Esq.  
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By: /s/ Lisa Gilford  
**Attorney for Defendants**  
**TOYOTA MOTOR SALES, U.S.A., INC.**

*Via First Class U.S. Mail:*

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By: /s/ Lisa Gilford

**Attorney for Defendants**

**TOYOTA MOTOR CORPORATION and  
TOYOTA MOTOR SALES, U.S.A., INC.**

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(FMOx), DISCOVERY, RELATED-G

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA  
(Western Division - Los Angeles)  
CIVIL DOCKET FOR CASE #: 2:10-cv-01234-AHM-FMO**

Stuart Grant v. Toyota Motor Sales USA Inc et al  
Assigned to: Judge A. Howard Matz  
Referred to: Magistrate Judge Fernando M. Olguin  
Related Case: 2:09-cv-08143-AHM-FMO  
Case in other court: Superior Court of CA County of Los Angeles, BC429345  
Cause: 28:1441 Notice of Removal - Injunctive/Declaratory Relief

Date Filed: 02/18/2010  
Jury Demand: None  
Nature of Suit: 890 Other Statutory Actions  
Jurisdiction: Federal Question

**Plaintiff**

**Stuart Grant**  
*an individual*

represented by **David Griffin**  
Griffin & Associates  
501 West Broadway Suite 800  
San Diego, CA 92101  
619-222-0888  
Fax: 619-923-3680  
*ATTORNEY TO BE NOTICED*

**Julianna R Makler**  
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Santa Barbara, CA 93101  
805-965-4651  
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Email: [tbaker@consumerlawgroup.net](mailto:tbaker@consumerlawgroup.net)  
*ATTORNEY TO BE NOTICED*

V.

**Defendant**



**Toyota Motor Sales USA Inc**  
*a corporation*

represented by **John D. Arya**  
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 San Jose, CA 95110  
 408 279 5393  
 Fax: 408 279 5845  
*ATTORNEY TO BE NOTICED*

**Defendant**

**Does**

*One through Twenty*

Date Filed	#	Docket Text
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02/18/2010	<u>1</u>	NOTICE OF REMOVAL from the Superior Court of CA, County of Los Angeles, case number BC429345 with CONFORMED copies of summons and complaint. Case assigned to Judge Mariana R. Pfaelzer, Discovery to Magistrate Judge Suzanne H Segal; (Filing fee \$ 350 PAID ); filed by defendant Toyota Motor Sales USA Inc.(esa) (ds). (Additional attachment(s) added on 2/19/2010: # <u>1</u> Civil Cover Sheet) (ds). (Entered: 02/19/2010)
02/18/2010		UNCONFORMED COPY OF FIRST AMENDED COMPLAINT - CLASS ACTION against defendants Does, Toyota Motor Sales USA Inc amending Complaint (see copy in Notice of Removal, <u>1</u> ),filed by plaintiff Stuart Grant (esa) (Entered: 02/19/2010)
02/18/2010	<u>2</u>	NOTICE OF INTERESTED PARTIES filed by defendant Toyota Motor Sales USA Inc. (esa) (ds). (Entered: 02/19/2010)
02/18/2010	<u>3</u>	APPENDIX OF STATE COURT PLEADINGS AND PAPERS filed by Defendant Toyota Motor Sales USA Inc re: Notice of Removal, <u>1</u> (esa) (ds). (Entered: 02/19/2010)
02/18/2010	<u>4</u>	CERTIFICATE OF SERVICE filed by defendant Toyota Motor Sales USA Inc, served on 2/18/10. (esa) (ds). (Entered: 02/19/2010)
02/19/2010	<u>5</u>	PROOF OF SERVICE filed by Defendant Toyota Motor Sales USA Inc, <i>re Notice to Counsel, Notice of Assignment to Magistrate Judge for Discovery; Clerk's Office Services for Attorneys and the General Public, USDC Central District of California Civility and Professionalism Guidelines</i> served on February 19, 2010. (Jones, Stephanie) (Entered: 02/19/2010)
02/22/2010	<u>6</u>	EX PARTE APPLICATION to Stay Case pending Action by the Judicial Panel on Multidistrict Litigation filed by Defendant Toyota Motor Sales USA Inc. (Attachments: # <u>1</u> Proposed Order, # <u>2</u> Declaration, # <u>3</u> Certificate of Service)(Jones, Stephanie) (Entered: 02/22/2010)
02/22/2010	<u>7</u>	Opposition Opposition re: EX PARTE APPLICATION to Stay Case pending Action by the Judicial Panel on Multidistrict Litigation <u>6</u> filed by Plaintiff Stuart Grant. (Baker, Terry) (Entered: 02/22/2010)
02/22/2010	<u>8</u>	EXHIBIT ABC to EX PARTE APPLICATION to Stay Case pending Action by the Judicial Panel on Multidistrict Litigation <u>6</u> <i>In Opposition</i> filed by Plaintiff Stuart Grant. (Attachments: # <u>1</u> Exhibit)(Baker, Terry) (Entered: 02/22/2010)
02/24/2010	<u>9</u>	EX PARTE APPLICATION for Extend Time to File Answer to 4/20/2010 re Amended Complaint filed by Defendant Toyota Motor Sales USA Inc. (Attachments: # <u>1</u> Proposed Order)(Jones, Stephanie) (Entered: 02/24/2010)
02/24/2010	<u>10</u>	DECLARATION of LISA GILFORD in support of EX PARTE APPLICATION for Extend Time to File Answer to 4/20/2010 re Amended Complaint <u>9</u> filed by Defendant Toyota Motor Sales USA Inc. (Jones, Stephanie) (Entered: 02/24/2010)
02/24/2010	<u>11</u>	ORDER RE TRANSFER PURSUANT TO GENERAL ORDER 08-05 -Related Case-filed. Related Case No: CV 09-08143 AHM(FMOx). Case transferred from Judge Mariana R. Pfaelzer and Magistrate Judge Suzanne H. Segal to Judge A. Howard Matz and Magistrate Judge Fernando M. Olguin for all further proceedings. The case number will now reflect the initials of the transferee Judge CV 10-01234 AHM (FMOx).Signed by Judge A. Howard Matz (rn) (Entered: 02/24/2010)

<b>PACER Service Center</b>			
<b>Transaction Receipt</b>			
02/25/2010 07:15:00			
<b>PACER Login:</b>	wb0242	<b>Client Code:</b>	056707-383593
<b>Description:</b>	Docket Report	<b>Search Criteria:</b>	2:10-cv-01234-AHM-FMO End date: 2/25/2010
<b>Billable Pages:</b>	3	<b>Cost:</b>	0.24